

# Police Prosecutor Update

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## SEARCH AND SEIZURE TERRY STOP

On November 7, 2016, the Indiana Court of Appeals issued its decision in Jacobs v. State, \_\_\_ N.E.3<sup>d</sup> \_\_\_, (Ind. Ct. App. 2016). Police had been sent on multiple runs to an apartment complex because of complaints that shots had been fired by juveniles and possible gang members wearing red clothing. The apartments were located in an area known to be a high crime area. After receiving a complaint during school hours, an officer went to the apartment complex and saw a group of individuals, many of whom appeared to be school aged juveniles and wearing red. Jacobs was one of them and at one point had a red t-shirt slung across his shoulder. Juveniles and adults were observed coming and going from this group over the course of hours. A park ranger in a marked vehicle approached the area, and Jacobs and another juvenile left the group and walked toward the apartments. After the park ranger left, Jacobs and his companion returned to the group. The officer requested assistance from uniformed officers.

As marked police vehicles approached, Jacobs and the other fellow began to quickly walk toward the apartments. A second officer, wearing a "POLICE" vest, approached; Jacobs picked up the pace. When told to stop, Jacobs continued walking. Officers ordered Jacobs to the ground, and he complied. He was placed in handcuffs and was escorted by police to a park shelter. A third officer observed the outline of a handgun in Jacobs' right front pocket. He asked Jacobs if he had any weapons, and Jacobs denied that he did. The officer removed the handgun and placed Jacobs under arrest. He was charged with and convicted of carrying a handgun without a permit. During trial, Jacobs objected to the admission of the gun on 4<sup>th</sup> Amendment and Article I, Section 11 grounds.

An officer may briefly detain someone without a warrant or probable cause if he has specific and articulable facts that would cause a reasonable person to believe that criminal activity has occurred or is occurring. During such a stop, an officer may search for weapon only if he has reason to believe that the person is armed and dangerous, regardless of whether the officer has probable cause for an arrest. The Court found:

Jacobs, who appeared to be a juvenile, was congregating for a relatively lengthy period of time with suspected gang members in a park during a time of day that juveniles should have been in school and was in possession of gang colors himself. Jacobs quickly left the area where the group was congregated whenever he observed law enforcement in the general vicinity, returned only after law enforcement had left the general vicinity, and increased his speed in leaving the area as law enforcement came closer. In addition, Jacobs failed to stop when initially ordered to do so by Officer Smith. On top of these facts, Jacobs and the group were congregated in a high crime area where there had been recent episodes of violence . . . Upon review, we conclude that these facts are sufficient to establish reasonable suspicion that Jacobs was engaged in criminal activity.

The Court further found that the search of Jacob's person, after the officer observed the outline of a gun, was reasonable.

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Having concluded the stop and the protective search did not violate the 4<sup>th</sup> Amendment, the Court turned to Article I, Section 11 of the Indiana Constitution. Applying the 3-part Litchfield analysis, the Court found the police had a high degree of concern, suspicion or knowledge of wrongdoing. It appeared that a number of individuals gathered were school-aged and were truant. Although 18 at the time of arrest, Jacobs looked to be a juvenile. They were gathered in a high crime area, and many were wearing gang colors. There had been multiple runs to the area on reports of shots fired by juveniles. Jacobs and another juvenile walked away from the group whenever they saw law enforcement, and refused to stop when initially ordered to do so.

The Court found the degree of intrusion was high because Jacobs was required to lie on the ground, was handcuffed, and was taken to another area.

The Court finally found that the needs of law enforcement to protect the community by attempting to stop gun violence were great. Many gathered were wearing gang colors. Juveniles wearing gang colors were suspected of being responsible for prior gunshot reports in the area. Jacobs both appeared to be a juvenile and was seen in possession of gang colored clothing. Finally Jacobs lied to police about the gun that he was observed to possess.

Having found two of the three factors to weigh in the state's favor, the Court found the stop of Jacobs and ultimate discovery of the handgun did not violated Article I, Section 11 of the Indiana Constitution.

This decision received a vigorous dissent. I would not be surprised if Jacobs asks for transfer to the Supreme Court.