

# Police Prosecutor Update

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## SEARCH AND SEIZURE TERRY STOP

On June 29, 2017, the Indiana Supreme Court issued its decision in Jacobs v. State, \_\_\_ N.E.3d \_\_\_, (Ind. Ct. App. 2017), which overrules the decision of the Court of Appeals in Jacobs v. State, 62 N.E.3d 1253 (Ind. Ct. App. 2017), reported in the November, 2016, issue no. 292, of the Police Prosecutor Update. 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.

The Court found it was reasonable for the officer to believe that Jacobs, who was not a juvenile, was truant when he first observed Jacobs; however, when the officer approached Jacobs several hours later, school had let out, and Jacobs was no longer truant. The Court also found it reasonable to conclude Jacobs could be affiliated with a gang, and that the early shooting had been gang related. However, the Court concluded that at the time of the stop, police had no articulable suspicion that Jacobs himself was involved in the shooting. "[H]is mere suspected affiliation with the suspected gang is not enough to justify a Terry stop on its own." At the time police detained Jacobs, they did not have reasonable suspicion that he had committed or was about to commit a criminal act. The Court reversed Jacobs' conviction.

## SUFFICIENCY OF THE EVIDENCE DEADLY WEAPON

On June 23, 2017, the Indiana Court of Appeals issued its decision in Burgh v. State, \_\_\_ N.E.3d \_\_\_, (Ind. Ct. App. 2017). Burgh and his girlfriend got into a fight with the victim in a pharmacy parking lot. During the fight Burgh pulled the victim to the paved asphalt surface, and his girlfriend slammed her

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head onto the paved surface 6 times, causing her to suffer a concussion. Burgh was charged with Level 5 felony battery with a deadly weapon, the asphalt pavement. After a bench trial the court found Burgh guilty and stated that the asphalt was a deadly weapon.

Burgh appealed and asserted that the paved surface of a parking lot cannot satisfy the deadly weapon enhancement that elevates battery from a Class B misdemeanor to a Level 5 felony. Whether an object is a deadly weapon on a given set of facts is determined from the nature of the object, the manner of its use, and the circumstances of the case. The original purpose of the object is not considered. The Court concluded that a reasonable trier of fact could conclude that Burgh and his girlfriend used the pavement as a blunt object with which to smash the victim's skull. It affirmed Burgh's Level 5 battery conviction.

