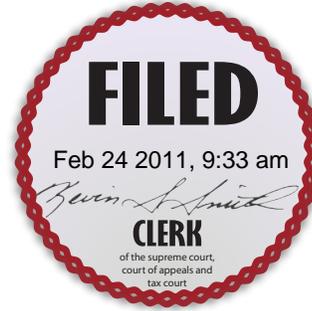


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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PHILLIP COLLIER, )  
 )  
Appellant-Defendant, )  
 )  
vs. ) No. 49A04-1007-CR-401  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Rebekah Pierson-Treacy, Judge  
Cause No. 49F19-0912-CM-99546

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**February 24, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARNES, Judge**

## Case Summary

Phillip Collier appeals his conviction for Class A misdemeanor criminal trespass. We reverse.

### Issue

Collier raises one issue, which we restate as whether evidence was obtained during a lawful encounter with police.

### Facts

On December 7, 2009, a Marion County Sheriff's Department deputy, Donovan Kegeris, also worked for Phoenix Apartments, a high crime area in Indianapolis. Deputy Kegeris, who was wearing his "police uniform," observed Collier walking with another man at the Phoenix Apartments. Tr. p. 11. Collier was talking to the other man and looking down. When he looked up and saw Deputy Kegeris, Collier "turned around and took off back inside the building." Id. Collier "didn't run, but he was walking at a real quick pace towards the back of the building." Id. at 12. At that point, Deputy Kegeris was concerned that Collier did not belong there or that he had a gun. Deputy Kegeris "ordered him to stop and he stopped just before getting into the building." Id. Deputy Kegeris asked Collier for his identification, and Collier gave it to him. Collier's name was on a no trespass list for the Phoenix Apartments, and Deputy Kegeris arrested him.

The State charged Collier with Class A misdemeanor criminal trespass. At the bench trial, Collier objected to the admission of the evidence obtained during his encounter with Deputy Kegeris. The trial court overruled the objection and eventually found Collier guilty of criminal trespass. Collier now appeals.

## Analysis

“Our standard of review of rulings on the admissibility of evidence is essentially the same whether the challenge is made by a pre-trial motion to suppress or by trial objection.” Montgomery v. State, 904 N.E.2d 374, 377 (Ind. Ct. App. 2009), trans. denied. We review the admission of evidence for an abuse of discretion. Id. “An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the trial court.” Id. We do not reweigh the evidence, and we consider conflicting evidence in a light most favorable to the trial court’s ruling. Id.

Collier argues that Deputy Kegeris’s investigatory stop was unlawful because it was not supported by reasonable suspicion. The State responds that the stop was lawful because it was either a consensual encounter or Deputy Kegeris had reasonable suspicion to stop Collier. At trial, Deputy Kegeris testified that he “ordered” Collier to stop and that he “asked” Collier to stop. Tr. pp. 12, 21. The State contends, “If the officer ‘asked’ Defendant to stop then it would be a consensual encounter, but the officer would need reasonable suspicion if he ‘ordered’ Defendant to stop.” Appellant’s Br. p. 3.

Regarding consensual encounters, our supreme court has explained:

Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L.Ed.2d 889 (1968) established that a law enforcement officer must have reasonable suspicion of criminal conduct in order to justify a traffic stop, which is a “seizure” for purposes of the Fourth Amendment. . . . As Terry explained, “not all personal intercourse between policemen and citizens involves ‘seizures’ of persons. Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a ‘seizure’ has occurred.” 392 U.S. at 20 n.16, 88 S. Ct. 1868. It is clear that “mere police questioning does not constitute a

seizure.” Florida v. Bostick, 501 U.S. 429, 434, 111 S. Ct. 2382, 115 L.Ed.2d 389 (1991); see also Florida v. Royer, 460 U.S. 491, 497, 103 S. Ct. 1319, 75 L.Ed.2d 229 (1983); Terry, 392 U.S. at 19, 88 S. Ct. 1868; Sellmer v. State, 842 N.E.2d 358, 362 (Ind. 2006). The Fourth Amendment is not triggered unless an encounter between a law enforcement officer and a citizen “loses its consensual nature.” Bostick, 501 U.S. at 434, 111 S. Ct. 2382. The encounter is consensual and reasonable suspicion is not required if a reasonable person would feel free to “disregard the police and go about his business.” Id. (quoting California v. Hodari D., 499 U.S. 621, 628, 111 S.Ct. 1547, 113 L.Ed.2d 690 (1991)).

Clarke v. State, 868 N.E.2d 1114, 1118 (Ind. 2007).

The fact that Officer Kegeris testified that he “asked” Collier to stop does not in and of itself make the encounter consensual. Contrary to the State’s assertion, Collier was not “standing” in a public area when Deputy Kegeris asked him to stop. Appellee’s Br. p. 4. Collier had actually turned and walked away from Deputy Kegeris, a uniformed officer, and then Deputy Kegeris asked him to stop. He did. Regardless of whether Deputy Kegeris “asked” or “ordered” Collier to stop, it was not a situation in which a person would feel free to disregard the police and go about his or her business. It was not a consensual encounter.

The State argues that even if it was not a consensual encounter, Deputy Kegeris had reasonable suspicion to stop Collier. “Reasonable suspicion to justify an investigative stop must be based on specific and articulable facts known to the officer at the time of the stop that lead the officer to believe that ‘criminal activity may be afoot.’” Finger v. State, 799 N.E.2d 528, 533-34 (Ind. 2003) (quoting Terry, 392 U.S. at 30, 88 S. Ct. at 1884). “Reasonable suspicion requires more than mere hunches or unparticularized

suspicious.” Id. at 534. “An officer must be able to point to specific facts giving rise to reasonable suspicion of criminal activity.” Id.

The State argues that Collier’s avoidance of Deputy Kegeris coupled with the fact that the incident occurred in a high crime area allowed Deputy Kegeris to stop Collier and briefly investigate. The State asserts, “The officer found Defendant’s actions strange and decided to stop him to determine whether he was involved in any criminal activity.” Appellant’s Br. p. 7. The State acknowledges, however, that, standing alone, one’s presence in a high crime area or turning away or avoidance of police does not constitute reasonable suspicion. See Williams v. State, 477 N.E.2d 96, 99 (Ind. 1985) (concluding late hour, neighborhood, and carrying an unidentified item standing alone or in combination, under the facts, did not justify detention); Stalling v. State, 713 N.E.2d 922, 924 (Ind. Ct. App. 1999) (observing, “the fact that one turns away from the police in a high crime neighborhood is not sufficient, individually or collectively, to establish a reasonable suspicion of criminal activity.”).

In fact, in Bridgewater v. State, 793 N.E.2d 1097, 1103 (Ind. Ct. App. 2003), trans. denied, we concluded that no reasonable suspicion existed to support a stop even when Bridgewater twice fled into a building in a high-crime-area after seeing police officers. We noted that police officers did not observe any transaction between Bridgewater and the people with whom he was talking, that Bridgewater was not carrying anything unusual, and that he was not doing anything else suspicious. Bridgewater, 793 N.E.2d at 1103. We held, “The mere fact that he walked or ran from the police into the building is simply not enough to meet the State’s burden in this case.” Id.

As in Bridgewater, Deputy Kegeris did not see Collier carrying any weapons or drugs in his hands or engaging in any transactions. Although Deputy Kegeris may have found Collier's actions strange, reasonable suspicion requires more than mere hunches or unparticularized suspicions. We cannot say that Collier's avoidance of Deputy Kegeris in a high crime neighborhood provides the necessary particularized suspicion to support an investigatory stop.<sup>1</sup>

### **Conclusion**

Because this was not a consensual encounter and the stop was not based on reasonable suspicion, the trial court improperly overruled Collier's objection to the admissibility of the evidence. We reverse.

Reversed.

BAKER, J., and VAIDIK, J., concur.

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<sup>1</sup> Because we conclude there was no reasonable suspicion to support the stop based on the Fourth Amendment to the United States Constitution, we need not address Collier's claims that his Indiana constitutional rights were violated.