

Published: 06.18.2005

Appeals court bars evidence from Tucson teen's frisking

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THE ASSOCIATED PRESS

PHOENIX - Police can't conduct a pat-down search unless they have reason to believe someone has committed a crime, a state appellate court ruled Friday in a Tucson case stemming from the frisking of a 16-year-old in an area known for gang and drug activity.

Police found a 40-ounce bottle of beer and a small bag of cocaine in the youth's clothes during the June 23, 2004, pat-down search in a park on Tucson's South Side. He later was adjudicated in juvenile court and placed on a year's probation.

However, a three-judge Court of Appeals panel in Tucson overturned the adjudication, agreeing with the teen's defense that the juvenile court judge should have suppressed the evidence.

Under a 1968 U.S. Supreme Court ruling, police can detain people only if an officer has a reasonable suspicion that criminal activity is afoot, but there was no such indication in the Tucson case before the youth was frisked, the Arizona court said.

The youth was among five people sitting under a park ramada, some wearing red, baggy clothing that an officer testified was often associated with weapons-carrying gang members.

Prosecutors argued that police had reasons to fear for their safety - including that one of the five people was a known gang member and that police had been shot at in the neighborhood recently. Also, the 16-year-old was wearing gang colors and loose-fitting clothes that could have concealed a gun.

However, the Court of Appeals said the officers weren't entitled to conduct a "protective search" of the youth without reason to believe he had committed a crime because such a search hinges on the officers having grounds to make an investigatory stop in the first place.

"We are cognizant of the need for officers to protect themselves as they engage in the vitally important and dangerous task of enforcing our laws, and we agree they must be given substantial leeway in determining whether a suspect may be armed and dangerous," Judge Peter J. Eckerstrom wrote for the court. "But, in the context of a consensual encounter initiated by an officer, those persons targeted by the officer, when not reasonably suspected of any criminal activity, also possess the right to be free of unwarranted government intrusion."

Judges Joseph W. Howard and J. William Brammer Jr. joined in the ruling.

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