



# ROLL CALL REPORTER

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## Unlawfully Obtained Evidence and the “Independent Source” Doctrine

**QUESTION:** Is evidence seized unlawfully by police automatically excluded from a criminal prosecution?

**ANSWER:** No. There are exceptions to the “Exclusionary Rule”. One is the “Independent Source” Doctrine, which holds that evidence unlawfully obtained by police may still be admissible if the evidence has a lawful and independent source.

**CASE:** *Frank Theodore Williams v. State of Maryland*  
Court of Special Appeals of Maryland, Decided February 26, 2014

This case applies the “Independent Source” Doctrine in the context of a cellphone unlawfully searched by police.

**The Murder:** On December 19, 2011, 19-year old Rodney Pridget was at the Towson Town Mall with his girlfriend. The two went to numerous stores and the food court. Pridget and his girlfriend began walking towards the parking garage at 6:30 p.m. The entire time, Pridget’s movements were being followed by as many as five individuals who were in immediate cellphone contact with each other. As they walked towards the garage, Pridget said to his girlfriend that he did not like the looks of the person behind them. As they reached the garage, Pridget handed all of the shopping bags to his girlfriend and told her to walk close to the wall. At that point, gunfire broke out and Pridget was hit with a volley of shots. One of the shooters was tall and wearing a ski mask. After the shooting, he ran deeper into the garage. Pridget was hit eight times and died at the scene.

**The Investigative Detention and Police Questioning:** Baltimore County Police Officer Kurt Parker was among the first officers to respond. He secured the perimeter of the mall parking garage between Joppa Road and the actual mall at the rear of 204 East Joppa Road. As he did so, he encountered Officer Daniel Burns, who pointed out an individual later identified as Frank Theodore Williams. Williams was frantically running up and down steps in the parking garage. He was wearing a gray and black hoodie with a black hat, and was talking into his cellphone as he ran. Officer Parker drew his weapon and caught up with Williams. He ordered Williams to lie on the ground and quickly frisked him for weapons. The officer noticed that Williams was very sweaty and hot to the touch. Williams was still holding his cellphone. Officer Parker seized the cellphone. Williams was handcuffed and, within a minute or two, other officers began to arrive. Officers brought a witness to where Williams was being detained but he failed to make an identification. Williams’ handcuffs were immediately removed. Officer Parker still wanted to speak with Williams so he requested that another officer transport Williams to the station. At the station house, Officer Jednorski, the transport officer, turned Williams over to detectives but kept possession of the cellphone. Detective Lambert questioned Williams. He asked Williams to fill out a personal information sheet, including his cellphone number. Williams did so. He was questioned until shortly after midnight and then offered a ride home by the detective.

During Williams' interview by Detective Lambert, Officer Jednorski looked down at the cellphone whenever it would ring and then jotted down the numbers from which the calls had been placed.

**The Arrest and Prosecution of Jermell Brandon:** The police investigation resulted in the arrest of Jermell Brandon the following day. In turn, he was persuaded to cooperate with the prosecution. He agreed to enter a guilty plea in federal court and to accept a sentence of 20 years without the possibility of parole. In exchange, Brandon testified as a State's witness against the other conspirators, namely William Ward, Tyrone Brown, and Williams, all of whom were members of the "Black Guerilla Family" (B.G.F.). Brandon denied being a member of B.G.F. but knew that, in order to obtain rank in the gang, you had to kill someone. He testified that Ward was a high-ranking member of B.G.F. and that Williams was a Commander. Brandon also knew that earlier in December, Pridget had shot Dustin Smith, who was Williams' cousin. Brandon was later present with Williams, Ward, and Brown when they decided to kill Pridget. Williams posted Pridget's picture on Facebook and ordered Ward and Brown to kill him. The gang members, including Williams, arrived at the mall in several cars and kept track of Pridget and his girlfriend. Ward and Brown followed Pridget into the garage and killed him there. Ward went back to the mall and told Brandon that they had "torn [Pridget's] ass up." The men then left the mall at different locations. Brown had driven Williams to the mall and was assigned to drive him away. In the confusion after the shooting, however, Williams could not find Brown's car. Brown waited a short time, but then left the area as ordered by Ward.

**The Conviction and Appeal:** Based on the evidence, Williams was convicted of premeditated murder in the first degree and related crimes. His motion to suppress the evidence was denied prior to his trial. Williams appealed. One issue in the appeal was the warrantless seizure of Williams' cellphone. More specifically, was Williams under arrest at the time his cellphone was seized or was he being detained for investigative purposes, despite being ordered to the ground and handcuffed? If Williams were under arrest, then probable cause must have existed at the time of arrest. If so, then the seizure of the cellphone could be deemed to be part of the search incident to arrest. But what if Williams were not under arrest at the time the cellphone was seized?

**The Decision:** The Court of Special Appeals upheld Williams' conviction, even though it decided that Williams *was not under arrest at the point his cellphone was taken*. The Court reached this conclusion because, in the words of the Court, "[a] lawful arrest requires more than a significant and sustained physical restraint. Even with unassailable probable cause to make an arrest, an officer is still required to go forward and actually make the arrest." In short, an officer must actually *intend* to make an arrest. The officer must also inform the person that he or she is being arrested. Here, none of these things had occurred at the point the cellphone was taken. If there was no arrest at the point of seizure (and the police certainly had no probable cause to arrest at the time), how was the subsequent search of the cellphone justified? For the answer, the Court turned to the "Independent Source" Doctrine. This doctrine, established by the Supreme Court in the 1920s, essentially holds that when challenged evidence has an independent source, it is still admissible in a criminal prosecution, even though the police may have obtained it unconstitutionally. Here, the "independent source" for the evidence obtained from the cellphone was "the mass of information about cellphones independently obtained by the police from the telephone company." In other words, the same information gleaned from the cellphone by Officer Jednorski was independently and lawfully available from mobile phone providers and networks. But what about the number of Williams' cellphone itself? Didn't that come into police custody unlawfully? Yes, the court concluded, but the number itself did not implicate Williams in any crime. Further, at the time he was questioned, Williams had freely given his cellphone number on the personal information sheet that he filled out. As such, the police also had an "independent source" for the number, *i.e.*, the personal information sheet. So, even if the cellphone and its contents were

unlawfully seized and searched, the “Independent Source” Doctrine salvaged Williams’ murder conviction.

**NOTE:** If the police had not obtained the cellphone number voluntarily, the result in this case may have been different. As to cellphones and their contents, the rule is that they can be searched incident to a *lawful* arrest, one based on probable cause. If probable cause is uncertain, officers can always try to obtain voluntary consent to search a cellphone. As to the legal wrangling over whether Williams had been detained, arrested, and/or “un-arrested” at some point, the court observed: “The reality, of course, is that when the police are still in a combat mode, they are in no position to think in legalistic terms. They react by instinct. As Officer Parker ran through the parking garage, adrenaline pumping and weapon in hand, the last thing on his mind was the paradigm of a good search incident to a lawful arrest. When the smoke clears, lawyers construct the theory of the case after the fact, a theory that seldom plays out so neatly on the ground.”

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