



ROLL CALL REPORTER

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The “Articulated Basis” for Reasonable Suspicion

QUESTION: Does a “bulging” pocket alone establish reasonable articulable suspicion to believe that a subject is armed?

ANSWER: Generally, the answer is no. Remember, however, that it is critical in reports and in testimony that officers *articulate* why particular observations, either standing alone or viewed collectively, led to the conclusion that reasonable articulable suspicion (RAS) existed to believe a subject was armed. So, if the “bulge” in a pocket was sufficiently clear to show the outlines of a handgun, and the officer articulated this in his/her testimony, then RAS to frisk should be found by the reviewing court. Otherwise, the “bulge” may be just one of many factors leading to the existence of RAS.

CASE: *Torian A. Underwood v. State of Maryland*
Court of Special Appeals of Maryland, Decided October 7, 2014

The Traffic Stop: At 10:59 p.m. on January 16, 2011, Corporal Neil Crouch, a twenty-three year veteran of the of the Havre de Grace Police Department, stopped a 2002 Cadillac for speeding (58 M.P.H. in a 35 M.P.H. zone). The Cadillac was driven by Torian Underwood. As Corporal Crouch approached the car, he observed Underwood sitting in the car “like a statute” with his eyes fixed forward and his hands in his lap. Underwood was holding his license and registration in his left hand. He was also holding what was intended to be an MVA change of address card – it was actually his employee assistance program number for work. This card fell inside the car between the driver’s seat and door when Underwood was attempting to hand it to the officer through the open driver’s window. Corporal Crouch asked Underwood to retrieve the card. Underwood slightly opened the car door, reached down very quickly, and grabbed the card. He handed it to Corporal Crouch. When the door was slightly opened, the dome light came on and Corporal Crouch could see that Underwood was wearing a jacket, the two front pockets of which were bulging out as if they were packed with something. Corporal Crouch advised Underwood that he had been speeding. Underwood responded that he had been traveling downhill and must have picked up speed. When asked, Underwood gave Corporal Crouch his address (in Havre de Grace) and said that he had been living there about two years. Trying to keep things light, Corporal Crouch asked Underwood how long he needed to get used to driving downhill. Underwood made no response and kept staring straight ahead.

The Frisk for Weapons and the Gun: Corporal Crouch returned to his cruiser and ran the tags and license, which were clean. Because of Underwood’s strange behavior, and the bulges in the jacket, the officer used his cell phone to access Underwood’s criminal history. It turned out that Underwood was on probation on a possession of a handgun in a vehicle charge. At this point, Corporal Crouch called for a K-9 unit to respond. Within two minutes, Corporal Cooper responded with his K-9. Corporal Crouch asked Underwood to step out of the car. Underwood responded that he didn’t have to get out of the car for a traffic stop and didn’t move. He just kept staring straight ahead. Corporal Crouch repeated his

request, and, again, Underwood didn't move. Corporal Cooper advised Underwood that force would be used, if necessary, to remove him. Corporal Crouch then opened the driver's door and reached for Underwood's right hand that was still in his lap. As Corporal Crouch started to reach for his right hand, Underwood started to move towards his right pocket. Corporal Crouch quickly cuffed Underwood's right wrist and began to tug Underwood out of the car. Underwood didn't voluntarily move until his entire upper body was out of the car, and then he moved his feet to put them underneath him. Once Underwood was removed from the car, Corporal Crouch fully handcuffed and frisked him. The bulges in the jacket pockets were gloves. Because of the right hand motion Underwood had made, Corporal Crouch patted down his right front pants pocket. As he touched it, he knew there was a handgun in it because he could feel the trigger and the slide. It was a loaded .25 caliber handgun with a 2.5 inch barrel. Underwood also had a retractable razor knife in the watch pocket. A search then produced a cigarette pack containing three baggies of crack cocaine in the front left pants pocket as well as \$280 in cash. The initial stop had been made at 10:59 p.m. The handgun was recovered approximately 12 minutes later.

The Motion to Suppress, the Trial and the Convictions: Underwood was charged with multiple offenses. He moved to suppress the evidence before trial but his motion was denied. At trial, Underwood was convicted of possession of cocaine, wearing, carrying or transporting a handgun in a vehicle and on his person, concealing a dangerous weapon, and speeding. He was sentenced to a term of seven years incarceration, with all but three and one-half years suspended and four years probation. Underwood appealed.

The Decision on Appeal: On appeal, Underwood argued that Corporal Crouch had relied only on the bulges in his pockets to justify the frisk for weapons, and that, this alone, did not establish reasonable articulable suspicion (RAS). The Court of Special Appeals disagreed, finding that Corporal Crouch had not only observed the bulges in the pocket, but observed, *and testified about*, Underwood's unusual "statute-like" behavior which, in part, had led him to run the criminal check, as well as the information concerning the prior gun offense, the difficulty in removing Underwood from the car, and Underwood reaching towards his right front pants pocket. All of these factors preceded the frisk for weapons and provided more than enough RAS to conduct it. In this regard, the Court did caution that although inferences and conclusions drawn by experienced police officers generally are to be respected, they are not to be "rubber stamped" by a reviewing court. Here, Corporal Crouch testified at the motion to suppress hearing why *each* of the observations he had made, and the information he acquired (specifically the prior handgun conviction), was, in his opinion as a veteran police officer, suspicious and led to the conclusion that Underwood might be armed. Consequently, the Court upheld Underwood's convictions.

NOTE: It is important to note, once again, the importance for officers to articulate the basis for their RAS and/or probable cause (PC) during suppression hearings. Remember, the trial judge was not there and neither were the appellate judges. Accordingly, it is critical for officers to testify not just as to what they saw or heard, but how their observations led to the establishment of RAS and/or PC. This is where an officer's experience and training come into play. Finally, Underwood thought he knew the law in telling the officer that he did not have to get out of the car during a traffic stop. Obviously, we know better. An officer has the right to order all occupants out of the car during a traffic stop if he or she chooses to do so.

By John F. Breads, Jr., Director of Legal Services, Local Government Insurance Trust

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