



Roll Call Reporter

October 2015

LEGAL UPDATES FOR MARYLAND LAW ENFORCEMENT OFFICERS

QUESTION: Is an investigative detention transformed into an arrest simply because a suspect is handcuffed, subjected to a *Terry* frisk, and read his *Miranda* rights at the scene of the detention?

ANSWER: No, handcuffing, frisking, and *Mirandizing* an individual at the scene of an investigative detention does not automatically transform the detention into an arrest.

CASE: *Ira Chase v. State of Maryland*
Court of Special Appeals of Maryland
Decided August 31, 2015

The Detectives' Observations:

On September 10, 2013, Baltimore County Police Detective Andrew Melnyk and his partner, Detective Young, both assigned to the Vice/Narcotics Section, were on patrol in the Security Boulevard section of the county, close to Interstates 70 and 695. This area was known to police for illicit narcotic activity. That evening, the detectives went to the Days Inn hotel. Detective Melnyk knew that the hotel was located in an area known for a high volume of drug trafficking. Numerous drug related search and seizure warrants had been executed at the hotel, and

Detective Melnyk had participated in the execution of many of them. Drugs, currency, and weapons had been recovered.

After the detectives pulled into the hotel parking lot, they noticed a white Jeep Cherokee backed into a parking spot. The Jeep's occupant, later identified as Ira Chase, was talking on his cell phone. About two minutes later, a Lexus backed in adjacent to the Jeep, taking up two designated parking spots, despite the fact that the remainder of the lot was virtually empty. The driver of the Lexus exited his vehicle and got into the passenger side of the Jeep.

Based on Detective Melnyk's experience and specialized training, he knew that persons often will use vehicles to conceal drug transactions from the view of law enforcement and will operate from a hotel to conceal the location of their homes. As a result, he concluded that a drug transaction was taking place in the Jeep.

The Detention, the K-9 Scan, and the Arrests

The detectives approached the Jeep and detained the suspects. As they approached the Jeep, the detectives observed both the driver and passenger moving things around and, at one point, reaching under the seat. The passenger also quickly put his

hands in his pockets. The occupants were ordered out of the Jeep and placed in handcuffs. The occupants were patted down but no weapons were found. Both suspects were read their *Miranda* rights. The driver of the Lexus, Michael DeLillo, III, said that he was at the hotel to meet someone known as "Phil" to watch an Orioles game. Chase said that he was going to meet his cousin at the Maryland Live Casino. Chase appeared angry and insisted he had done nothing wrong.

At this point, Detective Melnyk contacted police dispatch to request that a K-9 unit respond to the scene. The K-9 arrived within minutes, and at 7:00 p.m., eight minutes after the call had been made for the K-9, the K-9 alerted on the passenger side door of the Jeep. Chase was arrested and searched incident to arrest. No drugs were found. DeLillo was also arrested and searched, and police recovered fourteen grams of cocaine. He later confessed to this role as the purchaser in the drug deal.

Both Chase's and DeLillo's cell phones were seized incident to arrest. DeLillo's phone contained text messages indicating that he was obtaining quantities of "girl." Detective Melnyk knew from his training and experience that "girl" referred to cocaine powder. Some of the text messages were with "Fat Boy," which police learned was Chase's nickname.

The Charges, Motion to Suppress, and Conviction

Chase was indicted and charged with possession of cocaine with intent to distribute and related offenses. He moved to suppress the evidence against him. His motion was denied and he was subsequently convicted and sentenced to a suspended period of incarceration and probation. Chase appealed.

The Decision on Appeal

On appeal, Chase argued that he was arrested *before* the K-9 alerted and, therefore, he was arrested without probable cause. The State argued that Chase's detention prior to his arrest was merely an "investigative detention," and that included his being handcuffed for officer safety.

The Court of Special Appeals agreed with the State. Even placing the suspects in handcuffs had not changed their detention to an arrest. This is because the handcuffing was not done to arrest; rather it was justified by officer safety, based on the suspects' furtive movements in the car. Also, merely giving a suspect his *Miranda* rights, does not automatically convert an investigative detention into an arrest. Finally, the handful of minutes that passed awaiting the arrival of the K-9 did not convert the investigative detention into an arrest.

The time-constraints of a drug related *Terry* stop are different than a routine traffic stop. When the investigative detention is drug related, the bringing of a drug-sniffing canine to the scene is in the direct service of that investigative purpose and the measure of "reasonableness" under the Fourth Amendment is the diligence of the police in calling for and procuring the arrival of the canine at the scene. Here, the officers acted quickly in calling for the canine and the K-9 unit responded within minutes. The whole event took approximately ten minutes. Since this was a reasonable delay, the Court, based on the totality of the circumstances, upheld Chase's conviction.

NOTE:

Once again, an officer's particularized training and experience in vice/narcotics investigations was relied upon by the courts in making their decisions. What may appear to be innocent activity to the untrained eye, may appear to be crime related



activity to a trained investigator. When testifying, make sure the court is aware of your specialized training and how it impacted your decision to detain and/or arrest.

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