



Roll Call Reporter

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LEGAL UPDATE FOR MARYLAND LAW ENFORCEMENT OFFICERS

Prolonging a Traffic Stop Based on the Odor of Marijuana

Question: Is the odor of marijuana coming from a stopped vehicle a sufficient reason to prolong a traffic stop?

Answer: Yes. The odor of marijuana coming from a stopped vehicle's passenger compartment provides the reasonable suspicion needed to extend the stop for a period of time sufficient to investigate the marijuana odor.

Case: *United States v. Desmond Ra'Keesh White*
United States Court of Appeals for the Fourth Circuit (Federal Appellate Circuit that includes Maryland)
Decided September 9, 2016

The Traffic Stop, the Odor of Marijuana, the Firearm, and the Arrest:

On July 9, 2013, Corporal Justin Doughty of the Charleston Police Department was on patrol in a marked police cruiser in Charleston, West Virginia when he observed a vehicle veer out of its lane. Corporal Doughty initiated a traffic stop to ascertain whether the driver was impaired. Ericka

Teunis was driving the vehicle. Desmond Ra'Keesh White was in the front passenger seat, and another male, referred to only as "Bone," was seated in the rear.

When he approached the driver's window, Corporal Doughty smelled an odor of burned marijuana emanating from the vehicle. After obtaining Ms. Teunis's driver's license, Corporal Doughty asked Ms. Teunis to exit the vehicle in order to speak with her outside of the presence of the two passengers. Based on his observation of and conversation with Ms. Teunis, Corporal Doughty concluded that she was not intoxicated or otherwise impaired. While assessing whether Ms. Teunis was impaired, Corporal Doughty also inquired about the odor of marijuana. Ms. Teunis responded that she did not smoke marijuana but did not know about the other two passengers in the vehicle.

After speaking with Ms. Teunis, Corporal Doughty requested that White exit the vehicle and then asked him about the marijuana odor. White denied having anything illegal in the vehicle. Corporal Doughty then placed White in his cruiser (unrestrained) and returned to the vehicle to speak with "Bone." While speaking with "Bone," Corporal Doughty observed a firearm tucked in a

piece of plastic molding on the side of the passenger seat where White had been sitting. At that point, Corporal Doughty returned to his cruiser, placed White in handcuffs, and called for backup.

When backup officers arrived, Corporal Doughty returned to the vehicle and removed the firearm. After being read his *Miranda* rights, White admitted to Corporal Doughty that the firearm belonged to him.

During the stop, Corporal Doughty also called for an officer to conduct a canine sniff to investigate the marijuana odor. The canine alerted at the passenger door and the vehicle's center console, but no detectable amount of marijuana was recovered.

The Charges, Motion to Suppress, and Conviction

White was charged with possession of a firearm by a felon in violation of federal law. He moved to suppress the firearm evidence, but his motion was denied. White pled guilty and was sentenced to 180 months' imprisonment. White appealed.

The Decision by the Federal Court of Appeals

On appeal, White challenged the denial of his motion to suppress, an issue preserved for appeal by his conditional plea. The United States Court of Appeals for the Fourth Circuit upheld the denial of White's motion to suppress, finding no violation of the Fourth Amendment. First, the court found that Corporal Doughty had reasonable suspicion (RAS) to make the traffic stop. The RAS was based on Corporal Doughty's observing the vehicle driven by Ms. Teunis suddenly veer out of its lane.

White did not challenge the initial reason for the stop, however. Instead, he challenged the

duration of the traffic stop. Specifically, he argued that once Corporal Doughty determined that Ms. Teunis was not intoxicated or otherwise impaired, the stop should have ended. The court rejected that argument, stating that it had repeatedly held that the odor of marijuana alone can provide probable cause to believe that marijuana is present in a particular place. When the odor is detected in an automobile, police have probable cause to search the passenger compartment of the automobile without a warrant. Here, when Corporal Doughty first approached the vehicle, he smelled the odor of burned marijuana coming from it. At that point, he had RAS to extend the traffic stop for a period of time sufficient to investigate the marijuana odor. For this reason alone, the lower court was correct in denying the motion to suppress.

NOTE: White also challenged the lower court's acceptance of Corporal Doughty's testimony that he had smelled burned marijuana. The appeals court said that issue was one of credibility only, and, for that reason, the lower court, which had actually seen the witnesses testify, was in a much better place to make the decision. In general, an appeals court will overturn a lower court's credibility finding only if the witness's testimony is so inconsistent or unbelievable on its face that a reasonable factfinder would reject it. Also, if the witness's testimony is contradicted by objective evidence (dashcam or bodycam video for example), an appeals court may decide to reject it.

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