



Roll Call Reporter

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LEGAL UPDATE FOR MARYLAND LAW ENFORCEMENT OFFICERS

A lawful stop or search does not automatically justify a protective frisk (patdown) for weapons

Question: Is a policy that requires officers who are conducting a consent search of a vehicle to frisk the occupants for weapons lawful?

Answer: No. An occupant of a vehicle or any person may only be frisked when there is reasonable suspicion to believe that the person is armed and dangerous. Absent such suspicion, the frisk violates the Fourth Amendment.

Case: *Donzel Sellman v. State of Maryland*
Court of Appeals of Maryland
Decided August 24, 2016

The Officers' Observations, the Traffic Stop, and the Consent to Search

On November 12, 2013, at about 2:00 a.m., Corporal William Daughters, a 24 year veteran of the Anne Arundel County Police Department, and Officer Dan Kramer, a trainee, were on patrol. The officers were driving through a large apartment complex in Glen Burnie. The complex was considered by officers to be a high crime area, because, in the year that Corporal Daughters had been patrolling the area, there had been a shooting, the recovery of handguns, multiple thefts from cars, and drug arrests.

As the two officers entered the complex, they observed a vehicle stopping at a stop sign. The driver waited for the officers to cross the intersection before proceeding. The officers observed no other vehicle traffic. As the officers drove through the complex, they saw a man, later identified as Donzel Sellman, walk from a dark area on the side of one of the apartment buildings where there was no entry way towards an area lit by a street light. There was no one else out on the street. Sellman stopped and then started to turn to his right. He stopped again and watched the police car drive by. Once the patrol car passed, Sellman continued on his way.

Sellman continued at a normal pace towards the roadway, where there were numerous parked cars. Corporal Daughters noticed the car the officers had seen previously stopped in the roadway. Sellman got into the backseat and the car drove off. The officers turned their car around and followed. Upon noticing that the vehicle had a broken rear taillight and a broken tag dangling by its wiring harness, Corporal Daughters made a traffic stop. There were four occupants in the car, two men and two women. Corporal Daughters explained to the driver why he had pulled her over. Samantha Gillespie, the driver, produced her license, but didn't know where the registration card was because she had borrowed the car from a

friend. When asked why she was in the area, the driver said that she was there to pick up Andrea Queen, a pregnant friend who lived in the complex. Ms. Queen was in the rear seat, next to Sellman. Ms. Gillespie said the group was going to get some food. Corporal Daughters knew Ms. Queen from a prior contact, and didn't believe she lived in this complex. When he asked her for identification, Ms. Queen said that she didn't have any with her, but that she did live there. During this time, Sellman sat rigid in his seat, with his hands on his knees and looking straight ahead.

The officers ran a warrant check on Ms. Gillespie, which came up negative. A check on the vehicle showed that it was not stolen. Ms. Gillespie was given a written warning. Corporal Daughters asked her to step out of the car so that he could show her what needed repair. He then asked her if she had anything illegal in the car and she said no. He asked her for permission to search the car. Ms. Gillespie asked why and the officer responded that there had been problems in the area with thefts and drugs. Ms. Gillespie gave consent to search. She also said, when asked, that Sellman lived in the complex and that she had picked him up as well.

The Frisk for Weapons, the Handgun, and the Arrest

Corporal Daughters left Ms. Gillespie with Officer Kramer, and, before searching the car, asked the other occupants for identification. When Sellman was asked for his, he turned towards the officer and gave his name and date of birth. He said that he had also used an alias, "Marcus Neal Saunders, born July 12, 1982." Sellman also said that he did not live in the complex. Corporal Daughters returned to the patrol car to run the names given by the occupants, and called for a back-up officer. He was concerned because the officers were outnumbered and he also wanted the parking lot

checked to see if any cars had been broken into. All the names checked came back with no warrants. The alias given by Sellman had no MVA or arrest record.

When Sellman was asked again about the alias, he said that he had never had a driver's license, had never been arrested, and had never been in trouble. Corporal Daughters ordered Sellman out of the car, had him place his hands on the trunk, and frisked him for weapons. This was normal procedure for Corporal Daughters because departmental policy authorized frisks of a vehicle's occupants for weapons if there was consent to search the car. Corporal Daughters found a handgun in Sellman's waistband. Drugs were also found. Sellman was placed under arrest.

The Charges, Motion to Suppress, and Conviction

Sellman was charged with the handgun offense and moved to suppress the evidence prior to trial. He did not contest the validity of the traffic stop or consent to search, but argued that the officers lacked any basis to frisk him for weapons. The circuit court judge denied the motion after a hearing, finding reasonable suspicion based upon the fact that: the officers were outnumbered, it was late at night, the officers were in a high crime area, Sellman had come out of a dark area, and Sellman's unusual behavior in the car. Sellman was convicted and sentenced to ten years in prison. He appealed.

The Decision of the Court of Appeals of Maryland

Maryland's intermediate appellate court, the Court of Special Appeals, affirmed the denial of the motion to suppress and upheld the conviction. The Court of Appeals, Maryland's highest court, reversed.



As its starting point, the Court of Appeals emphasized that a frisk for weapons is *only* lawful where the officer has a reason to believe that he or she is dealing with an armed and dangerous individual. The officer need not be absolutely certain—rather the issue is whether a reasonably prudent police officer in the circumstances would be justified in believing that his safety or the safety of others was in danger. A subjective suspicion, belief, or hunch is not enough. It simply is not enough for an officer to simply articulate or assert that otherwise innocent conduct was suspicious to him or her. The test is an objective one, based on the totality of the circumstances. Stated simply: Are there articulable objective facts to support the officer’s conclusion that the person is armed and dangerous? Here, the court answered the question, “No.”

In doing so, it looked at the same record as had the circuit court and Court of Special Appeals. It reached a different outcome by concluding that none of the officers’ observations concerning Sellman, whether in isolation or in sum, could have caused a reasonably prudent officer to believe that he was armed and dangerous. And, the officers’ testimony failed to make it otherwise. A generalized concern about theft from cars in a high crime area did not amount to reasonable suspicion. Even combined with the other observations, it was still not enough. What was missing in the record was any testimony from the officers about how recent the criminal activity in the apartment complex had been, why the conflicting stories of the occupants was important, or an explanation of why they suspected Sellman of criminal activity and being armed and dangerous. They did not even testify that they were concerned for their safety. There was no testimony about furtive movements, evasive maneuvers, bulges in his clothing, bags, or containers associated with suspected theft crimes or the presence of a weapon. As a result, the frisk

was unlawful. In harsh terms, the court said: “Neither the motions court nor the appellate court may rubber stamp the unlawful conduct of an officer simply because the officer believed he had a right to engage in that conduct.”

NOTE: As a starting point, always be mindful that not every lawful stop justifies a frisk for weapons. The basis for the frisk for weapons stands or falls on its own. A generalized notion of “officer safety” or “routine caution” will never authorize a frisk for weapons. Instead, officers must articulate the objective factors that led them to believe the subject was armed and dangerous. In this regard, not only the nature of the suspected crime, but also the officer’s training and experience come into play. **Is the stop for a crime normally associated with the use of guns or other weapons (a crime of violence)? How did the officer connect his or her specific experience and/or specialized training to the belief that the subject was potentially armed?** In this case, the court found no basis for assuming that the crime of theft from cars implied the use of a deadly weapon. Further, the department’s own policy (which allowed frisks based solely on consent to search a car) may have resulted in the officers’ lack of detailed articulation. No department can give officers such authority. The Fourth Amendment prohibits it. First justify the stop – then, and only then, justify the frisk.

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

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