



Roll Call Reporter

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LEGAL UPDATE FOR MARYLAND LAW ENFORCEMENT OFFICERS

How quickly a *Whren* Stop can change into a *Terry* Stop for drugs

Question: Can a *Whren* Stop quickly turn into a *Terry* stop for drugs?

Answer: Yes. Although a *Whren* Stop requires an observed traffic violation, the officer's primary intention in making the stop is to look for narcotics violations. Based on the officer's observations, reasonable suspicion may quickly convert the traffic stop into a *Terry* investigation for drugs.

Case: *Anthony Santos v. State of Maryland*
Court of Special Appeals of Maryland
Decided October 26, 2016

The *Whren* Stop, the *Terry* Stop, and the Drug Arrest

On September 30, 2014, at approximately 12:45 p.m., Detective Bridges and Sergeant Rakowski were patrolling in an unmarked car near the Eastpoint Mall in Dundalk. Both officers were assigned to the narcotics section of the Baltimore County Police Department. While traveling on an access road around the mall, the officers observed

a black car parked outside a McDonald's restaurant. Detective Bridges noticed the car because, in his experience, drug transactions and similar crimes occur at public places where you can blend in. He also noted that the car was parked away from the restaurant itself, though spaces much closer to the restaurant were available. Both officers knew that the parking lot was often used by drug dealers.

A man later identified as Anthony Santos was sitting in the driver's seat of the car and a passenger, Amanda Fitch, was seated next to him. Both occupants were looking around and the officers believed they were trying to determine if they were being watched by police. Ms. Fitch, who was wearing pajama pants, got out of the car, went into the McDonald's and sat down at a table at which a white male was seated. Santos drove past the officers and out of the McDonald's parking lot. He was not wearing a seatbelt and was "manipulating" his cell phone. Detective Bridges concluded that a drug transaction had taken place and decided to make a traffic stop. He made the stop of Santos's car in a parking lot in front of a Bank of America branch on the other side of the mall.

Detective Bridges approached the driver's side of Santos's vehicle while Sergeant Rakowski went to the passenger's side. Detective Bridges identified himself as an undercover detective, explained the reasons for the stop, and asked for Santos's license and registration. Santos was so nervous that he was trembling, and, although it wasn't hot, he was sweating profusely. Santos was told to put the vehicle in park and he did. When Sergeant Rakowski asked him where he was coming from, Santos said "the mall." In response to more questions, Santos said that he had not met anyone and was headed home. Santos was then ordered to get out of the car and move to the rear.

Two other officers, Detectives Herr and Johnson, arrived in their car just two or three minutes after the traffic stop. While Detective Bridges began a record and registration check, Sergeant Rakowski and Detective Johnson went back to McDonald's to find Ms. Fitch. Santos's record check revealed two possible warrants. Detective Bridges asked the precinct desk to confirm whether the warrants were active.

Sergeant Rakowski and Detective Johnson found Ms. Fitch coming out of the bathroom and asked her about the "stuff" she had gotten from Santos. Ms. Fitch said that she had retrieved heroin from behind the front passenger's seat and had already used it. Sergeant Rakowski then radioed the information to the officers at the scene. The radio call was made about six minutes after the traffic stop. The detectives at the scene received the call after Santos's license and registration had been verified, but before learning about any open warrants. Santos was arrested and his car was searched. Both heroin and cocaine were found behind the passenger's seat. The warrants check came back negative at 1:00 p.m., about thirteen minutes after the traffic stop had been made.

The Charges, Motion to Suppress, and Conviction

Santos moved to suppress the evidence. The circuit court denied the motion, finding that the traffic stop was a valid *Whren* stop (based upon Santos's manipulation of his cell phone), the questions the officers asked Santos were routine, and that the officers had reasonable suspicion to detain Santos based on his answers to the officers' questions coupled with the officers' observations. Santos was found guilty of distributing heroin and possessing cocaine with the intent to distribute. He was sentenced to ten years imprisonment. Santos appealed.

The Decision of the Court of Special Appeals

The issue on appeal was whether Santos had been detained without reasonable articulable suspicion (RAS). The appeals court agreed with the trial court and upheld the denial of the motion to suppress and Santos's convictions. The court found that almost immediately after the traffic stop was made, Santos's detention became an investigation for a narcotics violation. The two detentions (traffic and narcotics) proceeded simultaneously on parallel tracks, and on separate clocks. The RAS for the *Terry* stop for drugs was based on the following circumstances: where Santos had parked, Santos and Fitch's "looking around," Fitch's exiting the vehicle, going into the restaurant and sitting with a male inside, Santos's profuse sweating and trembling, and Santos's untruthful answers to the officers' questions. The totality of these circumstances allowed the officers to further detain Santos. Finally, the officers diligently pursued their drug investigation, leading to a quick arrest.



NOTE: Asking a driver questions unrelated to the purpose of the traffic stop is not improper. However, asking unrelated questions that unduly prolong the traffic stop can result in Fourth Amendment violation. Here, the unrelated questions asked by the officers did not unreasonably extend the duration of the stop.

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