



Roll Call Reporter

April 2017

LEGAL UPDATE FOR MARYLAND LAW ENFORCEMENT OFFICERS

The *Carroll* Doctrine and Trunk Searches

Question: Can probable cause to conduct a *Carroll* Doctrine search of a vehicle's trunk be based solely on finding contraband on the person of a passenger?

Answer: No. For warrantless *Carroll* Doctrine searches, there are distinctions between passengers and drivers that must be taken into account. These distinctions may well define the areas of a vehicle that can, and cannot, be searched under the *Carroll* Doctrine.

Case: *Casey O. Johnson v. State of Maryland*
Court of Special Appeals of Maryland
Decided March 29, 2017

The Traffic Stop, the Furtive Movements, and Request for Back-Up

On January 9, 2015, Officer Robert Sheehan of the Montgomery County Police Department was on routine patrol. Officer Sheehan was assigned to the Germantown District Community Action Team, a unit placed in areas of high crime for crime suppression. Officer Sheehan was specially trained in drug interdiction and narcotics enforcement. At approximately 7:25 p.m., he was near the intersection of Middlebrook Road and Germantown Road, a known high crime area. Officer Sheehan observed a vehicle with a defective tail light. He

activated his emergency equipment and pulled behind the vehicle. The vehicle drove very slowly, turned into a Safeway parking lot, and parked.

Since it was dark, Officer Sheehan shined his spotlight on the vehicle's rear window. He could see the front seat passenger making "furtive movements." He also could see the driver manipulating something in the center console area. The driver's left hand was on the steering wheel but she was bent over the center console area, reaching into that area and towards the front passenger's seat. The front seat passenger appeared to be reaching under his seat or onto the floorboard area in front of his seat. He made this reaching motion several times. Officer Sheehan concluded that the occupants were trying to conceal drugs or weapons.

Officer Sheehan quickly exited his car and approached the driver's side of the stopped vehicle. He shined his flashlight into the passenger compartment and could see the front seat passenger leaning over his legs, with his hands between his legs. When Officer Sheehan reached the driver's window, he could see the front seat passenger jump back in his seat, and pull his shirt down over his crotch area.

The driver of the stopped vehicle was Casey O. Johnson. She had two passengers with her: Anthony Haqq in the front seat and Kevin Helms in the back seat. Officer Sheehan explained that he

made the stop to issue the driver a safety equipment repair order. Johnson was extremely nervous, to the point of trembling. Haqq remained silent, sitting rigidly in his seat, staring out the window. It was now 7:26 p.m., just a minute or so after the stop, and Officer Sheehan called for back-up. He then began processing the traffic stop on “eTix.” As part of the process, he conducted routine license, registration, and warrant checks in four systems.

The Arrival of Back-Up, the Searches, the Drugs, and the Arrests

At this point, Haqq again began to make furtive movements. He was lifting himself from his seat and leaning back. The entire time, his arms were moving in front of him. At that moment, the background checks came back clear and Officer Dos Santos arrived. It was now 7:29 p.m. Officer Sheehan spoke with Officer Dos Santos and informed him that a K-9 unit had been called. For “officer safety” reasons, the officers decided to wait for other units before taking further action. At 7:32, Officer Michael Mancuso arrived. The officers spoke briefly then approached Johnson’s car. Officer Sheehan asked Johnson to step out of the car so that he could show her the broken brake light and ask her a few questions. His questions began at 7:32 p.m. Officer Sheehan asked a number of general and specific questions, including Johnson’s itinerary and her relationship with the males in the car. He also asked Johnson if she would consent to his searching the vehicle. Johnson refused. A short time later, Johnson did consent to Officer Sheehan’s search of the outer pockets of her sweatshirt. No contraband or weapons were found. It was now 7:35 p.m.

Meanwhile, Officer Mancuso was speaking to Haqq and Officer Dos Santos spoke to Kevin Helms, the back seat passenger. Both gave their information and Officer Sheehan ran the passengers’ checks. Two more officers arrived on the scene. It was now 7:37 p.m. At 7:41 p.m., Officer Sheehan re-opened the e-ticket for the repair order for Johnson’s brake light. He completed the repair citation but did not

physically give it to Johnson. By 7:42 p.m., he had completed the passengers’ checks. There had been prior arrests for possession with the intent to distribute drugs but there were no open warrants.

At 7:44 p.m., Officer Kelly-the sixth officer on the scene-arrived with his K-9. Officer Sheehan announced the scan and Haqq and Helms were asked to step out of the car. When Haqq exited the vehicle, Officer Mancuso could smell PCP on his breath. He asked Haqq for consent to search his person, and, according to the officer, Haqq gave it. The search was conducted at 7:46 p.m. The search revealed 13.14 grams of marijuana in Haqq’s waistband. Based on his training and experience, Officer Mancuso knew the baggie contained more than 10 grams of marijuana. The officers then searched the vehicle, including the trunk. In the trunk, they found a backpack. Inside the backpack was a shopping bag containing a digital scale and a gallon sized bag of marijuana. When Johnson was searched incident to arrest, officers found \$544 in cash folded into different bundles. The entire occurrence had played out in little more than twenty-one minutes. No K-9 scan was ever performed because the officers believed they had sufficient probable cause to search the passenger compartment and the trunk.

The Charges, the Motion to Suppress, and Conviction

A grand jury charged Johnson with possession of marijuana with intent to distribute and conspiracy possession of marijuana with intent to distribute. Johnson moved to suppress the evidence against her, claiming that the police had violated the Fourth Amendment. Her motion was denied and the case proceeded to trial. Johnson was found guilty of possession of marijuana with intent to distribute and sentenced to five years supervised probation. She appealed.

The Decision on Appeal

The Court of Special Appeals chose not to focus on the issue concerning the duration of the traffic stop.



Instead, the court went directly to the issue of whether the officers had probable cause to search the trunk of Johnson's car based solely on the drug evidence found on her front seat passenger, Haqq. Johnson argued that, in order to search the trunk, the police needed a particularized and objective basis to search the trunk without a warrant. She further argued that this required the police to have established that she had given Haqq access to her trunk. In other words, finding drug evidence on the passenger alone, did not give the police *carte blanche* to search the entire vehicle, including the trunk of the car. Johnson argued that Maryland courts have drawn a continuing distinction between passengers and driver: passengers, unless there is something indicating otherwise, do not have control over the contents of the vehicle. The State contended that the police are not required to have a particularized basis to search areas of a vehicle where there is probable cause to believe that evidence of a crime is within the vehicle. In other words, the State rejected the contention that that courts should differentiate between drivers and passengers in determining whether the police developed probable cause.

Based on the facts of this case, the court agreed with Johnson. Here, the officers found a baggie of marijuana in a passenger's waistline and smelled PCP on his breath after he had stepped out of the car. Johnson, the driver, had already been searched, and no drugs had been found on her. There was no indication that she had taken any illegal drugs, and certainly her nervousness could not, alone, establish reasonable suspicion, let alone probable cause, that she was transporting contraband in the trunk of her car. Further, Johnson had told Officer Sheehan that she had only known Haqq "for about a month." She never said that he had any control over her vehicle or had access to the trunk. Neither Officer Sheehan nor Mancuso testified as to why they had probable cause to believe drugs were located in the trunk. In sum, the police had probable cause to believe that there were drugs in the passenger compartment of the vehicle, but not the trunk. In other words, the

officers' search of the car was limited by law to finding contraband that Haqq may have left or concealed within the vehicle. They failed to articulate any basis that would have allowed them to search the trunk. In sum, since the officers lacked probable cause to support a warrantless search of the trunk, Johnson's conviction was reversed.

Note: The rule of thumb is that, under the *Carroll* Doctrine, the scope of the warrantless search is governed solely by the probable cause possessed by the officers. **If officers have probable cause to believe that the contraband is located somewhere within the vehicle, but don't know where, they can search the entire vehicle, including the trunk. If officers have probable cause to believe that contraband is in a specific area of the car, then they can search only that area.** Finally, the court observed that "if the K-9 scan had been performed, and the dog had alerted, that alone *may* have provided the requisite probable cause to conduct a warrantless *Carroll* doctrine search of the entire vehicle, including the trunk." Speculation by the court, but certainly worth noting.

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