



Odor of Marijuana from a Vehicle and Frisks for Weapons

Question: Does the odor of marijuana emanating from a vehicle enable an officer to frisk the occupants for weapons?

Answer: No. For a law enforcement officer to frisk for weapons, there must be reasonable articulable suspicion that the individual is armed and dangerous, even where a law enforcement officer detects the odor of marijuana emanating from a vehicle.

Case: *Joseph Norman, Jr. v. State of Maryland*
Court of Appeals of Maryland
Decided March 27, 2017

The Traffic Stop, the Frisks for Weapons, and the Recovery of Drugs

On March 22, 2015, Trooper First Class Jon Dancho of the Maryland State Police was on patrol. At approximately 9:00 p.m., he initiated a traffic stop of a vehicle with an inoperable right taillight near southbound U.S. Route 13 at Allen Road in Princess Anne. In addition to the driver, Joseph Norman, Jr. was in the vehicle's front passenger seat, and another passenger was in the backseat. Trooper Dancho called for backup. Within a few minutes, two more troopers arrived. Trooper Dancho made contact with the driver, and detected

a strong odor of fresh marijuana emanating from the vehicle's passenger compartment. Trooper Dancho told the vehicle's three occupants to exit the vehicle so that he could search the vehicle for marijuana. Before searching the vehicle, Trooper Dancho, for his safety, frisked the three occupants for weapons. He did not find any drugs or weapons on the driver. Trooper Dancho then frisked Norman and felt what seemed like large quantities of some "foreign objects" in his pants. Specifically, he felt what seemed like plastic or cellophane-covered individually packaged bags of drugs in Norman's pants pocket. Trooper Dancho asked Norman what was in his pants pocket. Norman did not reply. Trooper Dancho moved Norman's pants pockets to make sure that what was in the pockets was not a weapon. Trooper Dancho then shook Norman's pants pocket and a bag of marijuana fell to the ground. Trooper Dancho frisked the other passenger, but did not find any weapons or drugs.

The Vehicle Search, the Arrest, and Conviction

After frisking all three of the vehicle's occupants, Trooper Dancho searched the vehicle, and found a grinder with traces of marijuana, as well as a small amount of marijuana in the dashboard's center compartment, above the gear shift. Norman and the others were arrested and transported to the State Police Barrack. At the Barrack, Trooper Dancho searched Norman and located another bag of

marijuana. After being given his *Miranda* rights, Norman admitted that all of the drugs and paraphernalia were his and that they were for his personal use.

Norman was charged with possession of marijuana with intent to distribute, possession of marijuana, and possession of drug paraphernalia. Norman moved to suppress the evidence but his motion was denied. Norman was found guilty of possession of marijuana and sentenced to nine months of imprisonment. He appealed his conviction.

The Decision by the Court of Appeals

The Court of Appeals, Maryland's highest appellate court, agreed to review the case. The question to be decided was whether the smell of raw marijuana coming from a car stopped for a traffic violation provides an officer with reasonable articulable suspicion to believe that all passengers in the car are armed and dangerous such that a pat down, or *Terry frisk*, of the passengers would be permissible. The court answered "No."

The court did so by reaffirming the basic principle that, for a law enforcement officer to frisk, *i.e.*, pat down, an individual, there must be reasonable articulable suspicion that the individual is armed and dangerous, even where a law enforcement officer detects the odor of marijuana emanating from a vehicle. Where there is an odor of marijuana emanating from a vehicle with multiple occupants, an officer may frisk an occupant of the vehicle *only if an additional circumstance or circumstances give rise to reasonable articulable suspicion that the occupant is armed and dangerous*. The totality of the circumstances must indicate that the occupant is armed and dangerous. An assertion of "officer safety" is simply not good enough.

Here, there was no evidence establishing that Norman had moved around in the car or otherwise behaved suspiciously; that he had attempted to flee; that there were any bulges in his pockets; that his clothing was baggy, large, or otherwise easily able

to conceal a weapon; that his hands were not visible; that he appeared nervous; that he gave a fake name or false identification; that he said something that was either false or inconsistent with something another one of the vehicle's occupants had said; that he was hostile, argumentative, or otherwise uncooperative; that he failed to comply with Trooper Dancho's instructions; that he had a criminal record or was known to be violent or carry a gun; or that the traffic stop took place in a high-crime area and/or an area that was known for drug activity or drug violence. To the contrary, Trooper Dancho testified that he patted down Norman for weapons solely for his safety before searching the vehicle. Absent articulable suspicion that Norman was armed and dangerous, the court reversed the denial of Norman's motion to suppress, thus overturning his conviction.

Note: It is indisputable that guns often accompany drugs. This fact has led many courts to point out the connection between drugs and guns. This "connection," however, does not automatically create the presumption that a subject is armed and dangerous, including a subject in a car in which the odor of marijuana is detected. There must be more. Finally, the court commented in a footnote that the "frisk" performed by Trooper Dancho was much more a "search" than a "frisk." In fact, in his report, Trooper Dancho referred to his "search" of Norman, not a "frisk." At the suppression hearing, the backseat passenger testified that the trooper was "tugging all over" Norman's body and that he put his hand under Norman's pants. Trooper Dancho testified that he felt foreign objects "in Norman's pants" and that he "shook" Norman's pants pocket, causing a bag of marijuana to fall to the ground. Because Norman did not contest the issue of frisk versus search, the issue was not before the court for decision.

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



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