



# Roll Call Reporter

September  
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LEGAL UPDATES FOR MARYLAND LAW ENFORCEMENT OFFICERS

**QUESTION:** When is it reasonable for an officer to believe that evidence of the crime of arrest will be found in the arrestee's vehicle?

**ANSWER:** An officer can establish this reasonable belief in the same way he/she establishes reasonable suspicion to make a *Terry* stop: The totality of the circumstances, including training and experience, the driver's behavior, and the nature of the crime of arrest.

**CASE:** *Efrain Taylor v. State of Maryland*  
Maryland Court of Special Appeals  
Decided August 27, 2015

## The Traffic Stop and Arrest:

Around 1:00 a.m. on March 1, 2013, Patrolman Chad Mothersell was on patrol in Cambridge. He observed an SUV traveling southbound on Phillips Street at a high rate of speed. He estimated the vehicle's speed at 45 miles per hour in a 25 mile per hour zone. Officer Mothersell followed the SUV and saw that it failed to stop at a stop sign while making a left turn on to Bradley Street. The officer turned on his emergency lights, the SUV stopped, and he pulled up behind it.

Officer Mothersell approached the vehicle which was occupied only by its driver, Efrain Taylor. The officer asked Taylor for his license. As he did so, he detected a minor odor of alcoholic beverage from Taylor's person and breath. Taylor's speech was slurred and hard to understand. His eyes were bloodshot and glassy. Taylor told Officer Mothersell that he had just left the Point Break Beach Bar in Cambridge. At that point, the officer asked Taylor to step out of the vehicle so that he could administer field sobriety tests. Taylor performed the tests unsuccessfully. Officer Mothersell then placed Taylor under arrest for suspicion of DUI.

## The Vehicle Search Incident to Arrest:

By the time of the arrest, Officer Carroll, the back-up officer, arrived on the scene. He conducted a search of the SUV while Officer Mothersell read Taylor his DR-15 Advice of Rights. Both officers had made numerous DUI arrests in which a search of the stopped vehicle yielded evidence of the crime of arrest, such as open alcohol containers. Officer Carroll searched the vehicle to locate any other evidence of the crime of arrest (DUI). Officer Carroll found a controlled dangerous substance in the vehicle inside the center console, which the officer had opened. Officer Carroll had noticed that the vehicle's center console was closed, but

not fully latched down as a piece of paper was sticking out of it.

He informed Officer Mothersell who walked to the SUV and observed the clear plastic baggie containing numerous (76) knotted bags of what he suspected was powder cocaine (hydrochloride). Taylor was searched at the station and Officer Mothersell recovered \$1,045 in cash in Taylor's wallet and pocket.

### **The Charges, Motion to Suppress, and Conviction:**

Taylor was charged with possession with intent to distribute CDS, possession of CDS, and numerous traffic violations. Taylor moved to suppress the evidence recovered from his vehicle. Taylor's motion to suppress was denied and a jury convicted him of all charges except one traffic violation. He was sentenced as a subsequent offender to forty years incarceration, with twenty years suspended.

**The Appeal and the Decision:** Taylor appealed. He challenged the legality of the search of his vehicle incident to his arrest. The Court of Special Appeals first identified the circumstances when police officers can search an automobile incident to arrest: (1) When the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search, and (2) When it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.

In this case, the first circumstance did not apply as Taylor was in handcuffs and had been moved away from the SUV. The issue was whether the second circumstance, searching for evidence of the crime of arrest, existed. So, when is it reasonable to believe that a vehicle might contain evidence of

the crime of arrest? The answer is as follows: When an officer has reasonable suspicion to believe the car contains evidence of the crime. This is the same level of suspicion required for a *Terry* stop and the same "totality of the circumstances" test is applied. It is a standard requiring more than a "mere hunch" but far less than a "preponderance of the evidence." It is a standard, obviously, far less demanding than probable cause. If the officer has this reasonable level of suspicion, he/she can search the vehicle of the person arrested for evidence of the crime of arrest.

**This reasonable level of suspicion is based on three factors: (1) the officer's training and experience; (2) the lack of an innocent explanation for the driver's seemingly criminal behavior; and (3) the nature of the crime of arrest.**

As to the first two factors, the officer must be prepared to testify as to how his/her training and experience led him/her to conclude that the arrestee's behavior was consistent with illegal activity; it is not enough for the officer to simply recount observations made at the scene. Factual conclusions made from the observations on the basis of the officer's training and experience are needed.

As to the third factor, certain offenses by their nature will involve evidence that an officer could reasonably believe is in a vehicle. Many courts have concluded that a DUI arrest provides reason to believe there will be containers of alcohol or other evidence of alcohol use in the vehicle. Other courts have required more specific proof that the drinking was occurring in the car.

In this case, the Court of Special Appeals landed in the middle, holding that: "[u]nless there are



**'contrary indications,' it is not unreasonable to conclude that an intoxicated driver became intoxicated in the vehicle."** One such contrary indication, might be an officer's direct observation of the suspect leaving a bar, and driving away immediately before the traffic stop. Since there were no "contrary indications," and since the other criteria were met, the Court concluded that the lower court correctly denied Taylor's motion to suppress and upheld his convictions.

**NOTE:** In some Maryland counties, bars are licensed to sell alcoholic beverages to patrons on-site to consume elsewhere. In such jurisdictions, offices may factor this fact into the determination of whether reasonable suspicion exists to search the vehicle incident to arrest.

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