



LGIT'S ROLL CALL REPORTER
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Probable cause to arrest other passengers in a motor vehicle is not extinguished simply because one passenger claims sole ownership of contraband found in the vehicle.

QUESTION: Is probable cause to arrest a passenger in a motor vehicle extinguished merely because another passenger claims sole ownership of the contraband?

ANSWER: No. Claimed ownership of the contraband is just one fact for an officer to consider in determining sole or constructive possession of contraband found in a motor vehicle.

CASE: *Bashawn Montgomery Ray v. State of Maryland*
Court of Special Appeals of Maryland, Decided July 2, 2012

On October 5, 2010, Sergeant Mark White of the Montgomery County Police Department was driving a marked police car north on Interstate 270 in Montgomery County. Sgt. White passed a black Ford Expedition and, as he passed, noticed that the headlamps on the vehicle were emitting a blue color. Sgt. White suspected that the headlamps might be halogen lights (the use of which is a violation of Maryland law - Maryland law requires headlamps to emit white light), but he couldn't be sure unless he stopped the vehicle and looked more closely at the lights. As a result, Sgt. White made a traffic stop and, before he got out of his car, he ran the Expedition's license plate number through the MVA and the NCIC. He learned that the Expedition's owner, Antoine Norris, had a suspended driver's license due to a child support violation.

Sgt. White approached the driver's side of the Expedition and spoke with Norris, who was in the driver's seat. He asked Norris to exit, which he did, and the two returned to Sgt. White's car. Norris sat in Sgt. White's car as the officer began to write three citations (two for driving with a suspended license and one for driving with an obstructed windshield). It was Sgt. White's intention not to let Norris drive the Expedition from the scene.

While Sgt. White was writing the citations, three other officers arrived on the scene. One of them, Officer Sheehan, pulled in behind Sgt. White and then walked up the driver's side of the Expedition. The driver's seat was empty. There was one passenger in the front seat and two in the back, one of whom was Bashawn Ray. Officer Sheehan asked them where they were coming from and where they were going. The passengers all looked at each other after each question and only one would answer. This seemed suspicious to Officer Sheehan. Since he was having trouble hearing the passengers because of the traffic, Officer Sheehan ordered them out of the vehicle. The two in backseat got right out. The front passenger, Mashea Ray, started moving around as if she were looking for something. Officer Sheehan again ordered her out, but she didn't get out. Instead, she said that she was cold and needed to grab her jacket. She said the jacket was on the floor in front of the seat behind her. Mashea Ray grabbed her jacket and got

out of the vehicle. Officer Sheehan asked her if there were any weapons in the jacket, and she said “no.” He then asked her if he could search the jacket and she said “yes.” Officer Sheehan searched the jacket and found a large wallet that he removed. Even though Mashea Ray said the wallet did not contain her identification, Officer Sheehan asked her if he could search it anyway, and she said “yes.” The wallet contained a thick stack of credit cards which appeared to the officer to be fake. One by one, he asked Mashea Ray who was the person whose name was on each card. Each time, she said that she didn’t know. At that point, Officer Sheehan placed Mashea Ray under arrest and the vehicle was searched. A number of Nordstrom shopping bags, filled with merchandise, were found in the car. When the officer asked who owned them, Bashawn Ray said that he did. At that point, he was placed under arrest.

Bashawn Ray was charged with a number of crimes, including conspiracy to commit theft of property. He filed a pre-trial motion to suppress that was denied. He was convicted and sentenced to ten years imprisonment. Ray appealed.

The Court of Special Appeals first concluded that Sgt. White had a reasonable articulable suspicion (RAS) that the Expedition was being operated with halogen lights in violation of State law. The fact that he didn’t issue a citation for such violation did not detract from his RAS. The court then considered the issue of probable cause to arrest. In this regard, Bashawn Ray’s counsel contended that since Mashea Ray was the sole owner of the jacket and wallet, his client should not have been charged with or convicted of conspiracy to commit theft. In other words, counsel said that his client supposed guilt was nothing more than guilt by association. The State argued that the proximity of the passengers to the jacket and wallet was sufficient to establish probable cause to arrest all of them. The State argued that simply due to the fact that the individuals are in a car, passengers are often found to be engaged in the crime with the driver and have the same interest in concealing evidence of the crime. Consequently, when evidence of a crime is present in a car, it *generally, but not always*, can be assumed that the criminal enterprise extended to all of the occupants.

The court avoided the “proximity” to the contraband argument simply because Bashawn Ray had not been arrested as a result of the wallet search; instead, he was arrested only after admitting ownership of the shopping bags. His admission, coupled with the passengers’ suspicious manner of answering questions and the fact that the contraband (the counterfeit credit cards) had been in a place where all of the passengers had access to them, established probable cause to arrest.

NOTE: The fact that Mashea Ray claimed sole ownership of the jacket and wallet did not stop the court from upholding the conviction. In this regard, the court said despite her claim of ownership, the credit cards were accessible to *all* of the occupants. Claimed ownership is merely one of multiple factors for officers to consider when determining sole or constructive possession. Probable cause to arrest any other passenger is not automatically extinguished simply because another passenger claims ownership of the contraband.

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