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Maryland's Highest Court Holds That Immobilizing a Suspect by Firing Taser Darts Into His/Her Body Constitutes an Arrest

QUESTION: Does the firing of Taser darts into a suspect convert a *Terry* stop into an arrest?

ANSWER: Yes. As long as the Taser darts immobilize the suspect, an arrest has occurred, and the arrest must be based upon probable cause.

CASE: *David Reid v. State of Maryland*, Court of Appeals of Maryland
Decided August 24, 2012

The facts established that Baltimore City police officers received a call from a confidential informant who told them that a tall, black male was armed and selling drugs out of a black Honda at particular location in Baltimore City. Several officers arrived at the location at approximately 12:30 p.m. and saw a group of three or four men, including a taller man wearing gym shorts, near a black Honda. The officers were wearing their badges and guns. As the officers approached, the taller man, later identified as David Reid, moved to shield the right side of his body from the officers and quickly moved toward the Honda. As the officers got even closer, Reid began to run. The man was wearing gym shorts and as he moved, the officers were able to see that there was some type of object in the side of the shorts that made a swinging motion as Reid ran. The officers called for Reid to stop, but he continued to run. At that point, one of the officers unholstered and fired his Taser at Reid. The darts struck Reid in the back and he fell to the ground. The officers surrounded Reid and asked him if he had a gun. Reid said he had a gun in his pocket. The officers removed the gun and emergency medical personnel were called to the scene to remove the Taser darts.

Reid was charged with wearing, carrying, or transporting a handgun illegally and of being in possession of a handgun after conviction of a disqualifying offense. He moved to suppress his statement to the police and the gun but the trial court denied his motion. The trial court found that, under the circumstances, the officers had a reasonable, articulable suspicion that Reid was armed and dangerous, and that, when he ran, they had every right to terminate his flight in order to conduct a *Terry* frisk for weapons.

On appeal, a sharply divided Court of Appeals, Maryland's highest court, reversed the conviction. In doing so, the Court rejected the State's contention that what occurred in this case was a *Terry* stop supported by RAS and not an arrest. The State argued that the use of the Taser darts was nothing more than a "hard take down" needed to conduct the frisk for weapons. The Court, however, ruled that "the use of a Taser to fire two metal darts into Reid's back converted

what otherwise may have been a *Terry* stop into a *de facto* (actual) arrest" under the Fourth Amendment. The Court concluded that "the levels of intrusion and control" effected by Taser darts that penetrate the body for an indefinite time period are much more than a "hard take down," the use of handcuffs or tackling a suspect. Since Reid would not have felt "free to leave" under these circumstances, he was *de facto* arrested. In short, the Court likened the discharge of Taser darts to an officer's firing his gun. Since the firing of a gun is tantamount to an arrest for which probable cause is needed, so is the firing of a Taser. The Court further ruled that although the officers had reasonable suspicion to detain Reid, they lacked probable cause to arrest him. Consequently, the Court held that Reid's statement and the gun recovered from him should have been suppressed.

NOTE: Based on this ruling, there is a possibility that the State may seek review in the Supreme Court. The key issue would be whether the discharge of Taser darts into a suspect is any more severe than tackling or a "hard take down" which, depending on the circumstances may require only RAS. Also, the Court seemingly concluded that *if the Taser darts had not immobilized Reid*, no arrest would have been made, and a subsequent "tackling" of Reid would have been upheld under an RAS standard. Finally, the probable cause issue was extremely close because of informant's tip. Even with it, the Court concluded that the suspicion possessed by the officers did not reach a level of probability of criminal activity. Also, the "public safety doctrine" or, more accurately, public safety exception to the *Miranda* requirements was discussed. The trial court invoked the doctrine to allow Reid's statement into evidence. The Court of Appeals disagreed, stating that the doctrine exists for exigent circumstances in which a valid arrest has been made and in which the officer has a reasonable belief that there is an imminent threat to public safety precipitating questions of the arrestee before he or she has been Mirandized. Since the Court found no probable cause to arrest, the public safety doctrine simply didn't apply.

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