



ROLL CALL REPORTER

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Positioning a Police Car to Block a Suspect from Leaving the Scene of a *Terry* Stop

QUESTION: Does using a police car to block in a suspect during a *Terry* stop automatically turn the stop into an arrest?

ANSWER: No. If the officer has objective information that the suspect is trying to or may try to flee, and the police vehicle is used to prevent the suspect from doing so, the stop should not be deemed to be an arrest. However, if other action (such as physically moving the suspect or placing him in handcuffs) has taken place, it is likely that what was intended as a *Terry* stop will be seen by the courts as an arrest.

CASE: *Thedral Thomas Williams, III v. State of Maryland*
Court of Special Appeals of Maryland, Decided June 26, 2013

This case deals with the existence of reasonable articulable suspicion (RAS) as well as using a police car to prevent a suspect from fleeing the scene of a *Terry* stop. These issues are far from new, and, concerning the positioning of police cars during *Terry* stops, defendants have argued many times in the past that using the car as a blocking device converted what may have begun as a *Terry* stop into a full blown arrest, for which probable cause (PC) was lacking. This argument resurfaces in this case.

At 1:00 a.m. on January 4, 2011, Patrolman First Class Brett Lysinger of the Chestertown Police Department received two calls almost simultaneously from the police dispatcher. One call concerned a home invasion in a secluded neighborhood at 108 Elm Street and the second call was for a panic alarm at a CITGO gas station within yards of that house. When Patrolman Lysinger arrived at 108 Elm Street, he was informed by the homeowner that she had seen flashlights and then several individuals had attempted to break into her house. After checking the area around the house, the patrolman was advised by the dispatcher that the CITGO station call had been upgraded to an armed robbery. Patrolman Lysinger left the scene and went directly to the nearby CITGO station.

Upon arrival, he spoke with the clerk who informed him that three males, all with their faces partially covered, had entered the gas station's convenience store. One of them brandished a sawed-off shotgun and demanded money. The men forced the clerk to lay face down on the ground and threatened to kill him if he looked up. After taking cash and cigarettes, the robbers fled.

The clerk and Patrolman Lysinger viewed the surveillance video, which showed two black males and one possibly white male entering the store from the direction of Greenwood Avenue, which is near Elm Street, where the attempted home invasion had occurred. The videotape showed the three robbers fleeing in the same direction from which they had come.

By this time, several other officers were on the scene. There were one or two vehicles that passed by the scene, but neither one attracted the officers' attention. Two officers went back to the scene of the attempted home invasion and, once there, they deactivated the lights on their cars. They then asked

that Canine Officer James Walker respond and attempt to trace the suspects' path. At this point, about thirty minutes had passed since the initial radio calls. The streets were still virtually empty and there were no people to be seen. Officer Walker arrived and as his dog began tracing the path in front of the house, a Dodge suddenly turned onto Elm Street and passed directly in front of the officers. As the Dodge passed, it slowed as it neared the officers (three to five miles per hour in a twenty-five mile per hour zone). The officers could see a white male and a white female in the front seat and two black males and a black female in the back seat. As the car passed, the back seat occupants all turned to look at the officers. The car then sped up and abruptly turned onto the next street. Officer Walker recognized the white male as someone with whom he had had prior drug related contact. Based on these observations, the officers decided to pull the car over to see if the occupants were suspects in the crimes they were investigating.

Officer Walker began the chase and had to accelerate to at least forty miles per hour to catch the Dodge. When he activated his emergency lights, the Dodge slowed and appeared to be coming to a stop. Before it stopped, however, the driver's side rear-passenger door opened. Officer Walker quickly pulled up and blocked the door from opening with his car. As Patrolman Lysinger drove up, the Dodge's rear passenger's side door began to open. Patrolman Lysinger quickly pulled up and blocked that door with his car. Both officers had seen the black males in the rear seat scrambling to get out of the car, and the black female trying to hold them back.

Thedral Thomas Williams, III, was one of the occupants in the back seat. Patrolman Lysinger recognized him from previous encounters and patted him down when he exited the car. The patrolman felt a large bulge in the leg area of Williams' pants. When asked what it was, Williams said, "Money, man. It's money." Patrolman Lysinger then removed a large stack of U.S. currency (\$2,150) from Williams' person. About \$3,000 had been stolen from the CITGO station. Williams and the other occupants were arrested.

Williams was charged with robbery with a dangerous weapon. He moved to suppress the currency seized from his person and the oral statements made at the time of arrest. He argued that the Dodge had been unlawfully stopped and that, when the officers' blocked the rear doors with their cars, they had, in fact, placed him under arrest without PC. Williams' motion was denied. The trial court found that the officers had RAS to stop the Dodge and that the "blocking" of the rear doors by the police was not an "arrest." Williams was convicted and sentenced to twenty years' imprisonment with nine years suspended. He appealed.

The Court of Special Appeals of Maryland affirmed the conviction. On appeal, Williams argued that, prior to the stop, the officers had only been able to corroborate the race, gender and proximity to the scene of the suspects. He said that these factors alone were insufficient to establish RAS. The court disagreed. It pointed to a number of factors additional to those pointed out by Williams. These factors were: The secluded area where the crimes and stop occurred, the lateness of the hour (nearing 2:00 a.m.) when the stop occurred, the lack of vehicle or pedestrian traffic in the area, the occurrence of two crimes in the secluded neighborhood in a very short span of time (suggesting that criminal conduct in the area may have still been ongoing), and, finally, the suspicious behavior of the car's occupants, especially those in the back seat. To the court, the return to the scene suggested that the suspects may very well have been checking on any police response to their crimes, and determining if they were able to complete the home invasion attempted earlier. In sum, the court easily concluded that the officers had RAS to stop the vehicle and investigate.

The court next turned to exactly when Williams had been "seized" under the Fourth Amendment. Williams argued that he had been "seized" without RAS or PC when Officer Walker first activated his emergency lights prior to the stop. The court again disagreed. Although Officer Walker's

activation of his emergency lights was a “show of authority,” Williams never yielded to it. Instead, he was attempting to flee until the officers blocked the car doors. So, Williams was “seized” when the stop was actually made, not when the officer first activated his lights. As to the use of the police vehicles to block the rear doors, the court held that this did not amount to an arrest. The court concluded that the officers were merely trying to prevent the suspect’s flight, which they are allowed to do during an investigatory stop. The arrest was not made until after the discovery of the money, and, at that point, there was clearly PC for the arrest. Result? Conviction upheld.

NOTE: The positioning of police cars during *Terry* stops is an important issue. The Court of Special Appeals has said that using a police car to block a suspect, without more, is not “the motorized equivalent of handcuffing.” However, officers must understand that a display of force, such as physically moving the suspect or placing him in handcuffs, generally is viewed by the courts as an arrest. This does not mean that the use of handcuffs during a *Terry* stop automatically converts the stop into an arrest. It does not. If handcuffing is used for the officer’s safety and/or to prevent flight, the investigatory detention should not be considered an arrest. In this regard, and importantly, the officer’s subjective beliefs (such as “I had a hunch that the suspect might try to run”), are insufficient to justify the use of handcuffs during a *Terry* stop. Instead, the officer’s conclusions concerning flight and/or officer safety must be based on *objective facts* (such as knowledge gained in previous contacts or information derived from police communications). Speculation alone will never be good enough.

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