



Roll Call Reporter

LEGAL UPDATE FOR MARYLAND LAW ENFORCEMENT OFFICERS

July 2016

An officer's physical intrusion into the interior of a vehicle through an open window or door constitutes a search under the Fourth Amendment.

QUESTION: Is an officer's insertion of his or her head into a vehicle's interior through an open window or door a search under the Fourth Amendment?

ANSWER: Yes. As a search, such physical intrusion must be based upon probable cause or justified by an exception to the warrant requirement.

CASE: *Terrance Jamal Grant v. State of Maryland*
Court of Appeals of Maryland
Decided July 12, 2016

The Traffic Stop, the Odor of Marijuana, and the K-9 Alert

At approximately 6:03 p.m. on May 23, 2013, Deputy First Class Chad Atkins, of the Frederick County Sheriff's Office, was patrolling Worthington Boulevard in an unmarked police vehicle when he observed a speeding vehicle being driven by an African-American male.

Deputy Atkins, a certified radar and laser operator, activated his radar equipment and determined that the vehicle was traveling at a speed of 50 miles per hour in a 35 mile per hour zone. Deputy Atkins stopped the vehicle for the traffic violation. The vehicle was driven by Terrance Jamal Grant and he was the only occupant.

Deputy Atkins approached the passenger side of the car. As Deputy Atkins approached, Grant rolled down the passenger side window. Deputy Atkins leaned down to speak with Grant. His normal practice during traffic stops was to put his head very close to where the window would have been or even slightly in the car. At the point of this initial contact, Deputy Atkins detected the odor of marijuana coming from the passenger compartment. He was familiar with the smell because of extensive police training in controlled dangerous substances—including the identification of marijuana—and completing approximately one hundred drug-related arrests. It was windy at the time of the stop and the odor of marijuana quickly disappeared.

Approximately two to three minutes after the stop, Deputy Atkins requested a nearby K-9 unit to respond. The K-9 officer arrived fifteen minutes later. Deputy Atkins then asked Grant

to step out of the vehicle and the K-9 scanned the car. Deputy Atkins told Grant that he had smelled marijuana and Grant said that there was a pipe and a small amount of marijuana in the center console. The K-9 alerted and the vehicle was searched. A film canister containing 1.6 grams of marijuana, as well as a smoking device containing burnt marijuana residue were found in the center console. Grant was arrested and released with a criminal citation.

The Suppression Hearing

Grant moved to suppress the evidence against him, contending that Deputy Atkins had conducted an illegal, warrantless search when he inserted his head into the car, beyond where the rolled down window would have been. Grant argued that the deputy had not detected the odor of marijuana until he leaned down and put his head in the car.

At the hearing, Deputy Atkins testified: "Like I, I don't know how to explain it 'cause I do it on every single stop that I have. I, you know, put my head, he, they have the, they roll the window down and I have my head by their window. And-

[DEFENSE COUNSEL]: Okay. Do you recall if your head entered the window or not?

[Deputy Atkins]: I don't know if my head entered through the window [pane] or not. I wouldn't of, you know, it, I, I don't know. Honestly."

The circuit court denied the motion to suppress. Grant was convicted and given a suspended sentence. He appealed.

The Appeal and the Outcome

The Court of Special Appeals upheld Grant's conviction, but the Court of Appeals, Maryland's highest court, reversed. The key issue was whether Deputy Atkins detected the odor of marijuana before he inserted his head into the passenger window. The timing was critical because courts generally hold that an officer's physical intrusion into the interior of a vehicle through an open window or door constitutes a search under the Fourth Amendment. So, an officer's action in inserting his head into the interior of a vehicle through an open window constitutes a search. Further, an officer's detection of incriminating odors by virtue of a physical intrusion into the vehicle's interior is also considered a search.

Since an officer inserting his or her head into a vehicle is a warrantless search, it must be based upon probable cause (or, depending on the circumstances, an exception to the warrant requirement). In this case, Deputy Atkins conducted a search when he inserted his head into the vehicle's interior. As such, the next question was whether his search was "reasonable." The court determined that it was not. The court based its decision on Deputy Atkins' testimony that he did not know if he detected the odor of marijuana before or after his head crossed the passenger window. That uncertainty was resolved against the State, which had the burden of proving that the warrantless search was reasonable. As a result, the court held that the motion to suppress should have been granted.



NOTE: Obviously, if Deputy Atkins had clearly recalled detecting the odor of marijuana before inserting his head through the window the result would have been different. The result would also have been different in many other circumstances, for example if the deputy had: observed suspicious behavior prior to the search; a reason to fear for his safety or the safety of others; or suspected flight, destruction of evidence, or similar circumstances. Finally, the plain view doctrine did not apply here because, again, the deputy's testimony did not establish that he had smelled the marijuana before he inserted his head into the passenger compartment. The plain view doctrine requires that an officer be lawfully within the area where he or she detects the odor of contraband.

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