



Roll Call Reporter

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LEGAL UPDATE FOR MARYLAND LAW ENFORCEMENT OFFICERS

Unprovoked Flight in a High Crime Area

Question: Is unprovoked flight alone in a high crime area sufficient to justify a *Terry* stop?

Answer: No. Flight from officers in a high crime area is just one of many factors to be considered in determining whether reasonable suspicion exists to detain a suspect.

Case: *Jamal Sizer v. State of Maryland*
Court of Appeals of Maryland
Decided November 28, 2017

The Officers' Observations, the Foot Chase, and the Arrest

On the evening of November 20, 2015, five or six officers from the Howard County Police Department Pathway Patrol Unit ("Patrol Unit"), on routine patrol, biked the footpaths that run throughout Columbia, Maryland. The officers were in uniform, including badges and the word "POLICE" in neon lettering on the front of their jackets. While on a footpath adjacent to a parking lot near the Owen Brown Village Center, which was known by the officers to be a high crime area, the officers observed a group of individuals "play fighting" and passing around an alcoholic beverage back and forth. The officers suspected that the beverage was alcohol because it was in a brown paper bag and the group's body language was consistent with persons drinking. The

officers, from 25-35 yards away from the group, observed a bottle being thrown and heard it hit the ground, but could not see who threw the bottle. At that point, the officers approached the group to investigate. When the officers were approximately five feet away, one of the individuals, later identified as Jamal Sizer, fled on foot. Sizer fled as soon as he observed the officers.

Officer Andrew Schlossnagle, one of the officers in the Patrol Unit, gave immediate chase and tackled Sizer to the ground. As Sizer was taken to the ground, he yelled out that he was carrying a handgun in his backpack. Sizer was then frisked for weapons. Within seconds of the takedown, another officer of the Patrol Unit recognized Sizer as the subject of an outstanding arrest warrant. At that point, Sizer was arrested and taken to the police satellite station.

The Search Incident to Arrest and Recovery of the Gun and Oxycodone

At the station, the officers confirmed the existence of the warrant and searched Sizer incident to his arrest. The officers recovered a .38 caliber handgun from Sizer's backpack and twenty-seven oxycodone pills from his sock.

The Charges, the Motion to Suppress, and the State's Appeal

Sizer was charged with unlawful possession of a firearm with nexus to drug trafficking. He moved to

suppress the evidence, contending that the evidence was seized pursuant to an unlawful stop. The State argued that Sizer's flight from the officers in a high crime area, an area in which there had been a rash of robberies and a report of a subject displaying a handgun on the footpath just the day before Sizer's arrest, was enough to establish reasonable suspicion to conduct a *Terry* stop. However, the circuit court judge suppressed the evidence and the State appealed.

The Decision on Appeal

The Court of Special Appeals found that the *Terry* stop was justified and reversed the decision of the circuit court and the Court of Appeals agreed to hear the case. The Court of Appeals agreed with the Court of Special Appeals that the stop was reasonably justified. Although the officers did not have a particularized suspicion to stop Sizer when they approached the group, they had observed enough suspected criminal activity to warrant further investigation based on the suspected littering (improper disposal of waste in violation of State law and the county code) and the passing around of an apparent open alcohol container in a public parking lot (also a county code violation). These observations, combined with Sizer's flight from the officers in a known high crime area, provided the reasonable articulable suspicion to detain him. In other words, the totality of the circumstances, including flight, justified the stop.

Even if the *Terry* stop of Sizer had been deemed unlawful, the court held that the existence of an open warrant for his arrest attenuated the connection between any unlawful investigatory stop and evidence seized from Sizer during the search incident to his arrest.

Note: The United States Supreme Court has not imposed a bright-line rule that flight in a high crime area is always sufficient to generate reasonable suspicion of criminal activity. Flight, however, is one of many factors that officers can consider before attempting to make an investigatory stop. When testifying at a suppression hearing, officers

should articulate in as much detail as possible all of the circumstances leading to the stop, including why a particular area is deemed to be "high crime." Remember, in deciding whether to make a *Terry* stop, a suspect's *behavior* is always more important than his mere presence in a high crime area.

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