



Roll Call Reporter

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LEGAL UPDATE FOR MARYLAND LAW ENFORCEMENT OFFICERS

Expanding the Scope of a *Carroll* Doctrine Search Under the “Fair Probability” Standard

Question: Can the scope of a warrantless vehicle search under the *Carroll* Doctrine be expanded based on a “fair probability” of finding additional evidence or contraband?

Answer: Yes. If contraband is discovered during a *Carroll* doctrine search, and the officer expands the scope of the original search, there must be a “fair probability” that additional evidence of the crime or contraband will be found in the area searched, including the trunk and its contents.

Case: *State of Maryland v. Casey O. Johnson*
Court of Appeals of Maryland
Decided April 20, 2018
(REVERSING COURT OF SPECIAL APPEALS decision in *Johnson v. State*, 232 Md. App. 241 (2017))

The Traffic Stop, the Furtive Movements, and Request for Back-Up

On January 9, 2015, Officer Robert Sheehan of the Montgomery County Police Department was on routine patrol. He was assigned to the Germantown District Community Action Team, a unit placed in areas of high crime for crime suppression. Officer Sheehan was specially trained in drug interdiction

and narcotics enforcement. At approximately 7:25 p.m., he was near the intersection of Middlebrook Road and Germantown Road, a known high crime area. Officer Sheehan observed a vehicle with a defective brake light. He activated his emergency equipment and pulled behind the vehicle. The vehicle drove very slowly, turned into a Safeway parking lot, and parked.

Since it was dark, Officer Sheehan shined his spotlight on the vehicle’s rear window. There were three occupants in the car, two in the front seat and one in the back. Officer Sheehan could see the front seat passenger, later identified as Anthony Haqq (“Haqq”) making furtive movements. He also could see the driver, Casey O. Johnson (“Johnson”) manipulating something in the center console area. Johnson kept her left hand on the steering wheel while reaching with her right in the direction of the front passenger seat. Haqq was now reaching into the area in front of his seat. When Haqq repeated this motion several times, Officer Sheehan concluded that the driver and front passenger were concealing drugs or weapons. He quickly exited his car and approached the driver’s side of Johnson’s vehicle. He shined his flashlight into the passenger compartment and saw Haqq leaning over with his hands between his legs. As Officer Sheehan reached the driver’s window, Haqq quickly moved back in his seat and pulled his shirt down over his crotch area.

Officer Sheehan explained to Johnson that he made the stop to issue a safety equipment repair order. Johnson was extremely nervous, to the point of trembling. Haqq remained silent, sitting rigidly in his seat, staring out the window. Based on what was taking place, Officer Sheehan called for back-up and began processing the traffic stop on “eTix.” As part of the process, he conducted routine license, registration, and warrant checks of the driver.

The Arrival of Back-Up, the Searches, the Drugs, and the Arrests

As Officer Sheehan conducted his checks, Haqq began lifting himself from his seat and leaning back. He kept moving his arms as he did this. The background checks on Johnson came back clear, and, at that moment, the backup officer, Officer Dos Santos arrived. Officer Sheehan told him a K-9 unit had been called, and, for officer safety reasons, the officers decided to wait for other units before taking further action. A few minutes later, Officer Michael Mancuso arrived and the officers walked up to Johnson’s car. Officer Sheehan asked Johnson to step out so that he could show her the broken brake light and ask her a few questions. She complied with the request. Officer Sheehan then asked several general and specific questions, including Johnson’s itinerary and her relationship with the two males in the car. He also asked Johnson if she would consent to his searching the vehicle. Johnson refused. Johnson did consent to a search of the outer pockets of her sweatshirt. No contraband or weapons were found.

Meanwhile, Officer Mancuso spoke to Haqq and Officer Dos Santos spoke to the backseat passenger. Both gave their information and Officer Sheehan returned to his car to complete the repair order and run the checks on the passengers. He completed the repair citation but did not physically give it to Johnson. The checks revealed that both Haqq and the other passenger had prior arrests for possession with the intent to distribute drugs but no open warrants.

A few minutes later, Officer Kelly, the K-9 officer, arrived with his dog. Officer Sheehan announced the scan to Johnson, Haqq, and the backseat passenger. He then asked Haqq and the passenger to step out of the car. When Haqq exited the vehicle, Officer Mancuso smelled PCP on his breath. He asked Haqq for consent to search his person, and Haqq consented. The search revealed 13.14 grams of marijuana in Haqq’s waistband. Based on his training and experience, Officer Mancuso knew the baggie contained more than 10 grams of marijuana. The officers then searched the vehicle, including the trunk. In the trunk, they found a backpack. Inside the backpack was a shopping bag containing a digital scale and a gallon sized container of suspected marijuana. Johnson was searched incident to arrest, and the officers found \$544 in cash folded into different bundles. No K-9 scan was ever performed.

The Charges, the Motion to Suppress, and Conviction

A grand jury charged Johnson with possession of marijuana with intent to distribute and conspiracy to possess marijuana with intent to distribute. Johnson moved to suppress the evidence against her, claiming that the police had violated the Fourth Amendment. Her motion was denied and the case proceeded to trial. Johnson was found guilty of possession of marijuana with intent to distribute and sentenced to five years supervised probation. She appealed.

The Decision of the Court of Special Appeals and the Reversal by the Court of Appeals

The Court of Special Appeals, Maryland’s intermediate appellate court, focused solely on the legality of the trunk search. The court concluded that the officers’ search of the trunk was based solely on the facts relating to Haqq, including his furtive movements, the odor of PCP, and his possession of drugs, and not on any evidence directly associated with Johnson. As a result, the



court concluded that although the officers had probable cause to search the passenger compartment, they lacked any legal basis to search the trunk. Accordingly, the evidence seized from the trunk should have been suppressed. The Court of Appeals, Maryland's highest court appellate court, agreed to review the case.

The Court of Appeals reversed the decision of the Court of Special Appeals, and rebuked that court for failing to view the facts and circumstances surrounding the stop in their entirety. Instead, the Court of Special Appeals had concluded that the officers' search of the trunk was based solely on the facts relating to Haqq, including his furtive movements, the odor of PCP, and his possession of drugs. And, because Haqq's drug use could not be directly attributed to Johnson, the officers had probable cause to search only the vehicle's passenger compartment, not the trunk.

The Court of Appeals said that this was simply not the case, and that the officers possessed many other facts before they searched the trunk. Those facts included the coinciding furtive movements of both Johnson and Haqq, Johnson's extreme nervousness, Johnson's evasive answers to questions, the criminal records of the other Haqq and the other passenger, and Johnson's reaction to the arrival of the K-9 unit. All the circumstances, which including the smell of PCP on Haqq and his drug possession, established a "fair probability" that additional drugs might be found *anywhere* in the car, including the trunk. For these reasons, the Court of Appeals reversed the decision of the Court of Special Appeals and remanded the case to that court for further consideration.

Note: As a reminder, the *Carroll* Doctrine authorizes warrantless vehicle searches if there is probable cause to believe the vehicle contains contraband or other evidence of a crime. That probable cause may justify a limited search of a specific area or a search of the entire vehicle, depending on the probable cause. Once contraband

or evidence of crime is discovered in a limited search, however, the scope of a *Carroll* Doctrine search can be expanded if there is a "fair probability" that additional evidence or contraband will be found in the area searched. In sum, probable cause is the standard justifying the initial search and its scope, and "fair probability" is the standard allowing the search to be expanded once contraband is discovered.

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