



Roll Call Reporter

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LEGAL UPDATE FOR MARYLAND LAW ENFORCEMENT OFFICERS

Active-Shooter Situations and Exigent Circumstances

Question: Is the prospect that an active shooter might continue to threaten the safety of the public and officers a “special need” that justifies a limited search and seizure without individualized suspicion?

Answer: Yes. There are limited governmental interests that go beyond ordinary crime control that can justify a search or seizure made without reasonable suspicion or probable cause. Exigent circumstances, including the need to protect the public and officers from active gun violence, may permit a suspicionless search or seizure.

Case: *United States of America v. Billy Curry, Jr.*
United States Court of Appeals for the Fourth Circuit
Decided September 5, 2019

The Special Patrol Unit, the Gunfire, and the Officers’ Use of Flashlights

On the night of September 8, 2017, four uniformed officers from the Richmond Police Department’s Focus Mission Team—a division dedicated to violent crime and drug suppression—were patrolling the Creighton Court neighborhood in Richmond, Virginia. The officers were assigned to

patrol this neighborhood because it had been the site of frequent gun violence, with six shootings and two homicides in the previous three months. The most recent homicide in the neighborhood had occurred just ten days earlier. At around 9:00 p.m., the officers heard around a half dozen gunshots coming from the direction of a street called Walcott Place. Two of the officers activated their body cameras.

Upon hearing the gunfire, the officers made a U-turn and drove northeast across a field toward Walcott Place. The officers travelled approximately two to three blocks and arrived behind Walcott Place within thirty-five seconds. In that short time, the officers’ radios announced that at least two 911 calls had come in for random gunfire, one of which was on Walcott Place. Before stopping, the officers observed a man in a red shirt, who appeared to be holding one of his arms.

The officers stopped at a point they estimated to be within 50 yards from where the gunfire had come. They immediately spotted several individuals, including Billy Curry, Jr., walking away from a cut-through from Walcott Place, away from where the gunshots originated. The officers, who were now looking for handguns or firearms, ordered the men to stop. The officers then fanned out and used their flashlights to illuminate the men, their waistbands,

and their hands. They ordered the men to lift their shirts, expose their waistbands, and turn around.

The Suspect's Refusal to Lift his Shirt, the Attempted Pat-Down, and the Recovery of the Handgun

The flashlight searches took less than a minute for the men who complied. Curry refused to fully comply. When officers sought to pat him down, a brief scuffle ensued. After Curry was taken to the ground and handcuffed, the officers recovered a silver revolver from the ground near Curry.

The Charges, the Motion to Suppress, and the Suppression of the Evidence

Curry was indicted for being a felon in possession of a firearm in violation of federal law. He then moved to suppress the revolver, arguing that the officers violated the Fourth Amendment by stopping and searching him without reasonable suspicion that he was engaged in criminal activity. In response, the Government argued that the officers had reasonable suspicion, and, alternatively, that the exigent circumstances at the time of the stop rendered it reasonable.

Following an evidentiary hearing, the trial court, the United States District Court, suppressed the recovered revolver. The district court determined that the officers lacked reasonable suspicion to justify the brief investigatory stop. The court reasoned that since the officers lacked any particularized suspicion as to Curry, and were seeking to do more than just detain him, their actions could not be justified under *Terry v. Ohio*. In the end, the trial court found that the "exigencies" of the situation could not overcome the absence of individualized reasonable suspicion. Since the trial court held that the initial stop was unlawful, it did not consider whether the officers were justified in frisking Curry. The government appealed the ruling to the United States Court of Appeals for the Fourth Circuit.

The Decision on Appeal

The appellate court reversed the suppression order of the trial court. The court found that exigent circumstances, namely facing an active shooter situation, existed. The court further found the exigent circumstances implicated important public concerns far beyond general crime control. Those public concerns, namely the dangers to the public and officers from active gun violence, justified the order to halt and the flashlight searches of the men's waistbands and hands. The officers were responding to the sound of gunfire seconds before in a densely populated neighborhood. As law enforcement first-responders in this situation, the officers' top priority was to prevent any further shootings and to treat any wounded on the scene. The officers' flashlight searches were a minimally invasive response to the exigent threat. Their limited seizure of the men was tailored to address the active-shooter scenario. And the officers had no effective alternatives to address the safety concerns. The threatened harm's immediacy, likelihood, and magnitude made this a circumstance beyond ordinary crime control. Therefore, their initial seizure of the men and the limited searches using flashlights did not violate the Fourth Amendment. Accordingly, the ruling of the trial court suppressing the revolver found next to Curry was reversed.

Note: Law enforcement's special interest in protecting the public safety from exigent threats is distinct from law enforcement's generalized interest in ordinary crime control, even if they sometimes overlap. The immediacy of the gunfire and the quick response were the keys to the outcome in this case. If, for example, the officers had responded fifteen or twenty minutes later, with no further reports of gunfire, the outcome may have been different. If an officer's response to an active shooter situation is delayed, the court could view his or her actions as ordinary crime control, with no exigent circumstances existing to justify a suspicionless search. A final word of caution: This case does not stand for the proposition that the mere perception of gunshots automatically authorizes



police to conduct an unbounded dragnet and frisk everyone in sight. That is not what occurred in this case. Here, again, the immediate and limited nature of the officers' response made their actions reasonable under the Fourth Amendment.

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