



Roll Call Reporter

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LEGAL UPDATE FOR MARYLAND LAW ENFORCEMENT OFFICERS

Consent Searches During Traffic Stops

Question: Is a traffic stop so “inherently coercive” that consent given by an occupant to search his person will be deemed involuntary by the suppression court?

Answer: No. During a traffic stop, the voluntariness of the consent to search is determined by viewing the totality of the circumstances.

Case: *William Scott v. State*
Court of Special Appeals of Maryland
Decided July 29, 2020

The Traffic Stop and Call for K-9

On the afternoon of July 16, 2018, Sergeant Robert Sheehan of the Montgomery County Police Department was working undercover in the Gaithersburg area. While driving into the parking lot of the Extended Stay Hotel on Professional Drive, a location known for drug activity and prostitution, he recognized a dark green Buick minivan heading toward the exit. He had stopped that same minivan almost a month earlier. At that time, the minivan had had three occupants: John Dicks, the driver and owner, Andre Stevenson, and Danielle Kidwell. Evidence generated from that traffic stop was used to obtain an arrest warrant for Stevenson for heroin trafficking. As of July 16, Stevenson was still being sought.

Believing that Stevenson might be in the minivan, Sgt. Sheehan followed it and paced it. He paced it for about a half mile and determined it was traveling 10 miles per hour faster than the posted limit. He radioed Officer William Weill, who was nearby, and told him to stop the minivan for speeding. Officer Weill was in uniform and driving a marked police cruiser.

After Officer Weill stopped the minivan, he approached the driver’s side and saw three occupants inside: John Dicks, the driver, Danielle Kidwell in the back seat, and an unknown male in the front passenger seat. The unknown male was holding some papers near his face and complaining about being overcharged by the hotel. Officer Weill could not see the man well enough to determine if it was Stevenson. Officer Weill asked Dicks for his license and registration which Dicks turned over. Officers Marshall Weider, Timothy Serlo, and Ruth Zotti arrived just after Officer Weill. A K-9 unit was called to the scene right away based upon the previous stop which had produced evidence of drug trafficking. *All the officers were wearing body worn cameras.* After the other officers arrived, Officer Weill returned to his car and began processing the traffic violation.

After Officer Weill returned to his car, Officers Weider and Zotti approached the passenger side of the minivan and Officer Weider motioned for the front seat passenger to open his window. The

passenger did so and asked the officer if he wanted identification. Officer Weider responded that he did, and the passenger handed him his identification card which showed that his name was William Scott and that he was born in 1976. Officer Weider took some notes from the card and returned it to Scott. The officer then walked back to Officer Weill's car and handed him the notes. Officer Zotti did the same with the information she had obtained from Kidwell.

Officer Weider then walked to the median strip and stood about two car lengths behind the minivan. Officer Serlo stayed next to the driver's side of the minivan. He noticed that Scott was sitting forward and hunched over. He appeared to be not feeling well. Scott's papers, cell phone, and wallet were in his lap. Officer Zotti stood by the passenger side of the minivan.

The officers conversed with the occupants, and Dicks, who had turned the air conditioning off, complained about the heat. Kidwell asked if she could open the minivan's sliding door because of the heat, and Officer Zotti said "yes." While the officers and passengers conversed, Sgt. Sheehan parked his unmarked car across the street to watch the stop. He later moved to the median strip and stood near the minivan.

The Arrival of the K-9 and the Discovery of the Gun

When the K-9 unit arrived, the occupants of the minivan were ordered out of it based upon departmental policy. Officer Serlo told Dicks to get out of the minivan. When asked whether he was carrying knives, Dicks said "yes" and showed the officer the knives in his pants pocket. The knives were recovered and put in the minivan by Sgt. Sheehan. The sergeant then approached Scott and ordered him out. As Scott stood up, still holding his papers, Sgt. Sheehan said, "Watch your stuff," referring to the cell phone and wallet. Scott slowly picked the items up and walked toward the median strip. He was still hunched over. Sergeant Sheehan asked him if something was wrong, but Scott did not

reply. As Scott reached the median strip, he began to sit down on the curb next to the minivan. Officer Serlo told him, "No, get up" because Scott was too close to the K-9 scan. The officer told him to move down the median strip, closer to Officer Weill's car.

As Scott stood up, he stumbled. Officer Serlo placed his hand on the back of Scott's shirt to prevent him from falling and to guide him down the median. Once Scott reached the right location on the median, Officer Serlo told him he could sit down on the curb if he wanted to. Scott sat down, facing the road. As Scott was sitting on the curb, still hunched over, Officer Weider observed a bulge around his right front pants pocket but could not tell whether it was from something in that pocket or his waistband. At the same time, Scott began grabbing and manipulating the area of his front pants pocket. From experience, Officer Weider believed this was an indication that Scott might be armed. Officer Weider leaned over next to Scott, bending down so their head were at the same level. He said in a calm, but firm voice, "Okay well you're trying to grab it and I don't want you to grab it. May I reach into your pocket and get it?" Scott said, "yes" and nodded his head affirmatively.

The Recovery of the Gun and Other Evidence

Officer Weider reached into Scott's right front pants pocket and removed a packet of over-the-counter medicine, a pack of cigarettes, and two twenty-dollar bills. Scott remained seated on the curb. As Officer Weider looked through the items, Scott continued to complain that he was hot and didn't feel well. Scott leaned slightly to his left, and, as he moved, his tee shirt lifted a little, revealing the butt of a handgun and the weapon's outline in Scott's waistband. Officer Weider yelled, "handgun!" and held Scott down. Officer Serlo grabbed the handgun and gave it to Sgt. Sheehan. He then handcuffed Scott. A search incident to arrest yielded an Adderall capsule from another pocket. After the gun was recovered, Scott suddenly stopped hunching over, stood up straight, and argued with the officers as to why he was



carrying the handgun. He had no difficulty standing or speaking.

The Charges, Motion to Suppress, and Conviction

Scott was charged with wearing, carrying, and transporting a handgun, possession of Adderall, and other crimes. He moved to suppress the evidence. The court denied the motion. Scott took a conditional guilty plea to the handgun and Adderall possession charges and was sentenced by the court. He later appealed.

The Decision on Appeal

On appeal, Scott contended that any consent he gave to Officer Weider to search his right front pants pocket was not voluntary because he was in a coercive environment and merely acquiesced to Officer Weider's request. Without voluntary consent, he argued, the search violated the Fourth Amendment and Article 26 of Maryland's Declaration of Rights. And, because the handgun only became visible once the search of the pants pocket was completed, the handgun should be suppressed as well. Finally, as to the Adderall, Scott argued that it was found in a search incident to an arrest brought about by an unconstitutional search, and, as a result, should also be suppressed. The State argued that Scott's consent to search was voluntary and that Officer Weider saw the butt of the gun and the gun's outline in Scott's waistband, which gave him probable cause to seize the weapon and arrest Scott.

The Court of Special Appeals upheld Scott's convictions. The Court first found that the traffic stop for speeding was lawful. The stop, while clearly pretextual, was based on a valid traffic violation. Next, as to the issue of consent, the Court said its determination was controlled by the totality of the circumstances. The factors considered in deciding whether consent was freely and voluntarily given include both *individual and environmental factors*. **Individual factors include: age, maturity, education, intelligence, intoxication or under the influence of drugs, prior experience with law**

enforcement, and whether the suspect knew of his right to refuse consent. Environmental factors include: whether the subject was detained, the duration of the detention, the number of officers present, whether the officers had their weapons drawn, whether the suspect was threatened, physically intimidated, or punished by the police, whether he relied upon promises or misrepresentations of the police, whether he was in custody or under arrest, whether he was in a public or secluded place when consent was sought, and whether he objected to the search as it was carried out.

In this case, the Court of Special Appeals concluded that the circuit court correctly ruled that Scott gave consent to the search of his pants pocket. The body worn camera footage completely supported the officers' version of events and did not support Scott's contention that he was coerced into giving consent. The Court found that the officers were not overbearing or threatening, and that moving Scott from the minivan to a first, and then a second location was reasonable under the circumstances. Scott was not handcuffed and none of the officers drew their weapons. Based on the non-coercive, non-confrontational nature of the stop, Scott's consent was deemed to be valid and his convictions were affirmed.

Note: The body camera evidence was extremely helpful to the Court in making its decision. It showed that the officers acted in a professional, non-threatening manner. Officers should review the highlighted factors relating to consent and remember that the less threatening and less coercive the police conduct, the more likely consent will be upheld by the court. Finally, it is worth noting that the officer who saw the bulge around Scott's pocket concluded that he *did not* have reasonable articulable suspicion to believe that Scott was armed. That precluded him from conducting a pat down. So, instead, the officer took the next logical step and asked for consent to search.



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