



## **LGIT'S ROLL CALL REPORTER FEBRUARY 2010**

### **The Relationship Between a Traffic Stop and a *Terry* Stop for Drugs**

**QUESTION:** If a detention begins as a traffic stop, is it constitutionally unfair to allow it to change into a *Terry* investigation of suspected crime?

**ANSWER:** No. The relationship between traffic stops and *Terry*-stops for drugs is often dynamic. At any point during a traffic stop, articulable suspicion for a *Terry* criminal investigation may be established.

**CASE:** *LeShone Jackson v. State of Maryland*, Court of Special Appeals  
Decided February 4, 2010

In this case, the Court of Special Appeals once again visited the relationship between traffic stops and *Terry*-stops for drugs. The facts established that at 12:56 p.m. on October 24, 2007, Maryland State Police Trooper David McCarthy was traveling southbound on Interstate 95 in Cecil County when he observed a gray Grand Prix Pontiac with South Carolina tags traveling faster than other traffic in the same southbound direction. He paced the Pontiac for half a mile and noted that it was traveling at a speed of 75 miles per hour in a posted 65 miles per hour zone. Trooper McCarthy pulled the Pontiac over. As he did so, he summoned immediate backup and called for a drug-sniffing canine to respond to the scene. The Pontiac was being driven by LeShone Jackson. There were no passengers. Trooper McCarthy asked Jackson for his driver's license and registration and told him that the traffic stop was being recorded. Jackson appeared unusually nervous. He asked Trooper McCarthy to repeat himself several times and the trooper noticed that Jackson's heart was racing. Trooper McCarthy also observed new air fresheners and two cell phones in the console. Jackson produced a license and a rental agreement that showed that the car had been rented in North Carolina by a female. Jackson said that the female was his aunt. He also told Trooper Conner, who had arrived as backup, that he was coming "from Hagerstown" and had "stopped at the Baltimore Travel Plaza." Trooper Conner knew that this was not plausible. Trooper McCarthy radioed Jackson's driver's license and car rental agreement data to police communications.

At 1:00, just four minutes after the traffic stop, Corporal Chris Armiger arrived with his K-9, "Leco." Leco made a positive alert for controlled dangerous substances at 1:04 P.M., eight minutes after the initial stop. At the time of the alert, Trooper McCarthy was still awaiting the reply concerning Jackson's license and rental agreement information.

As a result of the positive alert, the Pontiac was searched. A large plastic bag containing a number of smaller packages containing heroin was recovered. There were 1550 individual wax packages, containing a total of 600.5 grams of heroin. Jackson was charged with possession of heroin with the intent to distribute. Prior to trial, Jackson moved to suppress the evidence. His motion was denied and he was convicted. Jackson appealed the denial of his motion to suppress.

The Court of Special Appeals affirmed Jackson's conviction. The court initially found that the traffic stop was perfectly valid. Further, at the time of and during the stop, Trooper McCarthy quickly developed an articulable suspicion that Jackson was a drug courier. Based on his training and experience, Trooper McCarthy identified the following factors to establish "reasonable suspicion": the out-of-state tags; the vehicle's presence on the I-95 "corridor"; the driver's extreme nervousness; the driver's fumbling explanation of where he had been; the new air fresheners in the console; the two cell phones in the console; and the rental agreement signed by a female. Trooper McCarthy testified at the suppression hearing that in a high percentage of his narcotics seizures, air fresheners were present in the vehicle. He also testified that drug traffickers often use two cell phones, one for personal calls and one for calls related solely to drug trafficking. Trooper McCarthy further testified that drug couriers frequently use rental cars, particularly ones with out-of-state tags, and that the rental agreements are frequently signed by females. All of these factors, when viewed in their totality, established reasonable suspicion. The alert established probable cause to search the car, and, as a result, Jackson's conviction was upheld. As the court said, "[o]nce we have filtered out the extraneous static, we are left with a legitimate stop followed by a legitimate eight-minute detention followed by a legitimate dog sniff. That's all there is."

**NOTE:** Despite repeated assertions that the duration of traffic or *Terry* stops is not determinative of "reasonableness" under the Fourth Amendment, courts always attempt to reconstruct the timeline. For traffic stops alone, the court in this case observed that "the critical breaking point between permissible and unreasonably prolonged traffic detentions occurs at somewhere near the 20 to 25 minute marker." For *Terry* stops, longer detentions are allowed. When, as here, a traffic stop ripens into a *Terry* stop for drugs, the permissible length of the detention is measured in terms of *Terry*, not in terms of the traffic stop. This is because a criminal investigation under *Terry* usually takes more time than is needed to process a traffic violation. In this case, the clock began to run when the traffic stop was made. The clock stopped for purposes of the Fourth Amendment when the canine alerted. The eight minutes that elapsed in no way violated the Fourth Amendment. Even if more time had been taken, and/or Trooper McCarthy had completed the traffic stop before the arrival of the canine, the result would likely have been the same. This is because the traffic stop almost immediately became a *Terry*-stop for drugs. And, as the court said, when this type of "investigative upgrade" occurs, "a far more patient and leisurely wait for the arrival of K-9 assistance" is prescribed. In sum, in these circumstances officers must be aware of the timeline and be prepared to reconstruct it when called upon to do so.

*By John F. Breads, Jr., Director of Legal Services, Local Government Insurance Trust*

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