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DETAINEE'S FLIGHT DURING LAWFUL *TERRY* STOP AS A FACTOR IN DETERMINING WHETHER PROBABLE CAUSE TO MAKE A WARRANTLESS ARREST EXISTS

QUESTION: Does a detainee's flight during a lawful *Terry* stop convert an officer's reasonable suspicion to the probable cause necessary to make a warrantless arrest?

ANSWER: Depending on the totality of the circumstances, a detainee's flight during a lawful *Terry* encounter may sufficiently enhance the officer's reasonable suspicion to the probable cause needed to make a warrantless arrest.

CASE: *Collins v. State*, No. 70, Sept. Term, 2002
Court of Appeals of Maryland, August 4, 2003

In *Collins v. State*, the Court of Appeals considered the question of whether a detainee's flight during a lawful *Terry* stop was of any legal significance in determining whether the officer had probable cause to make an arrest.

In the *Collins* case, the facts established that on January 19, 1999, between 10:20 and 10:25 p.m., the Easton Police Department was alerted to an armed robbery of a High's convenience store. Easton Police Detective Shayne McKinney arrived and obtained a description of the suspect from the store clerk. The suspect was described as an African-American male, approximately 5 feet 8 inches tall, weighing about 160 pounds, wearing a black "nubbie" hat (close fitting knitted cap), and a long-sleeved gray shirt or sweatshirt with a black stripe or stripes. The clerk reported that the robber said that he was armed, and that he had "just left" on foot. Detective McKinney promptly broadcast the description to other members of the Easton Police Department.

Officer John Jones heard the broadcast and drove to the area near the store. Approximately 8 to 12 minutes after hearing the broadcast, Officer Jones observed Michael Darnell Collins ("Collins") in the Burger King parking lot. Collins, who was six feet tall and weighed 180 pounds, was somewhat larger than the person described in the broadcast. Also, Collins was wearing a black coat, gray sweatshirt, and a black nubbie. When he saw the patrol car, Collins quickly changed direction, walking "to [a] payphone to get on the phone as if he were going to make a call." Officer Jones drove to the payphone, exited his patrol car, identified himself, and asked Collins a number of questions. He asked Collins for his name, address, and date of birth. Collins provided this information. While he was questioning Collins, Officer Jones learned from a radio dispatch that the robber fled the store with \$200.00. Officer Jones then asked Collins how much money he had. Collins answered by pulling out a \$20 bill and saying that was all he had.

Officer Jones then informed Collins that he matched the description of the robbery suspect who reportedly had fled with \$200.00. When he asked Collins if he actually had more than \$20, Collins said that he did not. Officer Jones then asked Collins “if he could check”. Before answering, Collins “fled”. Although Officer Jones intended all along to detain Collins until the clerk could be brought to the scene to determine if Collins was the robber, he never advised Collins of this intent. Up to the point that Collins fled, Officer Jones had not used any force, or even made a display of using force, against Collins. Officer Jones and two other officers who had just arrived pursued Jones. They shouted for Collins to stop, but he kept running. After a lengthy foot chase, Officer Jones grabbed Collins and brought him to the ground. Collins resisted by refusing to bring his hand out from under his waist. Knowing that the robber was reportedly armed, Officer Jones and the other officers struggled to free Collins’s hand, finally using pepper spray. Eventually, the officers were able to handcuff Collins. One of the officers found a vial or bag of crack cocaine on Collins’s person.

Subsequent investigation did not reveal evidence that Collins was the robber, and he was never charged with the robbery. However, he was charged with possession of cocaine, possession with intent to distribute cocaine, and obstructing and hindering a police officer.

Prior to the criminal trial, Collins moved to suppress, among other things, all objects or items seized from his person. Collins contended that, at the time he fled, the police had no reasonable suspicion to detain him, and that he had the right to leave. The trial court denied the motion, and after a trial by jury, Collins was found guilty of possession of cocaine with intent to distribute and hindering a police officer in the performance of his duties. Since he was a repeat offender, Collins was sentenced as recidivist offender to 25 years without parole for the drug violation, and a 1-day concurrent sentence for the hindering offense. The convictions were affirmed by the Court of Special Appeals, and the Court of Appeals agreed to hear the case.

The Court of Appeals affirmed the convictions. In doing so, the Court first noted that under *Terry v. Ohio*, the Supreme Court case in which investigatory stops were first sanctioned, police officers have the ability, even in the absence of probable cause, “to investigate the circumstances that provoke suspicion”. The Court then considered Collins’s argument that the officer did not have a reasonable, articulable suspicion, but only a “hunch”, because of the disparity between his actual height and weight and that reported by the clerk, as well as the fact that the clerk reported the robber wearing a gray shirt with black striping, whereas he was wearing a gray sweatshirt under a black coat, without any striping. The Court of Appeals discounted the differences as “inconsequential” because courts have recognized that descriptions given by victims may be imprecise as to height and weight and that robbers often shed or change their clothes to elude capture. Further, this argument did not account for the fact that Collins was observed shortly after the robbery in the vicinity of the store. There did not appear to be anyone else around, at least no one matching the description of the robber. Collins was also on foot, and acted peculiarly when he saw the patrol car. Thus, the *Terry* stop was lawful.

Concerning his “flight”, Collins argued that it could not be used to establish probable cause because he fled to avoid an unlawful search of his person. The Court pointed out that there was no evidence indicating that Officer Jones intended to search Collins absent his consent. At the suppression hearing, Officer Jones expressly testified that he did not intend to put his hands on

Collins without his consent, and that he had asked Collins for such consent. Consequently, since the *Terry* stop was lawful, his “flight”, under the totality of the circumstances, converted Officer Jones’s reasonable suspicion into probable cause supporting an arrest. In other words, since Collins’s flight was coupled with specific knowledge possessed by Officer Jones relating to the evidence of the crime, Officer Jones had probable cause to arrest Collins for the robbery of the High’s store. Since the crack cocaine was recovered in the course of a valid arrest, the motion to suppress had been properly denied.

NOTE: It is important to take from the *Collins* case that flight alone from police presence or flight from unlawful police activity does not create probable cause to effect a warrantless arrest. In *Collins*, the arresting officer had much more than the detainee’s flight during a lawful *Terry* stop to justify the arrest. It is also important to remember that although *Terry* allows police to investigate the circumstances that provoke a reasonable, articulable suspicion, the detainee is not obligated to respond to the officer’s questions. If the detainee does respond, and his answers do not provide the officer with probable cause to arrest, the detainee must be released.

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