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THE DISCOVERY OF AN OUTSTANDING ARREST WARRANT CAN DISSIPATE THE TAIN OF AN ILLEGAL STOP

QUESTION: Is the discovery of an outstanding arrest warrant an intervening cause that dissipates the taint of an illegal stop under the Fourth Amendment?

ANSWER: If the pertinent criteria apply, the existence and discovery of an outstanding arrest warrant, and the arrest of the suspect pursuant to the warrant, dissipates the taint of an illegal stop.

CASE: *COX V. STATE*, Court of Appeals of Maryland, Decided February 8, 2007

In *Cox v. State*, the Court of Appeals considered the methods by which evidence obtained after an initial illegal stop under the Fourth Amendment can be purged of any taint.

In the *Cox* case, the facts established that on April 26, 2005, Sergeant Jeff Bryant was patrolling the Lancaster neighborhood in Waldorf, Maryland. There had been a series of robberies in the neighborhood, the last of which had occurred the previous day. The victim of that robbery had described the perpetrators as “two teenage black males.” At 11:05 a.m., Sgt. Bryant noticed two black males on the sidewalk walking towards him. One of the men was later identified as Artavius Donnell Cox. According to Sgt. Bryant, the men appeared to be avoiding him. They left the sidewalk and walked onto another street. Sgt. Bryant was unsure whether the men saw him before they changed their route. Sgt. Bryant circled in his patrol car, met with a second officer who was nearby, and then stopped Cox and the other man. Two other officers arrived within minutes of the stop.

Sgt. Bryant, who was in uniform, approached the men and identified himself. He asked the men for their identifications and explained that the police were having a problem with robberies in the area. He told them that they “loosely” fit the description of the suspects. Cox and the other man produced Virginia identification cards, and Sgt. Bryant ran their information, asking for a local MILES and NCIC check of wanted status. According to Sgt. Bryant, while he was checking the identifications, the men were not free to leave.

After about two minutes, communications advised Sgt. Bryant that one of the men was wanted on an outstanding warrant. Sgt. Bryant ordered the men to sit on the ground with their hands on their heads and awaited confirmation as to which man was wanted. A

short time later, Sgt. Bryant received confirmation that Cox was wanted for failing to appear in court on drug charges. Sgt. Bryant told Cox he was under arrest and placed him in handcuffs. One of the officers then noticed a plastic baggie of marijuana lying on the ground where the men had been sitting. The marijuana was not there when Sgt. Bryant asked the men to sit on the ground.

Cox was charged with various drug offenses, including possession of marijuana. He moved to suppress the evidence. The circuit court granted the motion and suppressed the evidence because it found that Cox had been illegally stopped under the Fourth Amendment and that the evidence seized was “fruit of the poisonous tree”. The Court of Special Appeals reversed the circuit court, finding that the stop was actually a “mere accosting”. The Court of Appeals then agreed to hear the case.

The Court of Appeals affirmed the judgment of the Court of Special Appeals. In doing so, it assumed, without deciding, that the initial stop of Cox violated the Fourth Amendment. The court made this assumption because it concluded that a balance of the appropriate factors established that Cox’s arrest pursuant to the outstanding arrest warrant sufficiently attenuated any taint caused by the arguably illegal stop. In sum, the court found that where a lawful arrest pursuant to a warrant constitutes the “intervening circumstance”, a compelling case that the taint of the original illegality is dissipated has been made.

NOTE: In the *Cox* case, the Court of Appeals determined that there are three factors which determine whether evidence obtained after an illegal stop or arrest has been purged of the taint of the illegality. **The first factor is the temporal proximity between the illegal stop and the evidence obtained. The second factor is whether there was an intervening event which led to the discovery of the evidence. The third factor is the purpose and flagrancy of the police misconduct.** In *Cox*, the court found that since the stop and the discovery of the marijuana were nearly contemporaneous (two minutes elapsed between the stop and the discovery of the marijuana), the taint of the arguably illegal stop had not been dissipated. However, the discovery of the outstanding arrest warrant, and the discovery of the baggie on the ground *after* Sgt. Bryant learned of the warrant and arrested Cox, was an “intervening event” that dissipated any supposed illegal “taint”. Finally, since there was nothing in the record to suggest that Sgt. Bryant had acted in bad faith, a balance of the factors demonstrated to the court that the arrest pursuant to the warrant sufficiently attenuated any taint caused by the questionable stop.

Prepared by John F. Breads, Jr., Director of Legal Services

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