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A FRISK OF A PASSENGER IN A VEHICLE STOPPED FOR A MINOR TRAFFIC VIOLATION IS LAWFUL UNDER THE FOURTH AMENDMENT AS LONG AS THERE IS A REASONABLE, ARTICULABLE SUSPICION THAT THE STOPPED PASSENGER IS ARMED AND DANGEROUS.

QUESTION: CAN AN OFFICER FRISK A PASSENGER OF A VEHICLE STOPPED FOR A MINOR TRAFFIC VIOLATION?

ANSWER: YES, IF THE OFFICER HAS A REASONABLE, ARTICULABLE SUSPICION THAT THE PASSENGER IS PRESENTLY ARMED AND DANGEROUS.

CASE: *Matoumba v. State of Maryland*
Court of Special Appeals of Maryland, May 25, 2005

In *Matoumba v. State of Maryland*, the Maryland Court of Special Appeals was asked to determine, among other things, if an officer's stop and frisk of a passenger in a vehicle that was stopped for a minor traffic offense was valid under the Fourth Amendment.

The facts of the case established that on July 18, 2002, Officers Dean Palmero and David Moynihan of the Baltimore City Police Department were in their unmarked cruiser on Baltimore's west side. The officers were assigned to a crime suppression detail. At about 10:30 p.m., the officers observed a car ahead of them that was traveling at a speed "greater than reasonable" and initiated a traffic stop.

As the officers approached the stopped car, Officer Moynihan noticed Kobi Matoumba seated in the right rear passenger seat. During the course of the traffic stop, Officer Moynihan observed Matoumba acting suspiciously on several occasions. Matoumba was seen 1) repeatedly looking back at the police cruiser while the officers were making the stop; 2) dipping his right shoulder down toward the floor as Officer Moynihan approached; 3) placing his right hand behind his back as Officer Moynihan reached the rear passenger side; and 4) maintaining constant eye contact with Officer Moynihan. Also, as the officers reached the car, they observed that Matoumba's hands were shaking. Eventually, the officers ordered all of the occupants out of the car, and Officer Moynihan frisked Matoumba. During the frisk, the officer retrieved a .25 caliber handgun from Matoumba's back pocket.

Matoumba was charged and tried on a handgun offense. At his trial, Matoumba moved to suppress the evidence against him, claiming that the search and seizure of the handgun violated his rights under the Fourth Amendment. The trial court denied the motion to

suppress, and Matoumba was later found guilty. He was sentenced to five years in prison. He appealed his conviction to the Court of Special Appeals of Maryland.

The Court of Special Appeals upheld the conviction. In doing so, the Court first explained that the cases decided by the United States Supreme Court establish that the Fourth Amendment allows a police officer to stop and briefly detain a person for investigation, as long as the officer has a reasonable, articulable suspicion that the person has been involved in, or is about to be involved in, some type of criminal activity. Additionally, the officer may conduct a protective frisk if the officer has a reasonable belief that the stopped person is armed with a weapon. The Court further explained that “reasonable suspicion” requires less evidence than is required for “probable cause,” but must be based on more than a mere “hunch” or unsupported guess. Finally, the Court noted that when determining whether or not a “reasonable, articulable suspicion” existed, courts must consider the “totality of the circumstances,” meaning they must assess the observations of all officers on the scene, and not merely the observations of any one officer.

When the Court applied these principles to Matoumba’s case, it determined that Officer Moynihan had sufficient reasonable articulable suspicion to justify his frisk of Matoumba. The Court said:

In arriving at this conclusion, we give due weight to [Matoumba’s] nervous conduct and obvious attempt to conceal some item behind his back, the dangerous nature of the area where the traffic stop occurred, and the initial reasonableness of the [traffic] stop. Given these facts, Moynihan operated on more than a ‘hunch’ of danger.

NOTE: This case serves as an important reminder that the reasonable suspicion justifying an investigative a “stop” does not automatically translate into the reasonable suspicion needed to conduct a limited “frisk” for weapons. To justify both a “stop and frisk,” an officer must not only have reasonable suspicion to believe that a person is involved in criminal activity (the standard for a stop), but also a reasonable suspicion that the stopped person is *presently armed and dangerous* (the standard for a frisk). It is also important to note that when the Court upheld Officer Moynihan’s frisk of Matoumba, it relied heavily on the detailed observations recounted by the officer during his testimony at trial. Rather than just giving his conclusions about Matoumba’s behavior (for example “he appeared nervous”, “he appeared to be hiding something”, or “he made furtive or unusual movements”), Officer Moynihan carefully described the things he observed that led him to his conclusions (for example, “his hands were shaking,” “his shoulder dipped down as I approached,” “he maintained constant eye contact with me”). This detailed testimony gave the Court a much clearer picture of what actually transpired at the time of the stop.

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