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ARTICLE 26 OF THE MARYLAND DECLARATION OF RIGHTS DOES NOT REQUIRE REASONABLE, ARTICULABLE SUSPICION TO CONDUCT A K-9 SCAN OF A MOTOR VEHICLE

QUESTION: Does Article 26 of the Maryland Declaration of Rights provide greater protection against police searches and seizures than the Fourth Amendment?

ANSWER: No. Article 26 of the Maryland Declaration of Rights does not provide greater protection than the Fourth Amendment. Article 26 is to be interpreted and applied in the same manner as the Fourth Amendment.

CASE: *Padilla v. State*, Court of Special Appeals
Decided May 30, 2008

In *Padilla v. State*, the Court of Special Appeals rejected the argument that Article 26 of the Maryland Declaration of Rights (the State constitutional provision that is similar to the Fourth Amendment to the United States Constitution) requires a "reasonable, articulable suspicion" to conduct a canine scan of a motor vehicle. The Court also rejected the argument that a police officer's violation of Article 26 gives rise to an "exclusionary rule" under State law.

The facts established that on August 3, 2005, at approximately 8:30 p.m., Maryland State Trooper Howard Kennard was operating a stationary laser in the area of I-95 southbound at the 99-mile marker in Cecil County. He observed a green Honda Accord traveling southbound at a speed in excess of the posted 65 mph. He pointed his radar gun at the car and obtained a speed reading of 73 mph. Trooper Kennard then made a traffic stop of the Honda. The driver produced a New York "temporary license" bearing the name "Melvin Allen". The license contained no photograph. In response to the trooper's questions, the driver said that he did not own the car and that it was owned and registered to his sister who lived in North Carolina. He said that his sister's name was "Sandra Lane", but later said it was "Sandra Allen". In addition, the driver said he was going to North Carolina to return the car to his sister, but he could not provide his sister's address. While he was talking to the driver, Trooper Kennard detected an "overwhelming" smell of air freshener coming from the car. Trooper Kennard then returned to his car and requested a check on the Honda's registration and on the driver's license. Because his suspicions were aroused by the driver's behavior, Trooper Kennard also requested that a narcotics detecting K-9 unit respond to the scene.

Within minutes, certified K-9 handler Joseph Catalano arrived with his dog, “Bruno”, and performed a scan of the Honda. The scan occurred approximately twelve minutes after the initial stop. The drug dog alerted to the presence of a controlled dangerous substance in the car. When the dog alerted, Trooper Kennard still had not received any information back from dispatch concerning the driver’s identity. Therefore, the traffic stop had not been completed at the time of the alert.

As a result of the alert, Trooper Kennard searched the Honda’s passenger compartment. He noticed an irregularity in the side wall of the driver’s rear passenger area and discovered a hidden compartment behind the side wall that was secured by a hydraulic piston. Inside the compartment were two large plastic-wrapped packages containing a total of nearly 1,600 grams of heroin, equal to over 3 pounds. The driver, later identified as Louis Padilla, was arrested. Padilla was charged with possession of heroin with intent to distribute. Prior to his trial, he moved to suppress. His motion was denied. Padilla was found guilty and sentenced to seven years imprisonment, with all but three years suspended. Padilla appealed.

On appeal, Padilla conceded that suppression was not required under the Fourth Amendment. However, he urged reversal based on Article 26 of the Maryland Declaration of Rights, the counterpart to the Fourth Amendment in the Maryland Constitution. Padilla argues that Article 26 provides greater protection than the Fourth Amendment, and, unlike the Fourth Amendment, Article 26 requires an officer to have a reasonable, articulable suspicion to conduct a dog scan of a vehicle, and that Trooper Kennard did not have reasonable suspicion in this case. The Court of Special Appeals rejected the first of Padilla’s arguments, and found it unnecessary to reach the reasonable suspicion issue. In essence, the Court held that Article 26 and the Fourth Amendment were essentially two sides of the same coin and were to be construed the same way. Consequently, since the Fourth Amendment does not require reasonable, articulable suspicion to conduct a dog scan of a vehicle, neither does Article 26 of the Maryland Constitution.

In its review of the facts, the Court concluded that the traffic stop for speeding was fully justified. Moreover, given that the dog alerted within twelve minutes of the stop, and at a point where the trooper was still waiting for the results of the license check, the Court found that the traffic stop had not been extended to await the arrival of the K-9. The positive alert gave rise to probable cause to search the vehicle’s interior, and the drugs were found during that search. Since the facts established no violation of the Fourth Amendment, they equally established no violation of Article 26. Even if there had been a violation of Article 26, the Court held that suppression of the evidence would have been unwarranted since a violation of Article 26 does not give rise to an independent exclusionary rule under State law.

NOTE: No testimony was taken in the *Padilla* case during the motion to suppress or at trial. Instead, the State and defendant submitted agreed statements of facts, presented orally by the prosecutor, and then argued their respective positions. However, the agreed statement of facts presented at trial was more detailed than the facts submitted during the

motion to suppress. This is a practice that can have unintended consequences. When an appellate court is deciding a suppression issue, it is limited to the record of the suppression hearing itself; it cannot rely on further facts or details that may have been provided at trial. Accordingly, it is of critical importance to present *all* necessary facts relating to the seizure of evidence at the suppression phase, regardless of the form in which the facts are presented.

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