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The constitutionality of a “reach-in” search conducted in a public place

QUESTION: **Is a “reach-in” search conducted in a public place automatically unconstitutional?**

ANSWER: **No. The constitutionality of a “reach-in” search, including one conducted in a public place, is determined by four factors: the scope of the search, the manner in which it is conducted, the need for the search, and where it is conducted. If, under all of the circumstances, the search was reasonable, it should be upheld.**

CASE: *Michael Anthony Turkes v. State of Maryland*
Court of Special Appeals, Decided May 26, 2011

In this case, the Court of Special Appeals of Maryland again considered whether a “reach-in” search violated the Fourth Amendment. The facts established that on May 2, 2009, at approximately 11:45 a.m., Officer Anthony Smith was patrolling the 6400 block of Grieg Street in Prince George’s County. He observed a brown Cadillac with dark-tinted windows drive past him. The tint on the windows was so dark that Officer Smith could not see who was in the vehicle. Suspecting that the tint was darker than that allowed by law, Officer Smith activated his emergency equipment, pulled in behind the Cadillac, and made a traffic stop. The traffic stop occurred about 7-8 blocks from the police station near 4 to 5 garden style apartment buildings facing the street. Several single-family homes were on the other side of the street. The driver turned off the ignition and got out of the car. He walked quickly towards a nearby apartment building. Officer Smith told him to get back in the car. The driver, identified as Michael Anthony Turkes, said that he could not open the driver’s side door. Officer Smith ordered him to open the passenger side door and unlock the other car doors. Turkes did so and walked back to the driver’s side and stood by the door. Officer Smith was standing next to Turkes when Turkes opened the driver’s door. When Turkes opened the door, he quickly looked to the left towards a black bag in the door well, and then nervously looked at Officer Smith. This drew Officer Smith’s attention to the bag. The bag was a black plastic half-gallon sized bag (about the size of a tissue box) and was about three to four inches in diameter. Officer Smith believed that the bag was large enough to easily conceal weapons, drugs, or other contraband. He then asked for Turkes’ license and registration and told Turkes why he had been stopped. He told Turkes to roll down the windows for safety purposes. Officer Smith also told Turkes that once he issued a ticket for a repair order, Turkes would be free to leave. Officer Smith then walked back to his police car, informed the dispatcher of his location, and called for backup. While Officer Smith was in his car, he noticed Turkes looking through the

Cadillac's rear view and side mirrors and pushing or raising up from his seat, with his head going toward the ceiling. To Officer Smith, these movements were extremely suspicious. With the Cadillac's windows down, Officer Smith could see into the car but could not see Turkes' hands.

At this point, Officer Ivey arrived as backup. The officers approached the Cadillac, with Officer Smith on the driver's side and Officer Ivey on the passenger's side. Officer Smith asked Turkes to step out of the car to sign the repair order. He did so because of Turke's suspicious and furtive movements, which led Officer Smith to suspect that Turkes was hiding a weapon. As Turkes stepped out, Officer Smith observed that the black bag was no longer there. He and Turkes walked back to the police car, and Officer Smith again told Turkes that he would be free to go once he signed the repair order. Turkes signed the order but was not allowed to leave. Instead, Officer Smith told Turkes that he intended to check the Cadillac because he suspected it contained weapons or drugs. He had told Turkes to get out of the car only to prevent any incident. Officer Smith entered the Cadillac and searched the door wells, the space beneath the seats, the dash, and the center console. He did not find the black bag and concluded that Turkes was hiding it on his person. When he asked Turkes about the bag, Turkes said that it was "trash," and was underneath the seat. Officer Smith looked again, but didn't find it. When he again asked where it was, Turkes responded, "What bag? I don't know what you're talking about." Officer Smith told Turkes to place his hands on the hood of the police car so that he could be patted down for weapons. As Officer Smith's hand came up the inside of Turkes' leg, towards the crotch area, Turkes pulled his hand from the hood. Officer Smith ordered him to put his hand back on the car and continued the pat down. As his hand neared Turkes' crotch area, Officer Smith felt a hard object. When he pressed on the object, Turkes pushed from the car and tried to run. Officer Smith grabbed him and they fell to the ground. Officer Smith told Turkes that he was under arrest and the two officers handcuffed him behind his back.

Turkes was secured and searched while seated on the curb between the Cadillac and the police car. Officer Smith unfastened the button fly on Turkes' pants and began to search. He felt a large bulge in the crotch area, underneath Turkes' scrotum. He felt over the top of Turkes' underwear and felt the hard object. He then reached in under Turkes' underwear and pulled out the black plastic bag. Officer Smith never observed Turkes' genitals and did not expose them to view. No one but Officer Ivey was in the immediate vicinity. From the bag, Officer Smith recovered four hundred glassine baggies, a razor blade, and 40 grams of crack cocaine. Turkes was charged with possession of cocaine and possession with intent to distribute cocaine.

Prior to trial, Turkes moved to suppress the evidence but his motion was denied. During the hearing, Turkes testified that the officer had exposed his genitals to public view during the search, but the trial court did not believe his version of the events. Turkes was found guilty and sentenced to eighteen months incarceration and supervised probation. Turkes appealed.

The Court of Special Appeals upheld the convictions. It did so by finding that: (1) there was reasonable articulable suspicion (RAS) to make the traffic stop based upon the perceived tinting violation; (2) there was RAS to support a "second stop" based upon the officer's reasonable and articulated suspicion that there were drugs and or weapons in the Cadillac or on Turkes' person; (3) the "frisk" or cursory search of the Cadillac's passenger compartment was supported by the same RAS that led Officer Smith to conclude that Turkes was concealing a weapon; (4) there was RAS to justify the pat-down of Turkes for weapons; and (5) based on

Officer Smith's testimony, the search of Turkes' person incident to arrest was not a strip search, but a "reach-in search" that was conducted in a reasonable manner. For these reasons, the convictions were upheld.

NOTE: This case again highlights the difference between a strip search and a reach-in search, both of which are judged under the Fourth Amendment. A reach-in involves a manipulation of the arrestee's clothes such that police are able to reach in and retrieve the contraband without exposing the arrestee's private areas. In a reach-in search, the arrestee's clothing is pulled away from the body but not removed. A strip search, on the other hand, involves either the removal of the arrestee's clothing for inspection of the under clothes and/or body or the removal or rearrangement of some or all clothing to permit the visual inspection of the skin surfaces of the genital areas, breasts, and/or buttocks. Because of their invasiveness, both types of searches are measured under the Fourth Amendment by: (1) the scope of the search; (2) the manner in which the search was conducted; (3) the justification for the search; and (4) where the search was conducted. In this case, even though the reach-in search was conducted in broad daylight on a public street, the officer took all reasonable steps to ensure privacy. And, even though the police station was nearby, the exigency of the search, *i.e.*, the possibility that the suspect was armed and dangerous, whether handcuffed or not, did not compel the officers to transport Turkes to the station in order to conduct the search there. As in most cases, it was Officer Smith's articulation of the circumstances that led both the trial and appellate courts to agree that RAS existed for the traffic stop and the subsequent frisks. One final point to be made is that the court never clearly discussed the basis for the arrest, which was announced by Officer Smith after Turkes tried to flee during the *Terry* frisk for weapons. If the arrest occurred at that point, it is likely that the court concluded that the totality of the circumstances, which included Turkes' attempted flight during the frisk, established probable cause to believe that Turkes was in possession of weapon. The alternative would be to conclude that Officer Smith was entitled to use force to detain Turkes during the *Terry* frisk, including handcuffing him behind the back, and that the discovery of the bag and its contents during the frisk established the probable cause for arrest.

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

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