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HANDCUFFING A SUSPECT DURING AN INVESTIGATIVE DETENTION IS TANTAMOUNT TO AN ARREST UNLESS THE OFFICER HAS AN OBJECTIVE CONCERN FOR HIS SAFETY OR THAT THE SUSPECT MIGHT FLEE

QUESTION: Does a brief detention or investigative stop become a *de facto* arrest when an officer places the suspect in handcuffs?

ANSWER: Unless the officer places the suspect in handcuffs because of a specific concern for his safety or that the suspect might flee, a reviewing court likely will view such restraint as an arrest.

CASE: *LONGSHORE V. STATE*, Court of Appeals of Maryland, Decided June 8, 2007

In *Longshore v. State*, the Court of Appeals considered whether an officer's application of physical force, specifically the use of handcuffs, during an investigative detention converts the detention into an arrest.

The facts in the *Longshore* case established that the Charles County Sheriff's Department received a tip from a confidential informant who said that he had witnessed and videotaped a drug transaction in front of the Saint Charles Towne Mall. The informant produced the videotape, which showed two men, later identified as John Carlson and Reginald Longshore, get into a Ford Expedition, which was parked in the mall parking lot, and remain there for a short time. The videotape also showed a third person standing by the driver's door. No drugs, paraphernalia, or money could be seen on the videotape. Based upon the videotape, Detective Smith set up surveillance at the mall. He observed Longshore drive away from, and then return, to the mall. Upon his return, Longshore was followed by Detective Clark, who observed him meeting with two people, both of whom he had seen on the videotape. Once again, no drugs or drug paraphernalia were observed.

The detectives observed Longshore walking into the mall with his acquaintances. Meanwhile, Carlson got into his car and drove from the mall. As he did so, he was stopped by waiting officers. Carlson consented to a search of his person, and trace amounts of marijuana and cocaine were found. At this point, a narcotics detecting canine unit arrived at the mall. The canine scanned Longshore's Ford Explorer, which was still parked in the lot. The results of the scan were negative. Subsequently, Longshore was

seen walking from the mall to the Explorer. He entered the vehicle and drove from the mall. As he did so, he was stopped by Detective Edge who told him that he believed that there were drugs in the vehicle. Longshore refused consent to search, and Detective Edge called the canine to the scene. While the Detective waited for the canine, he placed Longshore in handcuffs. Two minutes later, the canine unit arrived. During this second scan of the Longshore's vehicle, the driver's side window was down, and, as with the first scan, the engine was off. This time, however, the canine alerted. A search of the Explorer resulted in the discovery of a pill bottle containing crack cocaine and currency in the center console area of the ceiling. Longshore was indicted on charges of possession of cocaine with intent to distribute and possession of cocaine. Prior to his trial, he moved to suppress the pill bottle and the currency. The trial court denied the motion and Longshore was found guilty and sentenced to a lengthy period of incarceration. He appealed to the Court of Appeals, which affirmed his conviction. The Court of Appeals then agreed to hear the case.

The Court of Appeals took interest in Longshore's contention that he was effectively arrested when he was handcuffed, and that the officer had no probable cause to arrest him at that point. The State argued that the initial traffic stop was simply a detention which was supported by reasonable suspicion. The Court of Appeals disagreed with the State, finding that Longshore was, in fact, arrested when he was placed in handcuffs. This conclusion was premised on the fact that an officer's use of physical force against a suspect, including placing him in handcuffs, generally signifies an arrest. The Court noted that there were very few exceptions to this rule and that none existed here. Since the Court concluded that Longshore had been arrested when he was handcuffed, the question then became whether the officer had probable cause at that point to support the arrest. In determining that probable cause did not exist, the Court of Appeals relied upon the first failed canine sniff and the lack of visual proof in the videotape. The Court discounted the trace amounts of drugs found on Carlson, Longshore's history of drug arrests, and his nervousness when he was asked if he had drugs in his vehicle. The Court concluded that although the officer may have had a reasonable suspicion to detain Longshore when he made the vehicle stop, he did not have probable cause to arrest him. Consequently, Longshore's conviction was overturned.

NOTE: The *Longshore* case is important because it makes clear the limited circumstances in which a police officer can handcuff a suspect during an investigative stop and *not* convert such detention into an arrest. The circumstances in which handcuffing is allowed during an investigative stop are limited to the following: (1) when the detainee is handcuffed to protect the officer; (2) when the detainee is handcuffed to prevent flight. If an officer handcuffs a detainee in these special circumstances, with no intention to arrest, he must be prepared to explain the specific facts that caused him to fear for his safety and/or believe that the suspect might flee. If no special circumstances exist, a reviewing court likely will conclude that the use of handcuffs elevated the detention to an arrest, which requires the existence of probable cause to be constitutional.

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