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PROBABLE CAUSE TO BELIEVE AN INDIVIDUAL IS COMMITTING A CIVIL INFRACTION DOES NOT PROVIDE A CONSTITUTIONALLY VALID BASIS FOR A WARRANTLESS SEARCH OF THE INDIVIDUAL'S PERSON

QUESTION: Does commission of a civil violation justify a warrantless search of the suspect's person?

ANSWER: No.

CASE: *In Re Calvin S.*, Court of Special Appeals of Maryland
Decided August 31, 2007

In *In Re Calvin S.*, the Court of Special Appeals considered whether a police officer who observes a civil violation, specifically, possession of tobacco products by a minor, has probable cause to conduct a warrantless search of the suspect's person. In answering "no", the court explicitly rejected the argument that a "search incident to citation" is permitted by the Fourth Amendment.

The facts in *In Re Calvin S.* established that on October 10, 2004, at 1:45 a.m., Officers King and Underwood of the Salisbury Police Department observed a young man, Calvin S., riding his bicycle on the wrong side of the road, without a headlight, in violation of traffic regulations for bicycles. As the officers approached Calvin S. to inform him of the violations, they noticed he was smoking a cigarette and appeared to be under 18 years of age. When briefly questioned, Calvin S. admitted that he was 17 years old. After confirming that Calvin S. was underage, the officers jointly "frisked and searched" him for the purpose of finding and seizing any additional tobacco products that he might have. There was not other basis for the search of Calvin S.'s person. At no time did the officers suspect that Calvin S. was in possession of weapons. Upon searching one of Calvin S.'s pockets, one of the officers found a small plastic bag containing five small rocks suspected to be crack cocaine.

Although no citation was written for the bicycle violations, the State filed a juvenile delinquency petition, charging Calvin S. with numerous narcotics violations. A master subsequently recommended that Calvin S. be found delinquent. Calvin S. filed exceptions to the master's report and a *de novo* hearing was held in circuit court. At the hearing, Calvin S. made an oral motion to suppress the narcotics seized from his person. The circuit court denied the motion and found Calvin S. guilty of all counts alleged in the juvenile petition. Calvin S. was later placed on conditional release with electronic

monitoring, pending placement in a juvenile facility. He then appealed to the Court of Special Appeals.

On appeal, the Court of Special Appeals first observed that no one disputed that Calvin S. was observed smoking a cigarette and that he was underage. Therefore, he clearly violated § 10-108 of the Criminal Law Article which provides” “A minor may not . . . possess a tobacco product or cigarette rolling paper.” Violation of § 10-108(c)(1) is a “civil offense” for which “[a] law enforcement officer authorized to make arrests shall issue a citation to a minor if the law enforcement officer has probable cause to believe that the minor is committing or has committed a violation of this section.” CL, § 10-108(e). As such, the officers had probable cause to believe that Calvin S. had committed a civil violation. The court, however, determined that the existence of probable cause in these circumstances gave them no right to search for additional cigarettes.

In so doing, the court rejected the notion that “exigent circumstances” justified the search. Its conclusion was based on the fact that the cigarette in Calvin S.’s possession was not “contraband” under Maryland law. The court observed that the statute did not classify tobacco products in the possession of minors as “contraband” and contained no authorization for their seizure. While other statutes characterized tobacco products as “contraband”, CL § 10-108 did not. Furthermore, the statute does not authorize officers to arrest minors for possession of tobacco products or to obtain a warrant to search for evidence of a violation of the statute. Since the possession of cigarettes by a minor is not classified as a criminal offense, and since cigarettes so found are not classified as “contraband”, the court concluded that no probable cause and no exigent circumstances existed for the search in question.

NOTE: Apart from the absence of probable cause and exigent circumstances, the search in question could not have been preceded by a legitimate "stop-and-frisk" under *Terry v. Ohio*. The officers did not have reasonable, articulable grounds to believe that Calvin S. was committing, or was about to commit a crime. Further, they had no indication that he was presently armed and dangerous. This case is important because it expressly rejects the concept that a “search incident to citation” is allowed by the Fourth Amendment. Officers will need to keep in mind that, just because they have probable cause to believe that a civil violation has been committed, this does not automatically provide them with the probable cause and exigent circumstances needed to conduct a warrantless search of the suspect’s person.

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