



LGIT'S ROLL CALL REPORTER **OCTOBER 2006**

DEVELOPING CAUSE FOR A SECOND AND INDEPENDENT DETENTION DURING A TRAFFIC STOP

QUESTION: Can the duration of a traffic stop be extended if the officer develops a reasonable and articulable suspicion of other criminality while the traffic stop is still in progress?

ANSWER: Yes. Even if the underlying basis for the initial traffic stop has concluded, the continued detention of a vehicle and its occupants may be justified if the officer has developed a reasonable and articulable suspicion that other criminal activity is afoot.

CASE: *State v. Ofori*, No. 1267, Sept. Term 2006
Court of Special Appeals of Maryland, Decided September 8, 2006

In *State v. Ofori*, the Court of Special Appeals was called upon to decide whether a traffic stop had been unduly extended by the officer to allow a K-9 unit to respond to the scene. In reviewing the record, the court discovered that the officers had articulated a second basis for the continued detention of the vehicle and its driver that was completely separate from the traffic stop. This case is important for its thorough discussion of the interplay between a traffic stop, the use of a K-9 unit during a traffic stop, and the development of reasonable suspicion independent of the traffic stop.

The facts in the *Ofori* case established that on October 27, 2005, at approximately 12:23 p.m., Officer Geoffrey Shaffer of the City of Laurel Police Department made a traffic stop of a black Cadillac driven by Michael Jackson Ofori. Officer Shaffer stopped Ofori for two traffic infractions: failing to give a left-turn signal and for having tinted car windows of a tint darker than the 35 percent allowed by law. Officer Shaffer approached the driver's side of the Cadillac and asked Ofori for his driver's license and registration. Ofori produced a District of Columbia license issued to Anthony Kyle Dukes. The picture on the license was not Ofori. Officer Shaffer returned to his patrol car and attempted to get a computer check on the D.C. license he had been handed. At approximately 12:28 p.m., while still in his patrol car, Officer Shaffer requested that a K-9 unit be sent to the scene. He then began writing an equipment repair order, as well as a written warning for the turn signal violation. Officer James Brooks, a K-9 handler, received the call to respond at about 12:30 p.m. He arrived twelve minutes later, at 12:42 p.m. After being briefed by Officer Shaffer, Officer Brooks had his dog scan the Cadillac. At 12:47 p.m., the dog made a positive "alert", one that was especially strong in the area of the driver's door. The time lapse between the traffic stop and the positive alert was 24 minutes. In response to the alert, the officers removed Ofori and his passenger from the car and placed them in handcuffs. They were frisked for weapons, and during the "frisk", money and keys were removed from Ofori's pockets and placed on the hood of the car. Ofori and his passenger were then forced to sit on the sidewalk while the

officers searched the car. From inside the driver's door panel, the officers recovered suspected marijuana, suspected PCP, and a black handgun. Another handgun was recovered from inside the front passenger's door panel. After the recovery of the evidence, the officers announced that Ofori and the passenger were under arrest. A search of Ofori incident to arrest revealed a large quantity of U.S. currency. At the time the arrest was announced, Officer Shaffer still had not completed his traffic stop because, in his words, he "had yet to completely identify the driver because I had not gotten a good name for him."

Ofori was indicted by the Grand Jury in Prince George's County for six separate counts involving controlled dangerous substances and handgun violations. He filed a pretrial motion to suppress the physical evidence on the ground that the search that led to the evidence violated the Fourth Amendment. In essence, he argued that he was "arrested" immediately upon being removed from the car and placed in handcuffs, which occurred before the physical evidence was recovered. Only the officers testified at the suppression hearing. The judge granted Ofori's motion and suppressed the physical evidence. The terse reasoning offered by the judge was simply, "I don't think it was reasonable." The State appealed the ruling.

On appeal, Judge Moylan, writing for the Court of Special Appeals, first agreed with Ofori that he had been arrested "immediately after he was ordered [to get out of] the vehicle." Based upon the actions taken by the officers, which included handcuffing Ofori and removing money and keys from his pockets, no reasonable person in his place would have believed that he was not under arrest at that point. The court, however, continued by stating that the moment of arrest was of no consequence because Ofori had been validly arrested when he was removed from the car "based on the probable cause produced by the K-9 'alert'." The court expressly held that, in circumstances such as those involving a K-9 sniff, probable cause to search the vehicle is the same as probable cause to arrest, at the very least, the driver of the car. As a result, the court's focus reverted to the 24-minute period of detention between the initiation of the traffic stop and the K-9 alert. This shift in focus was occasioned by the legal principle that, under the Fourth Amendment, once the traffic-related purpose of the stop has been completed, any detention based on the stop must end and the person stopped allowed to leave. From the evidence in the record, the court found that although the 24 minute delay was not excessive, the traffic stop exceeded constitutional limits. This finding was based on the fact that there was nothing that Officer Shaffer could have gotten from communications that could have helped him make an accurate identification of Ofori, and that the delay in this regard was merely a stalling tactic to get the K-9 unit on the scene before the "bell rang".

That would have been the end of the analysis and the trial court's decision to suppress the evidence upheld except for one intervening event: while the traffic stop was in progress, Officer Shaffer developed a second and independent basis for the detention, one that was independently justified by reasonable suspicion. Officer Shaffer had testified at the suppression hearing that the illegal 35 percent tint of the windows (which prevented him from seeing the occupants) was, to his trained eye, one indication of possible narcotics trafficking. He further testified that, as he stood at the driver's window, he detected a very strong odor of air fresheners. When the window was rolled down, he observed many air fresheners in the car. Again, based on his training, Officer Shaffer had testified that he knew that air fresheners were indicative of a masking agent for controlled dangerous substances. He also testified that the "false identification" given to him by Ofori was

yet another reason that aroused his suspicion that the occupants were engaged in a possible violation of the narcotics laws. These factors, each of which might have had an innocent explanation, when taken individually, created a reasonable articulable suspicion that criminal activity was afoot when taken collectively. Consequently, just minutes into the traffic stop, Officer Shaffer had developed a *Terry*-level articulable suspicion that justified further detention of the occupants. From that point on, the two “detentions” ran concurrently, and the 17-minute duration of the *Terry*-stop for drugs (the time lapse from the request for the K-9 unit to the canine “alert”) was well within constitutional limits. On this basis, the Court of Special Appeals reversed the trial court’s decision to suppress the evidence.

NOTE: In the *Ofori* case, the court discussed the difference between a traffic stop and a *Terry*-stop for drugs. The major difference is the “respective attitudes” of the two types of stop towards the presence of drug-sniffing dogs. “The dog has no role to play in a traffic stop. The dog may be the star performer in a *Terry*-stop for drugs.” The traffic stop, once completed, will not await the arrival of the dog “for so much as 30 seconds.” The *Terry*-stop for drugs “very deliberately and patiently does await the arrival of the dog. The dog’s arrival is, indeed, the primary reason for waiting.” In *Ofori*, since the two stops ran concurrently within minutes of the traffic stop, the time-line of both detentions was critical to the court’s decision. In fact, the *Ofori* case highlights the fact that, in any case in which a K-9 unit is called to the scene of a traffic stop, the time-line becomes critical in determining whether the duration of the traffic stop exceeded constitutional limits. Consequently, in addition to dispatch records, officers in these circumstances should carefully record the times of their actions at the scene through field notes or other means.

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