



## **LGIT'S ROLL CALL REPORTER OCTOBER 2008**

### **USING A POLICE VEHICLE TO BLOCK A SUSPECT'S PATH DURING A *TERRY* STOP DOES NOT AUTOMATICALLY CONVERT THE STOP INTO AN ARREST**

**QUESTION:** May an officer block the suspect's path with a police vehicle during a *Terry* stop?

**ANSWER:** Yes. A suspect is not free to leave during a *Terry* stop, and blocking the suspect's path with a police vehicle does not automatically convert a *Terry* stop into an arrest.

**CASE:** *State v. Dick*, Court of Special Appeals of Maryland, Decided September 12, 2008

In *State v. Dick*, the Court of Special Appeals once again considered the question of whether reasonable suspicion existed to justify a *Terry* stop, and whether the officer's actions at the time of and during the stop converted the stop into an arrest requiring probable cause.

The facts in the case established that on May 10, 2006, members of the Community Drug and Violence Interdiction Team of the Baltimore County Police Department were conducting surveillance in a residential area near a BP gas station. Previously, the police had received complaints from patrons of the gas station and nearby residents reporting incidents of drug activity on the premises. Detective Ward and another member of the team had previously made arrests at the location. At approximately 7:30 p.m., Detective Ward observed Brian Hoffman on a bicycle pedaling around making circles in the parking lot of the gas station. The detective watched him for 10 or 15 minutes as Hoffman continued to pedal circles through the lot. Hoffman kept looking up the street as if he were waiting for someone to show up. Hoffman then left the lot and pedaled up the street where he encountered James William Dick, who was on foot. They engaged in a quick conversation, turned, and both went toward the gas station. While Hoffman waited outside on his bike, Dick entered the gas station's convenience store and exited a few minutes later.

Detective Ward radioed his sergeant that he and Detective Stricklin were going to initiate surveillance on the two men. Both Hoffman and Dick left the parking lot and walked down the road out of the officers' view. However, two other team members, Detectives Mazan and Massey, joined the surveillance and kept the two men in view. Dick and Hoffman stopped on the roadway near the curb and Dick handed something to Hoffman and Hoffman then handed something to Dick. Hoffman quickly took the object and put it in his pocket. Even though the detectives could not clearly see the objects exchanged, both believed they had witnessed a drug transaction. Detectives Massey and Mazan radioed that they would "stop and make contact" with Hoffman, who had ridden off on his bike. Detectives Ward and Stricklin would try and make contact with Dick, who was walking away.

Detectives Ward and Stricklin each drove off in their unmarked cars and caught up with Dick who, by this time, was walking down an alley. Detective Ward drove into the alley until he was in front of Dick. He stopped his car, opened his door, and stood behind it, approximately three feet away from Dick. Detective Stricklin pulled into the mouth of the alley to Dick's rear. He got out of his car about ten to fifteen feet behind Dick. There was enough room so that Dick could have walked around either police car. Detective Ward identified himself as a police officer and neither officer drew his gun. Detective Ward told Dick that he had just seen him engage in a drug transaction. Dick denied it. When Detective Ward moved from behind his car door, Dick pushed him in the chest and ran. The

detectives and other officers caught Dick and placed him under arrest. The search incident to arrest yielded a clear sandwich bag containing 34 individually packaged baggies of crack cocaine and \$220 in cash.

Prior to his trial, Dick moved to suppress the evidence, arguing that he had been unconstitutionally seized. Focusing on whether or not the police cars had “blocked” Dick, the circuit court granted the motion to suppress, finding that Dick had been “surrounded” by police cars and, as a result, had been “seized” under the Fourth Amendment. Further finding that the officers lacked any reasonable basis to seize Dick, the seizure was deemed unconstitutional. The State appealed.

On appeal, the Court of Special Appeals reversed. In doing so, the court first focused on whether the officers had reasonable suspicion to make a *Terry* stop. If they did, then they had every right to detain Dick for the duration of the stop. In examining the events that occurred prior to Dick’s flight, the court found that the detectives did have reasonable suspicion that Dick was involved in illegal drug activity. The detectives had testified at the suppression hearing that they were specialists in drug enforcement; that the area and location under surveillance were known for illegal drug activity; and that two of the officers had made previous drug arrests at the location. They further testified that Hoffman’s operation of the bike was unusual and that the quick hand-to hand transaction observed by the other detectives in an area more remote than the gas station was consistent with a drug transaction. Having concluded that there was a legal basis to make the *Terry* stop, the court then held that the detectives’ conduct, which included the positioning of their cars in the alley and Detective Ward’s statement to Dick that he had seen him do a drug transaction, did not convert the *Terry* stop into an arrest. Since the detectives had reasonable suspicion, Dick was not free to leave. And, during a *Terry* stop, a citizen’s path may be blocked. So, the positioning of the police cars did not automatically convert the stop into a full blown arrest. In the court’s words, “a blocking vehicle is not the automatic equivalent of handcuffing.” Finding no other oppressive or excessively intrusive police conduct that could have converted the stop into an arrest, the court reversed the circuit court and remanded the case for trial.

**NOTE:** Apart from the positioning of the police cars, the court looked at the totality of the circumstances in finding that the *Terry* stop had not been converted into an arrest prior to Dick’s pushing Detective Ward and fleeing the scene. These circumstances included the fact that: the detectives had not touched Dick; they had not drawn their guns; they had not shouted threatening orders; they had not removed Dick from the scene or placed him in a police car; they had not handcuffed him; and their investigatory stop had lasted for just seconds prior to Dick’s flight. All of these factors led the court to side with the detectives and the State and reverse the circuit court’s granting of the motion to suppress. As always in situations involving *Terry* stops, the court will look to the totality of the circumstances in deciding whether or not the Fourth Amendment was violated.

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