



## **LGIT'S ROLL CALL REPORTER OCTOBER 2010**

**A handgun is “about” the person if it is close enough to make it available for immediate use.**

**QUESTION:** Can the driver of a vehicle be convicted of wearing, carrying, or transporting a handgun where the gun is found under the passenger seat?

**ANSWER:** Yes. If the handgun is close enough to the driver to make it available for his immediate use, it will be deemed by the courts to be “about” the person and, as such, in violation of Maryland law.

**CASE:** *Kenneth Jefferson v. State of Maryland*, Court of Special Appeals of Maryland  
Decided September 2, 2010

In this case, the Court of Special Appeals considered the sufficiency of the evidence that resulted in the defendant’s conviction for transporting a handgun on or about his person and carrying a concealed and dangerous weapon on or about his person. The facts established that Officer David Simmons of the Baltimore City Police Department, a qualified expert in the use of radar, detected a Ford Explorer traveling 50 miles per hour in a posted 30 mile per hour zone near Reisterstown Road. Officer Simmons watched the vehicle pass his location and then turn right. He proceeded to follow the Explorer and had to travel at what he described as a “pretty high rate of speed” to catch up to it. Officer Simmons activated his siren and emergency lights and stopped the Explorer. Officer Simmons approached the vehicle and spoke to the driver, Kenneth Jefferson. Another man, Berry Green, was sitting in the front passenger seat. Officer Simmons told Jefferson why he stopped him, and Jefferson quickly said that his license was suspended. Officer Simmons confirmed the suspension over the radio and discovered that it resulted from a failure to appear. Officer Simmons directed Jefferson to exit the Explorer and placed him in the back of his patrol car. From this vantage point, Officer Simmons observed that Green was bending over and appeared to be stuffing something under the seat. To Officer Simmons, Green’s movements were a clear indication that there might be weapons or drugs in the car. Upon seeing this, Officer Simmons asked Jefferson if there were any drugs or weapons in the car and Jefferson said there weren’t any. The officer called for assistance, and upon the arrival of the backup units, he told Jefferson that he was under arrest for the suspended license offense. Officer Simmons then again asked Jefferson if there were drugs or weapons in the Explorer. This time, Jefferson said there was a “fishing knife” under the driver’s seat.

Officer Simmons then ordered Green out of the Explorer and officers searched it for weapons. Officer Simmons went to the driver’s seat and found under it what he described as a “battle” knife. The knife had a brass knuckle grip and spikes coming from the portion where the fist wrapped around it. The knife had a long blade that, as Officer Simmons testified, was “definitely not for fishing.” Officer Ronald Zimmora found a loaded gun underneath the front passenger

seat. The butt of the handgun was facing outward towards the passenger seat. Officer Simmons removed the handgun, which was a loaded and operable .38 caliber revolver. From where the knife and handgun were recovered, a person in either the driver's or passenger's seat could have reached either weapon. Both Jefferson and Green denied knowledge of the gun.

Jefferson was charged with transporting a handgun and carrying a concealed and dangerous weapon or about his person. His motion to suppress the knife and gun was denied. Jefferson was found guilty by a jury and sentenced to two years. Jefferson appealed only his conviction related to the handgun.

The issue on appeal was whether or not the handgun under the passenger seat was "in such proximity to [Jefferson] as would make it available for his immediate use." This was because the statute (Criminal Law Article § 4-203) prohibits the wearing, carrying or transporting of a handgun, whether concealed or open, on or about the person. A weapon is "about" a person if it is "in such proximity . . . as would make it available for . . . immediate use." In addition, in order to support a conviction for a possessory offense, the "evidence must show directly or support a rational inference that the accused did in fact exercise some dominion (influence or authority) or control over the prohibited drug or weapon." In other words, the accused must exercise some "restraining" or "directing" influence over the drug or weapon. Here, there was ample evidence from which the jury could have found Jefferson guilty. Officer Simmons testified that the gun was under the passenger seat and that its butt was facing outwards toward the seat. He further testified that either the driver or passenger could have reached the gun or knife. Finally, Jefferson was the driver of the vehicle, and owners/drivers are seen as having a heightened or increased control over the contents of their vehicles. For all of these reasons, Jefferson's conviction was upheld.

**NOTE:** Possession may be constructive or actual, exclusive or joint. Simply because contraband, including drugs or weapons, are not found on the suspect's person does not necessarily mean that the suspect is not in possession of the contraband. Consequently, it is important for officers to state in their reports and articulate when testifying exactly where the drugs or weapons were found. If they were not found on the suspect's person, were they close enough that the suspect could have quickly accessed and used them? Were they under the seat or partially under the seat? Was the handle or butt of the weapon facing outward making it easier to grab? Were there other objects blocking access to the drugs or weapons? Can you estimate (it would be better to actually measure) the distance between the suspect and the contraband? If officers focus on these questions at the time of arrest, and include the answers in their reports, there is a far greater chance that the prosecution of the defendant for a possessory offense will succeed.

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

*This publication is designed to provide general information on the topic presented. It is distributed with the understanding that the publisher is not engaged in rendering legal or professional services. Although this publication is prepared by professionals, it should not be used as a substitute for professional services. If legal or other professional advice is required, the services of a professional should be sought.*