



LGIT'S ROLL CALL REPORTER **NOVEMBER 2005**

**IN CERTAIN CIRCUMSTANCES, A PROTECTIVE SEARCH FOR WEAPONS
UNDER *TERRY V. OHIO* CAN EXTEND TO AN AREA BEYOND THE SUSPECT'S
PERSON**

**QUESTION: MAY POLICE "FRISK" THE PASSENGER COMPARTMENT OF AN
AUTOMOBILE FOR WEAPONS AS PART OF A VALID STOP AND FRISK UNDER
TERRY V. OHIO?**

**ANSWER: THE POLICE MAY "FRISK" AN AUTOMOBILE FOR WEAPONS
PROVIDED THEY HAVE REASON TO BELIEVE THAT A WEAPON IS IN THE CAR
AND THE SUSPECT IS DANGEROUS, AND THEY CONFINE THEIR SEARCH TO
AREAS OF THE PASSENGER COMPARTMENT IN WHICH A WEAPON MAY BE
PLACED OR HIDDEN.**

**CASE: *Cross v. State*, No. 720, September Term, 2004
Court of Special Appeals of Maryland, October 27, 2005**

In *Cross v. State*, the Maryland Court of Special Appeals examined the issue of whether a protective search for weapons under *Terry v. Ohio* can, in the absence of probable cause to arrest, extend to an area beyond the person of the suspect, specifically to the passenger compartment of the suspect's automobile.

The following facts were disclosed in the *Cross* case: On September 21, 2002, Officer Anthony Knox of the Edmonston Police Department was a patron at a 7-Eleven store in Bladensburg, Maryland, which was out of his jurisdiction. While standing in line, a stranger entered the 7-Eleven and asked the officer if he could speak with him. Officer Knox told the man to wait until he had paid for his purchases. The man left the store but returned shortly thereafter and told Officer Knox that it was necessary for him to speak with the officer immediately because there was an emergency. Officer Knox exited the 7-Eleven along with the stranger, who was "shaking real bad," "sweating extremely," and appeared to be "extremely nervous." The man advised Officer Knox that he had "just seen a high speed car chase" and that one of the occupants of a vehicle in that chase "had displayed a handgun out the window." The informant said the car involved in the chase was in the 7-Eleven parking lot and pointed it out to Officer Knox. Officer Knox inquired as to where the driver of the vehicle was. In the officer's words, the informant then "stopped talking and just completely looked away from me. He started looking out to his left and turned his back on me. I asked him several more times. He looked over the shoulder and saw a gentleman talking on the phone and pointed to a gentleman talking on the [pay] phone, that he had . . . the handgun."

The person whom the informant pointed out was the Defendant, Elohim Cross. Officer Knox then asked the informant to “go inside the 7-Eleven or sit in his car for his own safety” so that he could notify the Bladensburg Police Department by radio that “they had an armed subject in the area.”

Officer Knox called the Bladensburg Police Department and talked with Officers Russell Chick and Shawn Morder, and Corporal Charles Cowling. He told the Bladensburg officers that “a citizen had . . . approached me saying that there was a vehicle in the parking lot where there was a handgun either in the car or on the person. The citizen couldn’t advise me if he had it on him or if it was in the car.” Officer Knox did not ask the informant to provide identification, nor did he learn his identity. Moreover, he did not ask the informant if he knew the subject personally. Additionally, no inquiries were made as to how many individuals were riding in the two cars that were involved in the high-speed chase.

Officer Chick responded to the 7-Eleven and called for additional units to block off all entrances to the store. Next, he and two other Bladensburg officers sat and watched Cross on the payphone for several minutes. It appeared to the officers that Cross “was stalling, waiting for the police to leave the area.” Officer Chick then got out of his marked police cruiser and waited, out of sight, behind an electrical transformer. The other officers drove off to other locations. Within seconds of the officers leaving the area, Cross quickly walked to a gray Chevrolet Corsica, the same car which had been pointed out by the informant to Officer Knox. Officer Chick waited until Cross was about to enter the car, then ordered him to “put his hands on top of his head and walk away from” the vehicle. Cross obeyed and was “placed in handcuffs for his own safety” because of the nature of the information received from the informant.

Officer Chick performed what he described as “a *Terry* stop pat-down” while Cross was handcuffed, in order to ascertain if he had a weapon on his person. No weapons were found. Officer Chick then explained to the other officers, in Cross’s presence, that Cross “was being detained while we investigated the report of a firearm.” The two other Bladensburg officers searched the passenger compartment of Cross’s vehicle, while Officer Chick obtained background information from Cross and spoke to him “about what was being done”. Officer Morder then told Officer Chick “that he had seen a firearm in the glove box” of Cross’s car, but that the glove box “was locked and he was unable to open it completely.” A key was obtained from Cross, and the glove box was unlocked. A handgun, together with a bag containing a large quantity of narcotics, was recovered from the glove box. Cross was then arrested.

Prior to standing trial, Cross filed a motion to suppress evidence that was seized from his car. He contended that the warrantless search of his vehicle violated his Fourth Amendment rights. Cross’s motion was denied, and he subsequently was convicted of one of the charges against him. Cross then appealed.

On appeal, the Court of Special Appeals considered the correctness of Cross’s motion to suppress. In upholding the decision below and affirming Cross’s conviction, the Court of Special Appeals first determined that, despite being handcuffed, Cross had been detained but

not arrested prior to the warrantless search of the passenger compartment. The Court concluded that Cross's detention was valid under *Terry v. Ohio* (1968), the case in which the Supreme Court had upheld the validity of a protective search for weapons in the absence or probable cause to arrest. Specifically, the Court of Special Appeals looked to numerous factors in reaching its conclusion, including the fact that Cross had been made aware of the sort of detention that he was being subjected to proper to the search, that the initial detention was brief, and that Cross was not transported to any other location prior to the search.

After establishing the validity of Cross's detention and frisk, the remaining question was whether the protective *Terry* search conducted by the officers extended to an area beyond Cross's person, specifically, to the passenger compartment of his automobile. Relying upon the Supreme Court's decision in *Michigan v. Long* (1983), the court held that the protective search of the passenger compartment for weapons was permissible under *Terry*. By virtue of *Michigan v. Long*, and related cases, when the police legally stop a person in an automobile, the police may "frisk" the automobile for weapons provided the police have reason to believe that a weapon is in the car, the police have reason to believe that the suspect is dangerous, and the police confine their search to areas of the passenger compartment in which a weapon may be placed or hidden. In the *Cross* case, because the search made prior to Cross's arrest was confined to the passenger compartment of his vehicle, and the gun was found in an area of the passenger compartment where a weapon was likely to be placed or hidden, the search clearly came within the scope permitted by prior Supreme Court and related Maryland decisions.

NOTE: An equally important issue considered in the *Cross* case was whether, based on the information given to Officer Knox by the informant, the Bladensburg officers had, at the time of the search, a reasonable, articulable suspicion that the car contained a weapon and that Cross was dangerous. The Court of Special Appeals concluded that the officers possessed the required level of suspicion despite the fact that they had never spoken to the informant and his identity had never been established. The Court determined that the informant's basis of knowledge (his personal observations of the high-speed chase) had been established in his statements to Officer Knox. Further, the Court placed great weight upon the fact that the informant made no effort to hide his identity. Since he came forward to the police, the informant placed himself in a position where he could be held accountable if his information proved false. Thus, the likelihood that the information was reliable was much greater than if the information had been obtained from a truly anonymous tipster. Further, Officer Knox told the Bladensburg officers that the informant appeared credible. In determining whether a reasonable, articulable suspicion exists for a seizure, a police officer's on-the-spot judgment is entitled to considerable deference.

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