



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

A WARRANTLESS SEARCH OF THE PASSENGER COMPARTMENT OF A VEHICLE INCIDENT TO THE DRIVER'S ARREST PROPERLY EXTENDS TO A CONTAINER BELONGING TO A PASSENGER WHO IS NOT UNDER ARREST AT THE TIME OF THE SEARCH

QUESTION: If an officer lawfully arrests the driver of a vehicle pulled over for a traffic stop, does the warrantless search of the vehicle's passenger compartment incident to the arrest extend to a container belonging to a passenger who is not under arrest at the time of the search?

ANSWER: Yes. After the lawful custodial arrest of the driver of a vehicle, a police officer can search every part of the vehicle and its contents, whether or not such contents are owned by the driver or passenger.

CASE: *James Davis Purnell v. State of Maryland*
Court of Special Appeals of Maryland, December 4, 2006

In *Purnell v. State*, the Court of Special Appeals was asked to decide whether, upon the lawful arrest of the driver of a motor vehicle, a warrantless search incident to that arrest may extend to a container situated in the passenger compartment which belonged to a passenger who was not under arrest at the time of the search. In ruling that such a search is constitutional, the Court of Special Appeals acknowledged that no Maryland appellate court had yet extended the *Belton/Thornton* bright line test specifically to the circumstances presented.

The facts of the *Purnell* case established that, on December 2, 2003, Police Officer Jeffrey Peach, assigned to the Baltimore County K-9 Unit, was sitting in his marked police car on Dartford Road. At approximately 2:45 p.m., he observed a gold Honda Accord traveling down the road. The Honda did not have a front license plate affixed to the front grill. Instead, the license plate had been placed on the dash board within the car. Officer Peach followed the car for several minutes, and then stopped it for the traffic violation. The driver of the Honda was Lakisha Conyers ("Conyers"). James D. Purnell ("Purnell") was seated in the front passenger seat. Officer Peach approached the car, and spoke with Conyers. He told her the reason for the traffic stop, and asked for her license and registration. Conyers failed to produce any identification, but provided her name and date of birth. Officer Peach also spoke with Purnell and asked him for his driver's license. Purnell retrieved his license from the pocket of a black coat that was on the rear seat behind him. The coat was within the reach of both Conyers and Purnell. Officer Peach returned to his police cruiser and had the dispatcher run a routine license check of the driver. The routine check revealed that Conyers' license was currently suspended. Based upon this information, and Conyers' failure to produce identification, Officer Peach arrested

Conyers and placed her in his police cruiser.

After Conyers was secured, Officer Peach returned to the Honda and asked Purnell to exit the car to allow him to conduct a search of the Honda incident to Conyers' arrest. Officer Peach instructed Purnell to sit down on a grassy area approximately fifteen feet from the Honda. Officer Peach then searched the front and rear of the car, including the coat from which Purnell retrieved his driver's license. Inside the pocket opposite from the one which contained the license, Officer Peach found a small plastic grocery bag that was tied in a knot. Inside the bag, Officer Peach found twelve individualized yellow baggies containing crack cocaine and three baggies containing marijuana. Purnell was placed under arrest, advised of his *Miranda* rights, and transported to the police precinct. While at the precinct, Purnell admitted that he owned the drugs. He was charged with possession with intent to distribute cocaine and possession of marijuana.

Prior to his criminal trial, Purnell moved to suppress the evidence seized from his jacket and his subsequent statement. He argued that the search of his jacket violated the Fourth Amendment because it was only after Conyers was arrested and secured that he was ordered out of the car and a search of the passenger compartment conducted. During that search, Officer Peach picked up a jacket which he knew belonged to Purnell, who was not under arrest nor was suspected of being involved in any criminal wrongdoing, and searched it. The State countered that the search of the vehicle, including its contents, was a valid search incident to Conyers' arrest. The circuit court denied Purnell's motion. Purnell was then tried, found guilty, and sentenced as a subsequent offender to a term of ten years imprisonment without the possibility of parole. Purnell appealed.

On appeal, the Court of Special Appeals affirmed the denial of Purnell's Motion to Suppress and upheld his conviction. In doing so, the Court relied primarily on two Supreme Court decisions, namely *New York v. Belton*, decided in 1981, and *Thornton v. United States*, decided in 2004. In *Belton*, the Supreme Court held that when an officer makes a lawful custodial arrest of the driver or occupant(s) of a vehicle, he may, as part of a search contemporaneous to arrest, search the passenger compartment of the vehicle and may also examine the contents of any container (an object capable of holding another object) found within the passenger compartment, whether the container is open or closed. In *Belton*, the "container" at issue was a zippered pocket of a black leather jacket left on the rear seat of the car after the four occupants had been arrested and ordered to exit the car. Thus, *Belton* established the "bright line" rule that the entire passenger compartment and its contents lies within the reach of the arrested occupant(s) and are subject to being searched. In *Thornton*, the Supreme Court extended the *Belton* rule to situations where the driver of a vehicle that an officer intends to stop or has stopped exits the vehicle *before* the officer makes contact with him. In other words, the driver gets out of the vehicle before the officer has a chance to pull him over or gets out of the car immediately after the traffic stop, before the officer has approached the vehicle. If the officer ultimately arrests such person, who is then standing next to or near his vehicle, the officer may search the arrestee's vehicle.

In the *Purnell* case, the Court of Special Appeals was asked to apply the principles of *Belton* and *Thornton* to a situation where the driver, Conyers, was arrested and removed from the car before it was searched, and the passenger, Purnell, who was not under arrest, was also removed from the car before it was searched. Under these circumstances, the issue was whether Purnell had a "legitimate expectation of privacy" in his jacket which he left in the back seat of the car? In answering, "No", the Court concluded that the arrest of the driver justified the infringement of any privacy interest that

Purnell may have had in the jacket, *i.e.* the “container” that he left in the car. Simply stated, the Court held that an officer may search the belongings of a passenger after the vehicle’s driver has been arrested *if the items are in the vehicle when the search is made.*

NOTE: The rule announced in the *Purnell* case recognizes that passengers possess the same reduced expectation of privacy as drivers with regard to property they transport in a vehicle. This rule applies regardless of whether the passenger has been “placed under arrest or is within or has been ordered out of the vehicle.” Officers should note, however, that searches of a passenger’s *person* hold a significantly heightened protection and are to be distinguished from searches of a passenger’s *belongings*. Purnell was not under arrest prior to the search, and posed no threat to the officer or the scene of the search. Therefore, any search of Purnell’s *person* before the search of the Honda would have violated his Fourth Amendment rights.

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