



**LGIT'S ROLL CALL REPORTER
DECEMBER 2008**

**DETENTION OF PASSENGER UNTIL ARRIVAL OF K-9 UNIT UPHELD WHERE
OFFICERS' TESTIMONY ESTABLISHED THAT TRAFFIC STOP BECAME A
TERRY STOP THROUGH DISCOVERY OF EVIDENCE OF OTHER CRIMINAL
CONDUCT**

QUESTION: Were officers justified in detaining a passenger in a vehicle stopped for a traffic violation until K-9 unit arrived and scanned the vehicle?

ANSWER: Yes. The officers' testimony at the suppression hearing established that evidence of other criminal activity quickly converted the traffic stop into a *Terry* stop, allowing all occupants to be detained until arrival of the K-9 unit.

CASE: *Henderson v. State*, Court of Special Appeals, Decided November 26, 2008

In *Henderson v. State*, the Court of Special Appeals considered whether the detention of a passenger in a vehicle initially stopped for a traffic violation violated the Fourth Amendment. The facts in the case established that, on May 2, 2005, Deputy Paul Ruszala of the Harford County Sheriff's Office twice observed a vehicle fail to stop fully at stop signs. He made a traffic stop of the vehicle at 9:28 p.m. About two minutes later, Deputy Scott Blankenship, who was patrolling nearby, responded as backup. Deputy Ruszala performed a routine license and registration check and recognized the driver, Andre Austin, and the back seat passenger, Hayward Henderson, because of their prior involvement with CDS. He requested a K-9 unit, which was dispatched at about 9:32 p.m. Deputy Blankenship, who had been conducting a computer check for outstanding warrants, learned that there was an open warrant for the front seat passenger, Maurice Kevin Lewis, for failure to appear at a probation hearing on CDS-related charges. Before making the arrest, Deputy Blankenship called for additional backup because departmental safety guidelines require at least an equal number of police officers to suspects when an arrest is made. It took four or five minutes for the deputies to confirm that the warrant was still valid. The confirmation that the warrant was still open was radioed to the deputies at 9:39 p.m. When a third officer arrived at 9:40 p.m., Deputy Blankenship removed Lewis from the car and placed him under arrest. A search of his person revealed \$741 in one of his pockets.

At 9:52 p.m., Corporal John Seilback arrived with his K-9. The deputies ordered Austin and Henderson out of the car so that the scan could be performed. They frisked both men as they exited but found no weapons. However, they observed a knife on the floor between Henderson's feet. The K-9 positively alerted moments later, and the deputies handcuffed Austin and Henderson. Deputy Ruszala searched Austin and recovered crack cocaine from inside a skull cap he was wearing. Austin was arrested. Deputies then searched the car, finding an additional weapon, a handgun, concealed under the front passenger seat.

Henderson was also arrested. A search of his person revealed a clear plastic bag that held a loose rock of crack cocaine and smaller baggies of crack.

Henderson was charged with possession, possession with intent to distribute, conspiracy to possess and distribute CDS, carrying and transporting a handgun in a vehicle, and possession of a firearm under circumstances related to drug trafficking. He moved to suppress on grounds that his detention prior to the K-9 scan violated his Fourth Amendment rights. His motion was denied and he was convicted and sentenced to 20 years, with all but 12 suspended. Henderson appealed.

On appeal, the Court of Special Appeals upheld the denial of the motion to suppress and affirmed Henderson's conviction. In doing so, the Court rejected his contention that there was no reasonable, articulable suspicion that he had engaged in criminal activity prior to the K-9 alert, and that, because he was just a passenger, the officers needed that level of suspicion to detain him. The Court first found that there was no evidence that Henderson had attempted to leave, or was prevented from leaving, from the time the stop began until the K-9 alerted. Moreover, shortly after the traffic stop was made, the officers learned of the open warrant for Lewis. That single occurrence escalated the stop to a *Terry* stop with respect to Lewis. The discovery of the money on Lewis's person raised further suspicion. Combined with the officers' observation of the knife in plain view between Henderson's feet as they prepared for the scan provided the reasonable, articulable suspicion to detain him. In other words, the officers had discovered abundant evidence of criminal activity entirely independent of the traffic stop to justify the detention of all of the occupants before the K-9 alert. Finally, the Court rejected Henderson's argument that the officers had illegally extended the traffic stop during the nine minutes between Lewis's arrest and the arrival of the K-9. To the contrary, when the officers confirmed the warrant for Lewis and recovered the large amount of currency from him, the traffic stop became a *Terry* stop. Therefore, it was constitutionally permissible for the officers to detain all of the occupants until the K-9 unit arrived.

NOTE: Henderson also challenged his conviction for possession of a handgun. The Court affirmed this conviction because: (1) Henderson was observed in the same car in which the handgun was found.; (2) the officers testified that the rear seat was a bench-type seat, precluding the possibility of placing a weapon under it; and (3) the officers' description of the vehicle's interior established that Henderson had immediate access to the space underneath the passenger seat where the gun was concealed behind a loose item of clothing. This evidence supported a reasonable inference that Henderson had knowingly stashed the gun beneath the seat in front of him. As we repeatedly urge in this publication, the importance of officer "articulation" at suppression hearings and criminal trials cannot be overstated. Always be attentive to details and provide them to the court when testifying.

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