

Recent Case Report

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U.S. v. Washington

(D.C. Cir. 2009) __ F.3d __ [2009 WL 791460]

Issue

During a traffic stop, did officers have sufficient grounds to search the driver's car for weapons?

Facts

One evening, the Metropolitan Police Department in Washington D.C. conducted an "aggressive traffic patrol" operation in which officers on its High Impact Tactical Team made traffic stops in high-crime areas for the purpose of seizing drugs and illegal weapons. At about 9:30 P.M., two officers stopped a car driven by Carroll Washington after they saw him run a stop sign. The officer who approached the driver's side noticed that Washington was talking on a cell phone, so he told him to end the call. Washington complied and placed the phone on the passenger seat. The officer also noticed that Washington appeared "extremely nervous" and he repeatedly looked out the passenger-side window at the other officer.

When the officer returned to the patrol car to run a license and registration check, the other officer saw Washington "reach underneath his driver's seat" and "make some type of motion up by his feet in the floorboard area." The officer warned the other officer who returned to the car and asked Washington what he had been reaching for. Washington claimed he had dropped his cell phone on the floor but the officer didn't believe him because he had seen him put the phone on the passenger seat.

Consequently, the officer ordered Washington to step out. After he complied, the officer went into the car and searched the floorboard area, where he found a loaded handgun under the driver's floor mat. After arresting Washington, the officer found almost \$7,000 on his person and almost 800 ecstasy pills in his car. The District Court denied Washington's motion to suppress the evidence, and a jury found him guilty. He was sentenced to 16 years in prison.

Discussion

On appeal, Washington argued that the search of his car was unlawful and, therefore, the gun and the other evidence discovered during the search of his person and car should have been suppressed. The court disagreed.

After noting that a car stop is "one of the more perilous duties imposed on law enforcement officers," the court explained that, to help alleviate the danger, the Supreme Court has ruled that officers who are conducting car stops may conduct protective vehicle searches if both of the following circumstances existed:

- (1) **Lawful detention:** The officers had lawfully detained one or more of the occupants of the vehicle.
- (2) **Weapon in the vehicle:** The officers were aware of facts that reasonably indicated there was a weapon inside.¹

LAWFUL DETENTION: Washington argued that the traffic stop was unlawful because it was obviously nothing but a pretext stop. The court acknowledged that “the officers here were not interested in enforcing the traffic law.” In fact, it pointed out that they were apparently not even carrying ticket books. But it noted that the Supreme Court has ruled that an officer’s motivation for making a traffic stop is immaterial so long as the officer had grounds to do so.² Thus, the court ruled the stop was lawful because the officers had seen Washington run a stop sign.

WEAPON IN THE VEHICLE: An officer’s belief that a weapon is inside the passenger compartment may be based on direct or circumstantial evidence. In this case, it was based on circumstantial evidence, mainly Washington’s act of reaching down toward the floorboard.

The court agreed that this was a highly suspicious circumstance and, under the circumstances, it reasonably suggested “that Washington might be concealing or retrieving a weapon.” Adding to the suspiciousness was Washington’s explanation that he was reaching for his cell phone which, the court explained, was not believable because one of the officers “had earlier seen him place his cell phone on the passenger seat.” Furthermore, it pointed out that the stop occurred in a high-crime area, and that the officers had testified that Washington “was extremely nervous, sweating excessively, and behaving oddly during the encounter—all of which suggested something was afoot.”

For these reasons, the court ruled the search of the car was lawful, and it affirmed Washington’s conviction. POV

¹ *Michigan v. Long* (1983) 463 U.S. 1032, 1049-51.

² *Whren v. United States* (1996) 517 U.S. 806.