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Maryland's highest court provides further unintended incentive for cops to stop for driving/walking while black.

Cox v. Maryland provides police an additional reason illegally to detain people. (Image from U.S. Courts website.) On November 9, 2006, I strongly disagreed with Myers v. Maryland, 395 Md. 261 (2006), which allows arrests of people stopped unlawfully by the police, so long as the police learn that the suspect has an open arrest warrant. As I said when Myers was issued: This Myers decision will provide police with another incentive to unlawfully stop and arrest people, in a fishing expedition to see whether they have open arrest warrants. If we are not to live in a police state, this situation must change. Rather than changing, the situation has gotten worse. Whether or not the black defendant's race in Myers was a factor in stopping him, race certainly was a factor in stopping the defendant in Cox v. Maryland, ___ Md. _ (Feb. 8, 2007). Without deciding whether Defendant Cox's stop by the police was illegal, Maryland's Court of Appeals assumed as much for purposes of this appeal where the police stopped Cox and another person after a civilian report of being robbed the previous day by two teen-age black males. Of course Cox had been detained; the officer checking Cox's identification said he was not free to leave while his identification was being checked for open warrants. During the open warrant check, the police told Cox to sit down with his hand on his head. After the police confirmed Cox had an open arrest warrant, the police for the first time found marijuana on the ground (the court does not say how close the marijuana was to Cox). The police charged him with possession with intent to distribute marijuana, even though the police did not see who placed the marijuana there, and even though Cox was sitting next to an arrested co-suspect at the time. (Such dragnet arrests for drug cases are common with police, and are another reason for my limited confidence in the criminal justice system). Even though the police never would have found this marijuana had they not stopped and held Mr. Cox in the first place, Maryland's Court of Appeals affirmed his conviction, finding that the discovery of Mr. Cox's open warrant removed the taint of any illegal arrest, and that the marijuana was abandoned property the seizure of which, therefore, could not be challenged by Mr. Cox. I live and work in Maryland, which certainly does not have nearly the most oppressive criminal justice system in the nation. (Neighboring Virginia competes strongly for such a title). If the courts are not going to resist rendering such bad opinions as Cox, it is even more unlikely that legislative or executive branches will do anything to correct the situation. Jon Katz.

Posted by Jon Katz in Criminal Defense at 01:15