

Thursday, November 9, 2006

Maryland high court opinion effectively encourages unconstitutional police stops.

After fifteen years of representing criminal defendants, I have seen too many instances of illegal and discriminatory police stops, including for driving/walking while black (or any other minority, particularly young male minorities). This is one of several factors that reduces my faith in the criminal justice system. Enter Ernest James Myers, a black gentleman who in Pennsylvania was unlawfully stopped -- under Pennsylvania law, at least -- for allegedly speeding. This unlawful stop led to the discovery that he had an open warrant for his arrest, and a search incident to his arrest that led to evidence used to support a warrant to search his home in Maryland. Consequently, Mr. Myers was convicted of felony theft in Washington County, Maryland, and slammed with a ten-year prison sentence. On appeal, unfortunately, Maryland's highest court ruled that the intervening discovery of Mr. Myers's open arrest warrant was sufficient to override the taint of his unlawful traffic stop. As a result, the court refused to exclude from his trial the evidence obtained from the search of Mr. Myers and his car that followed the discovery of his open warrant, as well as the search of his home on the search warrant issued in reliance on the evidence found on Mr. Myers and in his car after his arrest on his open warrant. The case is *Myers v. Maryland*, No. 132, Sept. Term 2005, ___ Md. __ (2006). Also in *Myers*, unfortunately, the Court of Appeals stated that had the stop of Mr. Myers taken place in Maryland, the police officer's "mental impression of Myers's speed, under the circumstances, might have been adequate probable cause or, at a minimum, reasonable suspicion that Myers was traveling in excess of the posted speed" to have provided a sufficient basis to stop Mr. Myers's car. I do not think it is too much to ask that a speeding stop require a showing that the stop was based on the use of a properly calibrated laser, radar or speedometer operated by a properly-trained police officer. Already, it is easy enough for a police officer to lie that a traffic stop is based on a suspicion of speeding;. This *Myers* decision will provide police with another reason 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. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00