

Tuesday, November 6, 2007

Cops: You're prohibited from stopping for an insufficient suspect description and from violating the Fourth Amendment.

Â Bill of Rights.Â (From the public domain.)Â It is sad enough when cops urinate on people's Constitutional rights, and sad even more when judges allow a subsequent conviction grounded on such violations. Julian Madison-Sheppard learned that firsthand,Â after being unlawfully detained by cops on an insufficient description tip about "a suspectÂ with an outstanding warrant for an attempted murder that occurred sometime that week ... 'possibly armed and dangerous' and ... believed to be 'in the Elkton area.' According to the broadcast, the suspect was a black male, approximately six feet tall, 180 pounds, with cornrow-style hair, and the crime, believed to have been committed by the suspect, occurred somewhere in the 'Winding Brook' area, which is located in the Elkton mailing area but is outside the Elkton town limits. Julian Madison-Sheppard v. Maryland, ___ Md. App. __ (Nov. 2, 2007). Â After hearing the above-described police radio broadcast, police approached appellant Sheppard on the street, who ended up not being the person with an open attempted murder warrant. Although the trial judge sustained the police detention of Mr. Sheppard (who was handcuffed "for safety reasons" -- ah, the police state that excessively prevails (see Nov. 20, 2006, Underdog Blog)), Maryland's Court of Appeals said the detention violated the Fourth Amendment, having been based on an insufficient description, an insufficient totality of the circumstances, and insufficient grounds to handcuff Mr. Sheppard for looking nervous, seeing that nervousness is plenty common even when innocent people are encountered by police. Â The Court of Special Appeals provides further details of the seizure, search, and arrest of Mr. Sheppard:Â "When the second officer arrived, both Deputy Roland and the officer approached appellant; as they did so, appellant sat down on the porch steps. When Deputy Roland asked appellant for identification, appellant said that he did not have any. Appellant then became 'very nervous and could not stand.' The officers, 'for safety reasons,' handcuffed appellantâ€™s arms behind his back. After handcuffing appellant, Deputy Roland conducted a pat-down search for weapons. While patting down appellantâ€™s right pant leg, Deputy Roland detected 'blunt objects' in his right front pocket. This caused Deputy Roland to 'squeeze,' 'grab,' and 'grasp' the objects. According to Deputy Roland the objects were 'jagged,' 'hard,' and were 'sliding back and forth' between his fingers. The material felt like it was made of plastic. Deputy Roland then asked appellant if he had any illegal drugs on him. Appellant gave no response. Deputy Roland concluded that the objects he felt were crack cocaine. He then reached into appellantâ€™s right front pocket and removed a Ziploc baggie containing thirteen individual baggies of a white rock-like substance, which, based on Deputy Rolandâ€™s experience, he believed to be cocaine. Appellant was arrested for possession of a controlled dangerous substance ('C.D.S.'). Subsequent testing of the white rock-like substance by the Maryland State Crime Laboratory revealed that it was crack cocaine."Â As we know from *Minnesota v. Dickerson*, 508 U.S. 366, 378Â (1993). during such an allegedÂ TerryÂ frisk, a lump in one's clothing does not give the police a license to conclude that the item isÂ "contraband only after 'squeezing, sliding and otherwise manipulating the contents of the defendant's pocket' -- a pocket which the officer already knew contained no weapon." *Dickerson*, 508 U.S. at 378; see alsoÂ Feb. 27, 2007, Underdog Blog. Â Too often, cops run roughshod over the Constitution, as illustrated by Mr. Sheppard's foregoing ordeal of being detained for an insufficient description (aÂ "black male, approximately six feet tall, 180 pounds, with cornrow-style hair") and being arrested on an unconstitutional search. Even though Mr. Sheppard's rights ultimately were vindicated in the Maryland Court of Special Appeals, dollars to donuts his sentence was not stayed pending the lengthy time interval between his sentencing (and possibly beforehand, if he was unable to make bond, or if his bond had been revoked after being found guilty and before his sentencing date) and his appellate vindication. The prosecution has a right to seek appellate review in the Maryland Court of Appeals, which is Maryland's highest court. If that happens, I will take strong exception not only for the wrongness of such an appeal, but also as a Maryland resident telling the prosecutors not to do it in my name. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00