

Monday, December 3, 2007

Pringle and inevitable discovery: An unholy duo.

Photo from website of U.S. District Court (W.D. Mi.). In *Maryland v. Pringle*, 540 U.S. 366 (2003), the Supreme Court gave the green light more than ever to arrest everyone nearby contraband. When even such police-friendly cases as *Pringle* prove to be insufficient coverage for police to run roughshod over the Fourth Amendment, their backup position is to save an arrest or search from taint through arguing inevitable discovery, attenuation (which I rail against here), and independent source. See *Carroll Antonio Hatcher v. Maryland*, No. 1055, Sep. Term, 2006, __ Md. App. __ (Nov. 7, 2007). In *Hatcher*, the police stopped a car engaged in moving violations; the police confirmed the car was listed as stolen. The police arrested the driver and both passengers. Police took backseat passenger Mr. Hatcher to a "secure location", which amounted to a seizure under the Fourth Amendment. They searched Hatcher, finding cocaine in his pockets. Hatcher argued on appeal that the cops found the cocaine pursuant to an unlawful arrest and unlawful search, arguing the absence of probable cause to believe that Hatcher was guilty of theft of the car. However, Maryland's Court of Special Appeals found the arrest lawful, placing substantial reliance on *Pringle*. The court further determined that even if the initial arrest and search incident thereto had been unlawful, any taint of such a search was removed in that several minutes after the arrest and search of Hatcher, the cops learned he had an open arrest warrant, which inevitably would have led to a lawful search of Hatcher incident to an arrest on the open warrant, and the discovery of the cocaine which he would not have had an opportunity to conceal while being lawfully detained for an investigation about the stolen car under *Terry v. Ohio*, 392 US 1 (1968). I hope Mr. Hatcher will file for certiorari review in Maryland's Court of Appeals if he has not done so already. Unlike the Supreme Court's *Pringle* decision, which allowed the arrest of all a car's occupants on the view that they all could have been in joint possession (defined as knowledge, dominion and control) of illegal drugs found in the car through a police search following the driver's consent, it is much harder to determine that police have probable cause to believe that passengers of a stolen car are also guilty of car theft, in that the mere status of a car as stolen does not provide such probable cause absent such additional facts as the car's being found shortly after its theft within a distance reasonably driveable over a short period of time from the theft location, or a popped ignition or a busted driver's window that would be obvious to any passenger. Moreover, *Hatcher* grossly stretches the *Terry* doctrine by suggesting that it might have been lawful under *Terry* for the police to have detained Mr. Hatcher for such a long time to investigate his possible involvement in the theft of the car in which he was a passenger. *Terry* is a terrible case, and *Hatcher* is an example why *Terry* is so terrible. Jon Katz..

Posted by Jon Katz in Criminal Defense at 00:00