IN THE

COURT OF SPECIAL APPEALS OF MARYLAND

September Term, 2004

Case Number: 02818

William Sykes

Appellant

v.

State of Maryland

Appellee

Appeal from the Circuit Court for Baltimore County
(The Honorable Michael J. Finifter, Circuit Judge)

Appellant's Brief and Appendix

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APPELLANT'S BRIEF AND APPENDIX

STATEMENT OF THE CASE

The Appellant was charged with possession of cocaine, possession with the intent to distribute cocaine and attempting to bribe a police officer (App. 1). The Appellant filed a motion to suppress the fruits of the search of his person and the derivative evidence that flowed therefrom. (R. at 26-34). On May 21, 2004, a hearing was conducted on that motion. At the conclusion of the hearing, Judge Finifter held the

motion *sub curia*. (T. 5/21/2004 at 90). On August 23, 2004, Judge Finifter filed a written memorandum denying the motion (App. 1). On November 17, 2004, pursuant to an agreement with the State, the Appellant proceeded by way of an agreed statement of facts with respect to the charge of possession with the intent to distribute cocaine. Thereafter, he was sentenced to twenty-five years without the possibility of parole. (R. at 168). The Appellant noted a timely appeal raising the following questions for review. (R. at 168).

QUESTIONS PRESENTED FOR REVIEW

I.
WHETHER THE TRIAL COURT ERRED WHEN IT DENIED APPELLANT'S MOTION TO SUPPRESS WHERE HE WAS GROPED BY POLICE IN VIOLATION OF THE 4TH AMENDMENT

A.

WHETHER THE STOP OF THE APPELLANT WAS BASED UPON A REASONABLE SUSPICION

B.
WHETHER THE POLICE WERE REQUIRED TO DIRECT QUESTIONS, DESIGNED TO DISPEL THEIR SUSPICION, TO APPELLANT PRIOR TO GROPING HIM

C.

WHETHER THE GROPING TECHNIQUE UTILIZED BY THE POLICE EXCEEDED THE BOUNDS OF A *TERRY* PATDOWN FOR WEAPONS

STATEMENT OF FACTS

On January 30, 2004 at 9:21 P.M., Officer Donald Anderson, who was in the company of Officers Waite and Rock, had just finished the execution of a search and

seizure warrant, when they received dispatch about an armed robbery that occurred in the Woodlawn section of Baltimore County. (T. 5/21/2004 at 6-9).

The initial description of the two teenage suspects was that they were 16 year-old African Americans that were approximately 5'11" and weighed 150 pounds. (T. 5/21/2004 at 56-57). The description that was broadcast 10 minutes after that indicated that the suspects were 5'6" and not 5'11" as originally believed. Both had on black clothing. One of the teenagers had dark skin, while the other had a medium complexion. (T. 5/21/2004 at 45-46).

Based on the fact that the two robbers left on foot from Mountbatten Court, the three police officers had a discussion as to whether to set up their perimeter at Rich Glen or Longwood Circle. After the discussion, Longwood Circle was chosen. (T. 5/21/2004 at 19). The entire area of the perimeter was predominantly populated by African-Americans. (T. 5/21/2004 at 47). Longwood Circle was approximately a quarter of a mile and an eight to ten minute walk from Mountbatten Court. (T. 5/21/2004 at 59).

As Officer Anderson pulled off of Windsor Mill Road into the apartment complex, he saw the Appellant and Theodore Dargon walking out from behind an apartment building in between a dumpster area. Appellant and Dargon walked from the shadows into the light directly toward the officers. The three officers detained Appellant and Dargon at gunpoint and ordered them to put their hands on the car. (T. 5/21/2004 at 22-24 and 59-60). Officer Anderson described the men as "startled" and "cooperative" (T. 5/21/2004 at 22), he indicated they made no attempt to flee (T. 5/21/2004 at 33), and the only thing they did, that was suspicious, was to walk out from behind the building where

Mr. Dargon lived. (T. 5/21/2004 at 64). They were not seen running (T. 5/21/2004 p. 40), there was no indication that they exhibited any signs of nervousness or exertion, and neither of them had a purse in their possession.

The Appellant was 26-years-old, 6'1" tall, weighed 180 pounds and was wearing a green army jacket (T. 5/21/2004 at 34-38) and blue jeans. He clearly did not look like a teenager (T. 5/21/2004 at 46-47). Mr. Dargon was also 26 years of age, 5'10" tall, weighed 200 pounds, and was wearing a black sweatshirt (T. 5/21/2004 at 34-38) and blue jeans (T. 5/21/2004 at 22).

According to Anderson, the sequence of events was as follows: "We observed them, detained them, got their hands on the car, patted them down for weapons. It was after all that took place and the scene was made safe that we had a discussion of what was going on." (T. 5/21/2004 at 25). Although Officer Anderson said he "patted them down," what he actually did was far more intrusive and exploratory. In his own words, he describes his groping of the Appellant as follows:

> The procedure is we start at the head, work down on the shoulders and arms, *grabbing and crumbling the clothes as we check for weapons*. When I got to the right outer pocket, same procedure; *grabbed, crumbled, rolled my hand slightly*, felt the object, heard a plastic bag and felt two vials – two decks maybe, two objects which I recognized to be glass vials…
>
> I can't say that I could give a number to *when I first felt them* how many were in there. I felt several…

(Emphasis supplied.) (T. 5/21/2004 at 26-27). Based on this first or a subsequent feel/grope, Officer Anderson opined that he just discovered a "deck of cocaine," although he admitted that either cocaine or heroin could be in the vials. Next, he placed Appellant

under arrest. (T. 5/21/2004 at 27-28). In response, the Appellant offered the police $200 to cut them loose. (T. 5/21/2004 at 57).

ARGUMENT

I.
THE TRIAL COURT ERRED WHEN IT DENIED APPELLANT'S MOTION TO SUPPRESS BECAUSE HE WAS GROPED BY POLICE IN VIOLATION OF THE 4TH AMENDMENT

The fruits of the search of the Appellant (Sykes) and the derivative evidence that flowed therefrom should have been suppressed because the search was conducted in violation of the Fourth Amendment. This is so because Officer Anderson's stop of Sykes and Dargon was based on a hunch, not a reasonable suspicion; he should have directed questions to the two men prior to laying hands on them; and the groping technique was far too exploratory and intrusive than the limited pat down authorized by *Terry* and its progeny.

It is fundamental that the Fourth Amendment denounces those searches that are "unreasonable" *Florida v. Jimeno,* 500 U.S. 248, 250 (1991); *Carroll v. United States,* 267 U.S. 132, 147 (1925), including seizures that involve only a brief detention. *See United States v. Mendenhall,* 446 U.S. 544, 551 (1980); *Ferris v. State,* 355 Md. 356, 369 735 A.2d 491 (1999). Subject to a few exceptions, "searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable." *Katz v. United States,* 389 U.S. 347, 357 (1967); *Ferris, supra*.

The Fourth Amendment permits the foreseeable stop, questioning and limited

patdown of a pedestrian, *Terry v. Ohio*, 392 U.S. 1 (1968). In *Terry,* the Supreme Court held that:

> where a police officer observes unusual conduct which leads him *reasonably to conclude in light of his experience that criminal activity may be afoot* and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior *he identifies himself as a policeman and makes reasonable inquiries,* and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to *conduct a carefully limited search of the outer clothing* of such persons in an attempt to discover weapons which might be used to assault him.

(Emphasis supplied.) 392 U.S. at 30-31. Such searches, however, must be limited in scope and justified by the circumstances, *Sibron v. New York*, 392 U.S. 40 (1968), *Anderson v. State*, 282 Md. 701, 387 A.2d 281 (1978). In *Terry,* the Supreme Court adopted a dual inquiry for evaluating the reasonableness of police conduct: "Whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place." *Terry*, 392 U.S. at 20.

Over the years, since the day the Supreme Court decided both *Terry* and *Sibron,* it has become clear that the purpose of a *Terry* frisk is not to discover evidence, but rather to protect the police officer and bystanders. Therefore, *Terry* frisks are limited to a search for weapons that might place the officer or the public in danger. *See Minnesota v. Dickerson*, 508 U.S. 366 (1993). The central elements, of the *Terry* doctrine, have not changed. Simply stated, they are a reasonable suspicion that criminal activity may be afoot, *In Re David S.***,** 367 Md. 523, 789 A.2d 607 (2002), followed by inquires designed

to dispel those suspicions, *Florida v. Royer*, 460 U.S. 491, 499 (1983) Md. Code Ann., Crim. Law§ 4-206(a)(2); *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984), and if not dispelled, a limited pat down of the outer clothing for weapons *Dickerson*, 508 U.S. at 373; *State v. Smith*, 345 Md. 460, 693 A.2d 749 (1997).

In the case *sub judice,* it is abundantly clear that Officer Anderson's suspicion that the two adult men approaching him were the teenage robbers was unreasonable—he utterly failed to ask any questions designed to dispel his unreasonable suspicion. Further, the groping of the Appellant was far too exploratory and intrusive in nature. As a result, the fruits of the search of his person and the derivative evidence that flowed therefrom should be suppressed. (*See Wong Sun v. United States*, 371 U.S. 471 (1963) (initiating the "fruits of the poisonous tree" doctrine that derivative evidence gained from the illegal actions of police must also be suppressed.))

A.
The stop of the Appellant was not based upon a reasonable suspicion

When Officer Anderson first saw Sykes and Dargon they were engaged in wholly innocent activity. They were simply walking from Dargon's apartment and went to the lighted parking lot. They bore very little resemblance to the slightly built teenagers that perpetrated a robbery. They never tried to run away, in fact, they walked directly into the arms of the waiting police officers. They appeared neither nervous, nor frightened. They were simply startled by being surrounded by three armed police officers. At all times, they were cooperative and complied with the policeman's orders. Officer Anderson

admitted that the only thing the least bit suspicious was the fact that they were walking out from between the apartment buildings.

In *Anderson*, *supra*, the Court of Appeals was quite clear that a:

> "…police officer is not entitled to seize and search every person whom he sees on the street or of whom he makes inquiries. Before he places a hand on the person of a citizen in search of anything, he must have constitutionally adequate, reasonable grounds for doing so."

282 Md. at 707, 387 A.2d at 285. Under the *Terry* doctrine, this means a reasonable suspicion. When evaluating whether an officer was justified in conducting a *Terry* stop, a reviewing court "must look at the 'totality of the circumstances' of each case to see whether the detaining officer has a 'particularized and objective basis' for suspecting legal wrongdoing." *United States v. Arvizu*, 534 U.S. 266, 273 (2001) (citing *United States v. Cortez*, 449 U.S. 411 (1981)). *See also Graham v. State*, 325 Md. 398, 408, 601 A.2d 131, 136 (1992). Professor LaFave suggested evaluating the following factors when considering the reasonableness of a police officer's suspicion:

> (1) the particularity of the description of the offender or the vehicle in which he fled; (2) the size of the area in which the offender might be found, as indicated by such facts as elapsed time since the crime occurred; (3) the number of persons about in that area; (4) the known or probable direction of the offender's flight; (5) observed activity by the particular person stopped; and (6) knowledge or suspicion that the person or vehicle stopped has been involved in other criminality of the type presently under investigation.

4 WAYNE R. LAFAVE, SEARCH AND SEIZURE § 9.4(g), at 195 (3rd ed. 1996 & 2000 Supp.) The Court of Appeals has done just that in *Cartnail v. State,* 359 Md. 272,

289, 753 A.2d 519, 528 (2000) and *Stokes v. State*, 362 Md. 407, 765 A.2d 612 (2001). Applying these factors to the present case we find the following:

1-Description

The description of the perpetrators was that they were 16 years old, weighed 150 pounds, were 5'6" tall, and wearing all black. They were described as two African-American teenagers, one with a dark complexion and one with a medium complexion. On the other hand, Sykes and Dargon were fully grown men, 10 years older, outweighing them by 50 pounds, and towering over them by 7 inches. Sykes was wearing blue jeans and a green army jacket while Dargon was wearing blue jeans and a black sweatshirt. Both Sykes and Dargon were classified as dark skinned, with Sykes being slightly darker.

2-Size of the Area

Sykes and Dargon were first sighted by the police approximately 15 minutes after the robbery a quarter of a mile away by foot and 9/10 of a mile away by road.

3-Number of Persons in the Area

The state presented no evidence as to the number of persons in the area however, Officer Anderson did admit that this was a predominantly African-American neighborhood and that both the suspected teenagers and Sykes and Dargon were African-American.

4-Probable Direction

The state presented no evidence as to the direction of the flight of the teenagers. In fact the three police officers debated as to where the best place was to put up their perimeter.

5-The Activity of Sykes and Dargon

Sykes and Dargon walked out from behind an apartment building in between a dumpster area into the light directly toward the officers. They were not seen running, nor was there an indication that they exhibited any signs of nervousness or exertion, and neither of them had a purse in their possession. There was no mention of any furtive actions on the part of either man. Officer Anderson described the men as "startled" and "cooperative" and he indicated they made no attempt to flee. The only thing they did that was suspicious, according to Anderson, was to walk out from behind the building where Mr. Dargon lived.

6-Knowledge of Prior Criminality

Officer Anderson had no knowledge that Sykes or Dargon had been involved in criminal activity. They were complete unknowns.

Applying this test to the present case makes it abundantly clear that Officer Anderson did not possess a reasonable suspicion that Sykes and Dargon were the teenagers that committed the robbery. In fact, it seems that they were stopped simply for the fact that they were two African-American males. *See Ransome v. State*, 373 Md. 99, 818 A.2d 901 (2003).

In sum, there were no factors present that would give rise to a reasonable suspicion. No matching clothes and "nubie" hat as in *Collins v. State*, 376 Md. 539, 829 A. 2d 992 (2003) or guilty reaction, upon seeing police, such as flight and nervousness, as in *Cox v State*, 161 Md.App. 654, 871 A.2d 647 (2005) or an obvious attempt to conceal some item behind his back and nervousness as in *Matoumba v State*, 2005 WL

977023. The stop was based on nothing more then a hunch, devoid of any meaningful particulars.

B.
The police failed to direct questions, designed to dispel their suspicion, to Appellant prior to groping him

Assuming arguendo, that Officer Anderson had a reasonable suspicion as to Sykes and Dargon's conduct, his next step should have been to question them into effort to dispel any suspicion he may have had. A police officer may direct an inquiry to a citizen, even when he or she has no cause for doing so and it may be entirely appropriate for that citizen to decline "to stop or respond to such inquiries." *Anderson v. State*, 282 Md. at 708. A *Terry* stop allows police to "'investigate the circumstances that provoke suspicion." *United States v. Brignoni-Ponce*, 422 U.S. 873, 881, (1975). They do this by asking the "detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer's suspicions." *Berkemer v. McCarty*, *supra; see also Nathan v. State*, 370 Md. 648, 660, 805 A.2d 1086, 1093 (2002).

The confirming or dispelling of the police officer's suspicion is a necessary must, prior to the added violation of personal security that occurs during a frisk. As Justice Scalia pointed out, in his concurring opinion in *Dickerson,* "I frankly doubt, moreover, whether the fiercely proud men who adopted our Fourth Amendment would have allowed themselves to be subjected, on mere *suspicion* of being armed and dangerous, to

such indignity" *id*. at 508 U.S. at 380. The importance of this step in the police-citizen exchange cannot be ignored or minimized.

In fact, the Maryland Legislature wrote a statute highlighting its importance. The statute provides that in circumstances where the police harbor a reasonable suspicion of criminal activity a law enforcement officer:

> (i) may approach the *person and announce the officer's status as a law enforcement officer*;
> (ii) may *request the name and address of the person*;
> (iii) if the person is in a vehicle, may request the person's license to operate the vehicle and the registration of the vehicle;
> (iv) *may ask any question and request any explanation that may be reasonably calculated to determine whether the person is unlawfully wearing, carrying, or transporting a handgun* in violation of § 4-203 of this subtitle; and
> (v) if the *person does not offer an explanation that dispels the officer's reasonable beliefs described in paragraph (1) of this subsection, may conduct a search of the person limited to a patting or frisking of the person's clothing in search of a handgun*.

(Emphasis supplied) Md. Code Ann., Crim. Law§ 4-206(a)(2). Although the Court of Appeals did not reach the issue of the enforceability of this statute in *Anderson, supra*, this Court, thirteen years later, in *Allen v. State*, 85 Md. App. 657, 584 A.2d 1279, cert. denied, 323 Md. 1, 590 A.2d 158 (1991) held that the statute could not serve as a basis for suppression of evidence. (Because the General Assembly did not provide for an exclusionary sanction for violations of the procedures specified in a prior similar provision, the Constitution alone serves as the basis for suppression of evidence.)

Although, in this Court's view, this statute is without constitutional teeth, it should at a minimum, provide waypoints in our quest for "reasonableness in all the circumstances of the particular governmental intrusion of a citizen's personal security."

Terry, 392 U.S. at 19. Here, Sykes and Dargon had their hands on a car while they were surrounded by three police officers with drawn guns. In sum, the police had the "drop on them." Thus, there was no chance for Sykes and Dargon to pose a danger to either the police or other citizens.

What would have been constitutionally reasonable at this point in time, under the facts of this case, would have been to ask a few simple questions. For example, what is your name and where do you live. If the police had done so, they would've learned that Mr. Dargon lived in the apartment from whose direction he and Sykes were walking- a significant factor in dispelling what little suspicion Officer Anderson had. After all, the only thing he found suspicious, was for Sykes and Dargon to "walk out from behind a dark building" (T. 5/21/2004 at 64) where Mr. Dargon lived. Of course the dialogue could continue—May I see some identification? Where were you 15 minutes ago? How old are you?

This is not say that there are times when the police should forego the questioning of a suspect in lieu of an immediate frisk. *See Lee v. State,* 311 Md. 642, 537 A.2d 235 (1988) (hard take down appropriate under circumstances). *In Re David S.*, *supra* (handcuffed and ordered to lie on ground). Only, these circumstances did not present themselves in this case. As a result, under the totality of the circumstances of this case, the failure of the police to direct questions to Stokes and Dargon rendered the frisk constitutionally unreasonable.

C.

The groping technique utilized by the police exceeded the bounds of a *Terry* Patdown for weapons

Starting from the premise that the purpose of a *Terry* frisk is not to discover evidence, but rather to protect the police officer and bystanders from harm (*Terry*, 392 U.S at 29), the frisk should be "confined ... to an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer." *Id*. *Terry* frisks are limited to a search for weapons that might place the officer or the public in danger, *Dickerson*, 508 U.S. at 373, and "must be limited to the least intrusive means of determining whether a suspect is armed." *Smith*, 345 Md. at 472. The groping[1] technique, which incorporated the grabbing, squeezing, rolling and manipulation, that Officer Anderson called a "pat down" or "frisk" was far too exploratory and intrusive in nature to have been envisioned by the *Terry* and *Dickerson* Courts as constitutionally reasonable.

When the *Terry* Court concluded that a frisk was a "serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be undertaken lightly" it described a frisk as follows:

> The officer must feel with sensitive fingers every portion of the prisoner's body. A thorough search must be made of the prisoner's arms and armpits, waistline and back, the groin and area about the testicles, and entire surface of the legs down to the feet.

[1] To search or attempt to find something in the dark, or, as a blind person, by feeling; to move about hesitatingly, as in darkness or obscurity; to feel one's way, as with the hands, when one cannot see. Webster's Revised Unabridged Dictionary (1913).

Terry, 392 U.S. at 17 n.13. Twenty-five years later, the *Dickerson* Court stated that, "if the protective search goes beyond what is necessary to determine if the suspect is armed, it is no longer valid under *Terry* and its fruits will be suppressed." *Dickerson*, 508 U.S. at 373. In that case the police officer, after realizing the item was not a weapon "examined it with [his] fingers and it slid and it felt to be a lump of crack cocaine in cellophane" 508 U.S. at 369.

Here, Officer Anderson, no doubt trained in the wake of *Dickerson,* used the following groping technique which incorporated the grabbing, squeezing , rolling and manipulation in what he and the trial court called a "pat down" or frisk:

> The procedure is we start at the head, work down on the shoulders and arms, *grabbing and crumbling the clothes as we check for weapons*. When I got to the right outer pocket, same procedure; *grabbed, crumbled, rolled my hand slightly*, felt the object, heard a plastic bag and felt two vials – two decks maybe, two objects which I recognized to be glass vials…

(Emphasis supplied.) (T. 5/21/2004 at 26-27). It was not clear how many times he did this in his own words "I can't say that I could give a number to *when I first felt them* how many were in there."(T. 5/21/2004 at 27).

Several Courts have had opportunity to review and reject groping techniques. In *Howard v. State* 623 So 2d 1240 (1993, Fla App D2), the Court invalidated a seizure of rock cocaine and drug paraphernalia found during a patdown search where the officer had used a "groping action" while conducting the search. Similarly in *People v. Blake,* 268 Ill App 3d 737, 206 Ill Dec 575, 645 NE2d 580, app den 161 Ill 2d 530, 208 Ill Dec 363, 649 NE2d 419, (1995, 2d Dist) in finding the search was impermissibly broad, noted that

the search was more of a "grope" than a patdown. A rubbing and pinching technique was struck down in *Graham v. State,* 893 SW2d 4 (1994, Tex App Dallas) (officer testified that he could feel two objects which--"if you pinched on them enough"--felt like pills or capsules).

Obviously, Officer Anderson's technique was far too exploratory in nature and intensity to be reasonable under the circumstances. In Maryland, "general exploratory searches are not permitted and police officers must distinguish between the need to protect themselves and the desire to uncover incriminating evidence." *Smith*, 345 Md. at 645, (quoting 4 WAYNE R. LAFAVE, SEARCH AND SEIZURE, A TREATISE ON THE FOURTH AMENDMENT § 9.5(b), at 274 (3d ed. 1996). It is painfully obvious, that it was not intended solely to discover potential weapons. Rather, it was designed to be as exploratory and intrusive as possible, while still giving lip service to the term "frisk," while actively searching for contraband of any kind. As a result, it was impermissibly overbroad and anything found as a result should have been suppressed.

CONCLUSION

In the case *sub judice,* it is abundantly clear that Officer Anderson's suspicion that the two adult men approaching him were the teenage robbers was unreasonable—he utterly failed to ask any questions designed to dispel his unreasonable suspicion. Further, the groping of the Appellant was far too exploratory and intrusive in nature. As a result, the fruits of the search of his person and the derivative evidence that flowed therefrom should be suppressed. Therefore, the Appellant respectfully requests that this Honorable

Court reverse the conviction below and remand for a new trial, with instructions to suppress the evidence seized during the search of the Appellant and the derivative evidence that flowed therefrom.

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STATUTORY PROVISIONS AND RULES

U. S. Constitution: Amendment IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Md. Code Ann., Crim. Law§ 4-206. Limited search, seizure, and arrest.

(a) Limited search.-
(1) A law enforcement officer may make an inquiry and conduct a limited search of a person under paragraph (2) of this subsection if the officer, in light of the officer's observations, information, and experience, reasonably believes that:
(i) the person may be wearing, carrying, or transporting a handgun in violation of § 4-203 of this subtitle;
(ii) because the person possesses a handgun, the person is or presently may be dangerous to the officer or to others;
(iii) under the circumstances, it is impracticable to obtain a search warrant; and
(iv) to protect the officer or others, swift measures are necessary to discover whether the person is wearing, carrying, or transporting a handgun.
(2) If the circumstances specified under paragraph (1) of this subsection exist, a law enforcement officer:
(i) may approach the person and announce the officer's status as a law enforcement officer;
(ii) may request the name and address of the person;
(iii) if the person is in a vehicle, may request the person's license to operate the vehicle and the registration of the vehicle;
(iv) may ask any question and request any explanation that may be reasonably calculated to determine whether the person is unlawfully wearing, carrying, or transporting a handgun in violation of § 4-203 of this subtitle; and
(v) if the person does not offer an explanation that dispels the officer's reasonable beliefs described in paragraph (1) of this subsection, may conduct a search of the person limited to a patting or frisking of the person's clothing in search of a handgun.
(3) A law enforcement officer acting under this subsection shall take into account all circumstances of the occasion, including the age, appearance, physical condition, manner, and gender of the person approached.
(b) Seizure of handgun and arrest.-

(1) If the officer discovers that the person is wearing, carrying, or transporting a handgun, the officer may demand evidence from the person of the person's authority to wear, carry, or transport the handgun in accordance with § 4-203(b) of this article.
(2) If the person does not produce the evidence specified in paragraph (1) of this subsection, the officer may seize the handgun and arrest the person.
(c) Written report.-
(1) A law enforcement officer who conducts a search or seizure in accordance with this section shall file a written report with the law enforcement officer's employer unit within 24 hours after the search or seizure.
(2) The report shall be on a form that the Secretary of Public Safety and Correctional Services prescribes, shall include the name of the person searched, and shall describe the circumstances surrounding and the reasons for the search or seizure.
(3) A copy of the report shall be sent to the Secretary of the State Police.
(d) Civil actions.- On request of a law enforcement officer, the Attorney General shall defend the officer in a civil action, including any appeal, in which the officer is sued for conducting a search or seizure under this section that is alleged to be unreasonable and unlawful.
(e) Construction of section.-
(1) This section may not be construed to limit the right of a law enforcement officer to conduct any other type of search or seizure or make an arrest that is otherwise authorized by law.
(2) The provisions of this section are in addition to and not limited by the provisions of Title 2 of the Criminal Procedure Article.

Maryland Rule 8-131. SCOPE OF REVIEW

(a) Generally. The issues of jurisdiction of the trial court over the subject matter and, unless waived under Rule 2-322, over a person may be raised in and decided by the appellate court whether or not raised in and decided by the trial court. Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.
(b) In Court of Appeals--Additional Limitations.
(1) *Prior Appellate Decision.* Unless otherwise provided by the order granting the writ of certiorari, in reviewing a decision rendered by the Court of Special Appeals or by a circuit court acting in an appellate capacity, the Court of Appeals ordinarily will consider only an issue that has been raised in the petition for certiorari or any cross-petition and that has been preserved for review by the Court of Appeals. Whenever an issue raised in a petition for certiorari or a cross-petition involves, either expressly or implicitly, the assertion that the trial court committed error, the Court of Appeals may consider whether

the error was harmless or non-prejudicial even though the matter of harm or prejudice was not raised in the petition or in a cross- petition.

(2) *No Prior Appellate Decision.* Except as otherwise provided in Rule 8- 304(c), when the Court of Appeals issues a writ of certiorari to review a case pending in the Court of Special Appeals before a decision has been rendered by that Court, the Court of Appeals will consider those issues that would have been cognizable by the Court of Special Appeals.

(c) Action Tried Without a Jury. When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

(d) Interlocutory Order. On an appeal from a final judgment, an interlocutory order previously entered in the action is open to review by the Court unless an appeal has previously been taken from that order and decided on the merits by the Court.

(e) Order Denying Motion to Dismiss. An order denying a motion to dismiss for failure to state a claim upon which relief can be granted is reviewable only on appeal from the judgment.

STATEMENT OF FONT TYPE AND SIZE

The font in this brief is Times New Roman and the size is 13-point type for the body of the text, while the headings are in 16-point type.

APPELLANT'S APPENDIX

Judge Michael J. Finifter's Opinion……..……...…1