University of Baltimore Law Forum

Volume 24
Number 2 *Fall, 1993*

Article 12

1993

Recent Developments: Minnesota v. Dickerson: Supreme Court Created "Plain Feel" Exception to the Warrant Requirement

Lisa M. Parkinson

Minnesota v. Dickerson

SUPREME COURT CREATED "PLAIN FEEL" EXCEPTION TO THE WARRANT REQUIREMENT

The Supreme Court in *Minnesota v. Dickerson*, 113 S. Ct. 2130 (1993), recognized a "plain feel" exception to the warrant requirement but held that the officer's search and seizure in the instant case did not come under this new exception and unconstitutionally invaded the defendant's Fourth Amendment rights. The Supreme Court increased the police authority created in *Terry v. Ohio*, 392 U. S. 1 (1968) to conduct limited, warrantless searches based on articulable suspicion and extended the plain view theory to include items found by touch. Under the rule of *Minnesota v. Dickerson*, if a police officer discovers drugs or other contraband during a lawful patdown, the officer may seize those items without a warrant.

On November 9, 1989, while on evening patrol, two Minneapolis police officers developed reasonable suspicion to stop Dickerson. The officers saw him leave a notorious "crack house," abruptly change direction, and enter a nearby alley after making eye contact with the police. The officers stopped Dickerson and frisked him for weapons. Although no weapons were found, one of the officers felt a lump in Dickerson's front pocket and discovered that it was crack cocaine. Dickerson was charged with possession, found guilty and sentenced to two years probation.

The trial court, in denying Dickerson's motion to suppress, first concluded that the officers were justified in stopping and frisking him under *Terry*. Second, the court stated that under the plain view theory of warrantless seizures, it made no difference which sensory perception was employed by the officer to "view" the cocaine, so the evidence was deemed admissible. Dickerson was subsequently convicted on the theory that a seizure based on "plain feel" does not violate the Fourth Amendment. The Minnesota Court of Appeals reversed the conviction by refusing to accept the "plain feel" theory and finding that the officer violated Dickerson's Fourth Amendment rights. In rejecting the trial court's rationale that there is no difference between the senses, and affirming the decision of the intermediate appellate court, the Minnesota Supreme Court found that touch is more intrusive of protected Fourth Amendment rights than is sight. Thus, the court concluded that, as a rule, contraband may not be seized during a patdown. The United States Supreme Court granted certiorari "to resolve the conflict among the state and federal courts over whether contraband detected through the sense of touch during a patdown search may be admitted into evidence." *Dickerson*, 113 S. Ct. at 2134.

While affirming the decision of the state's highest court, the United States Supreme Court rejected the "categorical rule barring the seizure of any contraband detected by an officer through the sense of touch...." *Id.* Justice White, writing for a unanimous Court, reviewed earlier decisions which created the major exceptions to the Fourth Amendment warrant requirement. In *Terry v. Ohio*, 392 U. S. 1 (1968), the Court held that where an officer had an articulable suspicion that criminal activities were occurring, he could lawfully stop a person to make inquiries. If the officer believed that the suspect was dangerous, he could conduct a limited search. This type of search is justified by the need to protect the officer and the public from harm. The Court in *Michigan v. Long*, 463 U.S. 1032 (1983), extended this theory to allow an officer to conduct a limited protective search not only of the suspect, but also of the interior of a lawfully detained car. Additionally, the Court noted that while conducting a search of the passenger compartment of the vehicle where weapons may be hidden, the officer may seize contraband which is in plain view. The Court summarized the law by stating that in

certain circumstances where an officer had a lawful reason and right of access to search a person or his vehicle, items in plain view whose "incriminating character is immediately apparent...." may be seized without a warrant. *Dickerson*, 113 S. Ct. at 2136-37. The Court explained the rationale for the plain view exception by noting that there is no reasonable expectation of privacy regarding objects open to public view. Therefore, there may be no unreasonable search or seizure which violates the Fourth Amendment in those situations.

The Court applied the plain view doctrine and its rationale by analogy to searches involving the sense of touch and specifically rejected the rule of the Minnesota Supreme Court. First, the Court held that, as demonstrated in *Terry*, "the sense of touch is capable of revealing the nature of an object with sufficient reliability to support a seizure." *Id.* at 2137. In both cases, Fourth Amendment rights are protected by requiring articulable suspicion before the search is conducted. Second, the Court found that the proposition that touch is more intrusive than the other senses is inapposite, as a patdown for weapons is already justified. *Id.* at 2138.

Upon analyzing the facts of the case to determine whether the police officer had acted within *Terry* when searching the lump in Dickerson's jacket, the Supreme Court affirmed the decision of the Minnesota Supreme Court that the officer had unconstitutionally invaded Dickerson's privacy. *Id.* The Court upheld the state supreme court's interpretation that the officer's excessive probing into the defendant's pocket after it was apparent that the pocket did not contain a weapon, "overstepped the bounds of the 'strictly circumscribed' search for weapons allowed under *Terry*." *Id.* (citing *Terry v. Ohio*, 392 U. S. at 26). Referring to *Arizona v. Hicks*, 480 U.S. 321 (1987), in which the Court held that moving an item to read its serial numbers and thereby develop probable cause to believe that the item was stolen went beyond the plain view exception, the Court stated that where the incriminating character of an item is not immediately apparent, a further search is unconstitutional. *Dickerson*, 113 S. Ct. at 2139. The Supreme Court concluded that since the officer in *Dickerson* discovered that the item in the defendant's pocket was cocaine only after closely examining it with his fingers, such action constituted further search and seizure and was constitutionally invalid. *Id.*

Although the officer's actions in *Minnesota v. Dickerson* were found to be unconstitutional, the Supreme Court recognized that seizing drugs or other contraband as a result of a lawful patdown may be constitutional in certain circumstances. When an officer has reasonable suspicion to stop and to conduct a limited search of a person, contraband may be seized when it is within the officer's "plain feel." The sense of touch in such situations is equivalent to sight in the established "plain view" exception to the warrant requirement. Until *Dickerson*, Maryland law allowed for the seizure of only weapons, not contraband, as the result of a lawful patdown. In light of the Court's landmark decision in *Dickerson*, the power of police officers in Maryland has been significantly increased while the privacy interests protected by the Fourth Amendment have become alarmingly limited.

- Lisa M. Parkinson