University of Baltimore Law Forum

Volume 29
Number 2 *Spring/Summer 1999*

Article 16

1999

Recent Developments: State v. Evans: A Warrantless Search Incident to Arrest Is Constitutional, Regardless of Whether the Police Intend to Charge the Defendant upon Apprehension

Stacey E. Burnett

State v. Evans:

A Warrantless Search Incident to Arrest Is Constitutional, Regardless of Whether the Police Intend to Charge the Defendant Upon Apprehension

By Stacey E. Burnett

The Court of Appeals of Maryland held that a search incident to a valid arrest is constitutional even where the police had no intention of immediately charging the suspect. *State v. Evans*, 352 Md. 496, 732 A.2d 469 (1999). The court ruled that the trial judge may not exclude certain cocaine evidence seized from two accused drug dealers when the police detained and searched, but did not "book" them for possession of illegal drugs. In so doing, the court concluded that, for a valid arrest, the police need only subject a defendant to the officers' immediate control, based on probable cause that the suspect committed a crime. The court reiterated its position that requiring the police to intend a formal prosecution of all apprehended suspects would lead to the needless waste of police and judicial resources.

In *Evans*, the court consolidated two cases, *State v. Evans* and *State v. Sykes-Bey*, both having similar facts and identical issues. *Evans*, 352 Md. at 501, 732 A.2d at 424. In June of 1994, as part of a police task force to fight drug activity in Baltimore City, an undercover officer purchased drugs from defendant Dwight Evans ("Evans"). *Id.* at 501, 732 A.2d at 425. Approximately five to ten minutes after the transaction, other members of the task force stopped and searched Evans, seizing cocaine and marked money used in the undercover deal. *Id.* Although the police detained Evans to verify his identity, they did not transport him to the police station or bring him before a court commissioner, but instead, released him. *Id.* at 502, 732 A.2d at 452-26. One month after the incident, Evans was formally charged, and the grand jury indicted him for various drug offenses based on evidence seized from the undercover operation. *Id.* at 502, 732 A.2d at 426. Evans moved to suppress the evidence, arguing that it was illegally seized because the earlier encounter with the police did not constitute an arrest. *Id.* The trial court denied the motion, and Evans was subsequently convicted. *Id.* at 502-03, 732 A.2d at 426.

Defendant Charles Sykes-Bey ("Sykes-Bey"), in February of 1994, encountered a similar undercover operation, during which an officer purchased cocaine from an individual who was with Sykes-Bey. *Id.* at 504, 732 A.2d at 427. The undercover agent approached Sykes-Bey for drugs, but Sykes-Bey told the agent that he sold only "weight cocaine." *Id.* The agent, wanting to buy "dimes" instead, bought crack cocaine from Sykes-Bey's compatriot. *Id.* at 505, 732 A.2d at 427. The police, immediately thereafter, stopped and searched Sykes-Bey, and seized the cocaine. *Id.* As with Evans, the police did not take Sykes-Bey to the station house, or formally charge him until approximately one month later. *Id.* Sykes-Bey moved to suppress the seized evidence, claiming that, because he was not "arrested" prior to, or contemporaneously with the search, the evidence was not legally seized. *Id.* The trial court denied the motion and Sykes-Bey was convicted of various drug offenses. *Id.* at 506, 732 A.2d at 428.

The Court of Special Appeals of Maryland reversed both Evans's and Sykes-Bey's convictions, holding that the detention in both situations did not constitute an arrest, and therefore, the search was unconstitutional. *Id.* The Court of Appeals of Maryland granted certiorari on both cases to consider what constitutes an arrest for purposes of the search incident to arrest exception. *Id.* at 506, 732 A.2d at 428-29.

To address the issue of whether Evans and Sykes-Bey were arrested when detained, the court first defined the term "arrest" as set forth in *Bouldin v. State*, 276 Md. 511, 350 A.2d 130 (1976). *Evans*, at 512, 732 A.2d at 430-31. The court observed that the *Bouldin* court defined an arrest to include the taking, seizing, or detaining of another person (1) by touching or putting hands on him; (2) or by any act that indicates an intention to take him into

custody and that subjects him to the actual control and will of the person making the arrest; or (3) by the consent of the person to be arrested. *Id.* at 513, 732 A.2d at 431 (citing *Bouldin*, 276 Md. at 515-16, 350 A.2d at 133). As to whether the police must intend an immediate prosecution to make an arrest valid, the court found no support in either *Bouldin* or in other Maryland case law requiring such intent. *Id.* at 513-14, 732 A.2d at 431. The court therefore concluded that the intent to prosecute was not a prerequisite to a valid arrest. *Id.* at 514, 732 A.2d at 431.

The court next focused on Sykes-Bey's contention that after stopping and searching a defendant, the police must immediately charge the defendant to effectuate a valid search incident to an arrest. *Id.* at 524, 732 A.2d at 436-37. The court found no distinction between a "formal" arrest and a "custodial" arrest for the purpose of invalidating an otherwise constitutional search, but acknowledged that the terms are used in similar context by the U.S. Supreme Court and other courts. *Id.* The court further agreed with the dissenting opinion of the court of special appeals that requiring officers to immediately charge every person they detain to transform the detention into a valid arrest would contradict the principles behind the Fourth Amendment and violate public policy. *Id.* at 524, 732 A.2d at 437.

The court found that a lawful arrest requires probable cause that a suspect committed a crime, and a detention of the suspect that subjects him to the arresting officer's will or control; the intention of immediately charging the suspect is not required. *Id.* at 515, 732 A.2d at 432. Applying these elements to the facts in *Evans*, the court concluded that the officers had probable cause to believe Evans and Sykes-Bey had committed a crime. *Id.* The court further found that because the police detained the defendants in order to verify their identities, the defendants were subjected to the officers' control. *Id.* The court therefore held that the encounters between the police and the defendants constituted valid arrests. *Id.*

The court, having found the arrests valid, then determined whether the searches incident to the arrests were valid. *Id.* at 516, 732 A.2d at 432-34. The court reviewed the long-standing rule that arresting officers may validly search suspects incident to an arrest for weapons that may endanger an officer's safety, and for evidence of the crime that may be vulnerable to destruction. *Id.* at 517, 732 A.2d at 432-33 (citing *U.S. v. Robinson*, 414 U.S. 218, 225-26 (1973); *Chimel v. California*, 396 U.S. 752 (1969)). The officer's initial probable cause for arresting the suspects, according to the court, is sufficient for a search incident to the arrests; the officer does not need any additional suspicion to believe the suspect has weapons or evidence. *Id.* at 516-17, 732 A.2d at 433 (citing *U.S. v. Robinson*, 414 U.S. 218, 225-26 (1973)).

The *Evans* court, acknowledging that its justifications and requirements for a valid search incident to arrest may not be identical to those under the Fourth Amendment, determined that its holding incorporates the fundamental factors. *Id.* at 519-20, 732 A.2d at 434 (citing *Knowles v. Iowa*, U.S., 119 S. Ct. 484 (1998)). The court cited several Maryland cases applying the Fourth Amendment rule that warrantless searches incident to arrest are valid for the purpose of uncovering weapons and evidence. *Id.* at 517-19, 732 A.2d at 433-34. Therefore, the court concluded that because the arrests of Evans and Sykes-Bey were lawful, the searches incident to the arrests were valid. *Id.* at 23-24, 732 A.2d at 434.

The holding by the Court of Appeals in *State v. Evans* that an arrest is constitutional even if the police have no intention of immediately charging the suspect comports with both prior Maryland and federal constitutional jurisprudence. By not including the formal charging process as a requirement for a valid arrest, the court in *State v. Evans* created a wider range of situations that may be deemed valid arrests. Accordingly, searches incident to such arrests will also be lawful. This rule allows prosecutors to choose carefully which suspects to charge by first examining the strength of the evidence obtained from the search. As a result, suspects may be subjected to fewer unnecessary formal arrests and charging procedures. With fewer defendants in the system, court dockets and attorneys' caseloads will be less burdensome, resulting in a more efficient criminal justice system.