University of Baltimore Law Forum

Volume 30
Number 1 *Summer/Fall 1999*

Article 13

1999

Recent Developments: Ferris v. State: After Completion of a Routine Traffic Stop, Separate Reasonable Articulable Suspicion Is Required to Support a Continued Detention or Seizure

Kristin E. Blumer

Ferris v. State

After Completion of a Routine Traffic Stop, Separate Reasonable Articulable Suspicion Is Required to Support a Continued Detention or Seizure

By Kristin E. Blumer

In its first opportunity to consider the issue, the Court of Appeals of Maryland held that an initially valid stop can evolve into an unreasonable seizure under the Fourth Amendment when continued detention is not supported by separate, articulable suspicion. *Ferris v. State*, 355 Md. 356, 735 A.2d 491 (1999). Once the purpose of the initial stop has been fulfilled continued detention amounts to a "second stop" which must be either consensual or justified by reasonable, articulable suspicion to be valid under the Fourth Amendment. If elements of coercion are present and no articulable suspicion is found, then the second stop is unlawful.

Maryland State Trooper Andrew Smith ("Trooper Smith") observed a Totyota Camry traveling on Interstate 70 in Washington County, Maryland, in the early morning hours of May 7, 1996. Trooper Smith, using a laser speed gun, clocked the vehicle going ninety-two miles per hour in a sixty-five mile per hour zone. Trooper Smith stopped the car, approached the vehicle, and observed Peter Michael Ferris ("Ferris"), the driver, and Michael Discher ("Discher"), the passenger, in the front seat. Trooper Smith asked Ferris for his driver's license and registration. At that time, Trooper Smith noticed that Ferris's eyes were bloodshot and that Ferris appeared nervous.

After Trooper Smith returned to his patrol car to request a driver's license check and write out a citation, he noticed Ferris and Discher moving around and looking back towards him three or four times. At that time, Deputy John C. Martin ("Deputy Martin") of the Washington County Sheriff's Department arrived on the scene and parked behind Trooper Smith. He approached the patrol car and spoke with Trooper Smith briefly, and also noted that Ferris and Discher were acting nervous.

Trooper Smith returned to the Camry and handed Ferris his license and the citation, but he did not advise Ferris that he was free to leave. Instead, Trooper Smith "'asked [Ferris] if he would mind stepping to the back of his vehicle to answer a couple of questions. [Ferris] stated he didn't mind.'" Ferris accompanied Trooper Smith to the back of the car. As a result of the questioning, Trooper Smith searched the vehicle and found marijuana.

Ferris was charged with possession of marijuana and possession in sufficient quantity to reasonably indicate an intent to distribute. Prior to trial, Ferris moved to suppress all evidence and statements relating to the seizure of the marijuana. At the hearing, the judge denied Ferris's motion, and Ferris was later convicted in the Circuit Court for Washinton County. The Court of Special Appeals of Maryland affirmed his conviction in an unreported opinion. The Court of Appeals of Maryland granted certiorari to address two issues: (1) whether a person is seized within the meaning of the Fourth Amendment when asked to get out of his car for questioning upon the completion of a routine traffic stop, and (2) was the seizure justified by reasonable, articulable suspicion.

The court first noted that the initial stop for exceeding the posted speed limit was justified under the Fourth Amendment by probable cause. *Ferris*, 355 Md. at 369, 735 A.2d at 498. The court focused its analysis on the actions of the trooper after issuing the citation for speeding and returning Ferris' driver's license. *Id.* Ferris argued that the initially legitimate detention developed into an illegal stop once the purpose of the traffic stop was satisfied. *Id.* at 369-70, 735 A.2d at 498. The court noted that it had not yet considered the issue, but two prior decisions of the Court of Special Appeals of Maryland were relevant. *Id.*

In *Snow v. State*, 84 Md. App. 243, 578 A.2d 816 (1990), the court of special appeals held there was no reasonable suspicion to justify

detaining a vehicle to be searched once the officer issued a warning to the driver, pursuant to a valid traffic stop. *Id.* at 370-71, 735 A.2d at 498. A similar holding was reached in *Munafo v. State*, 105 Md. App. 662, 660 A.2d 1068 (1995), where the court of special appeals found that once a citation or warning has been issued, which was the purpose of the traffic stop, the continued detention of the car constitutes a second stop, which must be justified by separate, reasonable suspicion. *Id.* at 371, 735 A.2d at 498-99. Based on these cases, the court of appeals determined that once the initial purpose of a traffic stop is completed, a continued detention implicating the Fourth Amendment will be honored only if: (1) the driver gives consent to the further detention, or (2) the officer has, at the least, reasonable suspicion of criminal activity. *Id.* at 372, 735 A.2d at 499 (*citing United States v. Sandoval*, 29 F.3d 537, 540 (10th Cir. 1994)). The court concluded that Trooper Smith's initial detention of Ferris was complete when the trooper delivered the citation and handed back his license. *Id.* at 373, 735 A.2d at 500. At that time, Ferris was technically free to leave, absent reasonable suspicion or consent. *Id.*

The court then considered whether the second stop of Ferris was a detention in violation of the Fourth Amendment, or merely a "consensual encounter." *Id.* at 374, 735 A.2d at 500. The State argued that Ferris consented to stepping from the car, which did not transform the encounter into a seizure. *Id.* The court disagreed, noting that mere questioning of an individual does not constitute a seizure; however, the court opined that if a reasonable person felt compelled to remain, and no consent was given, the officer violated the Fourth Amendment prohibition against unreasonable seizures. *Id.* at 374-75, 735 A.2d at 500-01.

The court applied the "totality-of-the-circumstances" approach in evaluating whether Ferris was free to leave the scene of the traffic stop after Trooper Smith gave him a citation and his license. *Id.* at 376, 735 A.2d at 501. The court noted that the issue was fact-specific, identifying "certain factors as probative of whether a reasonable person would have felt free to leave." *Id.* at 377, 735 A.2d at 502. The factors cited by the court were:

> the time and place of the encounter, the number of officers present and whether they were uniformed, whether the police removed the person to a different location or isolated him or her from others, whether the person was informed that he or she was free to leave, whether the police indicated that the person was suspected of a crime, whether the police retained the person's documents, and whether the police exhibited threatening behavior or physical contact that would suggest to a reasonable person that he or she was not free to leave.

Id.

In finding that the stop was more coercive than consensual, the court first noted that the pre-existing, lawful seizure intensified the coercive nature of the situation. *Id.* at 378, 735 A.2d at 502. The court described the transition between the lawful stop and the second, unlawful seizure as "seamless," so that it was unlikely that Ferris knew that he was free to leave once the traffic stop was over. *Id.* at 379, 735 A.2d at 503.

The court also considered the fact that Trooper Smith never informed Ferris that he was free to leave. *Id.* Although there is no constitutional requirement that a detainee be advised that he is free to leave, the court noted that an officer's failure to so inform the detainee is relevant to the determination of consent. *Id.* at 379-80, 735 A.2d at 503 (citing *Ohio v. Robinette*, 519 U.S. 33 (1996)).

The court emphasized the fact that the trooper removed Ferris from his vehicle, placing him in a more coercive situation. *Id.* at 382, 735 A.2d at 505. The court additionally found that the coercive nature of the stop was furthered by the presence of two uniformed officers. *Id.* at 383, 735 A.2d at 505. Finally, the court noted that the environment of the situation, late at night on a empty stretch of rural highway, heightened the coerciveness felt by Ferris. *Id.* at 383, 735 A.2d at 505-06. The court found that although no single factor, when considered on its own, was indicative of a coercive situation, the totality of the circumstances indicated that a reasonable person in Ferris's situation would not have felt free to leave. *Id.* at 384, 735 A.2d at 506.

Therefore, the second stop was not consensual and constituted a seizure under the Fourth Amendment. *Id.*

In addressing the validity of the second stop, the court noted that it must have been supported by reasonable, articulable suspicion. *Id.* An officer's "hunch" is insufficient; rather, the standard is "whether a reasonably prudent person in the officer's position would have been warranted in believing that Ferris was involved in criminal activity...." *Id.* The court found that mere bloodshot eyes, nervousness, and a lack of odor of alcohol, the factors argued by the State, were insufficient to constitute articulable suspicion of criminal activity, warranting the second stop. *Id.* at 387, 735 A.2d at 507-08.

The Court of Appeals of Maryland in *Ferris* strengthened the application of the Fourth Amendment prohibition against unreasonable searches and seizures in Maryland. The opinion, however, does not address the hypothetical situation of a police officer questioning Ferris under the same circumstances before handing him the citation and his license. The court states that the transition between a lawful traffic stop and an unlawful seizure can be so "seamless" that the detainee does not recognize that a "second stop" has been effectuated. In reality, this "seamless" line of demarcation may create difficulties for law enforcement officers in attempting to stay within such a gray area of the Fourth Amendment jurisprudence and effectively do their jobs.