University of Baltimore Law Forum

Volume 37
Number 1 *Fall 2006*

Article 16

2006

Recent Developments: Swift v. State: When a Police Officer Blocks a Person's Path with a Police Vehicle and Performs a Warrants Check, and a Reasonable Person Would Believe That He or She Is Not Free to Leave the Police Presence, There Is a Seizure under the Fourth Amendment

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SWIFT V. STATE: WHEN A POLICE OFFICER BLOCKS A PERSON'S PATH WITH A POLICE VEHICLE AND PERFORMS A WARRANTS CHECK, AND A REASONABLE PERSON WOULD BELIEVE THAT HE OR SHE IS NOT FREE TO LEAVE THE POLICE PRESENCE, THERE IS A SEIZURE UNDER THE FOURTH AMENDMENT.

By: Kevin Cox

The Court of Appeals of Maryland found that a person is seized under the Fourth Amendment if a reasonable person, based on the totality of the circumstances, would believe that he or she is not free to leave the police presence when a police officer blocks his or her path with a police vehicle and performs a warrants check. *Swift v. State*, 393 Md. 139, 899 A.2d 867 (2006). Since the officer in this case did not have a reasonable suspicion to support the seizure, the defendant's Fourth Amendment rights were violated and the evidence obtained in the seizure was ordered to be suppressed. *Id.* at 143, 899 A.2d at 869.

In the early morning hours of August 9, 2003, Deputy Jason Dykes ("Dykes") was patrolling a high crime area, but had not received any reports of criminal activity. Dykes observed Logan Swift ("Swift") walking in the direction of oncoming traffic and continuously looking over his shoulder towards Dykes. Dykes stopped his car in front of Swift. While he did not activate his emergency equipment, he did shine his headlights on Swift. Dykes asked Swift for permission to talk with him and to obtain his identification. While conducting a warrants check, Dykes was informed that Swift was known for carrying weapons and drugs.

After learning of Swift's reputation, Dykes asked Swift if he could search him. Swift did not reply verbally. He put his hands on the hood of the police car, which Dykes viewed as consent. When Dykes went to search Swift, Swift fled the scene but Dykes caught Swift and arrested him. Swift was charged with possession of a handgun and possession of cocaine.

Swift sought to suppress the cocaine seized during his arrest, arguing that a reasonable person would not have felt free to leave, and

that he was illegally seized. The Circuit Court for Wicomico County denied Swift's motion to suppress and found him guilty of handgun and drug violations.

Swift appealed the lower court's denial of his motion to suppress to the Court of Special Appeals of Maryland, which affirmed the judgment of the trial court. The Court of Appeals of Maryland granted Swift's petition for certiorari to determine whether an individual is seized, for the purposes of the Fourth Amendment, when a police officer pulls his car directly in front of him, blocks his path, asks for identification, and detains him while waiting for the results of a warrants check.

The Court of Appeals of Maryland begins its analysis by reviewing and applying principles of case law on the Fourth Amendment. *Swift*, 393 Md. at 149, 899 A.2d at 873. According to the Court, with regard to the Fourth Amendment, there are three tiers of interaction between a citizen and the police. *Id.* An arrest, the most intrusive encounter, requires probable cause to believe that a person has committed or is committing a crime. *Id.* at 150, 899 A.2d at 873 (citing *Florida v. Royer*, 460 U.S. 491, 499 (1983)). The second type of interaction, commonly known as a *Terry* stop, is less intrusive because an officer may only briefly detain an individual and the detention must be supported by a reasonable suspicion that the person has committed or is about to commit a crime. *Swift*, 393 Md. at 150, 899 A.2d at 873.

The least intrusive police contact, and the category at issue in the case at bar, is the consensual encounter. *Id.* at 151, 899 A.2d at 874. A consensual encounter occurs when the police approach a person in public, engage in conversation, request information, and the person is free to answer or walk away. *Id.* A request for identification by a police officer, by itself, does not make an encounter consensual. *Id.* (citing *INS v. Delgado*, 466 U.S. 210, 216 (1984); *Royer*, 460 U.S. at 501).

The Court of Appeals of Maryland notes that a seizure does not occur unless a police officer, by either physical force or show of authority, restrains the person such that a reasonable person would not feel free to terminate the encounter. *Swift*, 393 Md. at 151, 899 A.2d at 874 (citing *Terry v. Ohio*, 392 U.S. 1, n.16 (1968)). The Court goes on to observe that the crucial test in deciding whether a seizure has occurred is whether, taking into account all of the circumstances, the police conduct would have communicated to a reasonable person that he or she was not free to leave. *Swift*, 393 Md. at 152-53, 899 A.2d at

875 (citing *Michigan v. Chesternut*, 486 U.S. 567 (1988)). The Supreme Court has identified an example of such police conduct as the operation of a car in an aggressive manner to block or control a defendant's direction, speed, or movement. *Swift*, 393 Md. at 153, 899 A.2d at 875 (citing *Chesternut*, 486 U.S. at 575).

To determine whether the encounter between Swift and Dykes was a consensual encounter or a seizure, the Court considered all of the circumstances surrounding the encounter, and asked whether the conduct of the police would have caused a reasonable person to believe that she was not free to ignore the police presence and go about her business. *Swift*, 393 Md. at 152-53, 899 A.2d at 875 (citing *Chesternut*, 486 U.S. at 569). The Court gives deference to the fact that it was implied that Swift had to wait for the results of the warrants check before he could leave. *Swift*, 393 Md. at 157, 899 A.2d at 877. Combining all of the facts, it was reasonable for Swift to believe that he was not free to go about his business. *Id.* at 156, 899 A.2d at 877.

Whether a reasonable person would feel free to leave police presence greatly depends on the facts of the specific inquiry. *Id.* at 156, 899 A.2d at 876. In the instant case, Dykes made it clear by his conduct, and in his testimony, that Swift was not free to leave because Dykes stated that he was "not done with him." *Id.* The interaction between Dykes and Swift was in the nature of a constructive restraint rather than a consensual encounter. *Id.* The time of the encounter, Dykes' conduct before he approached Swift, Dykes' blocking of Swift's path with the police cruiser, shining his headlights on Swift, his testimony that he was conducting an investigatory field stop, the warrants check, and the fact that he never told Swift that he was free to leave, taken together, led the Court to conclude that Swift was seized under the Fourth Amendment and that the cocaine should have been suppressed. *Id.* at 156-57, 899 A.2d at 877.

In *Swift v. State*, the Court of Appeals of Maryland reaffirmed the proposition that a seizure occurs if a reasonable person would feel seized. Police officers in Maryland will now have to take this into consideration when stopping citizens to ask for information. Defense attorneys may also have a greater chance of having evidence suppressed when obtained under facts similar to the case at bar. The question will always be very fact specific. Simply asking for identification, or executing a warrants check, may not necessarily convert a consensual encounter into a seizure because such actions are only circumstances to be considered in light of all of the other facts

surrounding an encounter. However, as in the facts of the instant case, when a police officer stops a citizen in such a fashion that a reasonable person would feel compelled to consent to a search, the officer has seized the citizen under the Fourth Amendment.