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Recent Developments: Derricott v. State: Maryland Declares Reasonable Suspicion for a Lawful "Stop and Frisk" Requires More Than Matching Characteristics of a Drug Courier Profile

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ment. *Id.* at 2434-35. Thus, the federal government can pre-empt state regulation and offer incentives to the states as a means of encouraging them to adopt regulatory schemes, but it cannot direct the states to provide for disposal of waste generated within their borders. *Id.* at 2435. The Court held that the take title provision was not a constitutional method of achieving regional self-sufficiency in waste disposal. *Id.*

By holding that the "take title" provision of the Low-Level Radioactive Waste Policy Amendment Act of 1985 violated the United States Constitution, the Court reinforced the sovereignty of the States that is reserved to them by the Tenth Amendment. Thus, when enacting environmental legislation, Congress must be careful not to infringe on States' power by directing their activities. Although disposing of radioactive waste is a serious problem, Congress must remain within Constitutional bounds when creating more innovative inducements for the States to adopt its regulatory schemes.

- Kristen L. Orff

***Derricott v. State*: MARYLAND DECLARES REASONABLE SUSPICION FOR A LAWFUL "STOP AND FRISK" REQUIRES MORE THAN MATCHING CHARACTERISTICS OF A DRUG COURIER PROFILE.**

The Court of Appeals of Maryland in *Derricott v. State*, 327 Md. 582, 611 A.2d 592 (1992), held that the reasonable suspicion required for a valid search of an individual is not satisfied by simply matching the characteristics of a statistically-based drug courier profile. Applying a totality of the circumstances analysis, the court held that a police officer must be able to articulate reasons beyond the profile that would warrant an invasion of someone's Fourth Amendment rights.

On June 3, 1988, Corporal Michael Thomas ("Corporal Thomas") of the Maryland State Police observed a brown sports car driving at excessive speed on Interstate 270. Corporal Thomas pulled the car over without inci-

dent and the driver of the vehicle, Darone A. Derricott, ("Derricott") readily handed over his driver's license and registration. During this encounter, Corporal Thomas observed that Derricott was young, black, and wearing gold jewelry. He also observed a "beeper" on the dash and various papers containing telephone numbers lying on the passenger seat.

A check of Derricott's license and registration revealed no irregularities. Despite this information and the fact that the Corporal had not observed any suspicious behavior by Derricott, he requested backup and a "drug dog" to perform a "sniff search" of Derricott and his vehicle. Corporal Thomas' sole justification for this action was that his earlier observations of Derricott matched the State Police drug courier profile.

When the back-up arrived, Corporal Thomas ordered Derricott to exit his vehicle and conducted a patdown which revealed no weapons. Corporal Thomas then searched the vehicle. The Corporal found and seized a cellophane bag containing what appeared to be cocaine and Derricott was arrested for possession of a controlled dangerous substance.

Prior to trial in the Circuit Court for Montgomery County, Derricott moved to suppress the drugs claiming they were the product of an unreasonable search and seizure contrary to his Fourth Amendment rights. After the motion was denied, Derricott waived his right to a jury trial and proceeded to trial before Judge McKenna on an agreed statement of facts. Judge McKenna found him guilty of possession of a controlled dangerous substance with intent to distribute, as well as speeding. The Court of Special Appeals of Maryland affirmed. The Court of Appeals of Maryland granted certiorari to determine the reasonableness of the search under the Fourth Amendment.

The state argued that the stop and search of Derricott was lawful based upon the limited "stop and frisk" doctrine exception to the Fourth Amendment as established in *Terry v. Ohio*,

392 U.S. 1 (1968), and its progeny. *Derricott*, 327 Md. at 587, 611 A.2d at 595. The court summarized the law regarding stop and frisk, noting that a lawful stop requires that an officer possess a reasonable, articulable suspicion of criminal activity. *Id.* Once an individual is lawfully stopped, an officer must have a reasonable, articulable suspicion that the individual is armed and dangerous in order to justify a frisk. *Id.* A lawful search of the passenger compartment of an automobile for weapons demands the same level of suspicion and is limited to those areas to which an individual could gain immediate access to weapons. *Id.*

The court proceeded to distinguish a *Terry* type search for weapons from a *Belton* search. Unlike *Terry*, *Belton* does not require suspicion, but instead authorizes an officer to search the interior of an automobile incident to a lawful arrest. *Id.* (citing *New York v. Belton*, 453 U.S. 454 (1981)). Since the search of Derricott's car was not the result of a lawful arrest, the court determined that *Terry* demanded an "evaluat[ion] [of] the totality of the circumstances to decide whether a reasonable prudent person in [Corporal Thomas'] position would be warranted in believing that his safety or that of others was in danger." *Id.*

The court first recognized that Corporal Thomas' suspicions were based solely upon the fact that Derricott matched several aspects of a drug courier profile. *Id.* at 588, 611 A.2d at 596. Noting that reliance upon a drug profile does not give rise to any special legal significance, the court held that an officer must demonstrate how the observation of elements of the profile would lead a reasonable person to determine that an individual is armed and dangerous. *Id.* at 589, 611 A.2d at 596. The court rejected the state's argument that a match to the "statistically-based profile" established by the police narcotics section was sufficient in and of itself to establish a reasonable suspicion justifying a search or frisk. *Id.* at 591, 611 A.2d at 597.

The court explained that such profiles were not susceptible to an objective test for reliability. *Id.* Moreover, the state had failed to provide an analysis of why the combination of profile characteristics presented to Corporal Thomas generated reasonable suspicion that Derricott was armed and dangerous. *Id.* The court maintained that the characteristics exhibited by Derricott were relatively common at-

tributes. *Id.* Therefore, the court concluded, further justification was required to prevent unjust infringement upon the privacy rights of innocent travelers who coincidentally matched the profile. *Id.*

The Court of Appeals of Maryland adhered to well established Fourth Amendment principles in *Derricott v. State*. In doing so, the court refused to allow faceless, statistic-wielding, bu-

reaucrats to determine exactly who will and who will not be protected by the Fourth Amendment. Moreover, although the opinion makes little direct reference to race, the holding makes it clear that the court will refuse to allow law enforcement officials to use statistics as a means to eviscerate the Fourth Amendment rights of African American citizens.

- Laurie Ann Garey

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