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RECENT DEVELOPMENT

MYERS V. STATE: THE DISCOVERY OF AN OUTSTANDING ARREST WARRANT DURING AN ILLEGAL TRAFFIC STOP MAY BE SUFFICIENT TO REMOVE THE TAIN FROM EVIDENCE THAT IS SUBSEQUENTLY SEIZED.

By: Levi Zaslow

In an issue of first impression, the Court of Appeals of Maryland held that the discovery of an outstanding arrest warrant during an illegal traffic stop may be sufficient to remove the taint from the evidence subsequently seized. *Myers v. State*, 395 Md. 261, 291, 909 A.2d 1048, 1066 (2006). In so holding, the Court established that an outstanding arrest warrant is an intervening cause that may be sufficient to attenuate an illegal stop and provide independent probable cause for an arrest and subsequent searches. *Id.* at 291, 909 A.2d at 1066.

On February 12, 2003, a Pennsylvania police officer initiated a traffic stop of Ernest Myers (“Myers”) because he noticed that Myers was parked illegally, acted in what he felt was a suspicious manner, and thereafter drove at a high rate of speed. The officer estimated Myers was going 40 mph in a 25 mph zone. Furthermore, the time, place, and Myers’ similarity to the description of a suspect in a number of burglaries in the area, piqued the officer’s attention. During the stop, the officer noticed a long screwdriver which would be capable of making pry marks similar to those found at the crime scenes and learned of outstanding arrest warrants for Myers from Washington County, Maryland. The officer arrested Myers and conducted a search of the car. As a result of the arrest, the Washington County Sheriff’s department executed search warrants in Maryland which led to the discovery of stolen property.

Myers was first convicted of “theft by receipt of stolen goods” in Pennsylvania, but the Superior Court of Pennsylvania (“Superior Court”), Pennsylvania’s intermediate appellate court, reversed and held that the trial court should have suppressed the evidence. The Circuit Court for Washington County denied Myers’ motion to suppress, and a jury convicted him of theft and imposed a sentence of

ten years incarceration. Myers appealed to the Court of Special Appeals of Maryland which affirmed his conviction. Myers petitioned for and received certiorari from the Court of Appeals of Maryland.

The Court of Appeals of Maryland first addressed whether the decision of the Superior Court was binding on Maryland courts. *Myers*, 395 Md. at 274, 909 A.2d at 1056. Myers maintained that the circuit court was bound to follow the Superior Court's conclusions that there was no probable cause to initiate the traffic stop; there was no probable cause to believe Myers was involved in criminal activity; and that the exclusionary rule barred the admissibility of the evidence obtained by the Pennsylvania police. *Id.* Finally, the Court addressed whether any evidence obtained as a result of his arrest was "derived from the fruit of the poisonous tree," and therefore should not have been considered in the search warrant application. *Id.*

The Court began its analysis by recognizing the general rule that the law of the state in which the arrest was made determines the legality and reasonableness of a stop absent a controlling federal statute. *Id.* at 275, 909 A.2d at 1056. The Court assumed "arguendo" that the initial traffic stop was invalid because, under Pennsylvania law, the officer did not have probable cause; although, they did not express an opinion as to whether they were bound to follow that determination. *Id.* at 278, 909 A.2d at 1058. Also, the Court determined that the federal exclusionary rule was the appropriate remedy in this case because the Superior Court did not expressly rely on the Pennsylvania Constitution or any other Pennsylvania law in suppressing the evidence. *Id.*

The Court ruled that the Pennsylvania police officer lacked a "reasonable articulable suspicion" to believe that Myers was involved in any criminal activity. *Id.* at 280, 909 A.2d at 1059. In making this determination, the Court viewed the totality of the circumstances and held that there was no reasonable suspicion of criminal activity and no probable cause to stop Myers' vehicle. *Id.* at 281, 909 A.2d at 1060. Therefore, the Court was left to determine whether the evidence admitted in the circuit court was the "exploitation of that illegality," or attenuated from its original taint by the discovery of the arrest warrant. *Id.*

The general rule is that illegally obtained physical, verbal, or other evidence should be suppressed, thereby furthering the purpose of the rule "to deter lawless and unwarranted searches by law enforcement officers." *Id.* at 282, 909 A.2d at 1060 (quoting *Wong Sun v. United*

States, 371 U.S. 471, 484-86 (1963)). There are, however, three judicially recognized exceptions to the exclusionary rule which will remove the taint of an illegal seizure. *Myers*, 395 Md. at 284, 909 A.2d at 1062. The three exceptions are attenuation, the independent source doctrine, and inevitable discovery. *Id.* at 284-85, 909 A.2d at 1062 (citing *Nardone v. United States*, 308 U.S. 338, 341, (1939) (establishing attenuation as a sufficiently intervening circumstance to remove taint); *Segura v. United States*, 468 U.S. 796, 814 (1984) (concluding that if the evidence would have been discovered through an independent source, it should not be suppressed); *Nix v. Williams*, 467 U.S. 431, 443 n.4 (1984) (allowing for the admission of evidence that would inevitably have been discovered). The only relevant exception in the present case was whether the challenged evidence was sufficiently attenuated to remove the taint of the initial stop. *Myers*, 395 Md. at 285, 909 A.2d at 1062.

In determining whether evidence has been sufficiently attenuated from its initial taint, the Supreme Court established three factors to aid in its determination: “1) the time elapsed between the illegality and the acquisition of the evidence; 2) the presence of intervening circumstances; and 3) the purpose and flagrancy of the official misconduct.” *Myers*, 395 Md. at 285-86, 909 A.2d at 1062 (quoting *Brown v. Illinois*, 422 U.S. 590, 603-04 (1975)). Simply stated, the attenuation doctrine is a way to determine whether there is a strong enough connection between the illegally obtained evidence and the primary taint to warrant exclusion. *Myers*, 395 Md. at 286, 909 A.2d at 1063.

In its analysis, the Court concluded that although there were a number of seizures over a period of time, including some immediately after *Myers*' arrest, the question of timing is not dispositive, and the mere fact that there was little time between the illegal stop and the seizure will not independently sustain the primary taint. *Id.* at 291-92, 909 A.2d at 1066. The Court also found that the subsequent discovery of the outstanding warrants was sufficient to remove the initial taint of the illegal seizure and was therefore not considered to be fruit of the poisonous tree. *Id.* at 291, 909 A.2d at 1066. Finally, the Court recognized that although the warrants were sufficient to remove the taint, it is the purpose and flagrancy of the official misconduct that is central to the analysis. *Id.* at 292, 909 A.2d at 1066.

Under that analysis, the Court concluded that the Pennsylvania officer's conduct was not to effectuate an arrest, but was based on

what he believed to be suspicious activity. *Id.* at 293, 909 A.2d at 1067. Therefore, although perhaps illegal, the purpose of the officer's stop was not egregious and flagrant. *Id.* The Court maintained, however, that if the purpose of the initial stop was blatantly egregious and in violation of Myers' Fourth Amendment rights, or if the purpose of the stop was to search the vehicle, the search warrants would not be sufficient attenuation. *Id.* at 292, 909 A.2d at 1066. Furthermore, the Maryland investigator acted with probable cause, reasonably, and in good faith. *Id.* at 295, 909 A.2d at 1068.

Myers v. State further blurs the line for police officers who must make immediate search and seizure determinations. Maryland practitioners and citizens must be aware that illegal police activity will often be attenuated or justified based on a standard of "objective" reasonableness. In this era of ever-shrinking Fourth Amendment rights, Maryland courts are clearly aligning themselves with those jurisdictions that consider illegal citizen activity to be a greater danger than illegal police activity.