



Supreme Court rejects Maryland's appeal of marijuana-frisk decision

By: Steve Lash Daily Record Legal Affairs Writer October 2, 2017

The U.S. Supreme Court on Monday declined Maryland's request that the justices review a the state high court's decision that the pungent smell of raw, unsmoked marijuana emanating from car during a traffic stop does not in itself enable police officers to frisk a passenger for weapons.

With its refusal to hear the state's appeal, the Supreme Court let stand without comment the Maryland Court of Appeals' overturning of Joseph Norman Jr.'s conviction and nine-month prison sentence for possessing 70 grams of marijuana.

A police officer had found the drugs while patting Norman down after ordering him and two other passengers out of a car that smelled of raw marijuana and had been stopped for having a broken taillight March 22, 2015, on U.S. Route 13 in Somerset County.

In his failed bid for Supreme Court review, Maryland Attorney General Brian E. Frosh had argued that the smell of marijuana gives police a reasonable concern for their safety that justifies a pat-down of passengers without violating their constitutional Fourth Amendment right against unreasonable searches.

"By withholding authority to frisk the occupants of a car that an officer already has probable cause to search, and by retreating from the widely recognized association of drugs and guns particularly in the circumstances of drug trafficking or transport on the nation's roads, the decision below makes constitutionally unreasonable the educated instincts that keep traffic officers alive," Frosh wrote in Maryland's petition for review. "This should not be."

The state's petition was co-signed by Assistant Attorneys General Daniel J. Jawor and Carrie J. Williams, the lawyer of record before the Supreme Court.

In a responsive filing, Maryland Public Defender Paul B. DeWolfe countered that the Maryland court's decision did not merit the justices' review as it correctly interpreted the Fourth Amendment.

"As an initial matter, the rule proposed by the state is breathtaking in its scope, and adoption of it would permit pat-downs of passengers in a staggering number of situations, including stops in which the police have probable cause to believe the car contains evidence of very minor crimes, such as shoplifting," DeWolfe wrote in the brief to the justices co-signed by Assistant Public Defenders Allison P. Bresseaux and Brian M. Saccenti, who is counsel of record in the case.

DeWolfe added the state's concern about marijuana-related violence is belied by the more than 20 states which have either legalized possession of small amounts of the drug or punish first-time marijuana possession with a fine at most. In Maryland, possession of less than 10 grams of marijuana is merely a civil offense punishable by a \$100 fine, the public defender wrote.

"Presumably, the legislatures in those (more than 20) states took the actions they did because they did not believe that individuals who possess small amounts of marijuana are dangerous," DeWolfe added in the Supreme Court brief. "Assuming the court believes there is any merit to the argument that the suspected possession in a car of heroin, or cocaine, or methamphetamine, or any other illegal drug that is treated consistently across the country, gives rise to reasonable suspicion to believe that passengers in the car are armed and dangerous, the argument has absolutely no merit when the drug at issue is marijuana; thus, review by the court is not warranted on that ground either."

In its March ruling, the Court of Appeals said police officers – to conduct a constitutional frisk – must have "reasonable articulable suspicion" based on the "totality of the circumstances" that the passenger is armed and dangerous, and not just that he or she is in a car that reeks of marijuana.



But the Court of Appeals said the drugs found on Norman should not have been admitted into evidence because the officer's frisk had violated Norman's Fourth Amendment right. The officer had no basis for suspecting Norman of being armed beyond having smelled marijuana, the court said, prompting the state's appeal to the justices.

The case was docketed at the Supreme Court as *Maryland v. Joseph Norman Jr.*, No. 16-1547.

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