

Freddie Gray And The Right of Police To Stop And Search

by Edward A. Malone

The Fourth Amendment to the U.S. Constitution was adopted to protect every citizen's right to be free from unreasonable government intrusion into their persons, homes, businesses, and property -- whether through police stops of citizens on the street, arrests, or searches of homes and businesses.

The arrest of Freddie Gray of Baltimore, Maryland, his death while in police custody, and the riots resulting therefrom have brought the issue of police stops, searches, and seizure back to the forefront of American discourse.

Freddie Gray

As has been reported in the media, Freddie Gray made eye contact with a Baltimore City police officer one morning and ran. Gray was in an area of town known for drug dealing. Police pursued Gray on bicycles, eventually catching up and restraining him on the ground. During the stop, the police noticed a pocket knife in his front pants pocket and arrested him.

At some point, Gray suffered a spinal injury leading to his death.

Before we even discuss what happened in the police vehicle, we need to ask a more fundamental question. Why was Freddie Gray stopped and arrested in the first place?



Under the 4th and 5th Amendments, police may not stop, frisk, or arrest a person unless they have reasonable articulate suspicion that a crime has been committed, is being committed, or about to be committed.

I have been practicing law in the State of Maryland for 15 years, and I have not seen anything in the Maryland code that says looking at a police officer and running away is a crime. It appears, therefore, that police had not observed Freddie Gray committing a crime when they began to chase him.

There is case law, however, in which courts have held that a person's flight from the police in a high crime area provides police officers with sufficient suspicion to justify a stop and frisk of the person. But in other cases, the court declared that mere flight is not enough to justify a police stop. Perhaps the U.S. Supreme Court will settle this issue once and for all.

The reason given in the police report for Freddie Gray's arrest was his possession of what police called a "spring-assisted" pocket knife. There is a Baltimore City municipal code ordinance from the 1950s that bans "any knife with an automatic spring or other device for opening and/or closing the blade." Gray was arrested under the pretext of violating this ordinance. After police caught Freddie Gray, they searched him and found a pocket knife. As vague and outdated as the Baltimore pocket knife ordinance is, however, a good lawyer could have successfully defended Gray against it. It is certainly sad that Freddie Gray did not live to make it to trial.

General rules

As a general matter, if the police see you on the street and ask to talk to you or for your ID, you have the right to politely tell them "no" or that you have better things to do. If you give the police such an answer, you should walk - not run - away.

If you are driving a motor vehicle and are stopped by the police, they do NOT have a right to search your vehicle if you are not under arrest. When the police ask you if they can search the car, they do so with such an authoritative tone, until most people think they have no choice but to undergo the search.

If they ask, "Can I search the vehicle," your answer should be "No, sir. I don't allow searches of my vehicle." Crack the window and lock the door.



Police entry into your home

Unless they have a search warrant or a warrant to place someone under arrest, they don't have a right to come into your home. All people in your house need to be in agreement that the answer is "no."

One person might say "no", but if another grown person who lives there says "yes", then the cops can come in. And as unpredictable as the Supreme Court is, I would not be surprised if one day they rule that a cop can come in based on the consent of a little child. So make sure everyone says "no".

If the police come to your house and need to talk about something, make them sit on the porch and talk to you. Or better yet, stay inside, don't let them in and talk to them through the screen door.

Conclusion

You may be saying "I have nothing to hide", but what if your uncle came over last week and left a porno magazine on your couch? What if your cousin left a joint in the trunk of your car? What if they see your little child in dirty underwear and report you to social services?

You may be arrested for crime you did not commit or you may find yourself in some other type of trouble simply because you gave the police the opening to find something that they otherwise would have had no authority to look for.

If at all possible, keep the police out of your home out of your car and out of your pants.