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ABOUT STEVE LASH

Steve Lash covers appellate courts and general legal affairs for The Daily Record. He is a member of the U.S. Supreme Court and Maryland bars.

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DeWolfe seeks Supreme Court review of search following DUI arrest

By: Steve Lash Daily Record Legal Affairs Writer December 27, 2016

Maryland Public Defender Paul B. DeWolfe (Maximilian Franz/The Daily Record)

Maryland Public Defender Paul B. DeWolfe has asked the U.S. Supreme Court to decide whether police have authority to search without a warrant the cars of drivers they arrest on suspicion of drunken driving.

DeWolfe's request follows the Court of Appeals' ruling in May that an arrest for suspected drunken driving generally provides officers with "reason to believe" that open bottles might be found in the vehicles' passenger compartments, which the judges said is all the police need to conduct a warrantless search incident to the arrest.

Once a search is deemed valid, any evidence of criminality found in the vehicle will generally be admissible in court, under Supreme Court precedent.

DeWolfe stated in papers filed with the justices that the "reason to believe" standard provides individuals arrested on suspicion of drunken driving with insufficient protection against unreasonable searches as provided under the U.S. Constitution's Fourth Amendment.

To conduct a constitutional search, police need at least "reasonable suspicion" based on "more than the arresting officer's unquantified experience" that examining the vehicle's interior will uncover evidence related to the suspected offense, in this case drunken driving, DeWolfe wrote in October.

DeWolfe is pressing the appeal of Efrain Taylor, whose roadside arrest on suspicion of driving under the influence of alcohol was shortly followed by a search of his vehicle in which police found cocaine in the front-seat armrest. He was later convicted in Dorchester County Circuit Court of possession with intent to distribute cocaine.

DeWolfe's decision to seek Supreme Court review was in keeping with the Court of Appeals' suggestion in its ruling that clarification from the justices is needed with regard to searches of vehicle incident to arrest.

Judge Alan M. Wilner, in writing for Maryland's high court, said the justices have fomented confusion in their past decisions by using the phrases "reasonable articulable suspicion" and "reasonable to believe" in describing when police can conduct a warrantless search.

"Ultimately, the Supreme Court may need to clarify what it meant and, given the vast number of traffic stops that occur every day throughout the country, we hope that it will do so," he wrote.

Looking to *Gant*

In its decision, the Court of Appeals cited the Supreme Court's 2009 decision that police had no constitutional justification for searching the car of a motorist who had just been arrested for driving on a suspended license. Evidence of that crime would be found in motor-vehicle-agency records, not in the automobile, the Supreme Court said in overturning a cocaine-possession conviction in *Arizona v. Gant*.

The justices added in *Gant* that a warrantless search incident to an arrest is justified if it was "reasonable [for police] to believe evidence related to the crime of arrest might be found in the vehicle."

But DeWolfe told the Supreme Court that the *Gant* decision has resulted in some states saying police need "probable cause"; some states and the District of Columbia saying police need "reasonable articulable suspicion"; and other states, like Maryland, saying officers need just a "reasonable belief" that evidence related to the suspected crime might be found.

"The issue is one of fundamental Fourth Amendment application: When is it 'reasonable to believe' that relevant evidence will be found in the recent arrestee's vehicle," DeWolfe wrote. "Given the frequency of roadside arrests – and, specifically, the frequency of roadside arrests for DUI – the novel exception announced in *Gant* requires clarification by this court: Does the Fourth Amendment require this warrantless

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Law Digest - Maryland Court of Special Appeals - Dec. 22, 2016

LEGAL NOTICES

Family - Rice, Anthony L

Name Change - McFadden, Dempsey A

Name Change - McFadden, Makenzi B

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search to be supported by, at the least, reasonable suspicion, and, if so, what type of evidence adequately establishes that suspicion."

DeWolfe's brief is co-signed by Assistant Maryland Public Defender Daniel Kobrin, Taylor's counsel of record at the Supreme Court.

'Commonsense application'

Maryland Attorney General Brian E. Frosh's office said in a statement Tuesday that it is preparing its response to DeWolfe's petition. The response is due at the Supreme Court on Feb. 24.

In a statement in May, the attorney general's office praised the Court of Appeals' ruling as a "commonsense application of the principle announced" in *Gant*.

"Under most circumstances, when a motorist is arrested for driving under the influence, it is reasonable for a police officer to conclude that evidence of that crime might be found in the passenger compartment of the vehicle," the statement read. "The officer can, therefore, conduct a search for such evidence incident to the lawful arrest."

The justices have not said when they will vote on whether to hear Taylor's appeal.

The case is docketed at the Supreme Court as *Efrain Taylor v. State of Maryland*, No. 16-467.

40 years

Cambridge police officer Chad Mothersell testified that he pulled Taylor over at 1 a.m. on March 1, 2013, after seeing him speed and fail to stop at a stop sign. Taylor's breath smelled of alcohol, his speech was slurred, his eyes were bloodshot and glassy, he failed a sobriety test and he said he had been at a local bar, Mothersell said in explaining his decision to make the arrest.

With Taylor in the backseat of Mothersell's police car, another officer searched Taylor's vehicle and found the cocaine. Taylor was sentenced in July 2014 to 40 years in prison, with 20 years suspended.

The intermediate Court of Special Appeals upheld the conviction in a reported opinion in August 2015.

The Court of Appeals rendered its decision in *Efrain Taylor v. State of Maryland*, No. 75, September Term 2015.

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