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Recent Developments: Jones v. State: The Fourth Amendment Is Violated When Police Stop a Bicyclist without Reasonable Articulable Suspicion

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at 618 (citing *City of Los Angeles v. Taxpayers for Vincent,* 466 U.S. 789, 796-98 (1984)). A statute should not be struck down for being overbroad, "unless there is a realistic danger that the statute itself will significantly compromise recognized First Amendment protections of parties not before the Court." *Id.* at 465, 569 A.2d at 618 (quoting *Taxpayers for Vincent,* 466 U.S. at 801). Section 121 contains applicable enforcement standards, and does not reach beyond conduct which can be regulated consistent with the first amendment. The court concluded, therefore, that Section 121 was not overbroad. *Id.*

Judge Eldridge argued vehemently against state restrictions on the volume level of protected speech in his dissent. Judge Eldridge was of the opinion that *Diehl* stood for the proposition that the phrase "loud and unseemly" could only serve to limit speech which "presented a clear and present danger of violence, or [speech] not intended as communications but merely as a guise to disturb other persons." *Id.* at 470, 569 A.2d at 620 (Eldridge, J., dissenting). He found Section 121 unconstitutional as applied because the limitations on speech made the delivery of speech a crime. *Id.* at 473, 569 A.2d at 622 (Eldridge, J., dissenting). Judge Eldridge went on to note that "[a]nnoyance at ideas can be cloaked in annoyance at sound." *Id.* at 475, 569 A.2d at 623 (quoting *Saia v. New York,* 334 U.S. 558, 562 (1948)) (Eldridge, J., dissenting). He then criticized the majority which found that "[s]ound is one of the most intrusive means of communication," and pointed out that "sound, in the form of the spoken word, is the most basic thing protected by the First Amendment." *Id.* at 476, 569 A.2d at 624 (Eldridge, J., dissenting).

Judge Eldridge found the court's requirement of prior warning an illusory, ineffective protection as any time government authorities desire to suppress first amendment activity, they could easily find complainants to give prior warnings. *Id.* at 490, 569 A.2d at 630 (Eldridge, J., dissenting). He believed that Eanes' speech was within his constitutional guarantees and concluded his dissent expressing his fear for those persons who speak on controversial topics. *Id.* at 500, 569 A.2d at 635-36.

The Court of Appeals of Maryland "balanc[ed] one's right to express himself and other's right to be free from disruption." *Id.* at 467, 569 A.2d at 619. The Court concluded that Section 121 is content-neutral, narrowly tailored to serve a substantial governmental interest and leaves open ample alternative channels of communication. Eanes was given fair notice that the volume level of his speech would be subject to prosecution if it was not lowered. Therefore, the statute did not violate Eanes' right to free speech.

— Kimberly A. Doyle

Jones v. State: THE FOURTH AMENDMENT IS VIOLATED WHEN POLICE STOP A BICYCLIST WITHOUT REASONABLE ARTICULABLE SUSPICION

In *Jones v. State,* 319 Md. 279, 572 A.2d 169 (1990), the Court of Appeals of Maryland, held that a police stop of a bicyclist for investigatory purposes based on a hunch, without a reasonable articulable suspicion justifying the stop, violated the fourth amendment. The court reasoned that a seizure occurred when the officer commanded the bicyclist to stop, thus affording fourth amendment protection.

Carl Lee Jones was riding his bicycle at 3:20 a.m. carrying a grocery bag hanging from the handlebars and, apparently, drycleaning bags across his shoulders and travelled from the general direction of a drycleaning store. The area where Jones was riding had been the scene of several recent burglaries. Officer Brown spotted Jones and in language to the effect of "hey, could you come here," commanded him to stop. Once stopped, the officer noticed a bulge in Jones' jacket pocket that appeared to be a handgun. A pat down search yielded a .25 caliber pistol. A subsequent search of the grocery bag yielded various quantities of cocaine, marijuana, and other paraphernalia. Jones was arrested and charged with possession and intent to distribute cocaine, possession of marijuana, and unlawful wearing and transporting of a handgun.

Prior to trial, Jones made a motion to suppress the evidence on the ground that the search and seizure was illegal because of the illegal stop. *Jones,* 319 Md. at 280, 572 A.2d at 170. The trial court denied his motion based on its finding that the initial encounter was not a seizure. Jones was convicted. *Id.*

The court of special appeals affirmed the conviction, finding the initial encounter was a "mere accosting", and not a seizure under the fourth amendment. *Id.* at 282, 572 A.2d at 171. The court determined that the stop was a "mere accosting" because there was no show of force or weapons used to effectuate the stop; and, therefore, the trial court properly denied the motion to suppress. *Id.* The court of appeals granted certiorari.

The issue on appeal was whether the stop was a legal seizure under the fourth amendment. Jones argued that an illegal stop and seizure occurred when the police ordered the stop of his bicycle without reasonable articulable suspicion. *Id.* The state posited two competing arguments. Either there was no error by the trial judge and therefore, the stop was consensual rather than custodial in nature and was not a seizure. Alternatively, if the stop was a seizure, there was sufficient articulable suspicion to justify the stop. *Id.*

The court began its analysis by stating the general rule that a police stop is a seizure when a reasonable person would feel that his freedom to walk away was restrained. *Id.* at 282, (citing *Terry v. Ohio,* 392 U.S. 1 (1968)). Additionally, the court, in distinguishing a seizure from a "mere accosting" held that a seizure occurs when an individual to whom questions are posed does not feel free to disregard the questions and walk away. *Id.* at 283, 572 A.2d 171 (citing *U.S. v. Mendenhall,* 446 U.S. 544 (1980)). Adopting a totality of the circumstances approach to determine what constitutes a seizure, the court stated that one or all of the following factors may persuade a trial court that a seizure occurred: (1) threatening presence of several officers; (2) show or use of a weapon; (3) physical contact by the officer; or (4) authoritative tone or language by the officer indicating an order rather than a request. *Id.*

Applying the *Mendenhall* factors, the court noted in *Florida v. Royer,* 460 U.S. 491 (1983), that merely approaching an individual and asking questions constituted a voluntary stop and was not a seizure unless the person approached was detained. Rejecting the use of a bright line test, the court instead posited

additional factors to consider when determining whether a seizure occurred: (1) police use of sirens or flashers; (2) use of a command to stop or halt, or show or use of a weapon; or (3) operating a road block or otherwise controlling the flow of traffic. *Jones*, 319 Md. at 285, 572 A.2d at 172 (citing *Michigan v. Chesternut*, 486 U.S. 567 (1988)).

In applying both the *Mendenhall* and *Chesternut* factors, the court of appeals found that the officer seized Jones when he commanded him to stop because the situation was such that a reasonable person would not feel free to walk away. *Jones*, 319 Md. at 285, 572 A.2d at 172. First, the officer was uniformed and driving a marked police car, and the hail translated into a command to compel Jones to stop. Further, the court stated, that it was reasonable for the defendant to feel constrained to stop, since to disobey or ignore an officer would be an offense. *Id.* (citing Md. Transp. Code Ann. section 21-103(a)(1987)). Thus, the court concluded that "given these circumstances, the average citizen, not being able to distinguish a mere accosting from a seizure, would have viewed the actions of the police officer's intimidating enough to have complied." *Jones*, 319 Md. at 286, 572 A.2d at 172-73.

The court analogized the level of physical control over Jones by the police with the level of control it held sufficient to constitute a seizure in *State v. Lemmon*, 318 Md. 365, 568 A.2d 48 (1990). In *Lemmon*, an officer identified himself to a suspect and stated "come here" as a command to the suspect to stop. When the suspect ran, the police chased him on foot and also tried to block his escape with a police car. The court held that the suspect was seized by the police at the initial encounter when they commanded him to stop. The *Jones* court concluded that Jones, like the suspect in *Lemmon*, was seized when the police commanded him to stop, because at that point, he did not feel free to walk away. *Jones*, 319 Md. at 287, 572 A.2d at 173.

Finding the initial encounter a seizure, the Court considered the state's alternative argument regarding the reasonableness of the stop. *Id.* The court noted that the officer admitted having no knowledge of any crime committed either at that approximate time or in that approximate location. *Id.* The court further noted that Jones was riding a bicycle in an area where recent burglaries occurred, carring what appeared to be drycleaning bags across his shoulders, and travelling from the general direction of a drycleaning store, and that these facts alone were not sufficient for the officer to have formed a reasonable and articulable suspicion to justify the stop. *Id.* The court concluded that the officer acted on a hunch that Jones was involved in or fleeing from a crime when he commanded him to stop; and, therefore, the stop was illegal. *Id.* at 288, 572 A.2d at 174.

The court of appeals has expanded the holding in *Lemmon* to the factually different case of a bicyclist, by finding that Jones was seized at the point when the officer commanded him to stop. Thus, a police officer must have a reasonable articulable suspicion to stop a bicyclist, like a motorist or pedestrian, or the stop will violate the fourth amendment.

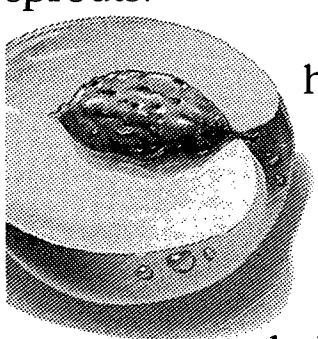
— *Laura Campbell*

This space contributed as a public service.

A defense against cancer can be cooked up in your kitchen.

There is evidence that diet and cancer are related. Some foods may promote cancer, while others may protect you from it.

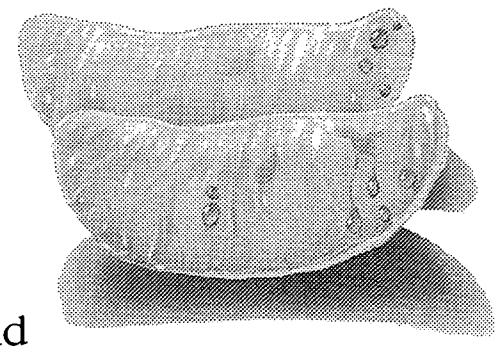
Foods related to lowering the risk of cancer of the larynx and esophagus all have high amounts of carotene, a form of Vitamin A which is in cantaloupes, peaches, broccoli, spinach, all dark green leafy vegetables, sweet potatoes, carrots, pumpkin, winter squash and tomatoes, citrus fruits and brussels sprouts.



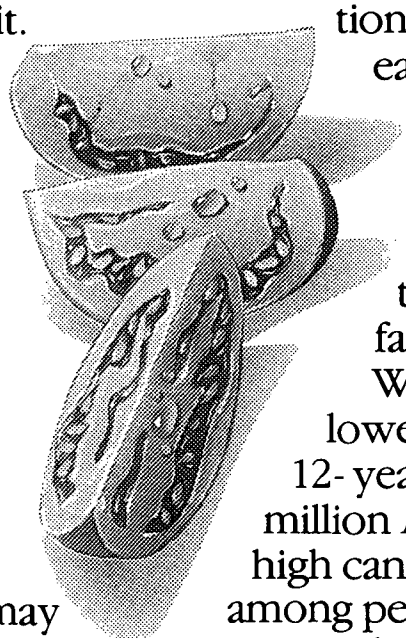
Foods that may help reduce the risk of gastrointestinal and respiratory tract cancer are cabbage, broccoli, brussels sprouts, kohlrabi, cauliflower.

Fruits, vegetables, and whole-grain cereals such as oatmeal, bran and wheat may help lower the risk of colorectal cancer.

Foods high in fats, salt- or nitrite-cured foods like ham, and



fish and types of sausages smoked by traditional methods should be eaten in moderation.



Be moderate in consumption of alcohol also.

A good rule of thumb is cut down on fat and don't be fat.

Weight reduction may lower cancer risk. Our 12-year study of nearly a million Americans uncovered high cancer risks particularly among people 40% or more overweight.

Now, more than ever, we know you can cook up your own defense against cancer. So eat healthy and be healthy.

No one faces cancer alone.

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