

INVESTIGATIVE STOPS LAW BULLETIN™

Vol. 4, No. 9 September 2005

in this issue:

Border Patrol Stop

U.S. Border Patrol agents in New York stop car full of illegal aliens ... 1

Police Questioning

Officer notes drugs in waist band of person stopped and questioned ... 2

Drug Dog

Officers use speeding as an excuse to walk a drug dog around car 3

Patdown Limits

Officers remove tin of mints during patdown and peek inside 4

Jurisdiction

Campus police officer authorized to conduct traffic stops outside of jurisdiction 5

Pedestrian Detention

Man arrested for possession of drugs while walking down a residential street at 4 a.m. 5

Plain Smell

Smelling marijuana leads officer to stop car to investigate 6

Drunk Driving

Woman stopped for weaving car charged with DUI 6

Pretextual Stop

Officers differ on reasons for stopping citizen 7

Investigative Stops Quiz

..... 8

Border Patrol Stop

U.S. Border Patrol agents in New York stop car full of illegal aliens

*Citation: U.S. v. Singh, 2nd Circuit U.S. Court of Appeals, No. 04-3324-cr (2005)
The 2nd U.S. Circuit has jurisdiction over Connecticut, New York, and Vermont.*

Champlain, N.Y., is one and a half miles away from the Quebec border. One night, at around 8 p.m., Border Patrol Agent Curtis saw a black Lincoln Town Car slowly traveling down a Champlain road before tapping its brake lights three times quickly in succession. Curtis noted the following:

- the area of New York the car was traveling was a frequent crossing area for illegal aliens;
- the car was registered to a Singh of Richmond Hills, N.Y., and had recently entered into the United States via Canada;
- black Lincoln Town Cars are often used to transport illegal aliens because of their large passenger capacity; and
- tapping the brakes three times quickly is often used as a signal to illegal aliens that a vehicle is waiting to transport them.

Curtis enlisted Border Patrol Agent Jefferson to assist him. Curtis and Jefferson watched as the car drove from Perry Mills Road to a McDonald's restaurant. While observing the parked vehicle at McDonald's, the agents noted that there were no passengers in the vehicle. Dispatch radioed in to let the officers know that a motion sensor at the border had been triggered.

The agents knew that a walk from the area of the motion sensor to Perry Mills Road would take about 15 minutes. The car left McDonald's, and the agents observed it heading west — back toward Perry Mills Road. The agents quickly set up observation posts on Perry Mills Road, and the two watched as the car first traveled west up Perry Mills Road with no passengers, and then east back down Perry Mills Road with at least two passengers.

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This bulletin is available on microfilm from University Microfilms International, Ann Arbor, MI.

Published by

QUINLAN PUBLISHING GROUP

Agent for Quinlan Publishing Co.

Investigative Stops Law Bulletin ISSN 1544-6409 (print) ISSN 1544-6417 (online)
23 Drydock Ave., Boston, MA 02210-2387 (617) 542-0048 fax: (617) 507-1079
email: info@quinlan.com <http://www.quinlan.com> Copyright © 2005

EDITOR'S NOTE:

In *Brignoni-Ponce*, the U.S. Supreme Court ruled that a roving border stop reasoned exclusively upon the apparent ancestry of the vehicle occupants was illegal. However, the Court did say that evidence of culture could be used as a factor in determining whether reasonable suspicion exists. Nevertheless, the court here did a factor analysis without mentioning the ancestral connection between Singh and a large number of the illegal aliens crossing through that area.

The car turned off Perry Mills Road and headed toward Interstate 87 — the main route to New York City. The agents radioed a third Border Patrol agent, Agent Hartigan, to stop the car. Four Pakistani nationals without valid immigration papers were found in the car, and so the agents arrested them and the driver, Singh.

Singh was convicted of transporting illegal aliens and appealed. Singh argued

that the sole reason for the roving stop was his nationality. Singh said that the fact that his car was registered to an Indian or Pakistani name and that Indians and Pakistanis often cross illegally in the area were the only causes the agents had to stop the car, since no agent observed him pick up the aliens, and no agent observed him violate any traffic laws. Singh argued that such observations do not amount to reasonable suspicion, which is required to pull over a person for a roving border stop on an inland road.

DECISION: Affirmed.

The appeals court found that there were “ample grounds” to detain Singh on suspicion of transporting illegal aliens.

The court found that the agents had factored in that:

- 1) the car was of a type often used to transport illegal aliens;
- 2) although the car was registered near New York City, the car was driving in a very rural area far from New York City;
- 3) the area the car was traveling was a

- frequent crossing point for aliens;
- 4) the car had just recently crossed into the United States from Canada a few days before;
- 5) the car was driving unusually slow;
- 6) the car tapped its brakes quickly three times, much in the manner of a common signal amongst illegal aliens;
- 7) shortly after the car may have signaled, there was an illegal border crossing;
- 8) the car returned to the road where it had earlier tapped its brakes at about the time when the aliens would have reached the road;
- 9) when the car headed toward New York City, it now had passengers; and
- 10) the stop occurred only two miles from the border.

Considering the totality of circumstances, the court found that Singh's request to rule the stop invalid and all evidence seized from the stop to be unlawful was properly denied.

see also: U.S. v. Brignoni-Ponce, 422 U.S. 873, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975).

Police Questioning

Officer notes drugs in waist band of person stopped and questioned

Citation: U.S. v. Francis, 11th Circuit U.S. Court of Appeals, No. 04-13268 (2005)

The 11th U.S. Circuit has jurisdiction over Alabama, Florida, and Georgia.

Francis was stopped by an officer for a motor vehicle violation. While the officer spoke with Francis, the officer asked some questions. First the officer asked about whether Francis had any guns on him, and he then asked if Francis had any drugs on him. During the conversation, Francis took off his shoes and loosened his belt. The action of loosening the belt revealed drugs hidden in the waist band, and Francis was arrested and frisked.

At trial, Francis argued that — although he was lawfully stopped — the questioning by the officer about the drugs and guns broadened the

scope of the stop and converted the lawful detention into an unlawful seizure. Further, he argued, Francis' perceived cooperation with the officer was actually coerced by a show of force by the officer. For these reasons, Francis requested the court suppress any evidence from the stop or the immediately subsequent interchange between the officer and Francis.

The lower court was unpersuaded by both arguments and denied the request. Francis appealed.

DECISION: Affirmed.

The court reminded Francis that

EDITOR'S NOTE:

This is another case wherein the defendant's charge that he or she was coerced by an official show of force has little to support it. If a defendant tries to assert that the mere appearance of the officer and the stop itself are enough to create a coercive circumstance in which no confession was voluntary, this argument will fail.

police questioning during a routine traffic stop is not unlawful provided that the question does not extend beyond the time needed to perform the

initial purpose of the traffic stop. Thus, unnecessarily prolonged traffic stops will amount to an unlawful seizure. However, in the case at hand, the court found that the total time of the traffic stop from start to finish and including the discovery of the contraband was only five minutes. Further, the court found that the questions were of a type that would help to rea-

sonably ensure the officer's safety.

The court also found that Francis' voluntary consent to be questioned by the officer was established by his cooperation in answering the questions, his voluntary removal of his shoes and loosening of his waistband, and the lack of signs of coercion demonstrated by the officer. The court noted that the officer did not

touch, restrain, or frisk Francis before the arrest, and he did not even unholster his gun until the moment of arrest, either.

As such, the court ruled that Francis's requests to suppress were properly denied.

see also: Penn. v. Mimms, 434 U.S. 106, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977).

Drug Dog

Officers use speeding as an excuse to walk a drug dog around the car

Citation: U.S. v. Garrett, 7th U.S. Circuit Court of Appeals, No. 04-3922 (2005)

The 7th U.S. Circuit has jurisdiction over Illinois, Indiana, and Wisconsin.

Detective Jones had been investigating Garrett for dealing crack. Jones observed Garrett selling crack in four separate controlled drug buys with a confidential informant. Although with the evidence he had, he could have submitted an arrest warrant immediately, Jones did not want to endanger his informant or jeopardize the integrity of the investigation, so he waited two months.

After two months passed, Jones instructed Detective Wilkerson and Sergeant McDonald to make a pretextual traffic stop on Garrett. McDonald observed Garrett doing 35 mph in a 25 mph zone, and he pulled him over for speeding. McDonald immediately called Wilkerson to his aid. Both, Wilkerson and McDonald, had been informed by Jones of Garrett's past offenses and his recent crack dealing.

The traffic stop took 20 minutes, and somewhere within it Officer Mielke and his drug dog, Cade, were called to the scene. Mielke and Cade arrived at the scene within minutes of the issuance of a warning to Garrett for speeding. Cade alerted to the passenger side door, and the officers found a secret compartment there that contained crack, marijuana, and a revolver. Although Garrett and his passenger initially did not wish to speak,

Garrett changed his mind at the police station and admitted responsibility for the gun and drugs.

At trial, Garrett requested that his statements, the gun, and the drugs be suppressed as the fruit of an unlawful detention. Garrett argued that although the initial detention may have been lawful, the 20 minutes it took to complete the stop was unnecessarily long and converted the lawful detention into an unlawful one.

The lower court disagreed and denied his request. The court ruled that 20 minutes for a traffic stop was not unreasonable, and the drug dog came within minutes of the completion of the traffic stop. As such, the added measure of the dog did not unreasonably extend the duration of the stop.

DECISION: Affirmed.

The appeals court stated that the detention itself was lawful. The introduction of the dog may have been lawful, the court admitted, but it could not make a judgment on the legality of the use of the dog based solely on the traffic stop. The question the court said that was left unanswered was: How long did it take for the dog to alert? Only after a dog has alerted that there is contraband does the detaining offic-

er have probable cause to further detain the suspect.

The prosecution pointed to how long it took the dog to get to the scene, and the defense pointed to how long the traffic stop took in general. What both parties should have been looking at is the span of time from the issuance of the warning to the dog's alert. If the span of time was only five or 10 minutes, the court suggested this would be reasonable. However, if the span of time from the issuance of the warning to the alert of the dog was, the court suggested, 19 minutes, it would likely be unreasonable.

Despite the defect in the arguments of both sides, the court still found sufficient reason to affirm the conviction. The court ruled that the lawfulness of the detention was beyond question because there was probable cause already from the evidence of four prior sales of

EDITOR'S NOTE:

Decided earlier this year, *Illinois v. Caballes* ruled that no level of suspicion is required for an officer to walk a drug sniffing dog around a driver's car. The Court found that since such a dog is trained to alert only to the smell of drugs, no legitimate privacy interest is intruded upon through its use.

crack. As such, the detention of Garrett via a traffic stop was no less lawful than a probable cause arrest on the street.

On this basis, the court affirmed the conviction and side-stepped the issue of dog use in pretextual traffic stops.

see also: Illinois v. Caballes, U.S. Supreme Court, No. 036-923 (2005).

Patdown Limits

Officers remove tin of mints during patdown and peek inside

Citation: State of Idaho v. Faith, Court of Appeals of Idaho, No. 30896 (2005)

Officer Mason, on a routine early-morning patrol, observed a motel parking lot for “stolen vehicles, suspicious individuals out in the lots possibly trying to commit vehicle burglaries, that type of thing” and noted what he thought to be an abandoned vehicle. Mason ran a license check on the vehicle and found it to be owned by Flynn, who had two outstanding warrants. Mason called for backup to help him search for Flynn, and Officer DeWitt arrived shortly thereafter. After inquiring about the car and Flynn at the motel lobby, the two officers returned to the parking lot only to notice someone reclined in the driver’s seat of Flynn’s car.

After ordering the person out of the car, the person identified himself to be Faith not Flynn. Wanting to confirm his identity, the officers handcuffed Faith’s hands behind his back and told him that he was not under arrest but merely detained while the two officers checked his identity. As the two officers moved Faith away from the car, Mason noted an eight-inch blade poking out of the snow near the curb.

DeWitt immediately initiated a Terry frisk on Faith as a weapons check. The officer noted in the front vest pocket he felt a “container measuring approximately three-quarters of an inch thick with the diameter of a baseball.” DeWitt testified it did not feel like a weapon, but he heard something “jingling around in it,” and removed the tin. Since he “wanted to see what was in it,” he handed the tin to Mason, who immediately opened it.

The only thing discovered in the tin was methamphetamine residue and drug

paraphernalia. Faith was arrested and charged with possession of methamphetamine.

Faith moved to suppress the evidence, but the motion was denied. Faith conditionally pled guilty so long as he could appeal the denial of his motion to suppress.

He appealed the denial of the motion arguing the officers violated his Fourth Amendment rights by manipulating, removing, and opening the tin.

DECISION: Reversed and sent back to the lower court.

Faith conceded that the detention, use of handcuffs, and justification for the Terry stop were proper, and so the only real question for the appeals court was whether the scope of the Terry stop had been exceeded. The court examined the Terry stop at the three stages in issue: manipulation, removal, and opening of the tin.

After briefly summarizing the history of the Terry stop as originating out of concern for the safety of officers, the court ruled that manipulation of the mint tin through Faith’s clothing was necessary as part of a valid search for weapons. However, the removal of the tin was unnecessary to protect the officers and therefore outside the scope of the Terry stop. And, the court observed, “The Altoids tin was not a weapon and it is highly unlikely that the tin could have been removed by Faith from his inside front pocket and opened by him while his hands were handcuffed behind his back, even if the tin had contained some kind of small in-

strument that Faith could have used as a weapon.” Further, even if the removal of the tin was necessary and justified, the tin posed no ascertainable danger once it was in the possession of the officers; there was no reason to open it. Mason had testified the tin “could have, um, any number of items in it. It could have possibly had needles in it. It could possibly have even a small pen knife or razor blade or, um, drug items in it and paraphernalia.” The court found his words unconvincing and quoted from a prior case, “It is not permissible to simply ‘recover’ objects from the suspect’s clothing, open the items or further examine them, and then, after the fact, argue the objects *might have* contained a weapon or were immediately apparent as contraband.”

see also: State v. Heath, 999 P.2d 324 (2000).

EDITOR’S NOTE:

The court stressed two additional factors throughout the decision. First, the court called attention to the circumstances of the search; Faith was not under arrest but was handcuffed by two armed officers, searched, and had evidence seized without his consent. Second, the court’s tendency to quote officer testimony illustrated the officers were poorly prepared to express the rationale for their actions, and it, combined with the mental image of how the search had been executed, may have cost them the case.

Jurisdiction

Campus police officer authorized to conduct traffic stops outside of jurisdiction

Citation: State v. Durr, Court of Appeals of Georgia, Fourth Division, No. A05A0514 (2005)

Durr was observed by a campus police officer weaving within his lane within the officer's jurisdiction. The officer conducted a traffic stop after Durr had left the officer's jurisdiction and arrested Durr for driving under the influence of alcohol.

Durr requested the court to suppress the evidence because the officer did not have reasonable suspicion to stop him and was not authorized to have conducted a traffic stop outside his jurisdiction. The court suppressed the evidence. The State appealed.

DECISION: Reversed.

The court ruled that weaving within a lane — though not a violation of the

law — can be indicative of drunk driving. So, such weaving can create reasonable suspicion enough to detain the driver.

Further, the officer may have legally stopped Durr as the natural conclusion of a hot pursuit. Despite the lack of probable cause, an officer may lawfully stop an individual outside of his or her jurisdiction with only articulable suspicion that an individual was committing a traffic or criminal violation so long as the chase meets the criterion for being hot pursuit.

Since the pursuit of Durr started in the officer's jurisdiction, current law would indicate that the later ar-

EDITOR'S NOTE:

While the chase seems to have been a hot pursuit, the lower court will likely have to settle issues like the quality and continuity of the pursuit before declaring it an example of the hot pursuit exception to the rules of the jurisdiction.

rest outside of the jurisdiction would be a lawful product of hot pursuit. The court reversed and sent the case back to the lower court for further analysis consistent with the findings of the appeals court.

see also: State v. Calhoun, 566 S.E.2d 447 (2002).

Pedestrian Detention

Man arrested for possession of drugs while walking down a residential street at 4 a.m.

Citation: Idaho v. Bigham, Court of Appeals of Idaho, Docket No. 30631, 2005 Opinion No. 45 (2005)

An officer on patrol of a residential neighborhood observed Bigham walking towards him at four in the morning. The officer thought this was an unusual time for someone to be walking the streets, so the officer stopped his patrol car to speak with Bigham. The officer asked Bigham if he could speak to him. The officer then recognized Bigham but could not recall his name. Upon the officer's request, Bigham identified himself. The officer recognized Bigham's name to be on a warrant list that he had seen a few days ago.

The officer ran a warrant check and arrested Bigham after confirming that there was an outstanding warrant for Bigham's arrest. The officer then searched Bigham incident to his arrest

EDITOR'S NOTE:

The potential unlawfulness of the detention discussed in this case was derived from a single sentence uttered by the officer to Bigham. The officer said that he asked, "Hey, can I talk to you for a minute?" However, Bigham testified that the officer said to him, "Hey you, come over here." The difference between those two sentences to the court was the difference between a consensual questioning and an unlawful seizure.

and discovered a small amount of methamphetamine.

Bigham asked the court to suppress the evidence because the methamphetamine was a product of an illegal deten-

tion. The court denied Bigham's request. Bigham appealed.

DECISION: Affirmed.

The officer was justified to arrest Bigham and search him because of the discovery of the outstanding arrest warrant.

An individual was considered seized when an officer, by way of physical force or authority, contains the individual's freedom. If however, a reasonable person in the position of the individual felt that he was free to leave or decline the officer's request, the encounter is considered consensual.

The attenuation doctrine allows the admission of evidence which would usually be suppressed if it was obtained in an unlawful manner so long as the

causal chain between the unlawful conduct and the discovery of evidence is weakened.

In this situation, the court did not consider whether the officer's initial stop was a seizure or a consensual encounter but found that even if Bigham's stop was unlawful, the officer's discovery of the outstanding warrant justified Bigham's arrest and subsequent search.

The court considered three factors under the attenuation doctrine in determining whether the officer's unlawful detention of Bigham was adequately at-

tenuated so as to admit the methamphetamine found on Bigham into evidence: 1) the time that elapsed between the officer's misconduct and the attainment of the evidence; 2) the intervening circumstances; and 3) the officer's purpose of his improper conduct.

In this case, the time that elapsed between the officer's contact with Bigham and his arrest lasted no more than minutes. Furthermore, the officer conducted himself in a proper manner; he did not act flagrantly when he asked

Bigham to stop. Nor did the officer request Bigham to stop to run a warrant check. It was the existence of the outstanding warrant for Bigham's arrest that acted as the intervening event. Thus, the lower court properly admitted the methamphetamine into evidence as the discovery of the outstanding warrant outweighed what could have been an unlawful stop.

see also: Florida v. Bostick, 501 U.S. 429, 11 S.Ct. 2382, 115 L.Ed.2d 389 (1991).

Plain Smell

Smelling marijuana leads officer to stop car to investigate

Citation: Iowa v. Fagerlind, Iowa Court of Appeals, No. 5-443/04-1272 (2005)

Early in the morning of February 29, 2004, an officer at a convenience store noticed Fagerlind enter and purchase cigarettes. Fagerlind appeared to be nervous and smelled of marijuana. She left the store in a small brown car. The officer returned to his patrol car and learned that the vehicle was registered to Fagerlind, who had a drug conviction. The officer pursued the vehicle and stopped it.

Upon approaching, the officer smelled marijuana and asked the occupants to get out of the car. The officer then obtained permission to search the vehicle and found a marijuana cigarette on the floorboard near where the third passenger had been sitting. All three were arrested and when Fagerlind was placed in the patrol car, the officer noticed her rummaging in her purse. A small bag of methamphetamine was later discovered.

After being charged with posses-

sion, she moved to suppress the evidence found in her car as the result of an illegal stop and subsequent search of her vehicle. The trial court denied her motion and she appealed.

DECISION: Affirmed.

The trial court properly denied her motion because the stop and subsequent search were legal.

An officer could stop a vehicle for investigative purposes when the officer had reasonable suspicion to believe that criminal activity had occurred or was occurring. Reasonable suspicion was evaluated in light of the totality of the circumstances confronting the officer at the time of the stop. An odor combined with furtive movements had, in past case law, provided an officer with reasonable suspicion and justified a search of her person.

In this case, the officer was in a con-

venient store when he observed Fagerlind walk into a store and purchase a cigarette. He noticed Fagerlind appeared nervous and smelled of marijuana. Based on these two factors, and the known drug conviction of the owner of the vehicle, the officer had reasonable suspicion to search Fagerlind's person and thus stop her vehicle.

see also: State v. Kinkead, 570 N.W.2d 97 (Iowa 1997).

EDITOR'S NOTE:

The extension of plain-view doctrine into smell is a vibrant issue in courts today. What seems to be emerging as a pattern in courts is that smell alone is not a justification for a detention of any kind, but smell can be a factor in the analysis of reasonable suspicion or probable cause, as the case requires.

Drunk Driving

Woman stopped for weaving car charged with DUI

Citation: Ohio v Frazee, Ohio Court of Appeals, No. CA2004-07-085 (2005)

On Feb. 15, 2004, an officer on patrol was informed that Frazee was driving

her vehicle while intoxicated. The officer began to following Frazee and noticed

her car drift to the center lane, touch the right fog line, and straddle the center-

EDITOR'S NOTE:

An interesting note to this case is that although there was probable cause of a traffic violation to stop Frazee, she was not ultimately given a citation. This seems to wipe away from pretextual stops even the procedural formalities normally associated with a traffic citation.

line. Based on this observation, the officer stopped Frazee.

The officer began to speak to Frazee and noticed a strong odor of alcohol, slurred speech, and that she was staring straight ahead. Frazee then admitted that she had consumed six beers. After ad-

ministering a field test, Frazee was arrested and taken to the police station. She refused a Breathalyzer test and was charged with DUI.

After being charged with DUI, Frazee moved to suppress the evidence arguing that the officer illegally stopped her vehicle. The trial court allowed her motion and the state appealed.

DECISION: Reversed.

The trial court improperly allowed her motion because the officer had reasonable suspicion to stop Frazee's car.

An officer could make an investigatory stop of a vehicle when the officer had a reasonable articulable suspicion that criminal activity had occurred or

was occurring and the officer sought to confirm or refute this suspicion. The officer could also stop a vehicle based on probable cause that a traffic violation had or was occurring.

In this case, the officer observed Frazee's vehicle drift within its lane, touch the right fog line, and straddle the centerline. Based on the observations of a traffic violation, the officer had probable cause to stop Frazee and did not violate her rights.

see also: State v. Weinheimer, 2004 Ohio 801 (2003).

see also: Dayton v. Erickson, 665 N.E.2d 1091 (1996).

Pretextual Stop

Officers differ on reasons for stopping citizen

Citation: U.S. v. Gant, U.S. District Court for the Eastern District of Pennsylvania, No. 05-140 (2005)

Two officers heard over the radio dispatch that a male in a white Cadillac Esplanade was exposing himself. The officers investigated the complaint and reported the complaint to be unfounded. About 45 minutes later, the officers saw in a different part of the district a grayish silver Esplanade and decided to follow it. The car made several turns and ended up in the same block as it started. The officers decided to stop the Esplanade.

During the course of the stop, Gant was handcuffed and taken from his car, which was then searched. Counterfeit bills were found in the car. Officer Winkler reported that after shining a flashlight into the front seat, he saw what appeared to be drugs, which is why he seized Gant. Officer Myers saw no such thing. Myers reported that — although the officers' car had a car between it and Gant's — they saw Gant fail to use a turn signal. Myers testified that he

and Winkler had discussed whether they should pull over Gant, but Winkler remembers no such conversation. One officer said the counterfeit money was seized in a patdown, and the other claimed it was seized during processing at the police station. Several other inconsistencies also existed.

Gant requested that the court suppress all evidence from the stop as it was an unlawful detention with no clear premise.

DECISION: Granted.

The court found that the very different accounts by the two officers reduced their credibility, and the officers' contentions that Gant had made a left turn without signaling was even more discrediting since a tail light could not have been seen through the car in front of them.

Indeed, the court found, the reason for the initial detention had only been

filed long after the arrest. Under such circumstances, the court could find no substantiated reason for the officers to have detained Gant. As such, the court ruled the stop unlawful and granted Gant's request to suppress.

see also: U.S. v. Givan, 320 F.3d 452 (2003).

see also: U.S. v. Johnson, 63 F.3d 242 (1995).

EDITOR'S NOTE:

In light of the differing accounts, the court seemed to use each of the officers as a means to verify the validity of claims made by the other. Anything that wasn't corroborated by the other officer was dropped from the court's consideration. With nothing left to evaluate at the end of its analysis, the court had no choice but to grant the request.

Investigative Stops Quiz

Answers (in italics) appear below their corresponding questions

1. A police officer stops a car for having a defective muffler and sees another car start to pull over in response to the pulling over of the car with the defective muffler. The officer discovers illegal aliens in the car with the defective muffler and detained the driver until Border Patrol arrived. The officer radios ahead that he needs someone to stop the other car. An officer responds and stops the car, and, in the process, discovers more illegal aliens. Is the second stop lawful?

STOP: Unlawful.

While the stop of the first car was based upon probable cause of a legitimate violation, the detention of the second car was based on no more than a hunch. Without some further reason to stop the second car, the hunch alone could not justify the detention of the second car.

Citation: U.S. v. Ross, U.S. Dist. Ct. for the Western Dist. Of Texas, San Antonio Div., No. SA-05-CR-97-XR (2005).

2. An officer sees a person sitting alone in a vehicle and decides to approach. As the officer nears, the person starts the car and drives away. In the driver's haste, he breaks several traffic laws, and the police pursue. After ignoring the police in chase behind him for a while, the police finally pull over the car. The suspect is charged with evading arrest or detention and unauthorized use of a vehicle. The driver requests that the initial ap-

proach of the officer or, in the alternate, the eventual stop of the driver was unlawful. Was either stop lawful?

STOPS: Lawful.

Although the approaching officer may have initially had the intent to conduct a brief stop on the driver, he drove off too quickly for the officer to conduct any stop. As such, no reasonable suspicion was required to simply approach a vehicle. Further, the later successful detention was predicated upon the observation of several traffic violations and so was lawful.

Citation: Shanks v. Texas, Texas Ct. of App, 13th Dist., Corpus Christi, No. 13-03-089-CR (2005).

3. An officer stops a motor home for speeding and asks for the driver's license, registration, and insurance. The driver has none of these. Further, the officer notes while walking up that the vehicle has an expired license and expired temporary vehicle permit. Suspicious, the officer asks the driver to step out of the vehicle, and then handcuffs him. The officer explains that the driver is not under arrest and that the handcuffs are just for the officer's protection. While handcuffing, the officer discovers the driver has an empty holster on his side. He asks for the location of the gun, and the driver denies having one. The officer initiates a frisk and finds a wallet with a license the driver said he did not have. The officer calls backup and asks dispatch to run

a check on the driver. The officer looks into the motor home to check on the passenger. The officer sees a handgun behind the driver seat, and so the officer enters the motor home. Backup arrives, the gun is seized, and the license turns out to be fake. When the real license of the driver is checked, it reveals several outstanding arrest warrants. Was the stop lawful?

STOP: Lawful.

The initial detention of the driver was based on probable cause of speeding and was therefore lawful. The use of handcuffs and the frisk were to ensure officer safety, and so these actions did not convert the stop into an unlawful stop. While handcuffing would generally be indicative of arrest, the officer was alone, had stopped a vehicle with multiple occupants, and had reasonable suspicion that the failure to provide identification was indicative of a more serious problem.

Citation: Wash. v. Thompson, Wash. Ct. of App., Div. 3, No. 22384-1-III (2005).

Disclaimer: *This quiz is intended for informational purposes only and should not be construed as legal advice. The answers to these questions are based on current state and federal case law; however, particular states may be more restrictive of officer conduct. Whenever you are unclear about proper procedure, ask an attorney in your jurisdiction.*

Questions? Comments?

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