

Defending Pipeline Drug Cases



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I. Traffic Stop Seizures

a. The traffic stop (the “seizure”) occurs when there is:

i. Probable cause to believe a traffic violation has occurred, or

1. Whren v. United States, 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996).

Officers observed truck stopped at an intersection for an unusually long time, take an abrupt right turn, and accelerate quickly down the road they had turned onto. The Court held, as a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.

2. Heien v. North Carolina, 574 U.S. 54, 135 S.Ct. 530, 190 L.Ed.2d 475 (2014).

Officer stopped Defendant due to one faulty brake light, searched the vehicle, and found cocaine. The state law only required that one brake light be working, but the Court held that an Officer’s misinterpretation of the law does not vitiate probable cause if it was “reasonable” mistake.

ii. Reasonable suspicion criminal activity is afoot

1. Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L.Ed.2d 889 (1968).

Officers conducted pat downs on persons he believed to be planning to rob a bank. The Court held that an officer may conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot.

2. Navarette v. California, 572 U.S. 393, 134 S.Ct. 1683, 188 L.E.2d 680 (2014).

Officer conducted traffic stop based on a 911 caller reporting a vehicle had ran her off the road, searched the vehicle, and found marijuana. Based on the 911 call, the officer had reasonable suspicion of criminal activity.

II. Detention and the Mission of the Traffic Stop

a. Law enforcement may only detain long enough to complete the mission of the traffic stop

i. Illinois v. Caballes, 543 U.S. 405, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005).

A back-up officer arrived at the scene of a traffic stop and conducted a dog sniff, discovering drugs, while the other officer was writing a ticket for the motorist. The Court held that the investigative activity was lawful because it did not prolong the stop beyond the time reasonably required to complete the officer's original mission.

b. The questioning must not go outside the scope of the traffic stop

i. Rodriguez v. United States, 135 S.Ct. 1609, 191 L.Ed.2d 492 (2015).

1. K-9 officer conducted a traffic stop due to motorist driving on the highway shoulder, undertook the usual traffic stop procedures, issued a written warning, and then continued to detain the motorist for another 7-8 minutes, until a back-up officer arrived, and then conducted a dog sniff of the vehicle. The Court expanded that the "mission" of a traffic stop is to address the violation that warranted the stop and to attend to safety related concerns and that an officer's mission during a traffic stop typically includes whether to issue a traffic ticket, checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance.

a. *Police may ask about purpose and destination of travel*

i. Arizona v. Johnson, 555 U.S. 323, 29 S.Ct. 781, 172 L.Ed.2d 694 (2009).

Officer asked a passenger of the vehicle about his potential gang affiliation. The Court held an officer's inquiries into matters unrelated to the justification of the stop do not convert the encounter into something

other than a lawful seizure, as long as the inquiries do not measurably extend the duration of the stop.

ii. United States v. Allegree, 175 F.3d 648 (8th Cir. 1999).

The Court held that a reasonable investigation during a traffic stop may include asking for the driver's license and registration, asking the driver to sit in the patrol car, and asking about the driver's destination and purpose.

b. *Officers may detain long enough to run a "Triple I" check*

i. United States v. Valle Cruz, 452 F.3d 698 (2006).

The State used a "Triple I," or the Interstate Identification Index report finding the motorist to have a record of drug charges to supplement their probable cause argument.

c. Police may not detain for longer than is **reasonably necessary** to complete the mission of the traffic stop

i. United States v. Sharpe, 470 U.S. 675, 105 S.Ct. 1568, 84 L.Ed.2d 605 (1985).

The Court held that there is no rigid time limitation for Terry stops, but officers must diligently pursue a means of investigation likely to confirm or dispel suspicions quickly.

ii. Rodriguez v. United States, 135 S.Ct. 1609, 191 L.Ed.2d 492 (2015).

K-9 officer conducted a traffic stop due to motorist driving on the highway shoulder, undertook the usual traffic stop procedures, issued a written warning, and then continued to detain the motorist for another 7-8 minutes, until a back-up officer arrived. He then conducted a dog sniff and drugs were discovered. The Court held that the authority for a traffic seizure "ends when tasks tied to the traffic infraction are—or reasonably should have been—completed."

iii. United States v. Cheatham, 577 Fed. Appx. 500 (6th Cir. 2014).

Officers conducted a traffic stop during which the driver admitted to driving without a license. The driver was arrested and put in the

back of the police car. The officers then ordered the passenger out of the vehicle, told him to put his hands on his head, and conducted a pat down, finding a pistol and hashish. The officers subsequently arrested the passenger. The Court held that the traffic stop had been completed upon arrest of the driver and there was no reasonable suspicion to extend the stop.

IV. Justification for Continued Roadside Detention

a. Consensual Search

- i. Katz v. United States, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967).

A search authorized by consent is valid under the Fourth Amendment.

- ii. Bumper v. North Carolina, 391 U.S. 543, 88 S.Ct. 1788, 20 L.Ed.2d 797 (1968).

A 66-year-old widow allowed four male police officers into her home because they said possessed a search warrant, which they did not. The Court found that if consent was granted only in submission to a claim of lawful authority, the consent is invalid coercion and the search is unreasonable.

- iii. Schneckloth v. Bustamonte, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973).

Consent cannot be coerced, by explicit or implicit means, by implied threat or covert force. Known knowledge of the right to refuse is not a necessary requisite to voluntary consent and the totality of the circumstances test must be used to determine the validity of consent.

b. Consent to Drug Dog Sniff

- i. U.S. v. Chavira, 9 F.3d 888 (10th Cir. 1993).

Border patrol agent obtained motorist's consent to conduct a dog sniff on his vehicle. The dog then indicated to the presence of drugs and a search revealed marijuana and cocaine. The court

held that a consented to dog sniff that lead to the discovery of drugs could not violate the Fourth Amendment.

ii. United States v. Richards, 500 F.2d 1025 (9th Cir. 1974).

A man consented to a search of his personal belongings the he had moved from his vehicle onto a private plane. A dog sniffed his belongings during the search and alerted to the presence of drugs in a wrapped Christmas package. The man contended the officers had violated his Fourth Amendment rights because he had not consented specifically to a dog sniff. The Court held that since the man had consented to the search, a dog sniff was an efficient way to determine if the belongings contained drugs.

iii. U.S. v. Perez, 37 F.3d 510 (9th Cir. 1994).

Officers found cocaine in the motorist's vehicle after he consented to a search, and a drug dog alerted to a spot in the undercarriage, while the officers were searching. The court held that dog sniff was a minimal intrusion while the consensual search was occurring and denied the motion to suppress.

iv. United States v. Robinson, 16 Fed. Appx. 966 (10th Cir. 2001).

A driver consented to extended questioning and to wait for a drug dog following the completion of the traffic stop. The Court held that a dog sniff conducted during a consented to extension of the stop does not constitute a search for Fourth Amendment purposes.

v. United States v. Garcia, 167 Fed. Appx. 737 (10th Cir. 2006).

The court held that consent is not required for a dog sniff of a lawfully detained vehicle.

c. Consent to Answer More Questions Once Citation/Warning Issued and Mission is Complete

i. United States v. Chavira, 467 F.3d 1286 (10th Cir. 2006).

A traffic stop can become a consensual encounter, requiring no reasonable suspicion, if the officer returns the license and registration and asks questions without further constraint of the motorist.

- ii. United States v. West, 219 F.3d 1171 (10th Cir. 2000).

A driver may voluntarily consent to further questioning after completion of the traffic stop.

d. Voluntary Information About Criminal Activity

- i. United States v. Nersesyan, 229 F.Supp.3d 1136 (E.D. Cal. 2017).

Motorist told officer that he had two rifles to a firing range on the day prior to the traffic stop. Since the comments were made during a routine traffic stop the officer made for a missing license plate, motorist was not considered to be “in custody” for purposes of Miranda and the comments were allowed into evidence.

e. Reasonable Suspicion

- i. United States v. Gordon, 2018 WL 2843277 (E.D. Mich. 2018).

Officer stopped motorist for following too closely, completed paperwork and a background check, but proceeded to call for backup, and 29 minutes into the stop, the backup officer found a firearm in a passenger’s purse, then conducted a dog sniff, which found no drugs. The court held that the 30-minute gap between the officer obtaining the information needed to issue a ticket, the discovery of the firearm, and statements made by the officer revealed the intent to discover other crimes despite the absence of reasonable suspicion and the firearm was suppressed.

- ii. re: what constitutes reasonable suspicion to justify continued detention

- 1. Reasonable suspicion not enough to search

f. Reasonable Suspicion for *Terry* Pat Down During Stop

- i. Arizona v. Johnson, 555 U.S. 323, 129 S.Ct. 781, 172 L.Ed.2d 694 (2009).

An officer conducted a pat down on a passenger of a car that had been stopped for a traffic violation, after he exited the vehicle. The Court held that a pat down of a driver or passenger during a

traffic stop is justified if the police harbor a reasonable suspicion that the person subjected to the frisk is armed and dangerous.

V. Probable Cause to Search the Vehicle

a. Plain View (drugs, weapons, etc.)

- i. Minnesota v. Dickerson, 508 U.S. 366, 113 S.Ct. 2130, 124 L.Ed.2d 334 (1993).

Police completed a Terry stop on a man leaving a building that was known for cocaine distribution. The Court held if contraband is left in open view and is observed by a police officer from a lawful vantage point or observed through the sense of touch, they may seize it without a warrant, as it does not constitute a search under the Fourth Amendment.

b. Credible Informant Tip

- i. United States v. Ross, 456 U.S. 798, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982).

Officers arrested a driver and searched the trunk of his vehicle after receiving an informant tip the driver was selling narcotics out of his trunk. The Court held that the credible informant tip was probable cause to search the vehicle and that probable cause allows for a warrantless search of the *entire vehicle*, meaning every part of the vehicle and its contents, including the trunk, all containers and packages.

c. Officer Smells Odor of Narcotics

- i. United States v. Wright, 844 F.3d 759 (8th Cir. 2016), cert. denied, 137 S.Ct. 2279, 198 L.Ed.2d 710 (2017).

The smell of burnt marijuana and presence of a marijuana cigar in plain view through the window were sufficient to justify a search. As no warrant was required, the officers could properly search the glove compartment, as it could conceal drugs they were searching for.

- ii. United States v. Lesane, 361 Fed. Appx. 537 (4th Cir. 2010).

The odor of marijuana, without more, may requisite probable cause to support the warrantless search of a vehicle and baggage contained in that vehicle.

iii. United States v. Franklin, 547 F.3d 726 (7th Cir. 2008).

A police officer who smells marijuana coming from a car has probable cause to search that car.

d. Dog Indicates to the Odor of Narcotics

i. Florida v. Harris, 568 U.S. 237, 133 S.Ct. 1050, 185 L.Ed.2d 61 (2013).

The State does not have to present an exhaustive set of records on drug dog's performance in the field for its indication to provide probable cause to search a vehicle, its satisfactory performance in a certification or training program can provide sufficient reason to trust his alert and have probable cause to search a vehicle.

VI. Valid Consensual Search of a Vehicle and Contents

a. Authority to Consent to Search

i. United States v. Matlock, 415 U.S. 164, 94 S.Ct. 988, 39 L.Ed.2d 242 (1974).

Only those with a "common authority" over the premises or effects can give valid consent to search it. Common authority is not to be implied from a mere property interest but requires a mutual use of the property for most purposes, so that each has a right to permit inspection and other users have assumed the risks thereof.

ii. Memorandum and Order (granting motion to suppress), United States v. DiGiorgio, No. 4:08-cr-03019-RGK-DLP (D. Neb. Aug. 11, 2008), ECF No. 47.

The Court granted a motion to suppress when officer had searched luggage in vehicle which belonged to a passenger who had not consented to the search of the vehicle, while the motorist had. The State had failed to show that the officer

thought the bag was mutually used by the two passengers or that the motorist had “common authority” or “control” over the bag.

b. Valid Consent to Search

- i. Katz v. United States, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967).

A search authorized by consent is valid under the Fourth Amendment.

- ii. Bumper v. North Carolina, 391 U.S. 543, 88 S.Ct. 1788, 20 L.Ed.2d 797 (1968).

A 66-year-old widow allowed four male police officers into her home because they said possessed a search warrant, which they did not. The Court found that if consent was granted only in submission to a claim of lawful authority, the consent is invalid coercion and the search is unreasonable.

- iii. Schneckloth v. Bustamonte, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973).

Consent cannot be coerced, by explicit or implicit means, by implied threat or covert force. Known knowledge of the right to refuse is not a necessary requisite to voluntary consent and the totality of the circumstances test must be used to determine the validity of consent.

c. Consent to Search but Not Destroy Property

- i. United States v. Osage, 235 F.3d 518 (10th Cir. 2000).

The Court held that an officer may not “destroy or render completely useless a container which would otherwise be within the scope of a permissive search” based on general consent alone, but must obtain explicit authorization to do so or have some “other, lawful basis on which to proceed.”

- ii. United States v. Strickland, 902 F.2d 937 (11th Cir. 1990).

The Court held that while the officers did not have explicit permission to cut open the spare tire, they had discovered probable cause to do so when conducting the search the motorist had consented to.

d. Limited Consent to Search

- i. United States v. Murillo-Salgado, 854 F.3d 407 (8th Cir. 2017), cert. denied, 138 S.Ct. 245, 199 L.Ed.2d 157 (2017).

Motorist gave officer voluntary consent to search the vehicle which revealed an air compressor that had recently been painted with non-factory welds attaching a bracket on it. The Court held that a warrantless search of an automobile for contraband where the officer had obtained voluntary consent, provided the search is limited to the scope of consent, and led to the discovery of probable cause to open a sealed container is a valid search and seizure under the Fourth Amendment.

e. Right to Revoke Consent to Search at Anytime

- i. United States v. McFarley, 991 F.2d 1188 (4th Cir.), cert. denied, 510 U.S. 949, 114 S.Ct. 393, 126 L.Ed.2d.

The Court held once consent for a search is withdrawn or its limits exceeded, the conduct of the officials must be measured against the Fourth Amendment principles.

VII. Arrests and Arrest Warrants

a. Premature Arrest

- i. Michigan v. Summers, 452 U.S. 692, 101 S.Ct. 2587, 69 L.Ed.2d 340.

The Court held that every arrest and every seizure having the essential attributes of a formal arrest, is unreasonable unless supported by probable cause.

- ii. United States v. Kithcart, 134 F.3d 529 (3d Cir. 1998).

The Court held that there was no probable cause for officer to arrest and search motorist prior to discovery of guns in the vehicle, regardless of information that two black males driving a black sports car were believed to have committed three robberies in the area.

b. Arrested for Traffic-Related Offense

- i. Arizona v. Gant, 556 U.S. 332, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009).

Motorist was arrested due to driving on a suspended license and the police subsequently searched his vehicle. The Court held that there was no need to search the vehicle for evidence because they already had evidence of the crime he had committed.

- ii. Colorado v. Bertine, 479 U.S. 367, 107 S.Ct. 738, 93 L.Ed.2d 739 (1987).
Officers found controlled substances and large amounts of case in vehicle they were inventorying after driver was arrested for driving under the influence. The Court held that that law enforcement officers may make a warrantless search of a legitimately seized vehicle provided the inventory is conducted according to standardized criteria or established routine.

- iii. United States v. Williams, 930 F.3d 44 (2019).

Motorist was arrested for speeding, driving recklessly, and unauthorized use of a rental car. Officers only found a gun hidden behind paneling in center console during a second inventory of the vehicle conducted after hearing in a recorded prison call that there was something of value in the vehicle. The Court found that second search was still part of a reasonable inventory, as removing the paneling was done without a tool, caused little-to-no damage and precinct's motive behind the inventory protocol was to ensure that motorists received all valuable belongings back and would not accuse the department of theft.

VIII. Roadside Custodial Interrogations

a. When is a motorist "in custody"?

- i. Berkemer v. McCarty, 468 U.S. 420, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984).

Motorist was pulled over after weaving in and out of an interstate lane. The officer requested he step out of the car and the motorist told the officer he had been drinking and smoking

marijuana. The officer subsequently placed him under arrest. Motorist failed to demonstrate that he was subjected to restraints comparable to those associated with a formal arrest to render themselves “in custody” because there was only a short time between the initiation of the stop and arrest, he was not handcuffed, and the officer had not told the motorist that he planned to arrest him.

ii. Howes v. Fields, 132 S. Ct. 1181, 182 L. Ed. 2d 17 (2012).

1. Prisoner supplied incriminating evidence while serving a prison term. In light of all objective circumstances of the interrogation, to be “in custody” a reasonable person much feel they were not at liberty to terminate the interrogation and leave. The prisoner was not “in custody” because imprisonment alone is not enough to create a custodial situation. Objective circumstances include, the location of questioning, its duration, statements made during the interview, physical restraint during the interview, and the release of the interviewee at the end of the questioning.

iii. State v. Landis, 281 Neb. 139, 794 N.W.2d 151 (2011).

1. Court found that motorist was not “in custody” when he had first consented to additional questioning by the officer he was in the cruiser with and an additional officer leaned on the passenger door, “sandwiched” the motorist between the two of them, and joined in the interrogation.

a. Specific Issue- Is being handcuffed “in custody” for purposes of Miranda?

i. U.S. v. Fonia-Castillo, 408 F.3d 52 (1st Cir. 2005).

Neither the use of handcuff nor the drawing of a weapon necessarily transforms a valid Terry stop into a de facto arrest.

ii. United States v. Fiseku, 915 F.3d 863 (2nd Cir. 2018).

Officer handcuffed men he found having a suspicious meeting in a heavily wooded area while he questioned them and searched their vehicle. The

court found it was a reasonable precaution to protect both himself and the public.

iii. Howell v. Smith, 853 F.3d 892 (7th Cir. 2017).

Officer's handcuffing of man suspected to have a firearm and having discharged said weapon in road rage incident was a reasonable precaution to protect himself and the public.

iv. Regardless of these various Circuit holdings, being handcuffed is an objective circumstance considered by courts to determine if someone is "in custody" post-Howes.

See Sialoi v. City of San Diego, 823 F.3d 1223 (9th Cir. 2016); United States v. Wiggins, 708 Fed. Appx. 105 (4th Cir. 2017); People v. Hightower, 154 A.D.3d 636, 63 N.Y.S.3d 370 (1st Dep't 2017); State v. Fullerton, 2018 UT 49, 428 P.3d 1052 (Utah 2018).

b. When does a roadside interrogation become custodial?

i. Berkemer v. McCarty, 468 U.S. 420, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984).

The roadside questioning of a motorist detained pursuant to a routine traffic stop does not amount to "custodial interrogation" for the purposes of *Miranda*.

ii. Rhode Island v. Innis, 446 U.S. 291, 100 S. Ct. 1682, 64 L. Ed. 2d 297 (1980).

Defendant supplied a self-incriminating response when officers were speaking with one another in front of the defendant. The Court held that "interrogation" is not only the express questions asked by the officers but also any of their words or actions, other than those normally attendant to arrest and custody, that the officers should know are reasonably likely to elicit from the suspect an incriminating response, but the officers in question had no way of knowing that their comments would elicit a self-incriminating response from the defendant.

IX. Related Problems

a. Federal Conspiracy Cases

- i. Many large interstate drug stops become multi-state drug conspiracy cases. 21 U.S. Code § 841,846.
- ii. Money Laundering. 18 U.S. Code § 1952,1956.

b. Cash Seizures/ Forfeitures/Property

- i. "Drugs go east, money goes west"
- ii. Vehicles transporting contraband are subject to forfeiture. 18 U.S. Code § 981.

X. Conclusion

- a. For best results, conduct a step-by-step analysis, even when a 4th Amendment violation is obvious. Talk to local criminal defense lawyers, they know the habits of the highway patrol.