CONSTITUTIONAL CRIMINAL PROCEDURE
ISSUES AND TRAFFIC STOPS

A Presentation of the
Texas Municipal
Courts Education
Center
Municipal
Prosecutors
Conference
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Portland, Texas – with slight,
unauthorized modification
by Geary Reamey
Amendment Four:
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
Art. 1, Section 9, Texas Constitution

The people shall be secure in their persons, houses, papers and possessions, from all unreasonable seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause, supported by oath or affirmation.
None of the following concepts and principles involve use of a warrant

While the courts prefer warrants, obtaining warrants is seldom practical or safe during traffic stops

Consequence: It is our burden to demonstrate legality of stops, searches, and seizures
Reasonable suspicion of criminal activity (such as DWI)

Probable cause of criminal activity (such as traffic violation in officer’s view)

Community caretaking function

Authorized roadblocks and checkpoints

What are some legal bases for stops of vehicles?
What are some legal bases for searching legally stopped vehicles?
Legal Contact With Drivers and Occupants of Vehicles
Law Enforcement / Citizen Contact

1. Voluntary encounter
   - No suspicion required

2. Temporary detention “Terry Stop”
   - Reasonable suspicion required

3. Arrest
   - Probable cause required
Law Enforcement / Citizen Contact

Voluntary Encounters

Temporary Detentions
Community Caretaking
Roadblocks
Arrests

Fourth Amendment “Seizures” = Reasons Required
I'm sure I have NO Probable Cause.

What can I do?

I know these guys are up to something illegal, but . . .
Temporary Detention

A Fourth Amendment “seizure”

Requires individualized suspicion focusing on individual detained

Suspicion must be based on crime-related activity

Detention necessary to determine if suspicion is justified – to investigate
Temporary Detention

*Terry v. Ohio, 392 U. S. 1 (1968)*

Officer’s observation of two individuals suspected of “casing” a store (planning a robbery) leads to official action: detaining to investigate and pat down for weapons.

“STOP and FRISK” is born!
Temporary Detention

Sometimes referred to as a “Terry Stop,” it requires less than probable cause, but still a minimum of articulable facts that make it reasonable to suspect that someone is engaged in crime-related activity.
Temporary Detention

“REASONABLE SUSPICION”

- Suspicion for which an officer has reasons. Reasons that can be explained.

- Suspicion that may be affected by officer’s training and experience.
“Particular facts and *inferences rationally drawn* from those facts that, when viewed under the totality of the circumstances and in light of the officer's experience, create a *reasonable suspicion* that criminal activity is afoot.” *Terry v. Ohio* (U. S. Supreme Court, 1968)

“This process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the *cumulative information* available to them that ‘might well elude an untrained person.’” *U. S. v. Arvizu* (U. S. Supreme Court, 2002)
Temporary Detention

The Texas Test for Reasonable Suspicion:

1. Activity out of the ordinary
2. Detain individual connected with activity
3. Activity is crime-related
Temporary Detention

An investigative tool for law enforcement, useful in two circumstances:

1. **Stop and detain** to investigate

2. **Continue to detain** to investigate
Example: 1. **Stop and detain**

**“Drunk Car”**

Vehicle observed to be
1. weaving, but within lane
2. proceeding at speed slower than traffic flow
3. driver making jerky, uncoordinated corrections

**YET**, no offense seen by officer . . .
Example: 1. Stop and detain

Car in Suspicious Place

Vehicle observed
1. emerging from behind strip shopping center at 3:00 a.m.
2. lights off until leaving parking lot
3. all stores closed, only security lights on
4. officer knows of recent burglaries in same neighborhood
Example: 1. Stop and detain

“BOLO” RE: VEHICLE USED IN ROBBERY

Dispatcher relays info from officers at scene of robbery describing location, suspects, vehicle used and direction of travel . . .

Patrol officer sees vehicle matching description, with matching number of occupants, going in described direction away from general area of robbery
Example: 2. Continue to detain

Assume vehicle stopped for “drunk car” facts (previous slide) but upon investigation officer learns

1. driver not intoxicated
2. after running plate, dispatcher advises vehicle matches description of one used minutes before during robbery
3. vehicle occupants unusually nervous and furtive
Temporary Detention -- Options

Temporary detention “Terry Stop”

- Detain individual for a reasonable period of time to satisfactorily account for his activity
- Interview (No “Miranda Warning” is required)
- Transport detainee to possible crime scene
- Make reasonable investigative inquiries, i.e., request identity, reason for being in area, explanation of suspicious conduct
- Seek consent for pat down or search
A detention last only for a “reasonable time”

The length is limited by the purpose of the detention

Every moment of the detention must be supported by r.s.

When r.s. runs out, the seizure ends
When an officer observes a violation of the law
“Traffic Stops”

• Based on probable cause that an offense has occurred (officer observed conduct)

• Analyzed as investigative detention, not an arrest, unless and until individual taken into custody (even if right to arrest exists from beginning)

• “Reasonable” period of time to take care of business related to offense(s)
“Pretext” Stops

- Stop (or arrest) for one reason
- Motive is for another reason

No problem if initial reason is lawful standing alone
The constitutional reasonableness of traffic stops does not depend on the motivation of the officers involved.

If objectively valid reasons can be given to support a stop, subjective intent is not relevant.

Vehicles may sometimes be lawfully stopped notwithstanding there is no reason to suspect wrongdoing on behalf of occupants:

- Community Caretaking
- Roadblocks/Checkpoints
To “protect and serve” includes looking out for welfare and safety of citizens. That may necessitate stopping to investigate -- not suspected criminal activity, but whether somebody needs protection, care or assistance.
Community Caretaking

United States Supreme Court:

*Cady v. Dombrowski*, 413 U.S. 433 (1973)

Dombrowski (who had identified himself as a Chicago policeman) had a one-car accident near a small Wisconsin town and was taken to a hospital; the police had the car towed. Early the next day, an officer searched the car to retrieve a service revolver to prevent it’s being stolen or used illegally. Instead, the search produced murder evidence incriminating to Dombrowski.

Texas Court of Criminal Appeals:


Patrol officer observed passenger of passing vehicle vomiting out window, stopped vehicle to render assistance, discovered marihuana in vehicle in plain view.
Community Caretaking

- Officer reasonably believes that, considering totality of circumstances, a person is in need of help

- Subjective motivation is significant (concern for safety and welfare of individual or community)

- Officer is not engaged in detection, investigation, or acquisition of evidence

- May not search incident to a vehicle stop unless necessary to address concern that justifies the stop initially
Community Caretaking

Some factors to be considered according to *Wright v. Texas:*

(1) the nature and level of the distress

(2) the location of the individual

(3) whether individual alone or has access to assistance from others

(4) extent of danger to self or others
Ordering Occupants Out of Car

*Pennsylvania v. Mimms*,

434 U.S. 106 (1977)

An officer may, as a matter of course, order the driver of a lawfully stopped vehicle to exit his vehicle.

**Reason: officer’s safety**
Ordering Occupants Out of Car


Extends *Mimms* to the passengers of a vehicle stopped to investigate driver’s conduct

However, this is for officer’s safety and control of contact. Some cases say officer may NOT require ID or other seizure-related activities unless and until each is suspected individually.
Q: Who gets arrested?
A: All whom officer has probable cause to believe may be involved in commission of an offense

*Maryland v. Pringle*,
“Pretext” Arrests

Q: Does the Fourth Amendment prohibit custodial arrest for fine-only traffic offenses?

A: No, if allowed by state law

*Atwater v. City of Lago Vista*, 532 U.S. 318 (2001)

Seat belt violation by and arrest of “soccer mom” driving vehicle occupied by children.
As with Whren, ultimate motive of arresting officer not relevant as long as officer has probable cause that individual arrested has committed offense for which state law permits arrest.

Questionable judgment of arresting officer jeopardized use of this tool in legitimate cases.
Legal Searches of Vehicles and Occupants
Search Incident to Arrest

• **General rule:** A search without warrant of a person and his immediate area following an arrest is reasonable.

• **Purposes:** (1) To remove any weapons that arrested person might seek to use, and (2) to prevent concealment or destruction of evidence of a crime.
Search Incident to Arrest

General Principle:


*United States v. Robinson*, 414 U.S. 218 (1973)

Applied to Vehicles:


Search Incident to Arrest

Full custody arrest as prerequisite:

The justifications for the search enumerated in *United States v. Robinson*, do not exist in traffic stops wherein citations are issued in lieu of custodial arrests.

*Knowles v. Iowa*,

525 U. S. 113 (1998)
Search Incident to Arrest

**New York v. Belton:** After arresting any occupant of a vehicle . . .

Officers may examine the contents of any containers found within the passenger compartment.

“Containers” denotes any object capable of holding another object, including closed or open glove compartments, consoles, or other receptacles located anywhere within the passenger compartment, as well as luggage, boxes, bags, clothing and the like.”
Search Incident to Arrest

• *Arizona v. Gant*: Search of vehicle interior incident to arrest is *not* allowed if the arrestee has no access to that space (e.g., he is handcuffed and locked in back seat of patrol car).
Frisk Incident to Terry Stop

Pat Down or Frisk

• Must be incident to lawful detention
• Officer must be reasonably concerned that individual detained is armed and dangerous
• Officer must be able to “articulate” that concern in court
Frisk Incident to Terry Stop

- Officer need not be “afraid,” only reasonable to be concerned about presence of weapon
- May not justify by “standard procedure”
- May not justify by blanket, boilerplate statement, “for officer safety”
- Weapon may be returned if not illegal and no arrest results
A “pat down” of the outer clothing of the person, or personal articles such as a purse, in order to see if he/she has a weapon.

**Purpose is to allow the officer to pursue investigation without fear of violence, not to discover evidence -- it is *not a “search.”*
Frisk Incident to Terry Stop

- If object suspected to be weapon, officer may investigate further to determine whether or not is weapon, even if necessary to go into pocket.

- If object **not** suspected to be weapon, officer must have *probable cause* it is contraband **without** further investigation ("Plain feel").
Q: What if officer has reasonable suspicion that vehicle has weapon accessible to occupant during stop?

A: Officer may “frisk” the vehicle


Officers may search the passenger compartment of an automobile, limited to those areas in which a weapon could have been placed or hidden, if they have reasonable belief that weapon is present.
Consent

A waiver of one’s 4th Amendment rights, like a confession is a waiver of one’s 5th Amendment rights.

If State is to show that seized evidence was discovered while conducting a consent search, it has the burden to prove that
Consent

✓ the consent was from someone with an expectation of privacy in the place searched;
✓ the consenting party had common authority with others if more than one person shared control of premises; and
✓ the consent was voluntary; it was informed and not coerced.
Consent

✓ Good when consequences are explained
✓ Better when request witnessed by third party
✓ Best when written form used
✓ SUPER good when recorded
Consent

✓ May be limited as to scope by consenting party
✓ May be withdrawn at any time
✓ Reason(s) to request consent not necessary
✓ Officer must be “legitimate” at time of request
Consent

Joint use, common authority:
• Valid as against the absent, non-consulted person
• NOT valid against present, objecting person
Vehicle Searches w/ Probable Cause

*Carroll v. United States*,

267 U.S. 132 (1925)

No warrant needed if:

1. **Probable cause** to believe contraband is somewhere in the vehicle

2. Exigent circumstances prevent obtaining warrant
* Probable Cause

Facts and circumstances that make it more likely than not that . . .

→ A particular person committed, or is committing, a crime (*for an arrest*)

or

→ A particular thing will be in a particular place (*for a search*)
Vehicle Searches w/ Probable Cause


If vehicle is readily mobile:

1. Probable cause
2. 


Vehicle Searches w/ Probable Cause

*Maryland v. Dyson*,


- An officer need only show probable cause that contraband is in a vehicle to justify a search without a warrant. There is no need for a separate finding of “exigency”.
Vehicle Searches w/ Probable Cause

*United States v. Ross*,

If officer acquires probable cause to believe there is contraband somewhere in the vehicle, *every container and cavity in or on the vehicle* may be searched that is reasonably capable of concealing the contraband.

*Bumper-to-bumper*, no less thoroughly than if pursuant to warrant.
Vehicle Searches w/ Probable Cause


Police officers were entitled to search an automobile passenger's belongings, without probable cause to search those specific items, because they had probable cause to believe the vehicle contained contraband.
Vehicle Searches w/ Probable Cause

Using a dog on a traffic stop to acquire probable cause:

  - While officer still writing warning ticket,
  - Dog alerted to presence of Marihuana.
  - Sup. Ct. said no intrusion beyond the original purpose of the stop, no problem
  - No requirement that officer have articulable suspicion as predicate to dog sniff
Inventories

- Non-searches – administrative procedures used to identify the presence of property of value.
- Property inventoried expected to be returned to owner/possessor.
- May not be used as subterfuge for search; purpose not for discovering evidence of criminal offense.
Inventories

Purposes for inventories:

- Protection of the owner's property
- Protect police against false claims of theft
- Protection of police and public from dangerous items in vehicle
Inventories

• Not as extensive as searches based on probable cause

• Evidence discovered during inventory
  – may be seized pursuant to *plain view rule*;
  – provides probable cause to search for more
If evidence discovered during inventory, State must show:

1. Property inventoried was lawfully in police custody;

2. Department has established procedures for inventorying impounded property; and

3. Procedures were followed and written record prepared reflecting property found present.
A passenger in a vehicle, like the driver, has been seized within the meaning of the Fourth Amendment when the police make a traffic stop of the vehicle. The passenger may, therefore, challenge the stop's constitutionality.
Arizona v. Johnson, U.S. Supreme Court 2009)

Passenger, lawfully “seized” because vehicle legally stopped (Brendlin v. California) and asked to exit vehicle (Maryland v. Wilson) may, during period of lawful detention, be frisked if officer has usual reasons to justify frisking suspects (Terry v. Ohio).
The Fourth Amendment does not require the suppression of evidence obtained incident to an arrest that is based upon probable cause, **even if the arrest violates a provision of state law.**
Traffic Law Enforcement