

Constitutional Criminal Procedure Issues and Traffic Stops

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4th Amendment “seizures”

- From “May I?” to “Put your hands behind your back” – The seizure of persons
- “Going through your stuff” – The seizure of items

The reasonableness requirement

- Both kinds of seizure require reasonableness, not necessarily probable cause and a warrant

Seizing a person – Temporary detention (*Terry* stop) or custodial arrest?

Temporary Detention

- “Reasonable suspicion” – a standard less than probable cause
- “Individualized suspicion” – focused, not general
- Objectivity
- “Criminal activity is afoot”
- “Articulable facts”
- Duration
- “Frisk” of the suspect

Traffic stops

- Reasonable suspicion vs. probable cause – detention vs. arrest
- “Pretext stops”
- Suspicionless stops
 - “Community caretaking” – How a slogan became a duty
 - Roadblocks and checkpoints – The road to SB298

Searching incident to traffic stop

- Removing driver and passengers
- Searching the vehicle
 - Search incident to “lawful custodial” arrest
 - The scope of s.i.t.a.
 - Not “search incident to a citation”
- Frisk of persons in vehicle
 - ONLY if reason to believe armed and dangerous
 - ONLY to find weapon
 - ONLY if individualized suspicion exists
 - ONLY of outer clothing
- Frisk of vehicle – ONLY of places where weapon could be reached
- Pretext arrests – Forget about it

Consent

- Voluntary
- Given by person with authority to consent
- Scope limited by consent
- No suspicion required

Plain view

- Lawfully in position to make “view”
- Object is “immediately apparent”

Dog “sniffs” – Not a “search”

Probable cause searches

- “Vehicle (automobile) exception”
 - Exigency inherent in mobility
 - Scope extends to anyplace magistrate could authorized with warrant
 - Scope limited by nature of probable cause

Inventory

- Probable cause not required
- Lawful impoundment is required
- Scope – Containers? Do you believe in pluralities?

A note on “standing”

- Passengers are seized, too
- You don't have to own it to complain
- R-E-O-P – Find out what it means to me