

FOURTH AMENDMENT SUPPRESSION ISSUES ROADSIDE SEARCHES AND DETENTIONS

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I. WHY SHOULD I FILE THE SUPPRESSION MOTION?

- **INCIDENTAL BENEFIT OF DISCOVERY**

Evaluate the officer(s) as witness(es)?

Rule 26.2 and Jencks applies to testimony at suppression hearings. (Make sure you tell that to the prosecutor before the hearing.)

Solidify, or even luminate, favorable facts regarding relevant conduct, mitigating factors, etc.

(We will discuss this further when we get to the roadside searches)

- **CUMULATIVE EFFECT OF QUESTIONABLE POLICE STOPS**

-www.ncjrs.org/pdffiles1/bja/184768.pdf

When the same officers are making the same stops for the same reasons, it gets tired.

- **“FREEZING” FAVORABLE OR MITIGATING TESTIMONY (ILLUSTRATION OF OFFICER ON THE STAND)**

Officer will testify that client consented to the search.

-Why would your client agree to a search if he knew drugs were in the car?

Officer will testify that your client agreed to stay and talk with him after traffic stop was over.

The guilty flee where no man pursueth but the righteous stand bold as a lion.

SODDI Defenses

-All of the evidence that inculpates another.

I. WHY SHOULD I FILE THE SUPPRESSION MOTION

- **ILLUMINATING OTHER ISSUES**

MOTIONS IN LIMINE

404(B) EVIDENCE

SUPPRESSION OF STATEMENTS

- **LEVERAGE**

II. ACCEPTANCE OF RESPONSIBILITY RISKS

DENIAL CAN NOT INFRINGE ON CONSTITUTIONAL RIGHTS

- *United States v. Kimple*, 27 F.3d 1409 (9th Cir. 1994).
- *United States v. Vance*, 62 F.3d 1152 (9th Cir. 1995).
- *United States v. Washington*, 340 F.3d 222 (5th Cir. 2003) (Defendant's "intent to walk" was not the proper test to apply.)
- ***But See*** *United States v. Gonzalez*, 70 F.3d 1236, (11th Cir. 1995)
- **TIMING OF THE MOTION**
- **AVOID CONCEDED GUILT**

III. DIFFERENT TYPES OF ROADSIDE SEARCHES AND DETENTIONS

A. The General Traffic Stop.

- A detention must be temporary and last no longer than necessary to effectuate the purpose of the stop, unless further reasonable suspicion, supported by articulable facts, emerges. *United States v. Dortch*, 199 F.3d 193, 198 (5th Cir. 1999)
- While the Circuits have recognized that it is legal for a highway patrolman to examine a motorist's license, registration, and rental papers, and run computer checks on the same, *Dortch*, at 200, and ask about a motorist's travel plans, *United States v. Brigham*, 382 F.3d 500, 508 (5th Cir. 2004), this recognition does not extend to detentions, searches and interrogations after the investigation of the traffic stop is complete.

B. The Consent Search

- "Where consent is preceded by a Fourth Amendment violation, the government has a heavier burden of proving consent." *Dortch*, 199 F.3d at 201.
- "Consent to search may, but does not necessarily, dissipate the taint of a fourth amendment violation." *United States v. Chavez-Villareal*, 3 F.3d 124, 127 (5th Cir. 1993).
- "Even though voluntarily given, consent does not remove the taint of an illegal detention if it is the product of that detention and not an independent act of free will." *Chavez-Villarreal*, 3 F.3d at 127-28.

"To determine whether the causal chain was broken, [the court should consider]

- The temporal proximity of the illegal conduct and the consent;
- The presence of intervening circumstances; and
- The purpose and flagrancy of the initial misconduct.

1. VOLUNTARINESS OF THE CONSENT

- United States v. Galberth, 846 F.2d 983, 987 (5th Cir.) *cert. denied*, 458 U.S. 865 (1988).
 - (1) the voluntariness of the defendant's custodial status.
 - (2) the presence of coercive police procedures.
 - (3) the extent and level of the defendant's cooperation.
 - (4) defendant's awareness of his right to refuse consent.
 - (5) the defendant's education and intelligence
 - (6) defendant's belief that no incriminating evidence will be found.
- United States v. Santiago, 310 F.3d 336 (5th Cir. 2002): Defendant's consent to search his vehicle was not an independent act of free will, but rather a product of the unlawfully extended detention.

2. SCOPE OF CONSENT

- "The standard for measuring the scope of a suspect's consent . . . is that of objective reasonableness –what would the typical reasonable person have understood by the exchange between the officer and the suspect?" Florida v. Jimeno, 500 U.S. 248, 251 (1991).
- United States v. Jaras, 86 F.3d 383, 390 (5th Cir. 1996), *citing United States v. Jenkins*, 46 F.3d 447, 451 (5th Cir. 1995). "It is well established that a defendant's mere acquiescence to a show of lawful authority is insufficient to establish voluntary consent."

3. WITHDRAWAL OF CONSENT

- United States v. Sanders, 424 F.3d 768, 774 (8th Cir. 2005). "Once given, consent to search may be withdrawn: Withdrawal of consent need not be effectuated through particular magic word but an intent to withdraw consent must be made by unequivocal act or statement."

C. From *Terry* Search to Probable Cause Search

- That is not the case here, because the justification for detention ceased once the computer check came back negative, and the canine search was not performed until after that completed check. Admittedly, that search, if performed *during* the detention, would not have violated Dortch's constitutional rights, because it is not a search at all under the Fourth Amendment.
- Thus, to say that the search was unconstitutional because it was during an unlawful detention makes that determination turn on the fact that the search occurred moments after the computer check was completed rather than moments before.
- But it is well established that 'an investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop. And while we 'should not indulge in unrealistic second-guessing of the methods employed by the officers on the scene, the evidence makes such second-guessing unnecessary and plainly reflects that the computer search had already ended before the dog search began ; at that point it was unreasonable to detain Dortch any longer.

***United States v. Dortch*, 199 F.3d 193, 200. (5th Cir. 1999).**

- Trooper Raley's original justification for the stop ended, however, at the time the computer check was completed. At that point, there was no reasonable or articulable suspicion that Santiago was trafficking in drugs, but Raley nonetheless continued his interrogation after the original justification for the stop had ended.

***United States v. Santiago*, 310 F.3d 336 (5th Cir. 2002)**

***United States v. Jacquez*, 421 F.3d 338 (5th Cir. 2005)** - report that a "red vehicle" had been involved in an earlier incident in the area 15 minutes earlier did not provide reasonable suspicion to stop defendant. Subsequent consent to search was not valid.

1. Conflicting Stories Do Not Provide Reasonable Suspicion

- *United States v. Valdez*, 267 F.3d 395, 397-98 (5th Cir. 2001) (conflicting stories from driver and passenger, driver's nervousness, and the fact that neither were listed on rental agreement did not give rise to a reasonable suspicion of drug trafficking.)
- *United States v. Jones*, 234 F.3d 234, 241 (5th Cir. 2001) (discrepancies between driver and passenger's explanations about travel, fact that driver's mother was only person listed on rental agreement, and driver's admission that he was previously arrested for crack did not support finding of reasonable suspicion.)

2. Probable Cause To Arrest and Probable Cause To Search

- Probable cause to arrest exists "where the facts and circumstances within [the arresting officer's] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that 'an offense has been or is being committed.'" *United States v. Preston*, 608 F. 2d 626, 632 (5th Cir. 1979), *cert. denied*, 446 U.S. 940 (1980) *quoting Draper v. United States*, 358 U.S. 307, 313 (1959).
- *See United States v. Reinholz*, 245 F.3d 765, 777 (8th Cir. 2001) (Eighth Circuit rejects government argument that defendant was not arrested where police approached defendant, patted him down for weapons, handcuffed him and placed him in the back of an unmarked car.)
- *United States v. Fifty-Three Thousand Eighty-Two Dollars in United States Currency*, 985 F.2d 245, 250 (6th Cir. 1992) (Discovering that plaintiffs were traveling with over \$50,000 in cash did not justify *Terry* detention, investigatory seizure, or probable cause)
- *United States v. Baro*, 15 F.3d 563, (6th Cir. 1994) (no probable cause where defendant purchased a one-way airline ticket and was walking around "constantly looking" was in an airport, carrying \$14,190 in cash)

- *United States v. U.S. Currency, \$30,060.00*, (9th Cir 1994) (Over \$30,000 in cash found in car arranged in \$1,000.00 stacks did not support finding of probable cause even coupled with “dog sniff” alert.)

United States v. Kennedy, 427 F.3d 1136 (8th Cir. 2005)

- Officer did not have probable cause to search locked compartment on the defendant’s truck after defendant’s girlfriend reported that he “keeps” methamphetamine there.
- Also, the search could not be considered an inventory search.

Knowledge of all of the officers will be imputed to the one doing the search. *Jenson* 425 F.3d 698

C. Search Incident to Arrest and Inventory Search

- *Chimel v. California*, 395 U.S. 752 (1969), because the rationale of the search incident to arrest is the need to prevent the arrestee from obtaining a weapon or destroying evidence, a search could only extend to the arrestee’s person and the area within his immediate control. (Chimel actually was a “premises” search, but it applied to automobile searches incident to arrest.)
- *New York v. Belton*, 453 U.S. 454 (1981): *Chimel*’s “immediate control” test was overruled in to the extent that it was used to impose a bright-line rule to cases involving lawful custodial arrests. If the person is not subject to lawful arrest before the search, courts tend to apply Chimel rather than Belton.
- *United States v. Adams*, 26 F.3d 702 (7th Cir. 1994) (passenger compartment not within “grab area” of arrested defendant.)
- *United States v. Jackson*, 415 F.3d 88, 92 (D.C. Cir. 2005): Even when a person is lawfully arrested for driving a car with stolen tags, the police did not have probable cause to search the trunk.
- *United States v. Bloomfield*, 40 F.3d 910, 916 (8th Cir. 1994) (“Time is an important factor in distinguishing between an investigative stop and a *de facto* arrest, and other significant factors include whether there were unnecessary delays and whether the suspects were handcuffed or confined in a police car.”)

IV. “Question-First” Tactics Used at Roadside

Missouri v. Seibert, 124 S.Ct. 2601, 2608 (2004)

After all, the reason that question-first is catching on is obvious as its manifest purpose, which is to get a confession the suspect would not make if he understood his rights at the outset; the sensible underlying assumption is that with one confession in hand before the warnings, the interrogator can count on getting its duplicate, with trifling additional trouble. Upon hearing warnings only in the aftermath of interrogation and just after making a confession, a suspect would hardly think he had a genuine right to remain silent, let alone persist in so believing once the police began to lead him over the same ground again.

Thus when *MIRANDA* warnings are inserted in the midst of coordinated and continuing interrogation, they are likely to mislead and deprive a defendant of knowledge essential to his ability to understand the nature of his rights and the consequences of abandoning them.

V. Roadside Detentions and Searches of Person

VI. Trends in the Jurisprudence

***California v. Carney*, 471 U.S. 386 (1985).**

Opinion of the Court by then Chief Justice Burger:

The capacity to be “quickly moved” was clearly the basis of the holding in *Carroll*, and our cases have consistently recognized mobility as one of the principal bases of the automobile exception.

The mobility of automobiles, we have observed, ‘creates circumstances of such exigency that, as a practical necessity, rigorous enforcement of the warrant requirement is impossible.’ (quoting *South Dakota v. Opperman*, 428 U.S. 364, 367 (1976)).

Beside the element of mobility, less rigorous warrant requirements govern because the expectation of privacy with respect to one’s automobile is significantly less than that relating to one’s home or office. *Ibid.*

Justice Stevens’ dissent in *Carney*:

In this case, the motor home was parked in an -off-the-street lot only a few blocks from the courthouse in downtown San Diego where dozens of magistrates were available to entertain a warrant application. . . . The officers plainly had probable cause to arrest the respondent and search the motor home, and on this record, it is inexplicable why they eschewed the safe harbor of a warrant.

In footnote to this: In addition, a telephonic warrant was only 20 cents and the nearest phone booth away.

Michigan v. Long, 463 U.S. 1032 (1983)

Justice Brennan's dissent:

It is clear that *Terry* authorized only limited searches of the person for weapons. In light of what *Terry* said, relevant portions of which the Court neglects to quote, the Court suggestion that "*Terry* need not be read as restrictin the preventive search to the person of the detained suspect," can only be described as disingenuous. Nothing in *Terry* authorized police officers to search a suspect's car based on reasonable suspicion.