Ohio Attorney General's
Law Enforcement
Bulletin

May 2015

Search and Seizure (Traffic Stops, Extending Stop to Conduct Dog Sniff): *Rodriguez v. United States*

Question: Can an officer extend a traffic stop solely to conduct a dog sniff?

Quick Answer: If the delay adds time to the stop, it is unlawful.

Rodriguez v. United States, 575 U.S. (2015)

Facts: A K-9 officer stopped Rodriguez for swerving once towards the shoulder of the road. The officer checked the drivers' licenses of Rodriguez and his passenger and issued a written warning for the traffic violation. He then asked Rodriguez for consent to walk his drug-sniffing dog around the vehicle. Rodriguez refused, and rather than letting Rodriguez leave, the officer asked him to exit the vehicle. Roughly eight minutes later, a second officer showed up and the K-9 officer walked his dog around the car. The dog alerted to the presence of drugs, and in the following search the officers found methamphetamine.

Importance: Once the stop is over—that is, once you've handed the ticket to the driver—the stop is over, and you must let the driver leave. A stop cannot be prolonged unless new evidence is observed that gives you reasonable suspicion of another crime. If you don't have additional evidence, you can detain someone long enough to issue a traffic ticket and make "ordinary inquiries incident to the traffic stop," such as checking the driver's license, determining if there are any warrants, and inspecting registration and proof of insurance.

Keep in Mind: In Fourth Amendment cases, the Court balances the liberty interest of the citizen against law enforcement's legitimate interest in continued detention. When you conduct a traffic stop for either suspicious activity or for a criminal infraction, you can only detain them as long as necessary for you to confirm your suspicion or to issue them a ticket for the infraction. Detaining them longer infringes on their constitutional rights.

Search and Seizure (Warrantless Home Entries, Exigent Circumstances, Hot Pursuit): *State v. Lowe*

Question: Can an officer enter an enclosed back porch to arrest a suspect without a warrant?

Quick Answer: No. Although the officer exercised great restraint when dealing with the suspect, and there was ample probable cause to arrest him for a serious felony charge, the Fourth Amendment prohibits warrantless arrests in the home absent exigency or consent.

State v. Lowe, Third Appellate District, Marion County, March 30, 2015

Facts: A Marion County deputy responded to an assault complaint. The victim told the deputy that Lowe was responsible for the significant injuries to her face and head. The deputy also learned that Lowe broke her phone when she tried to call the police and that he had threatened her. The deputy attempted to locate Lowe at his home. When he arrived at the home that Lowe shared with his parents, the deputy went to the enclosed back porch. He initiated contact with Lowe and told him he was under arrest. Lowe then retreated into the house. After trying to convince the suspect's father to encourage Lowe to cooperate, the deputy entered the porch without consent. Lowe approached the deputy with his fists clenched, was shot with a Taser, and was subsequently arrested.

Importance: Without consent, a warrantless home arrest is only allowed when exigent circumstances exist. Since the suspect no longer posed a threat to the victim, there was no exigency. The deputy should have gotten a warrant and monitored the residence to ensure that the suspect did not leave the house. Also there was no "hot pursuit" exigency. While law enforcement officers may enter a home without a warrant when they are in hot pursuit of a fleeing suspect, in this case the suspect was already in the home when the deputy arrived two hours after the contact with the victim.

Keep in Mind: An enclosed, attached porch is considered part of the home and is protected by the Fourth Amendment.

Search and Seizure (Consent Search, Passenger's Belongings): State v. Chojnowski

Question: If a vehicle owner consents to the search of his vehicle, can you search a container that belongs to a passenger?

Quick Answer: No, a vehicle owner has no authority to consent to a search of a passenger's belongings.

***State v. Chojnowski*, 9th Appellate District, Wayne County Municipal Court, April 13, 2015**

Facts: A deputy responded to a call regarding a suspicious vehicle in a business parking lot around 10:20 p.m. After determining that there was nothing illegal going on, the deputy asked the vehicle owner for permission to search the vehicle. The deputy obtained the owner's consent to search the vehicle and had both the driver and the passenger, Taryn Chojnowski, step out of the vehicle. The deputy testified that he saw Chojnowski with a black bag on her lap and then saw her leave the bag in the vehicle when she was asked to step out of the vehicle. The bag was partially open and another completely sealed bag was inside. Inside the sealed bag the deputy found a pipe, needles, and other items used for drug abuse.

Importance: The scope of a search under the automobile exception to the warrant requirement differs from the scope of a consent search. When the owner consents to a search of his vehicle, the belongings of the passengers inside the vehicle cannot be searched unless the owner has mutual use or joint access to the property. In this case there was no evidence that the owner had common authority over the bag or that the vehicle owner's consent extended to the passenger's bag.

Keep in Mind: This only applies to "consent searches" by the owner over belongings which clearly do not belong to them. Officers are allowed to search a passenger's belongings in a vehicle when the automobile exception applies. Under the automobile exception, when an officer has probable cause to believe a vehicle contains contraband, the scope of the search extends to any part of the vehicle that could conceal the object of the search, which may include the passenger's belongings.

Search and Seizure (Reasonable suspicion, *Terry* Stop and Frisk): *State of Ohio v. Ross*

Question: Can an anonymous tip that is corroborated by an officer's training, experience, and on-scene observations support reasonable articulable suspicion of criminal activity?

Quick Answer: Yes. A stop is lawful if the facts relayed in the tip are sufficiently corroborated by an officer's training, experience, and observations that the suspect is engaged in criminal activity.

State v. Ross Third Appellate District, Marion County, March 30, 2015

Facts: At 3:30 a.m., Officer Gosnell responded to a fight with a gun call at 182 W. Columbia St. He observed defendant Ross exit a vehicle that was parked in the parking lot adjacent to 182 W. Columbia St. and walk toward that house as if he were going to enter it. The car's windows were frosted over as if he was parked there for a period of time. There was not much foot traffic in the area. Officer Gosnell recognized the suspect as someone who he had previously dealt with regarding drugs and testified that, through his experience, guns and drugs go hand in hand.

Importance: An anonymous tip can form the basis for a *Terry* stop if the officer is able to articulate facts and circumstances that corroborate the tip.

Keep in Mind: Remember, in this case the tip was backed up by the officer's training, experience, prior experience with the defendant, and personal observations at the scene to form reasonable suspicion that the defendant was engaged in criminal activity. Officer Gosnell articulated during the suppression hearing the specific facts that led him to believe the suspect was involved in criminal activity and that he was armed. Under the totality of the circumstances analysis, the officer was able to justify his rationale for the stop.