Some material to be posted for our traffic stop committee. Thanks.

Inbox

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to me

Fellow committee members, I thought it useful for us to read some general case-law based examples of allowable police power to detain people or motor vehicles. Many of these same concepts are embodied in Missouri statutes and in the various statistical analysis models presented to our group. The cases are based on real life citizen/police interactions which eventually led to a prosecution and an appeal.

The following information is taken from a presentation on Search and Seizure Law presented by my friend H. Morley Swingle, Assistant Prosecuting Attorney for the City of St. Louis, to the Missouri Municipal and Associate Circuit Court Association on May, 23, 2019. Used with permission.

Pretextual Arrests – Okay as long as some violation occurred.

Whren v. United States, 517 U.S. 806 (1996). As long as a traffic violation really occurred, it does not matter if the officer had an ulterior motive for pulling over the defendant. Regardless of whether the police officer subjectively believes that the occupants of a car may be engaging in some other illegal behavior, as long as a reasonable officer in the same circumstances could have stopped the car for the suspected traffic violation, the stop is legal. In this case, police officers were in a “high drug area” and saw a truck with temporary plates and youthful occupants stopped at a stop sign. The driver was looking down into lap of the passenger. They sat there an unusually long time – more than 20 seconds. The police car did a U-turn to go back for another look. The truck turned suddenly without signaling and sped off at an unreasonable speed. Police followed and caught up when it stopped behind other traffic at a red light. An officer got out and went to the driver’s door and ordered the driver to put the car in park. He immediately saw two bags of crack cocaine in passenger Whren’s hands.

State v. Mease, 842 S.W.2d 98 (Mo. banc. 1992). The Court overruled State v. Blair, 691 S.W.2d 259 (Mo. banc. 1985) and State v. Moody, 443 S.W.2d 802 (Mo. 1969), which involved the pretextual arrest doctrine. In Mease, a murder case, the officer had arrested the defendant on a nonsupport warrant. Even though part of the reason for issuing the nonsupport warrant had been the desire to locate and question the defendant concerning the murder, the facts truly did support issuing a nonsupport warrant. Under the new law, as long as there really was a valid reason for stopping defendant, “so long as the police do no more than they are objectively authorized and

legally permitted to do" the officer's other motivations for pulling defendant over and making an arrest are irrelevant.

Statev.Malaney,871S.W.2d634(Mo.App.S.D.1994). The officer saw defendant's car weaving from centerline to sideline three times. He pulled the car over. Because of observations he made after pulling the defendant over, he asked for consent to search the contents of the car. Defendant consented. Defendant claims this was a pretextual use of a traffic violation to pull over a car the officer wanted to search. HELD: The officer's motives and state of mind in wanting to search the car were irrelevant as long as the traffic offense really occurred. The stop was not unlawful and the consent given was valid. Same result: State v. Peterson, 964 S.W.2d 854 (Mo. App. S.D. 1998); State v. Bunts, 867 S.W.2d 277 (Mo. App. S.D. 1993).

State v. Rodriguez, 877 S.W.2d 106 (Mo. banc. 1994). The defendant was driving a tractor-trailer rig. He stopped at a weight station for a safety inspection. As the inspectors did their routine work (about 25 minutes) they became suspicious that he might have something more than onions and potatoes in his padlocked truck bed. They called the Highway Patrol, who arrived before the regular inspection was over. The officer was given consent to search by the defendant, and found 700 grams of marijuana among the potatoes. HELD: The search was valid. A commercial operator of a motor vehicle has a low expectation of privacy. As long as the length of the stop is consistent with the requirements of a vehicle inspection, the subjective reasons the inspectors had in calling the Highway Patrol were irrelevant. The length of the stop was okay and the consent to search was valid.

United States v. Hambrick, 630 F.3d 742 (8th Cir. 2011). Officers saw defendant driving and knew his license was suspended. They had a tip that he was transporting cocaine, which was their ulterior motive for the traffic stop. HELD: "It is well-settled that any traffic violation provides a police officer with probable cause to stop a vehicle, even if the officer conducted the traffic stop as a pretense for investigating other criminal activity."

Stop & Frisk and Similar Lesser Intrusions.

"The stop is a watered-down junior varsity arrest. The frisk is a watered-down junior varsity search." —Hon. Charles Moylan.

(A) Stop – The officer must have reasonable suspicion to believe that a crime has occurred, is occurring or is about to occur. When an officer observes unusual conduct leading him to reasonably believe criminal activity may be afoot, he may stop that person, identify himself as a police officer, and make reasonable inquiries. "Reasonable suspicion" or "articulable suspicion" is all that is required, not probable cause. The Supreme Court has noted that the "level of suspicion" is considerably less than proof of wrongdoing by a preponderance of the evidence. United States v. Sokolow, 490 U.S. 1 (1989). It will suffice if at the time of the stop there exists a substantial possibility that criminal conduct has occurred, is occurring or is about to occur." United States v. Arvizu, 534 U.S. 266 (2002).

State v. Purnell, 621 S.W.2d 277 (Mo. 1981). Defendant was looking into a business at 2:00 a.m. “when every store or place of business in the area was closed” and as the marked police car approached the defendant “began to hurriedly walk away.” This was reasonable suspicion.

State v. Valentine, 584 S.W.2d 92 (Mo. 1979). The stop of a car was proper after a detective doing a stakeout noticed it pass by a cleaning establishment several times at the same time of evening that earlier cleaning establishment robberies had taken place. The officer was doing the stakeout specifically because of the robbery problem in the neighborhood.

State v. Lovelady, 432 S.W.3d 187 (Mo. banc 2014). Officers spotted defendant riding a bike in circles at 10:30 at night in a high crime area. When they got closer they spotted a gun tucked in his waistband and he told them, “They went that way!” They checked the gun and it was a toy. Afterward, they detained him an additional two minutes while they checked with dispatch to see if any warrants existed for his arrest. They learned that a pick-up order existed, so they arrested him, and found cocaine in his pocket. HELD: The original Terry stop was lawful. Although it is not illegal to carry a gun, the combination of being late at night in a high crime area while riding a bike, each separately an innocent behavior, combined to provide reasonable suspicion that a crime might be afoot. The detention was still lawful after the gun proved to be a toy because under the totality of the circumstances, reasonable suspicion was still present that a crime was occurring or had just occurred.

Reasonable Suspicion is Much Less Than Probable Cause and May Consist of a Combination of Otherwise Unsuspicious Facts – Court Should Not “Divide and Conquer” When Analyzing Those Facts.

United States v. Arvizu, 534 U.S. 266, 273-74 (2002). A border patrol officer developed reasonable suspicion that a van might be transporting illegal aliens or drugs, based upon a combination of otherwise unremarkable facts. The van had taken an unpaved back road, as if trying to avoid a checkpoint; when it drove by, the driver sat stiff and ignored the officer; the direction it was going led to nowhere and was rarely traveled; the children in the back were riding unusually high, as if sitting on something; the children waved mechanically for four full minutes, as if being coached by the adults in the front. The officer ran the license plate and found that the van was registered to an address in an area “notorious for alien and narcotics smuggling.” He stopped the van on reasonable suspicion and obtained consent to search. He found 128 pounds of marijuana worth $99,080.00. HELD: The combination of facts amounted to reasonable suspicion. The test is whether reasonable suspicion exists to believe that criminal activity “may be afoot. An investigatory stop must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity . . . Courts must look at the ‘totality of the circumstances’ of each case to see whether the detaining officer has a ‘particularized and objective basis’ for suspecting legal wrongdoing . . . Although an officer’s reliance on a mere ‘hunch’ is insufficient to justify a

stop, the likelihood of criminal activity need not rise to the level required for probable cause, and it falls considerably short of satisfying a preponderance of the evidence standard."

Fellow Officer Rule

Under the fellow officer rule, the Fourth Amendment test of reasonable suspicion or probable cause is satisfied if the information known by all of the officers collectively amounts to probable cause or reasonable suspicion.

Offering Roadside Assistance To Parked Motorist Does Not Require Reasonable Suspicion.

State v. Schroeder, 330 S.W.3d 468 (Mo. banc 2011). Trooper saw defendant pull his vehicle onto shoulder of road and put his headlights on bright. The trooper turned around and parked behind defendant's car, both to see if the driver needed assistance and to take enforcement action regarding the traffic violation of failing to dim the headlights. Defendant was intoxicated and the trooper arrested him for DWI. HELD: "Under the Fourth Amendment, a law enforcement officer may approach a vehicle for safety reasons, or if a motorist needs assistance, so long as the officer can point to reasonably articulable facts upon which to base his actions." Reasonable suspicion of criminal activity is not required.

Community Care-Taking Function.

"The "community care-taking doctrine" is an exception to the constitutional warrant requirements which may be invoked to validate as reasonable a search of a car. The typical instance is when an abandoned, unlocked vehicle is sitting off the roadway, or sitting on a roadway or parking lot blocking traffic, or where the driver is slumped over the wheel.

Officers commonly do "welfare checks" which originated from the U.S. Supreme Court decision in Cady vs. Dombrowski [1]. In Cady, an automobile accident had occurred and a disabled vehicle was towed to a garage. Officers inventory any contents of the vehicle to make sure any valuable property was inventoried and guarded. The "community caretaking function is totally divorced from the detection, investigation or acquisition of evidence relating to the violation of any criminal law." The doctrine is an exception to the Fourth Amendment warrant requirement, which reflects the reality that modern society expect police to fulfill various responsibilities [2].

Police are expected to engage in activities and interact with citizens in a number of ways beyond the investigation of criminal conduct. Activities include a general safety and welfare role in helping citizens who made be in peril or who may otherwise be in need of some form of assistance. Police wear many hats such as criminal investigator, first aid provider, social worker, crisis intervener, family counselor, youth mentor and peacemaker — just to name a few. But are all involved with the duty to protect people,

not just from criminals, but from accidents, natural perils and even self-inflicted injuries. Police are society's problem solvers when no other solution is apparent or available."

[1] 413 U.S. 433 (1973)
[2] ullom vs. Miller, 705 2d 111 (W. 2010)
By Dee Wampler| November 14th, 2018|Legal News|Comments Off
on An Exception to the Fourth Amendment

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Dee Wampler has practiced law for 50 years has received many awards and honors. As Greene County's youngest elected Prosecuting Attorney at the age of 29, Wampler's reputation was quickly established as a leading trial attorney. Dee was an original organizer and first president Crimestoppers. Wampler has published over 250 articles for Law Enforcement Journals, and authored six books: Missouri Criminal Law Handbook; The Trial of Christ; The Myth of Separation Between Church and State; Standing on the Front Line; Defending Yourself Against Cops in Missouri, and other Strange Places; and One Nation Under God. His knowledge of criminal law and trial tactics is widely recognized.