

Constitutional Issues Regarding Identification and Sentencing

The U.S. Supreme Court has said that its decisions will not "affect the state's power to impose higher standards on searches and seizures than required by the Federal Constitution if it chooses to do so." Cooper v. California, 386 U.S. 58, 62, 87 S.Ct. 788, 791, 17 L.Ed.2d 730 (1967).

The Traffic Stop: The question is: When can an officer stop a driver?

Traffic stops must be based on one of three justifications: 1) on probable cause, 2) reasonable suspicion, 3) a blockade, or 4) specially marked plates. Stops are not the same as a search, but a stop is a seizure within the meaning of the Fourth Amendment. Case law gives parameters but draws few bright lines.

1. Probable Cause: An officer may stop a vehicle when she has probable cause to believe that the vehicle contains a person subject to arrest or evidence of a crime or probable cause to believe the driver committed a traffic offense. The probable cause may arise from the officer's first hand observations --flight, physical clues, voluntary admissions, suspicious conduct, known prior record, high crime area.

Information from an informant may be adequate to support probable cause. This determination is to be based on the totality of the circumstances. Gates v. Illinois, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983).

2. Reasonable Suspicion: Reasonable suspicion is needed to make an investigatory stop. The totality of the circumstances test is also used here although information needed does not rise to the level of probable cause.

Reasonable suspicion to stop a vehicle calls for the same or similar type analysis as seen in "stop and frisk" situations. Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). Balancing test was first considered in Terry. The Court's inquiry compared reasonableness of an intrusion (frisk) in an area that is within the protection of the Fourth Amendment/as against the needs of society (police officer's safety). The rationale is that an investigatory stop is a less intrusive stop as compared to the stop/intrusion associated with full arrest. The officer's suspicion required is greater than a hunch and must be based on articulable facts.

An officer may receive information from sources other than direct observation of the operation of the vehicle. The police dispatcher, a broadcast report from a fellow officer or a citizen's complaint have been accepted in many jurisdictions as a reasonable basis for a stop. Citizen band radio channels are also monitored by some police agencies.

Informant tips were held to meet standard of reasonable suspicion to stop car concerning possible transport of drugs. The term moderate suspicion was also used. The minimal level of certainty required is significant. Alabama v. White, 496 U.S. 325, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990). Adams v. Williams, 407 U.S. 143, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972).

3. Blockade: Initially, the U.S. Supreme Court held that law enforcement officers could not make random stops of vehicles for "spot checks" of traffic law violations. The court did suggest that the Fourth Amendment might allow roadblocks that are not "conducted at officer's unbridled discretion." Delaware v. Prouse, 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979).

Blockade stops are permitted on a limited basis. The U.S. Supreme court found that special circumstances allow for sobriety checkpoints. Every car must be stopped or

some predesignated number. Stops that are random or at officer's discretion are not permitted. Michigan Dept. of State Police v. Sitz, 496 U.S. 444, 110 S.Ct. 2481, 110 L.Ed.2d 412 (1990). City of Indianapolis v. Edmond (Road Blocks)

A suspect can be required to leave his/her car at time of stop. Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977). The court relied upon the best interests of the officer's safety, considering large number of officer deaths related to stops.

Some states authorize stops based upon DUI designated plate.

After the Stop: Determination of the point in time the defendant was arrested controls the finding that there was probable cause for the arrest. Events that occurred and observations made after arrest cannot be used to bolster probable cause.

The arrest is also crucial to the determination of when the right to counsel attached.

The right to counsel is derived from the Fifth Amendment and provided by the Sixth Amendment.

On Appeal: After conviction and sentencing, the defendant begins to feel the impact of the consequences. If there was a trial, then the driver will consider the taking of an appeal. But, if no appeal is taken or if the appeal does not result in the conviction being vacated, the defendant will try to use civil remedies. Those remedies, post conviction relief, habeas corpus, etc., are usually provided by specific state statute or rule.

Drivers may also find their licenses revoked by administrative agencies for cumulative convictions. They may file for a driver license restoration appeal in court. Cases may be adjudicated *de novo*, on the record, or on equity. (See state specific statutes and rules).