




Ohio Attorney General's Law Enforcement Bulletin



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Search and Seizure (Traffic Stops and Statutory Jurisdiction): *State v. Brown*

Question: Can officers make stops for minor misdemeanor traffic offenses outside of their statutory jurisdiction or authority?

Quick Answer: No. It is an unreasonable search and seizure in violation of the Ohio Constitution.

***State v. Brown*, Ohio Supreme Court, June 23, 2015**

Facts: A township police officer stopped a vehicle for a marked-lanes violation on an interstate highway. The officer's drug-sniffing dog alerted to drugs in the vehicle and the officer conducted a search. The officer found 120 oxycodone pills and marijuana inside the vehicle. Both parties agreed that the township police officer did not have law enforcement powers to stop the defendant for a minor misdemeanor traffic offense on an interstate highway.

Importance: The evidence obtained as a result of the unlawful search and seizure was suppressed.

Keep in Mind: In determining whether a search or seizure is reasonable, the courts will balance the extent of the intrusion on an individual's privacy interests against the governmental interest in effective law enforcement. In this case, the court found that law enforcement's interest in allowing officers to make minor misdemeanor traffic stops outside their jurisdiction is minimal and outweighed by the intrusion on the individual's liberty.

Search and Seizure (Hotel Guest Registries): *City of Los Angeles v. Patel*

Question: Does a municipal code that allows police to inspect hotel guest records on demand violate the Fourth Amendment?

Quick Answer: Yes. An administrative warrant is required.

***City of Los Angeles v. Patel*, United States Supreme Court, June 22, 2015**

Facts: A Los Angeles municipal code required hotel operators to record and keep information about their guests on the premises and to make the records available to "any officer of the Los Angeles Police Department for inspection" on demand. If hotel operators failed to make these records available to the police, they could be arrested and charged with a misdemeanor for violating the code. The information

included the guest's name and address, the number of people in the party, the make, model and license plate of each car, the date and time of arrival and scheduled departure date, the room number, rate charged, and method of payment.

Importance: Searches without warrants are *per se* unreasonable under the Fourth Amendment. Under the facts of the case, the administrative exception to the warrant requirement did not apply, nor did consent or exigency.

Keep in Mind: The Supreme Court emphasized that the ruling was very narrow. The rest of the record-keeping law stands and police can still examine the records so long as they are complying with the Fourth Amendment. They just can't search without affording the owner a chance to have the request reviewed. The exception for exigent circumstances still allows police to effectuate quick searches.

Search and Seizure (Personal Knowledge and Reasonable Suspicion): *State v. Freeman*

Question: Must an officer personally observe a traffic violation in order to have reasonable suspicion to stop the vehicle?

Quick Answer: No, an officer may rely on a fellow officer's observations as long as the officer has reasonable suspicion that the vehicle stopped committed one or more traffic violations.

***State v. Freeman*, 9th Appellate District, Summit County, June 24, 2015**

Facts: Members of the Narcotics Unit were conducting surveillance on a home due to complaints of drug activity. Two officers were assigned to assist with any stops that might need to be made. One of these officers received a radio transmission from an undercover detective. The detective reported that a burgundy Oldsmobile pulled up to the house, a front seat passenger got out and went into the house and returned to the car within a short time period. The detective requested assistance in following the vehicle. The detective called out the license plate number, the location, and the traffic infractions the driver was making. The officer eventually stopped the vehicle. He observed the occupants making furtive movements, so he had them exit the vehicle and he performed pat-downs. He found cocaine during a pat-down of the defendant.

Importance: There is no requirement that reasonable suspicion be based solely upon an officer's personal knowledge. Officers may rely on reliable communication from other officers. When another officer transmits reliable information that a vehicle has committed a specific traffic offense, an officer has reasonable suspicion to stop the vehicle.

Keep in Mind: The court will look at the totality of the circumstances to determine whether an officer has reasonable suspicion of criminal activity. In this case, the officer was made aware of the specific traffic violations before he stopped the vehicle, and the information was relayed to him as it was occurring. Based on this, the court found that the officer had reasonable suspicion of criminal activity to execute a traffic stop, even though he did not personally observe the traffic violations.

Search and Seizure (Consensual Encounters, Warrant Checks): *State v. Tabler*

Question: Can a consensual encounter become a seizure when an officer retains identification information and conducts a warrant check?

Quick Answer: Yes.

***State v. Tabler*, 10th Appellate District, Franklin County, June 30, 2015**

Facts: An officer observed a gold Camry parked on a street in a high crime area that was known for having guns and drugs. The vehicle's lights were turned off and the car was running. The officer parked behind the Camry and observed three occupants. The defendant was in the back seat. The officer approached the vehicle and explained to the occupants that he was just checking to make sure they were OK. The officer asked for their information, collected their identification, and checked for warrants. The check revealed no outstanding warrants and the officer returned to the Camry five to 10 minutes later. Upon returning to the Camry, the officer repeatedly asked if he could search the car. The driver explained he didn't know if he could consent to a search of a vehicle that didn't belong to him, but eventually told the officer he didn't care. Four back-up officers arrived on scene and they discovered a weapon during the vehicle search.

Importance: A person is seized, for purposes of the Fourth Amendment, when a reasonable person would not feel that they are free to leave. Courts have held that a reasonable person would not believe they are free to leave when a police officer retains identification information for purposes of conducting a warrant check. Without reasonable suspicion of criminal activity, the occupants were subject to an unlawful detention which continued when the officer sought the driver's consent to search the vehicle.

Keep in Mind: The initial encounter between the officer and the occupants was a consensual encounter and legally permissible. As long as a person feels free to leave or not answer your questions, the encounter is consensual. In this case, the consensual encounter became an unlawful seizure when the officer took their identification and ran a check for warrants. Because of the unlawful detainment, the court found that the consent was involuntary.