



CourtSmart

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HOW MUCH TIME DO OFFICERS HAVE TO GET CONSENT TO SEARCH RENTAL CARS?

Context

Recently, in the 2018 term, the United States Supreme Court ruled that a “mule” driving a rental car has a reasonable expectation of privacy in the car, even if he is not a named driver on the contract. *BYRD V UNITED STATES*, 138 S Ct 1518 (2018).

STATES, 138 S Ct 1518 (2018).

That means the officer must have a theory to search the vehicle – like consent, or probable cause (the automobile exception), etc. Both the Illinois courts (see e.g. *People v Ruffin*, 734 NE2d 507 (2000) and the 7th Circuit (*United States v Sanford*, (2015) have ruled that consent can be obtained through the rental company.

The question is -- how long does an officer have to obtain consent from the rental company? How long does it take to obtain consent in the middle of the night? Although there is no “brightline” rule as to duration during a traffic stop, are officers held to the 12-13-minute rule of thumb in these circumstances?

People v Cassino

Facts

An officer stopped a man, Cassino, driving a Hertz rental car at 89 mph in a 55 mph zone. Since Cassino was not an authorized driver under the vehicle’s rental agreement, the officer called the Hertz “emergency police number.” “A Hertz employee asked the officer to recover the vehicle for Hertz.”

The officer returned to the rental vehicle roughly 25 minutes after the stop and arrested Cassino for criminal trespass to the rental vehicle. There is no explanation as to why it took him that long. The officer handcuffed Cassino and put him in the back seat of the squad car.

The officer searched the rental car – purportedly under the inventory doctrine -- and discovered narcotics in the center console.

The Illinois Appellate Court

The Illinois Appellate Court ruled that the duration of the detention was too long. Therefore, the evidence was suppressed.

Training Tips

1. The dissenting opinion in this case noted that there are several cases where officers held drivers longer than 15 minutes based on varying circumstances. (The problem here was that the officer never explained why the call took him so long. Was he put on hold? Was he directed to a different Hertz employee? Etc.? That should have been in the officer's report.)
2. The dissent never discusses the Illinois and 7th Circuit cases where these courts of jurisdiction require the officers to obtain the consent of the rental company if the officers have no other theory for the search (as the driver / mule generally has a reasonable expectation of privacy in the car he is driving). The point is that if these courts require that the rental company be contacted, then why shouldn't courts give officers extra time to do that?
3. Once again, the court states that traffic stops are basically the same as TERRY stops in "duration and atmosphere."
4. In this situation, you should always question the driver about the car and should always ask for consent.
5. Also, if you know you are going too long time-wise, ask the driver for more time to complete the stop.
6. Do not give the ticket too early as a lot of courts rule the stop is over when you give the driver the ticket.
7. It is possible in this situation that a rental company could give a blanket consent (to take or search the vehicle) in writing to officers. That would be an ideal solution. But it is, of course, unknown if the courts would allow it. If you decide to follow this course, be sure to have the consent document executed by your attorney and that of the rental company. Let the attorneys decide if this is a viable alternative, considering the time constrictive issue. The problem with this approach would be that sometimes people who are not on the contract drive a rental car and have no contraband in the car.

WHEN MUST OFFICERS GIVE MIRANDA DURING A TRAFFIC STOP?



Context

Generally, Officers can ask questions during a traffic stop without providing MIRANDA warnings as traffic offenders generally are not in custody. *BERKEMER V McCARTY*, 468 US 420 (1984)

However, in certain situations officers must give warnings before questioning. The most obvious is when the person being questioned is handcuffed. *People v Miller*, 993 NE2d 988 (2013)

Less obvious situations are when a person is in the back seat of a squad car. *People v Jordan*, 960 NE2d 1253 (2011)

What about if there are 5 or 6 officers around the suspect during a traffic stop where drugs have been located in the vehicle? Is that custodial interrogation?

Facts

An officer stopped a minivan for speeding. There were five occupants in the car. About 10 minutes into the stop, a drug dog alerted on the car. By this time there were 5 officers at the scene. All of the occupants of the car were thoroughly searched – even their socks. No drugs were discovered in those searches, and none of the occupants had an arrest warrant. All the occupants were told to stand in a certain area where they could be watched. No suspect was handcuffed; no suspect was told he was under arrest and no one was given his MIRANDA warnings.

The officers searched a backpack in the trunk area. The backpack contained marijuana and cocaine. By this time there were six officers on scene. An officer approached the occupants and asked them who owned the backpack. Garza admitted that he owned it.

The Illinois Appellate Court

The Illinois Appellate Court ruled that Garza was in custody for Miranda purposes and suppressed the evidence.

Training Tips

1. The court stated in the opinion that, basically, if a person is not free to leave, the person is in custody. This is absurd as when a traffic offender is questioned, he / she is not free to leave -- and yet not in custody. The dissenting opinion stated that the United States Supreme Court in *BERKEMER V MCCARTY* found the suspect not in custody, and he was the driver of a vehicle. The dissent is clearly correct on that point.
2. That doesn't mean that the suspect was not in custody in *Garza*. He had been thoroughly searched – even his socks. There were six officers there. In *People v Rivera*, 709 NE2d 710 (1999), decided 20 years ago, the court ruled that six officers around a suspect looked custodial to the court. The difference here is that there were six suspects in a group – not just one suspect. This is a very close case. You should be very careful about questioning suspects when a lot of officers are around him, if you haven't given the suspect his MIRANDA warnings.
3. A suggested approach might be for each officer to take one occupant aside and talk to them in order to get their story. Then compare stories. This would probably not be custodial.
4. On a separate issue, consensual contacts, where there are several suspects, officers must be careful not to give orders to suspects when splitting them up. Officers obviously may give such orders to all occupants during a traffic stop.
5. Way, way too many officers fail to give MIRANDA warnings to persons during a traffic stop when the officers handcuff them. Officers, generally, should have probable cause and give MIRANDA to occupants of vehicles if the occupant(s) are going to be handcuffed. If you feel you have to handcuff occupants briefly for your safety, don't ask them any questions. When you feel safe and you don't have probable cause, uncuff the occupant(s) and tell them that they are not under arrest or in custody. Ask them if they understand that. Make sure to get an answer of the affirmative. Then make sure you put that in your report.
6. Many officers have said that they don't have to give MIRANDA if they don't ask questions. It is crucial that you ask questions and get answers related to the crime you are investigating. Many cases are lost in court because officers did not ask questions about it.



WHEN DOES GOOD FAITH APPLY -- AND WHEN DOES IT NOT APPLY?

Context

Generally, when officers take an informant to an issuing judge, the informant's credibility is enhanced. Also, when a magistrate signs a warrant, appellate courts are supposed to defer to the magistrate, as the

magistrate was the person who listened to the informant and judged his / her credibility.

Finally, the state has a second chance when probable cause is lacking because a judge signed the warrant. Therefore, officers in "good faith" should be able to rely the magistrate's good judgment (even when it was bad). *UNITED STATES V LEON*, 468 US 897 (1984)

So under what conditions will an appellate court overrule an issuing magistrate?

People v Pruitte and Neal

Facts

A confidential informant, (Pat Doe) told officers that he saw heroin in a certain specifically described apartment within the past week. The problem was that Doe had a long list of crimes charged (some for dishonesty) that he had committed.

The officers took the informant to a magistrate to be questioned.

The judge then signed a search warrant for the apartment. During the execution the officers found a used syringe, three Dormin pills, \$100, a drug scale and three pistols, 57 live rounds of ammunition, and a plastic bag containing suspected ecstasy.

The Trial Judge

The two defendants were overnight guests and therefore had standing. The trial judge stated that the warrant "sucks" (his word). There was no probable cause, and the good faith doctrine did not apply as the affidavit was "bare bones."

The Illinois Appellate Court

The Illinois Appellate Court ruled there was no probable cause in that Doe said that a black person, residing in the apartment stated that the substance was his heroin. That was the only observation of any criminal activity. There had been no surveillance of the apartment.

Another problem was that the informant was dishonest, based on his crimes charged, and the magistrate did not indicate in any way that he relied on the informant's statement.

The good faith doctrine did not save the case because as the court put it, "an unknown individual possessed what Doe believed to be heroin, based on Doe's unspecified prior experience, at the location described in the complaint."

The dissenting opinion stated that the magistrate should be given greater deference. There was probable cause and even if there wasn't, the state should be able to rely on good faith as the magistrate thought there was probable cause, so why should the officers not trust the magistrate's judgment?

Training Tips

1. Hopefully, most officers reading this already realized that if the defendants had said that the apartment did not belong to them and that they were not overnight guests, the officers would have no obligation to prove that the warrant was supported by probable cause. That could have been a crucial tip for the officer here as most suspects want to distance themselves from the scene where the drugs are.
2. Any time an officer takes an informant to the magistrate for questioning to support a warrant, appellate judges tend to find the warrant ok as to probable cause or, if not, the appellate court tends to find the warrant ok under the good faith doctrine. It just didn't work here for obvious reasons.
3. State how the informant knows that it was heroin he saw.
4. Always have someone who knows warrant requirements to look over the warrant.
5. The dissenting opinion here might have the strongest argument based on the good faith doctrine. But if your probable cause is weak, do some surveillance to bolster your suspicion.
6. Always make sure the informant talks to the judge and is prepared to answer his / her questions.

WHAT IS OBSTRUCTING?



Context

Obstructing is a tricky charge. We've all heard about it for years as it relates to President Trump's conduct. Probably Congress can create its own definition when it comes to impeachment. But officers do not have that luxury.

Most officers do not know the rules related to obstructing. Do you know in the following? If you do not, look them up in Volume I of *The Officer's Legal Source Book*.

- Is it obstructing when a passenger flees from a lawful traffic stop? *People v Johnson*, 945 NE2d 2 (2010)
- Is it obstructing when an occupant of a vehicle will not get out of the vehicle, or in the vehicle, during a lawful traffic stop? *People v Synnott*, 811 NE2d 236 (2004)
- Is it obstructing to swallow drugs? *People v Brake*, 783 NE2d 1084 (2002)
- Is it obstructing for a TERRY-stop suspect to refuse to give his name? *People v Fernandez*, 963 NE2d 1058 (2012)
- Is it obstructing during a domestic when a spouse tells the officer to get out of his house after the officer sees no indication of violence? *People v Jones D*, 35 NE3d 970 (2015)
- Is it obstructing when a suspect lies about his name if the officer already knows his name? *People v Taylor*, 972 NE2d 753 (2012)

People v Rasheed Casler

Facts

Officers saw a man, Casler, come out of motel room. Then Casler went back into the room. The officers knocked on the door. A woman opened the door, and the officer smelled marijuana. Casler was not in the room, so the officers thought he must be in the restroom. Casler, while in the restroom, said his name was Jakuta Williams. Casler finally came out of the restroom. An officer recognized then that the suspect's name was Casler. An officer searched a hooded sweatshirt on the bed and found a wallet reflecting that the suspects name was Casler. When an officer called Casler in, dispatch related that Casler had an arrest warrant.

Illinois Appellate Court

The Illinois Appellate Court ruled that there was probable cause to arrest for obstructing and Casler was convicted of obstructing.

Training Tips

1. The court refused to follow *Taylor*, a case where an officer basically knew the suspect's name. When the officer asked Taylor his name, Taylor lied. The court in *Taylor* said that it was not obstructing because the false name "did not materially impede the investigation." While refusing to follow the *Taylor* decision, the court stated that it does not have to follow the precedent of another district appellate court. Casler is 5th District (Southern Illinois) case. (See *People v Taylor*, page 75 in Volume I of ***The Illinois Officer's Legal Source Book***.)
2. The 7th Circuit has ruled that officers may not enter a home – or certainly a motel room – just because the officers smell marijuana. See *White v Stanley* page 68 in Volume II of ***The Illinois Officer's Legal Source Book***.
3. To see the result in *Jones, Jenkins, Blake* and *Fernandez*, above, see pages 69 and 70 in Volume I of ***The Illinois Officer's Legal Source Book***.

MISCELLANEOUS QUESTIONS, ISSUES AND CASES



Context

The following are cases that are important but not as important as those fully briefed or not on point as a constitutional issue.

Henry v Hulett (7th Circuit) – Strip searches of female inmates at a prison was constitutional, even with males present. There was a very strong dissenting opinion.

US v Sawyer (7th Circuit) – Sawyer was burglarizing a home. When the police came, Sawyer left his backpack, containing a gun, in the home. Officers searched it. The court ruled that Sawyer gave up his expectation of privacy in it when he left it in the home he was burglarizing.

People v Morales (IL App Ct) – It was a *BRADY* violation to fail to disclose that a witness was given assistance in his immigration status in exchange for his testimony.

People v Markham (IL App Ct) – Officers responded to a 911 overdose. Markham was given Narcan -- and recovered. Officers then found less than 3 grams in a rolled up bill – Markham was charged, but case was dismissed.

Kooperman v Chicago (IL App Ct) – Can't ticket for parking during street cleaning if not posted.

People v Norris (IL App Ct) – On a petition to rescind, the exclusionary rule doesn't apply, as it is a civil proceeding.

People v Taylor (IL App Ct) – A suspect's silence cannot be introduced at trial, so an officer cannot mention that he gave a suspect his / her MIRANDA warnings unless there is a statement.

People v Quigley (IL App Ct) – Quigley was in an accident and was DUI. At the hospital, they took Quigley's blood (.251). Quigley argued doctor-patient privilege. Bad idea; the BAC was admitted.

People v Spicer (IL App Ct) – Officers cannot get the passcode to Spicer’s cell phone as that would violate his 5th Amendment rights. (There is now a conflict among IL courts on this issue.)

People v Garcia-Gutierrez (IL App Ct) – The warning to motorists was read to the suspect in English. Suspect spoke only Spanish. The court ruled the warning was adequate.

People v Monroy-Jaimes(IL App Ct) – PC is a low standard -- “Probable cause does not require even a showing that the belief the suspect committed a crime was more likely true than false.”

People v McGregor(IL App Ct) – Officers seized computers during execution of search warrant for drugs, but didn’t get a warrant for the computers for eight months – evidence suppressed.

CERTIFICATION



All officers and chiefs understand that officers are required to complete certification in certain areas of expertise.

CourtSmart can work with any MTU (Mobile Training Unit) to help certify officers.

CourtSmart provides a monthly publication and exam that can be submitted to your MTU, and ultimately ILETSB for select mandate

certification approval.

CourtSmart will submit each publication for certification to your MTU, as long as the MTU is open to working with us. NEMRT and some other MTU's have been extremely helpful in providing pass-through for CourtSmart.

Once we have a working relationship with the MTU, the MTU will start to pass our content and exam data to ILETSB for mandate certification of individual officers.

Officers must understand that if they do not take the test, generally, they cannot take the test the next month. So they will not be certified in the mandates satisfied that month. So please take the tests every month.

It is your responsibility to verify that you (your officers, if you are a supervisor) are being certified and receiving credit. The most common issues arise when the officer has a missing or incorrect PTB ID number (found here: <https://www.ptb.illinois.gov/resources/ptb-id-lookup/>) These officers will not receive credit if this information is missing or incorrect.

Frequently Asked Questions About Certification

Q: Will I automatically receive certification if I pass an exam on the Leotraining website?

A: No, you must verify with your MTU or ILETSB that you, or your officers, are receiving credit and contact us if they are not.

Q: Will Leotraining do the administrative work of passing our data through the proper channels?

A: Yes, we will send data on a monthly basis to your MTU (provided we have a working relation with them). All you have to do is verify that your officers'

data is being approved at the MTU and State level.

Q: Can I go back and retake older exams for certification approval?

A: No, we only pass the most recent exam data for a given month. Also, the answers to all the questions are provided in the subsequent month's publication. That is why it is imperative for you to verify that your officers are being certified for each month's mandates if you are a supervisor.

Q: Does LeoTraining know if officers have been certified?

A: No, ***you must verify*** that with your MTU or ILETSB. We are happy to help facilitate the data in any format that they need, but we don't have any mechanism to know an officer's data outside of our website.

Q: I see that an officer has a missing or incorrect PTB ID number on his/her profile. Can I change that?

A: Your officers can change / edit their profile at any time by logging in and clicking the "edit profile" link on the website
> <http://leotraining.com/dashboard/edit-profile/> All officers and supervisors must check to be sure your profile is accurate.

QUESTIONS – AND ANSWERS -- FOR THE JULY EDITION OF COURTSMART

1. According to WISCONSIN V MITCHELL, if an officer has probable cause that the suspect is DUI and is passed out, and the officer reads the suspect his implied consent warnings, the officer may normally draw the suspect's blood without obtaining a warrant. T
2. In question 1, the theory under which the BAC is admissible, according to the Court in MITCHELL, is the implied consent doctrine. F
3. If an officer has probable cause (PC) a suspect is DUI and PC the suspect just ran over and killed a pedestrian, an officer should get a search warrant to draw blood if there is time. T
4. All departments should develop rules, policies and procedures for dealing with cultural changes which the departments are aware of. T
5. If an informant is in the home of a suspect buying drugs and the informant gives a signal that he (the informant) sees the drugs, officers may enter the home under the consent once removed doctrine. F
6. Reasonable suspicion is a totality test, so officers must include every fact they can think of to put in their report to justify a stop and detention. T
7. There is conflict among the courts about whether taking a driver's license during a consensual encounter turns the encounter into a seizure, so officers who feel compelled to ask for ID during a consensual encounter should give the ID back quickly before asking any other questions. T
8. Passengers in a car who have done nothing wrong can / may walk away from a traffic stop. F
9. A passenger who runs from a lawful traffic stop is guilty of obstruction of a peace officer. T
10. If a passenger asks to leave a traffic stop, officers must allow him to leave, even if they are still dealing with the driver, if the traffic stop has lasted 10 minutes long at the time. F

QUESTIONS – FOR THE AUGUST EDITION OF COURTSMART

1. Officers can take extra time (beyond the 12 – 13 minute rule of thumb) to call the rental company to find out if the rental company wants to reclaim the car when a mule is driving the rental car, and the suspect is not on the rental contract. T F
2. Officers should not question an occupant of a vehicle stopped for a traffic violation if the occupant is handcuffed, in the backseat of the squad car or surrounded by five officers unless there is probable cause, and the occupant has waived his MIRANDA rights. T F
3. Any time an officer takes an informant to the magistrate for questioning to support a warrant, appellate judges tend to find the warrant ok as to probable cause or, if not, the appellate court tends to find the warrant ok under the good faith doctrine. T F
4. There is a conflict among the appellate courts as to whether it is obstructing when a *TERRY* suspect provides a false name to avoid the detection of a warrant and the officer already knows what the suspect's name is. T F
5. It is obstructing for a passenger of a lawfully stopped car to get out of the car and run away. T F
6. A burglary suspect who leaves his backpack in a house that the suspect broke into, loses the expectation of privacy in his back pack. T F
7. Probable cause is a more than likely test. T F
8. If hospital personnel turn BAC results / blood over to officers that was obtained during the treatment of a DUI suspect, the hospital and the officer have violated the doctor – patient privilege unless the officer had obtained a warrant or consent. T F
9. If officers are called to a drug overdose, and 3 grams of heroin are discovered there, the drugs will be admissible only if the suspect recovers while the officers are there. T F
10. An officer's stating that he / she read a suspect his / her rights can cause a mis-trial if the suspect does not / will not give a statement. T F