



LEGAL BULLETIN #2002 - 08 OFFICE OF LEGAL AFFAIRS

2002 IN REVIEW

Legal Flag: It is paramount that officers stay cognizant of recent court decisions.

The purpose of this bulletin is to highlight three (3) cases decided in 2002. While none of them introduced a new concept, all serve as a reminder of very important legal principles.

CONVERSATIONS DURING A TRAFFIC STOP

In *People v. White*¹, the Illinois Appellate Court held that conversations during a traffic stop, like any other *Terry* stop, must be reasonably related to the purpose of the stop. On July 1, 1998, Detective Robert Lee of the Naperville Police Department stopped a brown station wagon because the driver failed to signal while changing lanes. When Lee walked over to the car, he observed a lawn mower and a weed whacker in the back of the vehicle. The detective asked for White’s driver’s license and insurance card and informed him of the reason for the stop. The officer also asked the driver if he had any receipts for the mower and weed whacker. The driver produced receipts, but not in his name. From here, the conversation began to center on the items in the station wagon and the identity of the person on the receipts. Eventually, it became apparent that White’s Arkansas driver’s license was suspended. During the conversation with the officer, White confessed to having committed a forgery at Sears.

The 2nd District Appellate Court held that the statements should have been suppressed because they were unrelated to the stop. The court held, “...While a police officer making a lawful stop of a motorist is not precluded from making reasonable inquiries

concerning the purpose of the stop, the scope of the activities and questioning by the police during an investigatory detention must be reasonably related to the circumstances that initially justified the stop. An officer may expand the scope of his detention beyond that which is reasonably related to the circumstances only when the officer has a reasonable and articulable suspicion that other criminal activity may be afoot or where matters that arise during the course of the stop cause the officer reasonable suspicion. Questioning wholly unrelated to the purposes of the stop, which is reasonably calculated to elicit incrimination responses, is impermissible unless supported by independent, reasonable, and articulable suspicion.”²

Result

Since Detective Lee had no reasonable suspicion to believe that the items in the car were stolen and had no information regarding a theft, the questions regarding the mower and weed whacker were impermissible. The situation would have been different, however, if the officer had possessed information about the forgery at Sears and therefore had a reason for questioning the driver about the items.

¹ *People v. White*, 770 N.E.2d 261 (2002).

² *Id.* at 271.

CONSENT

Police officers often rely upon “consent” to enter a residence or search a location. It is a useful concept for law enforcement because when a person gives his or her consent to search, there is no need for probable cause or a search warrant. However, since consent operates as a waiver of a Fourth Amendment right, it must be voluntarily given. In addition, the United States Supreme Court has said that in order for the consent to be valid, the police must establish that they reasonably believed that the person giving the consent was authorized to do so.

In United States v. Camci³ four plainclothes federal agents were investigating the case of two illegal aliens. When they knocked on the suspect’s door, it was answered by a person they did not know. The agents identified themselves and asked to come in. The person at the door said “yes” and stepped backward. The agents entered. Once inside, the agents used another person as a translator and asked the individual about his identity. The federal court ruled that this was not a valid consent. Part of the reason for their ruling was that the person opening the door did not speak English. However, the Court went on to say, “even if defendant were an English speaking, high school educated American citizen, a strong showing would be required of the Government to prove that the agents’ entry into a residence was the result of consent freely and voluntarily given and not the product of coercion of duress.”⁴

Result

An officer cannot automatically assume that the person who answers the doorbell is the occupant, or is a person who has the authority to admit the officers. The State bears the burden of proving that the consent was voluntarily given.

SEARCHES

³ *United States v. Camci*, 2002 WL 883750 (D.Del.).

⁴ *Id.* at 2.

One of the cases being watched closely is People v. Marilyn Love⁵. In this case, 015th District officers asked Ms. Love to spit out the contents of her mouth during a street stop. After she spat out the contents of her mouth (cocaine), she was arrested for possession of controlled substance. The circuit court denied the motion to suppress the cocaine, but the 1st District Appellate Court reversed, thereby suppressing the evidence. The reasoning of the Appellate Court was that during a *Terry* stop only a pat down of the outer clothing is allowed based upon a reasonable suspicion that the person is armed with an object that poses a danger to the officer and/or others in the vicinity.

The State appealed to the Illinois Supreme Court and the case was reversed, thereby admitting the cocaine into evidence. The Illinois Supreme Court did agree with the Appellate Court that a *Terry* stop does not provide for a request by officers to spit out the contents of the mouth. However, the Illinois Supreme Court analyzed this case based upon the “totality of circumstances.” Officer Olson had seen a man trade currency to a person on a bicycle for something in the defendant’s mouth. When Officer Olson approached the defendant to ask her name and received a garbled response, Officer Olson could have reasonably concluded, based upon all his observations and experience, that the defendant was concealing drugs in her mouth.

Result

Reasonable suspicion ripened into probable cause to arrest and Officer Olson’s order to the defendant was a search incident to a lawful arrest.

CONCLUSION

Police officers must stay abreast of legal decisions affecting law enforcement. By becoming familiar with such decisions, officers can perform their duties and responsibilities with confidence and assurance. This Bulletin was prepared by Sandra Brode, an attorney with the Office of Legal Affairs.
© Chicago Police Department, December 2002.

⁵ *People v. Love*, 769 N.E.2d 10 (2002).