Traffic Stops

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the seizure: note on stopped cars

1. cts split: is person seized when, in parked vehicle, police pull up behind and activate emergency lights AND person does not attempt to leave

Montana: *is* seizure

State v. Graham, 175 P.3d 885 (Mont. 2007)
traffic stop vs. arrest?

No bright line rule


* _no rigid time_ limit for stop -- brevity _is_ important consideration

* _primary focus: events during detention_

STOP -- “extremely elastic rule” w/ broad range of application

_U.S. v. Acosta-Colon, 157 F.3d 9 (1st Cir. 1998)_

identical actions can be labeled arrests or stops, depending on if police need to engage in protective actions

_Washington v. Lambert, 98 F.3d 1181 (9th Cir. 1996)_
time limits

no rigid time limit but stops are temporary in nature

at some point, merely because of duration, detention labelled arrest

Sharpe

early cases: stop must be brief

E.g., Florida v. Royer, 460 U.S. 491, 500 (1983)

(plurality):

scope of detention “must be carefully tailored to its underlying justification” and stop cannot last any longer than “necessary to effectuate the purpose of the stop”
inquiry now fact-specific, instrumental in character:

is length of time reasonable in light of purpose of stop?


“Even a very lengthy detention may be completely reasonable under certain circumstances. Conversely, even a very brief detention may be unreasonable under other circumstances. There is no set formula for measuring in the abstract what should be the reasonable duration of a traffic stop. We must assess the reasonableness of each detention on a case-by-case basis and not by the running of the clock.”
factors typically used to assess reasonableness of length of time:

* nature of criminal activity being investigated

* actions of suspect contributing to any delay

* actions of police contributing to any delay

E.g., Center for Bio-Ethical Reform v. City of Springfield, 477 F.3d 807, 827 (6th Cir. 2007) (stating factors)

"Nothing so well symbolizes the difference between a traffic stop and a *Terry*-stop for drugs as their respective attitudes toward the presence of drug-sniffing dogs. The dog has no role to play in a traffic stop. The dog may be the star performer in a *Terry*-stop for drugs. The traffic stop, once completed, will not await the arrival of the dog for so much as 30 seconds. The *Terry*-stop for drugs very deliberately and patiently does await the arrival of the dog. The dog’s arrival is, indeed, the primary reason for waiting."

**Ofori:**

17 minute detention for drug dog to arrive / alert reasonable when articulable suspicion driver engaged in drug-related criminal activity.
two stop scenarios

once purpose of stop satisfied, subject must be let go unless another valid reason to detain

two stops--

stop for traffic violation cannot be extended to investigate possible drug charges

\textbf{but} can be extended, as second stop, if police develop articulable suspicion to justify drug stop \textit{during} permissible scope of traffic stop

U.S. v. Ramirez, 479 F.3d 1229, 1243-45 (10th Cir. 2007)

Montana

- Dog sniff is a search justified by articulable suspicion
  
  State v. Stouambaugh, 157 P.3d 1137 (Mont. 2007)

- Traffic stop can be *prolonged* to get dog sniff based on articulable suspicion of drug activity developed during traffic stop

  State v. Meza, 143 P.3d 422 (Mont. 2006)
Orders to exit vehicle

order driver AND passengers out - always permissible

- MD v. Wilson, 519 U.S. 408 (1997)

many courts: can order to get back in stopped vehicles

  (collecting cases)
involuntary transport to police station = arrest


other movement:

depends on how narrowly court interprets permissible scope of *Terry* stop

considerations:

1. more movement, more likely scope of stop exceeded

2. purpose of movement?

* get out of rain

* taking person to small room to be interrogated and confronted w/ request to consent to open luggage
License, registration, computer checks

* overwhelming weight of authority permits as incident of every traffic stop

  *E.g.,* Delaware v. Prouse, 440 U.S. 648 (1979)

* cannot do random, suspicionless stops of vehicles to check background checks on passengers

  most cts: need reasonable suspicion related to passenger

  *E.g.,* People v. Andrews, 867 N.E.2d 520 (Ill. Ct. App. 2007)

  *But see* U.S. v. Soriano-Jarquin, 492 F.3d 495 (4th Cir. 2007)

  (permitting requests for identification of all passengers in validly stopped vehicles as incident of stop)
VIN checks


Exam of VIN not search within 4th and permissible for *all* traffic stops

*Class*: stopped for speeding, cracked windshield - officer reached into car and moved some papers covering VIN -- observed gun

VIN is “significant thread in the web of regulation of the automobile” and motorist’s reasonable expectation of privacy in VIN diminished due to pervasive regulation of vehicles
Questions of suspect / others

as to crime under investigation
- always permissible during stop

can police ask Q unrelated to purpose of stop?

* split of authority pre- *Mena*

resident validly detained during execution of s/warrant - permissible to ask Q unrelated to crime under investigation

reasoning:
did not prolong detention; do not need R- suspicion to ask about “name, date and place of birth, or immigration status”
unrelated questioning

post - *Mena:* courts *more likely* to give police officers latitude in Q asked, so long as Q occur during course of permissible stop

**Examples:**
* origin of travel / destination
* relationship of occupants of vehicle
* Q about weapons, drugs, contraband, other crimes

**Recent case:** *Arizona v. Johnson,* 555 U.S. __ (2009)

"An officer's inquiries into matters unrelated to the justification for the traffic stop ... do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not *measurably* extend the duration of the stop."
must detainee answer Q?

generally NO:

“person stopped is not obliged to answer, answers may not be compelled, and refusal to answer furnishes no basis for arrest, although it may alert the officer to the need for continued observation.”

*Terry v. Ohio, 392 U.S. 1, 34 (1968) (White concurring)*

identification requests *during valid stops:*

*Hiibel v. Sixth Judicial District, 542 U.S. 117 (2004):*

upheld NV statute requiring person stopped, based on R- suspicion, to disclose name

failure to disclose arrestable offense
passengers in vehicle can challenge stop of that vehicle

most courts may not routinely request passenger’s license during traffic stop when passenger not suspected of crime
Arizona v. Johnson, 555 U.S. __ (decided 01/26/09)

can frisk during vehicle stop if police have articulable suspicion passenger armed and dangerous

- Johnson --- back-seat passenger of vehicle legally stopped for non-criminal vehicular infraction
- police do not also have to believe passenger is engaged in criminal activity
frisks of vehicle


**during vehicle stop,** police can make protective
s/ of **entire passenger compartment** “limited
to those areas in which a weapon may be
placed or hidden” if police have R- suspicion
driver armed and dangerous

**MONT:** status unclear

State v. Stubbs, 892 P.2d 547 (Mont. 1995)
(frisk of person in car - cites *Long*)
probable cause-based vehicle searches

4th Amendment: NEVER need a warrant

Montana: need to show exigent circumstance in each case -- otherwise need a warrant

State v. Elison, 14 P.3d 456 (Mont. 2006)
search incident arrest

traditional federal doctrine

- **rationale:**  
  1. officer safety  
  2. recover evidence that could be destroyed

- **exigency:** prior to *Robinson v. United States, 414 U.S. 218 (1973)*

  often viewed as exception to warrant requirement -- intimated exigent circumstances rationale and, perhaps, need to justify each case

*Robinson* changed this: *per se rule.*
A custodial arrest of a suspect based on probable cause is a **reasonable** intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification.

It is the fact of the lawful arrest which establishes the authority to search, and we hold that in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a “reasonable” search . . .
permissible scope of SIA

1. of the **person**: “unqualified authority"
   
   *Robinson*

2. **reach and grasp area** (area w/ in "immediate control")
   
   *Chimel*

3. **vehicles** - entire passenger compartment
   
   *Belton*
**Scope:** vehicle searches incident to arrest


incident to arrest of auto occupant, may s/ entire passenger compartment, including any open or closed containers, but not trunk

"Container"

Any object capable of holding another object. "It thus includes closed or open glove compartments, consoles, or other receptacles located anywhere within the passenger compartment, as well as luggage, boxes, bags, clothing, and the like."
montana: search incident arrest

- **scope** of a warrantless S/ I/ A

  "must be commensurate with the **underlying purposes** of preventing an arrestee from using any weapons he or she may have, escaping, or destroying any incriminating evidence in his or her possession"

- "**specific and articulable exigent circumstances** are also required to justify and render lawful such a search"

  State v. Hardaway, 36 P.3d 900 (Mont. 2001)
digital evidence containers

applying *per se* rule to digital evidence containers

searches incident to arrest
SIA: recent occupants


*Belton* applies when suspect gets out of car *before* officer makes contact w/ suspect.

Reasoning:

- “arrest of a suspect who is *next* to a vehicle presents identical concerns regarding officer safety and the destruction of evidence as the arrest of one who is inside the vehicle”

- “[N]or is an arrestee less likely to attempt to lunge for a weapon or to destroy evidence if he is outside of, but *still in control* of, the vehicle.”

- *per se rule*: no actual or perceived danger needed
how close does arrestee have to be to car to justify Belton search?

* **Thornton:**

  * “suspect who is next to a vehicle”

  * Thornton had conceded in lower ct that “he was in ‘close proximity, both temporally and spacially,’ to his vehicle”

**majority:** “an arrestee’s status as a ‘recent occupant’ may turn on his **temporal or spatial relationship** to the car at the time of the arrest and search”
recent occupants: lower cts apply Thornton

Thornton applies when

* “few feet” away
  US v. Powell, 483 F.3d 836 (D.C. Cir. 2007)

* next to truck
  US v. Osife, 398 F.3d 1143 (9th Cir. 2005)

* recent occupant when fled vehicle immediately prior to arrest, which occurred one block away
  Penman v. Commonwealth, 194 S.W.3d 237 (Ky. 2006)
Gant -- a new approach!!

granted cert on this question:

Does the F/A require law enforcement officers to demonstrate a threat to their safety and a need to preserve evidence related to the crime of arrest in order to justify a warrantless vehicular search incident to arrest conducted after the vehicle’s recent occupants have been arrested and secured?

Arizona v. Gant, __ U.S. __ (April 21, 2009)
Gant's *two new holdings*:

1. *Belton* does not authorize vehicle search incident to recent occupant's arrest after *arrestee secured* and cannot access interior of vehicle

2. circumstances unique to automobile context justify S/I/A when reasonable to believe that *evidence of offense of arrest* might be in vehicle
majority

Stevens - Scalia, Souter, Thomas, Ginsburg

Scalia concurring

* does not like rule but don't want 4-1-4 / sees majority as "artificial narrowing" of prior cases

* wants: SIA vehicle only if object of S/ is evidence of crime for which arrest made

Breyer dissent: stare decisis applies

Altio dissent (w. CJ Roberts, Kennedy, and Breyer in relevant part))

* Belton was good rule
* new rule:
  why not apply to all arrestees?
  why reason to believe sufficient to s/?
holding #1 explained

can S/I/A vehicle "only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search"

majority -- fn4:

Because officers have many means of ensuring the safe arrest of vehicle occupants, it will be the rare case in which an officer is unable to fully effectuate an arrest so that a real possibility of access to the arrestee's vehicle remains.
essential rationale:

1. **protect privacy interests** -

*Belton* searches authorize police officers to search not just the passenger compartment but every purse, briefcase, or other container within that space.

A rule that gives police the power to conduct such a search whenever an individual is caught committing a traffic offense, when there is no basis for believing evidence of the offense might be found in the vehicle, **creates a serious and recurring threat to the privacy of countless individuals.**
2. *Belton* not as bright as claimed

   -- close in time to arrest, proximity to car/ scene are problems

3. *Belton* unnecessary to protect legitimate law enforcement interests

   --- can use other vehicle s/ for

   *(ex) frisk of vehicle*
holding #2 explained

circumstances unique to automobile context justify S/ I/ A when **reasonable** to believe that **evidence of offense of arrest** might be in vehicle

std:  "reasonable basis"
"Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest."

majority's final words