



# Motorcycles, Traffic Stops, and the Fourth Amendment

National Council of Clubs, Gulfport, MS

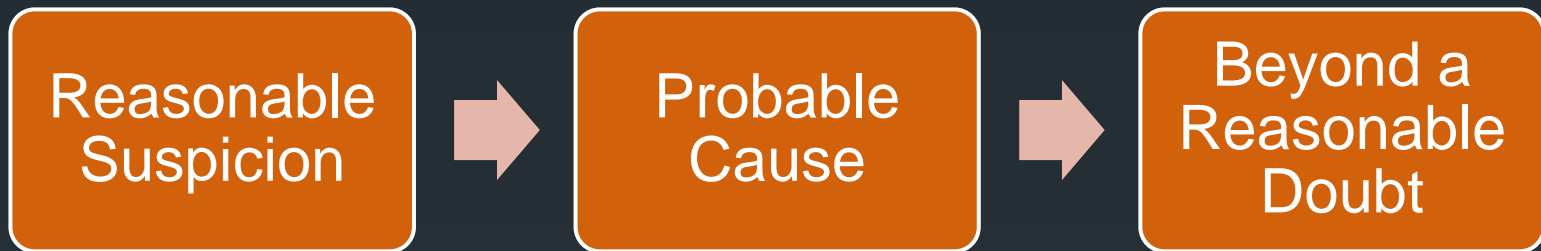
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# Different Levels of Evidence are Required for Different Things



- **Reasonable Suspicion** – Necessary for a Traffic Stop
  - **Probable Cause** – Necessary for Arrest or Search
    - **Beyond a Reasonable Doubt** – Necessary for a Conviction

# Reasonable Suspicion

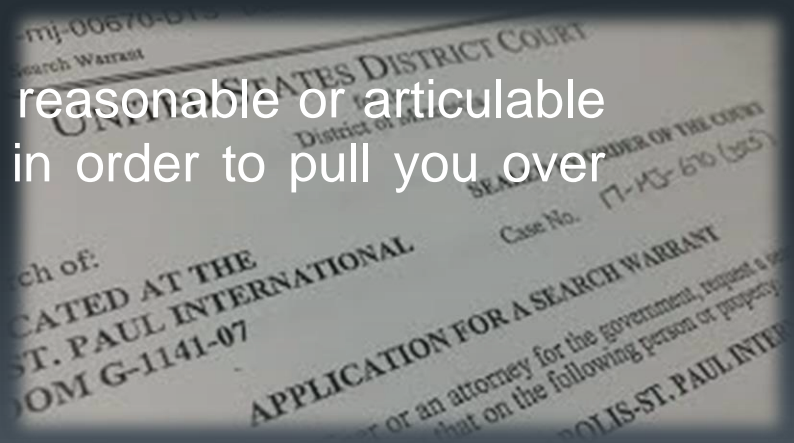
- LOW degree of evidence required
  - An objectively justifiable suspicion that is based on specific facts or circumstances and that justify stopping or sometimes searching (as by frisking) a person thought to be involved in criminal activity at the time
- Reasonable Suspicion is required in order to pull someone over
- Reasonable suspicion can be obtained by an officer observing an individual breaking a traffic law
- Reasonable suspicion is just that; a suspicion
- Lesser degree of certainty than probable cause

# Probable Cause

- Higher degree of certainty than reasonable suspicion
  - More than a “suspicion”
- Requires that facts and evidence presented in a case are of the type that would lead any *reasonable person* to believe that the suspect has committed a crime.
- Officers determine if they *believe* probable cause exists during a traffic stop
- In court, a judge will determine whether or not probable cause *actually* existed

# The Fourth Amendment

- The right to be free from unreasonable searches and seizures
- Just like a car, there must be consent, probable cause, or a search warrant to search your motorcycle
- NEVER consent to a search of your home or vehicle, no matter how innocent you may be
- A traffic stop is considered a *Seizure* under the Fourth Amendment
- This means that the officer has to have reasonable or articulable suspicion that criminal activity is afoot in order to pull you over while driving
  - Breaking a traffic law, etc.



# The Fourth Amendment cont.

- At your home, the Fourth Amendment right to be free from unreasonable searches includes your home's curtilage or area immediately surrounding and associated with the home.
  - *Collins v. Virginia*, 138 S. Ct. 1663 (2018)
- This means that if your motorcycle/automobile is in your driveway, an officer must have a warrant in order to step onto the property to view the motorcycle, get the VIN, plate number, etc.
  - Does not apply to vehicles on the street outside the home
  - If officer can see plate number or any other identifying information without being on the property, it is *legal*.

# The Erosion of the Exclusionary Rule

- The Exclusionary Rule was originally created to strengthen the Fourth Amendment, declaring that the protection of the Fourth Amendment be of no use if the courts permit illegally obtained evidence to be used in a criminal trial
  - Applied to all States in *Mapp v. Ohio*, 81 S. Ct. 1684 (1961)
- EXAMPLE
  - If an officer has a search warrant for the garage at your house, but instead of just searching the garage, he enters the home and begins searching the drawers in the kitchen. Any evidence found in the kitchen would be inadmissible in a trial.
- However, there are many exceptions to the Exclusionary Rule that allow illegally obtained evidence to be used in trial
  - Independent Source Doctrine
  - Inevitable Discovery Doctrine
  - Attenuation Doctrine
  - Good Faith Doctrine



# The Erosion of the Exclusionary Rule cont.

- **Independent Source Doctrine**

- *Murray v. U.S.*, 108 S. Ct. 2529 (1988)
- Illegally obtained evidence may be used at trial when the evidence in question has an independent source
- **EXAMPLE:**
  - If the officers illegally search your home and find documents that identify you as the culprit behind an internet scam. Then the next day, a confidential informant sends the officers the same documents. The documents are then admissible because there was an independent source

# The Erosion of the Exclusionary Rule cont.

- **Inevitable Discovery Doctrine**

- *Nix v. Williams*, 104 S. Ct. 2501 (1984)

- Illegally obtained evidence may be used at trial if the evidence in question would have inevitably been discovered anyways

- **EXAMPLE**

- If the police illegally search your home and find a map showing the location of an outdoor marijuana field located next to the loading dock of a busy commercial strip. Although the police were led to the marijuana by information obtained during an illegal search, the evidence could still be used in court because the field was in a busy area and its discovery was likely inevitable

# The Erosion of the Exclusionary Rule cont.

- **Attenuation Doctrine**

- *Hudson v. Michigan*, 126 S. Ct. 2159 (2006)

- Illegally obtained evidence is admissible when the connection between the unconstitutional police conduct and the evidence is remote or diminished enough to dissipate the taint

- **EXAMPLE:**

- If an officer does not have a legitimate reason to stop you but discovers that you have an outstanding arrest warrant. If the officer arrests and searches the person and finds drug paraphernalia, there is a high likelihood the evidence could be used in court.

# The Erosion of the Exclusionary Rule cont.

- **Good Faith Doctrine**

- *Arizona v. Evans*, 115 S. CT. 1185 (1995)
- If officers had reasonable, good faith belief that they were acting according to legal authority, the illegally seized evidence is admissible.
- **EXAMPLE:**
  - Officers complete the search of a home with a search warrant, however, in court the search warrant is later found to be legally defective. Because the officers were just acting in accordance with what they believed was legal, the evidence found in the search of the home is admissible

# Pretext Traffic Stops

- If you are followed by an officer for a long period of time and are then pulled over for a minor traffic violation, it is possible that it was a pretextual traffic stop
- A Pretext Traffic Stop occurs when the police employ a traffic stop based on reasonable suspicion as a way to search for evidence of a more serious crime they believe may be occurring
- Profiling is often a factor in pretext traffic stops
- The Supreme Court has ruled that the “Constitutional reasonableness of traffic stops does not depend on the actual motivations of the individual officers involved”
  - *Whren v. U.S.*, 116 S. Ct. 1769 (1996)

# 14<sup>th</sup> Amendment and Profiling

- “No state shall...deny to any person within its jurisdiction the equal protection of the laws.” This clause requires something rather simple of police officers—that all people situated similarly be treated the same.
  - *14th Amendment’s Equal Protection Clause*
- Perhaps the best known and most highly publicized application of the Equal Protection Clause to police work occurred in a 2013 order of a federal district court in New York. In that case, *Floyd, et al. v. City of New York*, “Plaintiffs—blacks and Hispanics who were stopped—argue that the NYPD’s use of stop and frisk violated their constitutional rights in two ways: (1) they were stopped without a legal basis in violation of the Fourth Amendment, and (2) they were targeted for stops because of their race in violation of the 14th Amendment.
- While an officer’s subjective motivations might not be relevant to the Fourth Amendment analysis of an objectively lawful pretextual stop, an officer’s discriminatory motivation would be front and center in Fourteenth Amendment analysis

# Red and Blue Lights, What Now?

- Pull over in a safe area. If nowhere safe is immediately available, slow down, turn on your hazards or wave to the cop to let them know you are aware you are being pulled over, then pull over immediately when it is safe.
  - Some officers may direct you where to pull over through their intercom
- Be patient and polite
  - Do not get upset if the officer takes a little time to walk up to you
  - Yes sir, No sir. Yes Ma'am, No ma'am.



# Red and Blue Lights, What Now?

- Take off your helmet
- Turn the bike off and put the stand down. This lets the officer know that you will not be attempting to flee
- Do NOT reach for license, registration, or insurance until the officer has asked
  - As an extra precaution, tell the officer where you will be reaching before you reach for anything (jacket pocket, saddlebag, etc.)
- Remember that this is also a stressful situation for the officer. They do not know who you are and what you may be capable of



# During the Traffic Stop

- If you have a camera recording, KEEP RECORDING
- The stop can only last as long as reasonably necessary to issue a citation for the violation you were pulled over for
  - Authority for seizure ends when tasks tied to the traffic infraction are, or reasonably should have been, completed
  - *Rodriguez v. U.S.*, 135 S. Ct. 1609 (2015)
- Checking for warrants, checking license, and inspecting insurance and registration are all reasonable during the stop and may prolong it

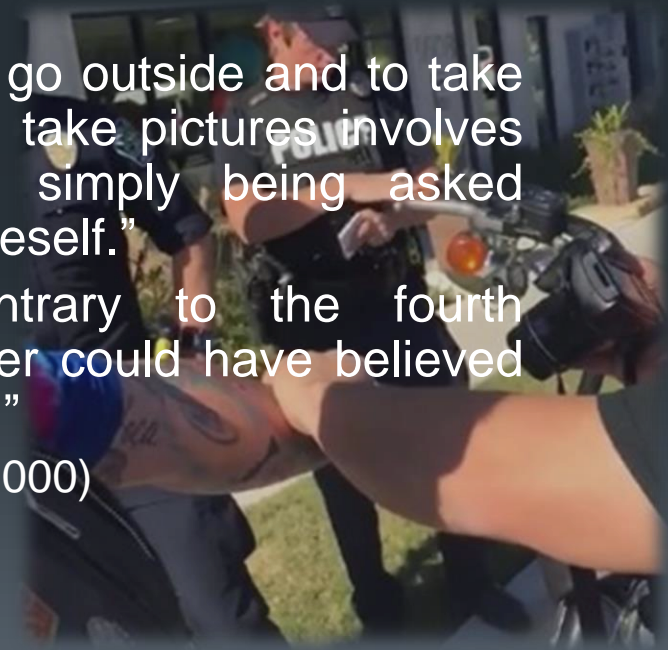


# During the Traffic Stop cont.

- The officer has the legal right to pat you down for weapons if he has a reasonable belief that you may have one
  - The officer may believe you have a weapon due to how you answer questions or if there is a bulge in your jacket/waistband
  - *Arizona v. Johnson*, 555 U.S. 323 (2009)
- If you are in a big group and the officer pulls over everyone, the officer has to process every ones information which could take a long time. The officer has the legal right to keep everyone there until they are finished
- If you do believe the officer is violating your rights, DO NOT get angry with the officer. Do as the officer says, then immediately after the stop is over write everything down and call an attorney

# Pictures of Tattoos: Legal or Illegal?

- What the officer did in the previous video was ILLEGAL
- Officers are not legally allowed to take pictures of your tattoos.
  - EXCEPTIONS:
    - You have consented to the photographs
    - Officers obtain a search warrant
    - You are legally confined
- “It is apparent to us that being ordered to go outside and to take off one’s shirt so that a police officer can take pictures involves much more fear and humiliation than simply being asked questions or being compelled to identify oneself.”
- “...Officer Danner’s actions were contrary to the fourth amendment, and that no reasonable officer could have believed otherwise in light of clearly established law.”
  - *Pace v. City of Des Moines*, 201 F.3d 1050 (2000)



# Tattoo Database

- If you have ever been arrested and booked into jail, there is a chance that Law Enforcement does have pictures of your tattoos on file
- Pictures of tattoos may be used for identification purposes when a victim remembers the design of a tattoo better than other details of the individual
- The National Institute of Standards and Technology (NIST) has attempted to create a program that would detect tattoos in pictures then match them to pictures of tattoos in a database
  - NIST asked contenders to create a program that could identify tattoos on screen, called Tatt-C. However, Tatt-C was disbanded in 2016 and Tatt-E was started.
  - As of October 2018, Tatt-E has only proven to be around 70% accurate and further development on the program is necessary in order to be able to actually use it



# Colors are not Illegal

- Many officers across the country tend to target motorcyclists who are wearing club colors/logos
- Freedom of Expressive Association is a derivative right, implied from the First Amendment
- Of course, this does not mean you can wear colors anywhere. If an establishment or event specifically bans club colors/logos, they can legitimately exclude you
- If an officer harasses you about your colors/logos, comply with their demands and speak to an attorney afterwards



# Colors are not Illegal cont.

- *Coles v. Carlini*, 162 F.Supp. 3d 380 (2015)
  - “The right to expressive association is a derivative right, implied from the First Amendment in order to assure the meaningful exercise of rights expressly secured by the First Amendment; in other words, the expressive associational right is reserved for groups that engage in some form of protected expression, and there is no constitutional right to associate for a purpose that is not protected by the First Amendment.”
  - “Members of a group who regularly engage in a variety of civic, charitable, lobbying, fundraising, and other activities are entitled to constitutional protection, under the First Amendment rights to expressive association”



# Final Remarks

- Remember that Law Enforcement Officers are people too, if you respect them, there is a better chance they will respect you
- Getting aggressive or angry with an officer will only make things worse
- The information provided in this presentation is generalized to be applicable to all states, however, each state has different laws. It is always best to consult an Attorney in your area if you have any questions regarding the specific laws of your state, county, or town
- The information provided in this presentation is for informational purposes only and does not constitute an attorney-client relationship

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# Case Law

- Arizona v. Evans, 115 S. Ct. 1185 (1995)
  - Good Faith Doctrine
- Arizona v. Johnson, 555 U.S. 323 (2009)
  - Officer can pat you down in they believe you may have a weapon
- Coles v. Carlini, 162 F.Supp.3d 380 (2015)
  - *Freedom of Expressive Association*
- Collins v. Virginia, 138 S. Ct. 1663 (2018)
  - *Officers need a search warrant to view motorcycle in driveway*
- Hudson v. Michigan, 126 S. Ct. 2159 (2006)
  - *Attenuation Doctrine*
- Mapp v. Ohio, 81 S. Ct. 1684 (1961)
  - *Extending Exclusionary Rule to State cases*
- Murray v. U.S., 108 S. Ct. 2529 (1988)
  - *Independent Source Doctrine*

# Case Law cont.

- *Nix v. Williams*, 104 S. Ct. 2501 (1984)
  - *Inevitable Discovery Doctrine*
- *Pace v. City of Des Moines*, 201 F.3d 1050 (2000)
  - Search warrant needed for Pictures of Tattoos
- *Rodriguez v. U.S.*, 135 S. Ct. 1609 (2015)
  - *Traffic stop can only last as long as it takes to complete investigation of for violation which you were pulled over for*
- *Whren v. U.S.*, 116 S. Ct. 1769 (1996)
  - Pretextual traffic stops