

The Fourth Amendment: A Patriot's Friend

Prairie Dog Lawyer's Seminar
TTU Law School
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Framework for Analysis

- 1. Was 4th A implicated?
- 2. Was 4th A violated?
- 3. Does the Exclusionary Rule apply?

STANDING

- "A reasonable expectation of privacy (subjectively and objectively) in the thing seized or the area to be searched"
 - *Rawlings v. Kentucky*, 448 U.S. 98, 100 (1980).

STANDING

- OWNERSHIP is NOT required
 - Brown v. U.S., 6 F.3d 1390 (5th Cir. 1993).
 - Standing found for passenger in automobile (5th A Freedom of Movement)

U.S.A. v. TOMMIE JENSON

- 462 F.3d 399 (5th Cir. 2006)
- DPS stopped van for 77 in a 65 (6-4-04)
- 30 seconds after overhead lights turned on for Van to pull over.

- 3 people in car, Jenson (D) plus 2 others.

U.S.A. v. TOMMIE JENSON

- Explained work was for “Tommie and Cotton” or “Tommie-Cotton”
- Calm at first, then “excessively talkative” and answered questions not asked, even after the warning was issued.

Jenson, cont'd

- 2 min. after DL ck =CLEAR, trooper again asks about employment, gets "inconsistent" answer from other male (Uncle Cotton) (no name to self employed business).
- Permission to search obtained.

Jenson (cont'd)

- Later pat down = pistol & marihuana
- CT=(1)Dtn may last no longer than req'd to effect the purpose of the stop.
(2) 30 sec to pull over and "nervous behavior" = rzble susp to continue the detention

JENSON (Cont'd)

- CONSENT 2 part test:
- 1. was C voluntarily and
- 2. was it an "independent act of free will".

VOLUNTARY?

- 1. voluntariness of custodial status
- 2. presence of coercive police procedures
- 3. extent and level of D's cooperation
- 4. D's awareness of rt. to refuse consent
- 5. D's education and intelligence
- 6. D's belief that no incriminating evidence would be found.

Consent was INDEPENDENT?

- 1. temporal proximity of illegal conduct and consent
- 2. presence of intervening circumstances
- 3. purpose and flagrancy of misconduct by police

Wolf v. State

- Wolf v. State, 137 S.W. 3d 787, 799 (Tex. App.—Waco 2004 no pet).
- Defective tail lamp, prolonged detention, consent not sufficiently attenuated from illegal dtn.

Reasonable Suspicion

- Klare v. State, 76 S.W. 3d 68, 70 (Tex. App.—Houston [14th. Dist.] 2002.
- D parked behind strip center @ 2:30 a.m., recent burglaries, no businesses open, “identify the truck”.

Protective Sweep

- ONLY IF
- (1) based upon specific and articulable facts that support an objectively reasonable belief THAT a
- [2] PERSON in THAT AREA poses DANGER to cop or others

Protective Sweep

- LIMITATION
- Must stay within appropriate scope and last only as long as necessary to dispel the rzbl suspicion of Danger (of presence of another person). Reazor v. State, 12 S.W.3d 813

EXIGENT CIRCUMSTANCES

- 1. Is only an exception to the requirement that police get a warrant.
- 2. Probable cause to search is always required.
- PC + Exigent Circumstances to justify the warrantless search.

EXIGENT CIRCUMSTANCES

- Situations usually include factors pointing to some danger to the officers or victims, an increased likelihood of apprehending a suspect or possible destruction of evidence.
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- Evaluate the 5 factors

Exigent Circumstances (Factors)

- 1- degree of urgency involved and AMOUNT OF TIME TO GET A WARRANT.
- 2- rzbl belief contraband IS about to be removed
- 3- possibility of DANGER to police guarding the site

Exigent Circumstances Factors

- 4- information indicating that possessors of contraband are aware police are on their trail.
- 5- the ready destructibility of the contraband and knowledge that efforts to dispose of narcotics and to escape are characteristic behavior or persons engaged in drug trafficking
- McNairy v. State, 835 S.W.2d 101,102

Davis v. State

- 61 S.W.3d 94,96 (Tex.App.—Amarillo 2001)
- Group of people gathered in backyard of “high crime neighborhood” approached by officers.
- D ‘acts nervous’. Cops knew him from prior domestic calls, asked for identification anyway and conducted a Terry Frisk = crack pipe=PC to arrest, then subsequent to arrest, found Cocaine.
- Terry= based on belief of armed & dangerous.




