



A District Court holds that a traffic stop of a vehicle, in which the Defendant was a passenger, was unconstitutionally extended in violation of the Defendant's Fourth Amendment rights and, therefore, suppressed the evidence seized after the point at which the arresting officer lacked reasonable suspicion to investigate non-traffic-offense-related criminal activity



June 2018

For duplication & redistribution of this article, please contact Public Agency Training Council by phone at 1.800.365.0119.
PATC 5235 Decatur Blvd Indianapolis, IN 46241

Article Source : http://www.patc.com/weeklyarticles/2018_us_v_clark_chapman.pdf

In *United States v. Clark*, 2017 WL 3394326 (D.N.J. Aug. 7, 2017), Defendant Theodore Clark filed a motion to suppress with the United States District Court for the District of New Jersey, arguing that the District Court should suppress the evidence of his possession of a handgun because the search that led law enforcement to discover the handgun violated his Fourth Amendment rights. The District Court conducted a hearing on Clark's motion, and the relevant facts are as follows.

On February 21, 2016, shortly after midnight, Edison, New Jersey, Police Officer Daniel Bradley ("Officer Bradley") stopped a minivan operated by Donald S. Roberts ("Roberts") for motor vehicle offenses, including driving at night without headlights, driving while using a cellular phone, and driving with an obstructed view. Defendant Theodore Clark was a passenger in the minivan. The dashboard camera of Officer Bradley's patrol car recorded the stop which lasted approximately twenty-three (23) minutes from Officer Bradley's arrival at the minivan's driver-side window to the discovery of a handgun and marijuana blunt in Clark's possession.

After pulling over the minivan, Officer Bradley stood by the open driver-side window and asked for Roberts' credentials. Roberts quickly located his driver's license and insurance information, but he could not locate the minivan's registration. Officer Bradley waited calmly by the driver-side door of the vehicle while Roberts searched for the registration. While searching for the registration, Roberts advised Bradley that the van belonged to Roberts' mother and offered to call her to determine the whereabouts of the registration. During this time, Officer Bradley also informed Roberts that he had been stopped for driving with his headlights out, for using his cellphone while driving, and for driving with an obstructed view. Because Roberts was still unable to locate the vehicle's registration, Bradley took possession of Roberts' license and insurance identification and walked around the rear of the vehicle to observe the license plate to run a computerized check of the registration. Officer Bradley then returned to his patrol car and entered Roberts' information and the minivan's license plate number into his mobile data terminal.

Officer Bradley's mobile data terminal search revealed that Roberts' license was valid, that he had a criminal record (including drug offenses), that he had no outstanding warrants for his arrest, and that his driver's license was valid until February 29, 2020. Furthermore, there was no dispute that Officer Bradley's title search of the minivan's license plate on the night of February 21, 2016, revealed this information to him. Officer Bradley then approached the driver-side door of the minivan to begin his interrogation.

Officer Bradley first asked Roberts about Roberts' criminal record, asking him whether he had ever been arrested, for what kinds of crimes he had been arrested, and for the date of his last arrest. Roberts responded that he had been arrested for drugs and a "CDS" with the last arrest taking place in 2006. Officer Bradley then asked Roberts from where Roberts was coming. Roberts explained that he was coming from his mother's

©2018 Online Article: 800.365.0119

Link to article online: http://www.patc.com/weeklyarticles/2018_us_v_clark_chapman.pdf
<http://www.patc.com>

house. Bradley asked Roberts to confirm that his mother's house was located in New Brunswick, consistent with the title search record showing a registered owner sharing Roberts' last name at the address in New Brunswick also listed on Roberts' driver's license. Roberts did not answer Bradley and instead began speaking to someone on his cellular phone. Speaking aloud as if on speakerphone, Roberts stated "Mom, you on a three-way." Having not received an answer to his previous question, Officer Bradley again asked Roberts to confirm that he was coming from New Brunswick. At this point, Roberts became agitated, and, again speaking in a loud voice, but not directed at the officer, stated: "He's asking me questions about when have I ever been arrested before; where were you coming from. And I told him I'm coming from the QuickCheck and before that was in Plainfield." Although Roberts contended to the person on speakerphone that he had already told the officer that he was coming from Plainfield, this is the first time that Plainfield was mentioned during the stop. Officer Bradley then asked Roberts if the minivan belonged to Roberts' wife. Roberts, still sounding agitated, stated that the van belonged to his mother, that his mother was the person on the phone, and that his mother lives in Plainfield. Officer Bradley asked for confirmation that the address was in Plainfield and not New Brunswick. A female voice could then be heard from Roberts' cellular phone stating that the problem was that she did not change her address on her registration. Roberts then told Officer Bradley that the officer's questions were confusing him. Officer Bradley stated that he too was confused and calmly explained his reasons for questioning Roberts. Bradley explained that he had reviewed Roberts' criminal record, that he was trying to understand Roberts' trip itinerary (namely where he was coming from), and that he had asked additional questions to judge Roberts' truthfulness. Bradley then asked Roberts if he had any outstanding warrants for his arrest or outstanding parking tickets, and Roberts explained that he had just been released from prison on December 2 and that he had no outstanding warrants or other issues. Bradley asked Roberts how many times Roberts had been arrested. Roberts became audibly frustrated and asked: "What is that for?" at which point Officer Bradley asked Roberts to step out of the vehicle.

Roberts complied with the request, and Bradley and Roberts walked to the back of the minivan. Roberts was not restrained, and the body language of both men remained relaxed. At the rear of the minivan, Officer Bradley explained that he had run Roberts' license, had checked him for warrants, and had told Roberts why he had been stopped. Officer Bradley then asked a series of questions about Roberts' passenger, including asking for the passenger's name, the length of Roberts' acquaintance with him, and how they came to travel together. Roberts stated that his passenger's name was Tyron, but Roberts did not know his last name. Roberts also stated that he and his passenger had not been friends long and that Roberts had picked up his passenger earlier that night in the Potters community in Edison Township, New Jersey.

Officer Bradley then approached the passenger's side to question Clark, leaving Roberts unrestrained behind the vehicle. Roberts appeared relaxed and was using his cellular phone. Officer Bradley waited outside the passenger-side door of the minivan as Clark attempted to roll down the window, but Clark was unable to roll down the window and, instead, opened the door, while remaining seated inside the vehicle. Officer Bradley smelled a strong odor of marijuana coming from the passenger's side of the car. Officer Bradley then asked Clark a series of questions to which Clark responded with his full name, Roberts' full name, that he had known Roberts "a long time," that he and Roberts were coming from Roberts' mother's house where Clark had stayed over the previous night, and that he (Clark) had never been arrested before.

Officer Bradley then returned to the rear of the vehicle to speak with Roberts. Bradley informed Roberts that he and Clark had given conflicting accounts and asked Roberts why he had lied. Roberts denied lying and attempted to explain the route itinerary. Bradley then informed Roberts that Bradley had smelled a strong odor of marijuana from the passenger's side of the car but that he had not smelled anything from the driver's side. After speaking with Roberts for a couple of minutes, Bradley announced to Clark that he would have to get out of the van because the police intended to search it. Bradley and his partner, who had been waiting silently by the passenger's side of the vehicle throughout the stop, then asked Clark to turn around for a pat-down. Clark

complied and informed the officers that he had a handgun in his waistband. The officers removed a 0.357 caliber Smith and Wesson revolver loaded with six rounds of ammunition and a “blunt” (brown tobacco leaf wrapped around marijuana) from Clark’s person. Clark was taken into custody, and Roberts was permitted to leave after having been issued summons for driving without headlights, using a cellphone while driving, and obstruction of view.

Thereafter, Clark was indicted by a federal grand jury for being in possession of a weapon as a convicted felon in violation of 18 U.S.C. § 922(g)(1). Before the District Court, Clark moved to suppress the evidence of the gun seized from him. Clark argued that law enforcement impermissibly prolonged the traffic stop of the vehicle driven by Roberts in which he was a passenger, such that any evidence recovered thereafter, including the gun recovered from him during the pat-down, should be suppressed as fruit of the poisonous tree under the Fourth Amendment. Specifically, Clark argued that the motor vehicle stop was legally concluded at the moment when Officer Bradley returned to the minivan after having run Roberts credentials and the minivan’s license plate, and any questioning after that point, including Bradley’s initial questioning of Roberts concerning his prior arrests unconstitutionally prolonged the stop.

The District Court began its analysis by reiterating that a well-established exception to the Fourth Amendment’s warrant requirement permits an officer to conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot. Moreover, the District Court explained that a lawful roadside stop begins when a vehicle is pulled over for investigation of a traffic violation. The temporary seizure of driver and passengers ordinarily continues, and remains reasonable, for the duration of the stop. Normally, the stop ends when the police have no further need to control the scene and informs the driver and passengers that they are free to leave. 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. Like a Terry stop, the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure’s “mission”—to address the traffic violation that warranted the stop and to attend to related safety concerns. Because addressing the infraction is the purpose of the stop, it may last no longer than is necessary to effectuate that purpose. Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.

Beyond determining whether to issue a traffic ticket, an officer’s mission includes ordinary inquiries incident to the traffic stop. Typically, such inquiries involve checking the driver’s license, determining whether there are outstanding warrants against the driver, and inspecting the automobile’s registration and proof of insurance. These checks serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly. Questions relating to a driver’s travel plans ordinarily fall within the scope of a traffic stop. Inquiries and delays incident to an officer’s safety also fall within permissible scope of a traffic stop because the government’s officer safety interest stems from the mission of the stop itself.

On the other hand, ordinary inquiries do not include measures aimed at detecting evidence of ordinary criminal wrongdoing. On-scene investigation into other crimes detours from the mission of enforcing the traffic laws and ensuring officer safety inherent in each traffic stop. Once a valid traffic stop has been initiated, however, an officer who develops a reasonable, articulable suspicion of criminal activity may expand the scope of an inquiry beyond the reason for the stop and detain the vehicle and its occupants for further investigation.

In other words, an officer may conduct certain unrelated checks during an otherwise lawful traffic stop. But, he may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual. Where reasonable suspicion for the traffic stop or the extension of the stop includes investigation beyond the ordinary inquiries incident to the traffic stop is lacking, the evidentiary fruits of the traffic stop must be suppressed.

In this case, the District Court noted that Officer Bradley's initial conduct consisted of ordinary inquiries incident to a valid traffic stop. However, the District Court held that Officer Bradley's intervening questioning regarding the timing and nature of Roberts' past arrests did not fall within the category of ordinary inquiry because Bradley was already aware of Roberts' criminal history as a result of the background check that Bradley performed.

Nevertheless, the District Court stated that Officer Bradley had a reasonable suspicion to continue the investigation to a point. For example, Roberts and Clark gave inconsistent statements, and Officer Bradley smelled marijuana from the passenger side of the vehicle.

But, in the end, the District Court held that, under the totality of the circumstances, Officer Bradley did not possess a reasonable suspicion to question Roberts on matters outside of the ordinary inquiries incident to a traffic stop. True, Officer Bradley's smelling of marijuana emanating from the passenger's side of the vehicle created reasonable suspicion to search Clark, but this suspicion arose long after the stop had already been impermissibly extended by Officer Bradley. Accordingly, the District Court granted Clark's motion to suppress and suppressed the evidence of his possession of the handgun as being fruit of the poisonous tree obtained in violation of Clark's Fourth Amendment rights.