



PEDESTRIAN STOPS AND WARRANT CHECKS



10th Circuit *United States v. Burleson*

October 2011

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Article Source: http://www.llrmi.com/articles/legal_update/2011_10_burleson.shtml

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On September 12, 2011, the Tenth Circuit Court of Appeals decided the *United States v. Burleson*¹, which serves as an excellent legal review for officers on the topic of pedestrian stops. The facts of *Burleson* taken directly from the case are as follows:



Shortly before midnight on May 2, 2008, Officer Jeff Kuepfer of the Roswell, New Mexico, Police Department was patrolling a neighborhood in Roswell when he observed Mr. Burleson and two companions exit an alleyway and begin walking in the middle of the street side-by-side. One of the individuals was carrying a pit bull without a leash.

Officer Kuepfer decided to question the individuals for two reasons. First, they were walking in the middle of the street, which is a violation of a New Mexico statute and a Roswell ordinance. Second, they were carrying a dog that appeared to be older than a puppy, which Officer Kuepfer found odd and which concerned Officer Kuepfer based on reports of dog thefts in the city. Officer Kuepfer therefore believed that further investigation was appropriate, especially in light of the fact that the police department had within the past week received reports of criminal activity in the immediate area, including property damage, vehicular burglaries, and a shooting. Although Officer Kuepfer did not intend to cite the individuals for a traffic violation, he wanted to give them a verbal warning for walking in the street, find out who they were and what they were doing, find out why they were carrying the dog, and determine whether the dog could have been stolen.

Officer Kuepfer thus got out of his patrol car and asked the group to "hold up." He approached them and informed them that they were not permitted to walk in the middle

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of the street. He then talked to them about what they were doing and about the dog, after which he asked for their names:

I just basically said, Hey, how you guys doing tonight? Just, what's going on? Where are you heading? And, through just talking to them, I found out that they were heading home, that the dog was theirs, that the reason why they were carrying the dog was because, if they put him down, he'd run off from them. So that made sense to me, okay. Asked them for their names.

Once Officer Kuepfer obtained their names, he immediately requested a warrants check on each of them, using the portable radio attached to his belt. Shortly thereafter, police dispatch responded that there was an outstanding warrant for an individual named Carl Burleson. The total duration of this initial encounter, from the time at which Officer Kuepfer stopped the individuals to the time at which dispatch informed Officer Kuepfer that Mr. Burleson may have an outstanding warrant, was three to five minutes.

At that point, Officer Kuepfer told Mr. Burleson that he may have an outstanding warrant, and asked Mr. Burleson for identification or for his date of birth and Social Security number so that Officer Kuepfer could verify that the warrant really was for Mr. Burleson. Mr. Burleson provided his date of birth and Social Security number, and Officer Kuepfer confirmed that the warrant was indeed for Mr. Burleson. Officer Kuepfer then told Mr. Burleson that he was under arrest for the warrant, and while Mr. Burleson was turning around, he told Officer Kuepfer, "Just so you know, I do have guns on me." Officer Kuepfer handcuffed Mr. Burleson and, during the ensuing a pat-down, discovered two handguns and ammunition in Mr. Burleson's pants pocket and waistband.ⁱⁱ

Burleson was indicted for federal weapons violations. He filed a motion to suppress the handguns and argued that his prolonged detention to run the warrant check, after the officer warned him of his violation and dispelled his suspicion about the dog, violated the *Fourth Amendment*. The district court agreed and suppressed the guns for the reasons argued by Burleson and because the court held officer safety concerns did not justify a warrant check. The government appealed to the Tenth Circuit Court of Appeals.

The issue before the court of appeals was whether Burleson was lawfully detained at the time the officer checked his name and date of birth for warrants. If he was lawfully detained, the guns will be admissible. If not, the guns must be suppressed as the product of an unlawful detention.

To resolve the issue, the court first examined whether officers may, during the course of a pedestrian stop, run a warrant check, just as they do during traffic stops. The court first noted that,

One type of seizure is an investigatory stop," *United States v. Simpson*, 609 F.3d 1140, 1146 (10th Cir. 2010), in which "a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly

criminal behavior even though there is no probable cause to make an arrest," *Terry v. Ohio*, 392 U.S. 1, 22, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). Under *Terry*, an investigatory stop must be "reasonably related in scope to the circumstances which justified the interference in the first place." *Id.* at 20.ⁱⁱⁱ

The court then noted that, in order for an officer to be within the proper scope of the stop, the officer must not exceed a reasonable time frame or duration required to complete the purpose of the stop.^{iv}

With the above rules in mind, the Tenth Circuit stated that

[I]t is well-settled in the traffic-stop context that while an investigative detention is ongoing, a police officer may obtain an individual's name and check that name for outstanding warrants.^v

The court next examined whether officers can also run warrant checks during pedestrian stops. In order to answer this question, the court examined another Tenth Circuit case, the *United States v. Villagrana-Flores*.^{vi} In *Villagrana-Flores*, officers received reports that a man was in public who appeared to be mentally ill. Officers arrived and found Villagrana-Flores was acting "delusional and paranoid" and appeared to be a danger to himself and others. The responding officers detained him and conducted a warrant check. Mr. Villagrana-Flores returned wanted and was arrested. He was later indicted for illegal reentry into the United States. The Tenth Circuit stated

Mr. Villagrana-Flores's *Fourth Amendment* rights were neither violated when his identity was obtained during a valid *Terry* stop nor when his identity was shortly thereafter used to run a warrants check.^{vii}

Thus, in *Burleson*, after examining *Villagrana-Flores*, the Tenth Circuit stated

In sum, we concluded in *Villagrana-Flores* that the same rationale that underlies our conclusion as to the permissibility of warrants checks in the motorist context applies with equal force in the pedestrian context. Contrary to the government's statement at oral argument, this conclusion is not dicta, but reflects the holding of *Villagrana-Flores*. See *id.* at 1275, 1277 (holding that it is not a violation of the *Fourth Amendment* for an officer who performs a *Terry* stop on an individual suspected of engaging in criminal activity to obtain that individual's identity and perform a warrants check, and thus that the warrants check on Mr. Villagrana-Flores, a pedestrian, was permissible).^{viii}

The court of appeals next examined whether, at the time the officer conducted the warrant check of Burleson, the stop was completed and Burleson was being unlawfully detained. The district court, at the motion to suppress, held that the officer intended to warn Burleson and his companions about the violation. Further, the district court found that the officer was satisfied regarding their explanation regarding the dog. As such, the district court held that Burleson was unlawfully detained at the time of the warrant check.

Regarding the pedestrian law violation (walking in the street) the court of appeals held

Viewed objectively, Officer Kuepfer had not completed the *Terry* stop by the time he requested the warrants check. Officer Kuepfer stopped the individuals because they had committed a pedestrian traffic violation and because they were carrying the dog without a leash. With respect to the first basis for the stop, it is objectively reasonable for an officer in that situation to assess the circumstances and then decide whether to issue each individual a written traffic citation or to let them go with a verbal warning. Whether an officer opts for a citation, a warning, an arrest, or some other action will depend in part on what transpires during the detention, including the results of the computer check.^{ix} [Internal citation omitted]

The court also noted that the stop was not “completed” just because the officer told Burleson and his companions that they were not allowed to walk in the street.

Further, the court of appeals also recognized that there was another purpose to the stop, particularly to investigate whether the men were stealing the dog. As to this purpose, the court of appeals stated

With respect to the second basis for the stop (investigation into whether the dog had been stolen), it is objectively reasonable for an officer in that situation not only to ask questions as to whether the dog actually belongs to the detainees, but also to obtain their names and confirm their identities in case the dog is later reported stolen.^x

In fact, regarding this purpose for the warrant check, the court of appeals noted that the officer testified that he asked for Burleson and his companions’ identities for the very purpose of furthering an investigation if the dog were later reported stolen.

One additional important issue examined by the court was the duration of the stop. As previously stated

[A]n investigative detention must not exceed the reasonable duration required to complete the purpose of the stop.^{xi} [Internal quotations and citations omitted]

In this case, it is undisputed that the duration of the stop was three to five minutes. The court held that this is well within the objectively reasonable period of time for this type of stop.

Lastly, the court examined whether officer safety concerns must be present in order to justify a warrant check during a pedestrian stop. In *Burleson*, the district court held that there were no officer safety concerns that would justify a warrant check. In fact, they distinguished this case from *Villagrana-Flores* based on the fact that officer safety concerns were present in that case. However, the court of appeals stated

It is true that in *Villagrana-Flores* we recognized that officer-safety concerns justified running a warrants check during a *Terry* stop because determining whether a detainee has outstanding warrants may inform an officer whether the detainee might engage in

violent behavior during the detention. However, we did not base our decision solely on officer-safety concerns. We also determined that permitting a warrants check during a *Terry* stop on the street also 'promotes the strong government interest in solving crimes and bringing offenders to justice.'^{xii} [Internal quotations and citations omitted]

As such, the warrant check is justified based on strong governmental interest in solving crime and bringing offenders to justice, as well as officer safety concerns.

Additionally, the court of appeals found that the district court was incorrect in concluding that Burleson and his companions posed no officer safety concerns. The court reasoned that the officer was alone with three unknown suspects at midnight in a neighborhood that was known for recent, significant criminal activity, including a shooting. As such, officer safety concerns were present in this case.

In conclusion, the court of appeals reversed the grant of Burleson's motion to suppress and remanded the case back to the district court for further proceedings.

Note: Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal advisor regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.

CITATIONS:

ⁱ No. 10-2060, 2011 U.S. App. LEXIS 18820 (10th Cir. Decided September 12, 2011)

ⁱⁱ Id. at 2-5

ⁱⁱⁱ Id. at 9

^{iv} Id. at 10

^v Id at 11 (citing United States v. Villa, 589 F.3d 1334 (10th Cir. 2009))

^{vi} 467 F.3d 1269 (10th Cir. 2006)

^{vii} Burleson at 15-16 (quoting Villagrana-Flores, 467 F.3d 1269 (10th Cir. 2006))

^{viii} Id. at 16

^{ix} Id. at 18-19

^x Id. at 20

^{xi} Id. at 21

^{xii} Id. at 30