EIGHTH CIRCUIT UPHOLDS SEARCH INCIDENT TO ARREST OF PASSENGER BASED ON K9 ALERT ON VEHICLE

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On November 26th, 2014, the Eighth Circuit Court of Appeals decided the United States v. Chartier, which serves as an excellent review of the law pertaining to reasonable suspicion to make a traffic stop, expansion of the scope of the stop, and probable cause after a canine sniff. The relevant facts of Chartier, taken directly from the case, are as follows:

On December 7, 2012, at approximately 11:00 p.m., Officer Erik Naaktgeboren of the Hiawatha Police Department was conducting routine patrol when he observed a blue Mercury Grand Marquis. After running the vehicle's license plate, he learned that the registered owner—a white male—did not have a currently valid driver's license. It was dark, snowing, and misting. From his location behind the Grand Marquis, Naaktgeboren was able to see two heads above the seats' headrests, but the two-lane road he was on prevented him from pulling up next to the vehicle to determine whether the driver was the registered owner.

Naaktgeboren initiated a traffic stop and approached the vehicle. A woman was in the driver's seat. While speaking with her, Naaktgeboren noticed a bottle of muriatic acid in the backseat and a Walmart bag and package of airline tubing tucked under the front passenger's leg. Because Naaktgeboren had been trained and certified by the Drug Enforcement Administration as a clandestine laboratory technician for dismantling and processing methamphetamine labs, he recognized the acid and tubing as items regularly used in manufacturing methamphetamine. After checking the occupants' identification cards, he identified the driver as Aubree Sivola and the passenger as Adam Chartier. Naaktgeboren testified that he remembered previously having heard Chartier's name mentioned as someone who was involved with methamphetamine manufacturing. Naaktgeboren requested that another officer assist him at the scene. He then learned from dispatch that Sivola had a valid license to drive. When the back-up officer arrived, Naaktgeboren requested that Sivola step out of the vehicle and asked her where she and Chartier had been. She responded that they were coming from a Walmart store. Naaktgeboren asked Sivola what they had purchased at Walmart, and she replied that they had not purchased anything there. This response seemed suspicious to Naaktgeboren, since he had seen a Walmart bag in the car, so he began to inquire about whether there were any illegal drugs in the car and indicated that he would be walking his drug-detection dog around the vehicle. Sivola then consented to a brief pat-down and showed Naaktgeboren her pockets.
Dispatch had informed Naaktgeboren that Chartier had a prior incident on his record involving assault with a weapon. Naaktgeboren requested that Chartier step out of the vehicle and noticed bulges in his pockets when Chartier did so. Although Chartier refused to consent to a protective search, Naaktgeboren proceeded to pat him down. During the pat-down, Naaktgeboren felt a package of hypodermic needles in Chartier's pocket and asked him to remove the package and place it on the trunk of the Grand Marquis. Naaktgeboren then walked his drug-detection canine, Reso, around the vehicle. Reso alerted at the passenger-side door. Naaktgeboren searched the vehicle and did not find any contraband. Naaktgeboren then searched Chartier's person, notwithstanding Chartier's renewed refusal to consent to the search. Naaktgeboren seized several small plastic baggies that contained methamphetamine, a yellow drill bit case with pseudoephedrine pills in it, and a pipe, and Chartier was arrested.

Chartier was indicted on federal drug charges. He filed a motion to suppress the evidence and the court denied the motion. He entered a condition guilty plea with the right to appeal the denial of the motion to suppress. Chartier filed a timely appeal with the Eighth Circuit Court of Appeals.

The four issues on appeal were as follows:

1. Whether the traffic stop, based on learning the registered owner of the vehicle did not have a valid driver's license, was reasonable under the Fourth Amendment?
2. Whether the officer impermissibly extended the duration and scope of the traffic stop when he began a drug investigation?
3. Whether the pat-down search of Chartier was lawful?
4. Whether the search of Chartier's person was lawful after the canine alerted on the vehicle and the search of the vehicle proved fruitless?

**Issue One: Whether the traffic stop, based on learning the registered owner of the vehicle did not have a valid driver's license, was reasonable under the Fourth Amendment?**

In this case, the officer conducted a tag check of the vehicle. He then checked the registered owners driver's license status and learned the owner's license was suspended. Due to weather conditions and a narrow roadway, the officer was unable to get next to the vehicle to verify a physical description of the driver. The officer stopped the car. As it turned out, the registered owner was a passenger and the driver was a female. Regarding this issue, the court stated:

"Given the road and weather conditions, the Fourth Amendment did not require that Naaktgeboren affirmatively identify the sex of the driver or further investigate the driver's physical appearance before initiating a traffic stop. Thus, Naaktgeboren had an articulable and objectively reasonable suspicion that a motorist without a valid license was driving the vehicle, and his decision to initiate a traffic stop did not violate the Fourth Amendment."

As such, the stop of the vehicle was lawful under the Fourth Amendment.

**Issue Two: Whether the officer impermissibly extended the duration and scope of the traffic stop when he began a drug investigation?**

Chartier argued that the officer impermissibly expanded the duration and scope of the stop, beyond the traffic reason, when he conducted a drug investigation. The court examined rules pertaining to this issue and stated:

"A constitutionally permissible traffic stop can become unlawful . . . 'if it is prolonged beyond the time reasonably required to complete' its purpose." United States v. Peralez, 526 F.3d 1115, 1119 (8th Cir.

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An officer may detain the occupants of a vehicle while completing routine tasks related to the traffic violation, such as asking for license and registration or inquiring about the occupants' destination, route, and purpose. If, during the course of completing these routine tasks, "the officer develops reasonable suspicion that other criminal activity is afoot, the officer may expand the scope of the encounter to address that suspicion." In determining whether reasonable suspicion exists, we look at the totality of the circumstances, and "[t]his process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that 'might well elude an untrained person.'" United States v. Arvizu, 534 U.S. 266, 273 (2002) (quoting United States v. Cortez, 449 U.S. 411, 418 (1981)).

In this instance, the court stated that when the officer observed muriatic acid and airline tubing in the vehicle, he had sufficient reasonable suspicion to expand the scope of the stop to include determining whether those items were used for methamphetamine. Additionally, the officer also recognized Chartier's name as one associated with methamphetamine manufacturing. These facts were sufficient to allow the officer to lawfully expand the duration and scope of the stop and to detain Chartier long enough for a canine to sniff the exterior of the vehicle.

**Issue Three: Whether the pat-down search of Chartier was lawful?**

Chartier argued that the pat-down was not lawful because it was not supported by a reasonable belief that he was armed and dangerous. The court first examined the relevant rule and stated:

> If during the course of a justified traffic stop an officer has "a reasonable, articulable suspicion that [a] person may be armed and presently dangerous[,]" then the officer is "justified in making a limited, warrantless search for the protection of himself or others nearby in order to discover weapons[.]" United States v. Roggeman, 279 F.3d 573, 577 (8th Cir. 2002) (citing Terry v. Ohio, 392 U.S. 1, 30 (1968)).

The court then examined facts relevant to this issue. First, the court noted that the dispatcher advised the officer that Chartier had an involvement with assault with a weapon. Second, the officer had reasonable suspicion that Chartier was involved in manufacturing methamphetamine. The court said that those factors support the pat-down search. However, there was one more relevant factor; particularly, the officer observed a bulge in Chartier's coat pockets that could have indicated the presence of a weapon. As such, the pat-down was supported by a reasonable belief that Chartier was armed and dangerous.

**Issue Four: Whether the search of Chartier's person was lawful after the canine alerted on the vehicle and the search of the vehicle proved fruitless?**

The most unique issue of this case was whether the officer lawfully searched Chartier after the canine alerted on the vehicle passenger area and the search of the vehicle proved fruitless. The government argued that he officer searched Chartier incident to a arrest. Chartier argued that probable cause was not present to arrest him prior to the search therefore, the search was not lawful.

At the outset, the court noted that a canine sniff and alert by a reliable drug dog provides probable cause to believe drugs are present in the vehicle. Thus, carrying this rule further, the issue was whether the canine alert on the vehicle was "sufficient to establish probable cause that Chartier himself possessed, or had possessed, illegal drugs." In this case, the canine altered on the vehicle and it was thoroughly searched, yielding no drugs. The court noted that the location of the alert was on the passenger side where Chartier had been, and further noted that
the odor of drugs can be passed from person’s body to a vehicle, and a well trained canine should alter to such an odor. The court then stated:

Furthermore, given that Reso specifically alerted outside the passenger door, where Chartier had been sitting, and that Sivola had already shown Naaktgeboren the contents of her pockets, the totality of the circumstances known to Naaktgeboren was sufficient to warrant a reasonable belief that Chartier possessed or had possessed illegal drugs on his person. Naaktgeboren thus had probable cause to arrest Chartier, rendering his pre-arrest search of Chartier’s person lawful.

Chartier argues that it was not until Naaktgeboren found the drugs in his pockets that he was subject to arrest and that the drugs found after the search could not retroactively justify the search. True it is that the fruits of a search incident to arrest that precedes the arrest may not serve as the justification for the arrest. Sibron v. New York, 392 U.S. 40, 63 (1968). Here, however, probable cause for arrest existed even before the search, and since "the formal arrest followed quickly on the heels of the challenged search of [Chartier's] person, we do not believe it particularly important that the search preceded the arrest rather than vice versa." Rawlings v. Kentucky, 448 U.S. 98, 111 (1980). Thus the search of Chartier's person did not violate his constitutional rights.

As such, the court held that the search of Chartier, based on the totality of the circumstances, was a lawful search incident arrest because probable cause to arrest was present; this is so even though the physical arrest did not occur until immediately after the search took place.

Therefore, the court of appeals affirmed the denial of the motion to suppress.

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

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i No. 14-1421 (8th Cir. Decided November 26, 2014)
ii Id. at 2-4
iii Id. at 5
iv Id.
v Id. at 7
vi Id. at 8
vii Id.