



The Trooper Legal Update

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Case Update:

Search Incident to Arrest: May be conducted within the "entire passenger compartment of the automobile and any closed containers therein." *Johnson*, A04A1381 (8/2/4). The right to search the passenger compartment and containers incident to arrest includes: 1) an arrest of any passenger (not just an arrest of the driver); and, 2) is permitted even if the individual arrested is stopped or arrested after getting out of their vehicle. *Thornton*, 124 S.Ct. 2127 (2004).

Independent Tests: If the suspect mentions wanting to have a blood test (before the implied consent is read or at the jail) the officer must clarify whether an independent blood test is being requested. There is a presumption that any mention/question by the suspect regarding an independent test amounts to a request for an independent test. *McGinn*, A04A1545 (7/9/4).

1st Tier Encounters: Yelling out at a suspect asking them to come over and talk to the officer even if the suspect keeps walking and the officer yells out more forcefully "hey...", "does not require reasonable suspicion. A police officer may approach a citizen, ask for identification, and question the citizen without any basis or belief that the citizen is involved in criminal activity. *Edge*, A04A1371 (8/11/4).

Consent Search: A request for consent to search **after** the stop is completed requires: 1) reasonable suspicion; or, 2) the suspect is free to go. A request for consent to search **during** the stop does not require reasonable suspicion. The only test is whether the request or questioning of the driver is done during the need for the stop (& does not extend the stop). An officer could ask questions and ask for consent to search without reasonable suspicion while he was waiting to find out the status of a driver's license. *Harris*, A04A1113 (8/10/4).

Terroristic Threats: The victim does not have to hear the threats in order to support a conviction for terroristic threats. A man stating two or three times at the hospital that when he gets out, "I am going to kill her" -- stated loudly where a police officer can hear, is sufficient to support a charge for terroristic threats. *Cobble*, A04A0884 (7/29/4).

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Trooper Highlight

Trooper Crystal Griffin of Post 15, Perry struggled with a bush bond. The suspect kicked and swung at her. Later in court, the suspect argued that there was no felony obstruction because Trooper Griffin did not suffer any injury. The court disagreed. Proof of an actual injury to the officer is not necessary for felony obstruction. An attempt to injure the Trooper supports a felony obstruction charge. *Estrada*, A04A0880 (8/20/4).

Law Enforcement Carrying Concealed Weapons

Congress enacted a law allowing currently employed law enforcement officers and qualified retired law enforcement officers to carry a concealed firearm in any state. This new law overrides any state law which conflicts. Currently employed officers need proper I.D. Retired law enforcement officers are subject to several limitations. Review of these limitations is recommended for all retired officers. H.R. 218.

Monthly Minder: When charging "Driving with a Suspended License," only two types of suspensions require a verification of notice: Suspensions for Failure-To-Appear; and Suspensions based on Insurance Cancellations. (Note that after October 31, 2002, DMVS no longer does insurance cancellation suspensions.)

Help your PROSECUTOR: A prosecutor requested that law enforcement be reminded not to add anything when reading implied consent. If you try to explain to the driver what it means, anything you say can and will be used against you. If the driver has questions, you may elect to re-read the warning. The more you say in the way of an explanation, the more you risk. Remember, you do not have an obligation to make sure the individual understands implied consent.

HUMOR WORKS:

"My daddy is a movie actor and sometimes he plays the good guy and sometimes he plays the lawyer."
-- *Harrison Ford's son*