Vehicle Stops By the Police and "Knock and Talk" Encounters at Your Front Door: Two Examples of How To Bluff Your Way Into Prison!

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There are two situations that occur frequently in the practice of every criminal defense attorney, and those situations almost always result in the arrest of someone who would not likely have been arrested except for their consent to a search. The first situation involves consent searches of vehicles stopped by patrol officers on the highway. The second situation involves an encounter at a residence, a situation which the police refer to as a "knock and talk."

It amazes me how often a person involved in those situations gives consent for a search, knowing all the while that he has illegal drugs, illegal firearms, or other contraband either in the vehicle or the residence. Those people are bluffing the police, and it almost always results in a trip to prison. I guess those people are trying their best to look innocent and to act like they are co-operating, while hoping the police do not really search. Since, in either a vehicle stop or a "knock and talk," the police just asked permission to search, I cannot understand why someone would try to bluff and hope the police do not find whatever that person is tying to hide.

Vehicle Searches

The Fourth Amendment to the United States Constitution prohibits law enforcement officers from stopping a person without legal justification. These Fourth Amendment rights apply equally to any person in the State of North Carolina or anywhere else in the United States. American citizens, legal aliens and visitors to this country, and undocumented aliens all enjoy equal protection pursuant to the Fourth Amendment.

A police officer may legally stop a vehicle on the street if he has reasonable suspicion that the operator of that vehicle is committing a criminal offense. That offense may be something as simple as speeding, or driving with a broken tail-light, or driving after dark without the vehicle's headlights burning. However, an officer may not randomly stop vehicles on the street in order to check their driver's licenses or vehicle registrations, because in that situation, the officer has no reasonable suspicion of criminal activity. Police may establish systemic checkpoints, if certain criteria are met, such as the presently popular driving while impaired checkpoints.

Once a law enforcement officer lawfully stops a vehicle, he then has the right, and opportunity, to investigate any other criminal activity that comes to his attention. For example, if the driver is impaired from alcohol or drugs, the officer may arrest him for that even if he stopped the vehicle originally just for speeding.

Another type of vehicle stop that calls for special scrutiny from the courts is the case of a vehicle stop based on the tip of an anonymous informer. Information from known informers is evaluated under a "totality of the circumstances" test, and the primary elements for judicial examination are the reliability of that specific informer and the basis of that informer's knowledge about the present situation.

If the informer is anonymous, meaning unknown, then the police have no basis upon which to evaluate his reliability or his knowledge of the present situation. In that case, the test becomes whether or not the tip establishes reasonable suspicion, and the courts evaluate the work of the police officer to confirm the anonymous information and to corroborate it with additional police observations.

In a typical stop that I see in representing many of my clients, a police officer stops a vehicle for speeding, issues a citation, observes that the vehicle's operator is more nervous than usual for a traffic stop, he decides to ask more questions. Sometimes, as the comedian George Lopez has commented upon, the driver may only be guilty of the imaginary offense of "driving while hispanic." But whatever the reason for the officer's additional questioning, he then asks if the driver has any drugs, weapons, other contraband, or large amounts of U.S. currency in the vehicle. Very few people are going to say "yes," even if they do. However, the next step is for the officer to ask consent to search, relying later in court on his observation that the driver got more nervous when he asked that question. It is incredible to me how many drivers give consent to search, when asked for consent, knowing the whole time that they do in fact have drugs, weapons, other contraband, or large amounts of U.S. currency in the vehicle. Those people are just bluffing their way into prison.

If the driver had said "no," the police officer would have had no legal grounds to detain that driver any longer or to search his vehicle. The Fourth Amendment would have protected that person from an unreasonable search and seizure. But because that driver submitted timidly to the apparent authority of the police, or simply tried to bluff his way out of trouble, he was arrested for a very serious crime. Or, in the case of a person possessing large amounts of U.S. currency but committing no other apparent criminal offense, he just lost his money to the officer's seizure.

There is one other situation where vehicle stops may run afoul of the Fourth Amendment. If a vehicle is stopped by an officer who has a trained, drug-sniffing canine in his vehicle, and therefore does not have to wait for a dog to be brought to the scene, then the officer is allowed to walk that dog around the stopped vehicle to see if it alerts to drugs. But if the police officer detains the driver and vehicle without reasonable suspicion of criminal activity, in order to call in and wait for the arrival of a drug-sniffing dog, then that detention is improper.

The "Knock and Talk"

In the "knock and talk" situation, many people who would otherwise be protected by the Fourth Amendment's prohibition against unreasonable searches and seizures end

up giving consent that results in their arrest. The typical situation goes like this: the police learn that someone is living in a certain residence, and they have received reports of suspicious activity in the area, but no specific reports of criminal activity. Without having any more information, the police have no probable cause with which to go to a magistrate and obtain a search warrant for that residence. The same provisions of the Fourth Amendment that protect a driver and his vehicle from unreasonable search and seizure also protect a person in his home from unreasonable search and seizure.

The police therefore developed a technique in which they approach a person's door, knock on the door, and inform the person answering the door that they have received reports of criminal activity at that location or that they are investigating certain activities. That is perfectly legal for them to do. The police then ask for permission to enter and search. Again, if the person just said "no," the police would have no lawful right to enter and search, because of the protections of the Fourth Amendment. Nevertheless, it is incredible how many people bluff, knowing they have drugs, illegal weapons, contraband, or large amounts of U.S. currency in that residence. Do they assume that they have such a unique hiding place that the police will not find those things? Or do they simply timidly submit to the apparent authority of the police?

Those two situations account for almost half of all the drug cases that I have handled in the past year. The number of cases of that nature would decrease dramatically if people knew their constitutional rights and exercised those rights. Every person, citizen or alien, legally or illegally present in this country, is protected by the provisions of the Fourth Amendment. To avoid arrest in many of these situations, one only need be polite, non-threatening, and firm in their resolve to exercise their constitutional rights. The police have a difficult job to do, but they also have the obligation to perform their duties in a lawful manner. Nearly every one of them will do so. However, as is true in every vocation or profession, there are a few rogue cops who will not feel duty bound to obey the law, and who will conduct a search even without consent, reasonable suspicion, or probable cause. On the other hand, the reader must be aware that the police do have the lawful right to ask for consent to search, and they then have the right to search if a person gives that consent. But if someone gives consent in hopes of bluffing the police, he will only be bluffing his way into prison.

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