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THE UNITED STATES SUPREME COURT -- IS IT CONSTITUTIONAL FOR OFFICERS TO STOP DRIVERS “REASONABLY” BELIEVING THE STOP WAS BASED ON A TRAFFIC OFFENSE BUT LATER DETERMINING IT WAS NOT (“LEGAL”)?

Heien v North Carolina

An officer stopped a car because the car had only one working brake light. The owner, Heien, gave the officer consent to search the car, and the officer discovered cocaine.

The officer apparently wasn’t aware that in North Carolina a person only needs one brake light.

The question in the case was whether the stop was constitutional when an officer made a mistake of law.

The United States Supreme Court ruled that the officer had reasonable suspicion to stop the car. Therefore, the evidence discovered was admissible.

Training Tips

1. No one knows how broadly Illinois courts are going to interpret this case. I have often said that officers do not understand all the case law interpreting obstructing, resisting, trespass, disturbing, etc. Will courts in Illinois excuse officers who make “reasonable mistakes of law in arresting in these situations? Doubtful. One big reason being that this is a reasonable suspicion / stop issue – not a probable cause / arrest issue.

2. The following is probably the best example of the limited circumstances Illinois courts will apply the Heien test. An officer sees tinted windows which he believes rises to the level of a traffic offense. The officer stops the car and as a result, finds crime-related evidence. Later, the officer determines that the tint on the window was legal. A court in another jurisdiction just ruled that even though the officer was wrong, the stop was constitutional as the mistake of fact and law was reasonable.

3. Many articles have made much more of this case than is warranted by the facts and law. Some authors have argued that the sky is falling on the 4th Amendment and that Americans have lost their right(s) to privacy. (See the next articles for a more balanced explanation.)
IS THE UNITED STATES SUPREME COURT “ERODING THE FOURTH AMENDMENT’S PROTECTION OF CIVIL LIBERTIES...”?

Justice Sotomayor wrote the dissenting opinion in *Heien* and stated that the Fourth Amendment protections had “already been worn down” by prior decisions of the Supreme Court.

Many liberal columnists took the opportunity of her dissent to explain once again to the American people that the constitutional sky was falling and many, like Henny Penny, echoed these sentiments in article and internet discussions.

I received many of these “sky-falling” articles from friends, relatives and officers.

One of them recited thirteen (13) cases decided by the United States Supreme Court that reflect beyond any doubt, according to the author, that our 4th Amendment rights are (just about) gone.

First, let us say in response to this position that when we discuss 4th Amendment rights we are generally weighing officers’ powers against citizens’ rights. That is, when the courts rule against the officer in a case, they are ruling in favor of greater rights of the citizenry. On the other hand, when courts rule in favor of the officer, they are ruling against the rights of the citizenry.

We always like a good debate, so we decided to find thirteen (13) recent cases decided by the United States Supreme Court that reflect beyond a reasonable doubt that 4th Amendment rights are not contracting – but are, in fact, expanding in this country!

We will start in the next article with Justice Sotomeyer’s and the liberal argument, by discussing the thirteen (13) 21st Century cases where rights have allegedly been taken away from the American people.

Then in the following article we will discuss thirteen United States Supreme Court cases where rights have been expanded – that is where officers’ powers have been contracted.

After reading these, hopefully you will agree with us that the United States is not biased toward destroying officers’ powers to do their jobs or trying to erode the rights of citizenry to be left alone. The Supreme Court (and every court?) is simply trying to balance the power of the state (police power) against the rights of its citizens.
THE THIRTEEN (13) UNITED STATES SUPREME COURT CASES IN THE 21ST CENTURY THAT REFLECT THAT (OUR) FOURTH (4TH) AMENDMENT RIGHTS ARE BEING ERODED.

Illinois v Wardlow (2000) (See the Peace Officers Bible [Hereafter POB], page 34)
Flight in a high crime area constitutes reasonable suspicion to (Terry) stop the suspect.

Board of Education v Pottawatomie (2002)
Public schools can drug test students who engage in extracurricular activities.

Maryland v Pringle (2003) (See POB, page 69, 139)
When drugs are (lawfully) discovered in a car, all occupants may be arrested.

Hiibel v Sixth Judicial District Court (2004) (See POB, page 55, 236)
An officer can compel a suspect (lawfully) stopped by police to identify him/her self.

Illinois v Cabelles (2005) (See POB, page 248)
Police can use a drug dog to sniff a car to determine if drugs are present in the car.

Parolees may be searched without warrant, probable cause or reasonable suspicion.

Hudson v Michigan (2006) (See POB, page 402)
Evidence need not be suppressed for violation of the knock and announce requirement.

Herring v United States (2009)
Police can rely on information from another law enforcement agency that there is a warrant.

Kentucky v King (2011) (See POB, page 149)
Police can create their own exigency in order to enter premises.

Arizona v United States (2012)
Police can ask about immigration status without reasonable suspicion the person is an illegal.

Florida v Harris (2013) (See POB, page 268)
An alert by a drug dog can constitute probable cause without showing the dog is reliable.

Maryland v King (2013)
Arrestees can be required to provide DNA samples even if they are never convicted of a crime.

Fernandez v California (2014) (See POB, page 181)
Police can conduct a consent search of a home even if the co-tenant previously objected.
THE THIRTEEN (13) UNITED STATES SUPREME COURT CASES DECIDED IN THE 21ST CENTURY THAT REFLECT THAT OUR FOURTH (4TH) AMENDMENT RIGHTS ARE NOT BEING ERODED – AND, IN FACT, ARE BEING EXPANDED (MAKING LAW ENFORCEMENT MORE DIFFICULT).

Most of the following cases are factual situations where most lawyers, officers and lay people assumed the conduct of the law enforcement was perfectly constitutional – until the United States Supreme Court ruled otherwise.

**Ferguson v Charleston (2000) (POB page 345)**

Pregnant women who appeared to be on drugs were tested for drugs. Women who tested positive were turned over to law enforcement for possible prosecution.

The Supreme Court ruled that the procedure was unconstitutional to a great extent because law enforcement was so integrally involved. Therefore the cases were dismissed.

**Bond v United States (2000) (POB 313)**

An officer squeezed soft luggage on a bus and felt a brick. This led to the officers developing probable cause against Bond.

The Supreme Court ruled that squeezing of the bag was a search, and since there was no theory (such as a warrant or even probable cause) for squeezing the luggage, the evidence was suppressed.

**Indianapolis v Edmonds (2000) (POB 229) (POB 229)**

Officers set up a drug checkpoint, similar to that which they always set up for drunk driving.

The Supreme Court ruled that, although drunk driving checkpoints are constitutional, drug checkpoints are not, so the evidence was suppressed.

**Kyllo v United States (2001) (POB 119)**

Officers determined by thermal imaging that a house was a “grow” house.

The United States Supreme Court ruled that it was a search to determine how much heat was being emitted from a home, and that there must be a theory (warrant) to determine that.

**Kaupp v Texas (2003) (POB 50, 491)**

Officers obtained a confession from Kaupp’s friend that he, the friend, was involved in a murder. The friend implicated Kaupp in the murder. Officers took Kaupp into custody from his home at 3 a.m. They gave Kaupp his *Miranda* warnings, got a waiver and a statement.

The Supreme Court ruled, that under the 4th Amendment, the officers had basically arrested Kaupp without a warrant or probable cause. Therefore Kaupp’s statement was suppressed.

An officer using a boilerplate warrant, put the house to be searched on the line where the evidence to be seized should have been. Ramírez sued for violating his 4th Amendment rights.

The Supreme Court ruled basically that the officer should be sued for failure to proofread the warrant. The warrant was invalid on its face -- and the search therefore unconstitutional. (This was even in the face of the fact that a judge had read the warrant before he signed it.)

**Georgia v Randolph (2006) (POB 181)**

Mrs. Randolph told police that there was cocaine in the house and that they could search the house for it. Her husband stated that the officers could not search the house. The officers searched the house and discovered the cocaine.

The Supreme Court ruled that if one spouse consents to an officer’s search and the other spouse refuses to consent, the officer may not search.

**Brendlin v California (2007) (POB 211, 232)**

An officer stopped a car solely to determine if the driver had a license and registration. After the stop the officer recognized that the passenger was wanted. The officer arrested the passenger and discovered crime-related evidence as a result.

The Supreme Court ruled that, generally, officers may not stop a car without reasonable suspicion and that when a driver is seized, so is the passenger. Therefore the evidence that was discovered as a result of the unconstitutional stop was suppressed as fruit of the poison tree.


Officers basically arrested Gant out of his car, handcuffed him, put in the back of the patrol car and then searched the passenger compartment of the car, discovering drugs and a gun.

The Supreme Court ruled that the search was unconstitutional under the search incident to arrest doctrine as Gant could not escape from the patrol car and access his own car to destroy evidence or grab a gun from the car. Therefore the evidence was suppressed.

**City of Ontario v Quon (2010) (POB 341)**

The city provided Quon with a pager that permitted the transfer of text messages. Administrators read the text messages to be sure they were work-related. They weren’t, so Quon was disciplined. Quon sued for violating his 4th Amendment rights.

The Supreme Court ruled that checking the phone and using the information administratively to discipline was constitutional, but that using it for criminal proceedings might well be unconstitutional.
Officers put a tracker on a vehicle and followed it for a month.

The Supreme Court ruled that officers must have a warrant to place a tracker on a vehicle.

**Missouri v McNeely (2013) (POB 105)**
An officer had probable cause to believe McNeely was DUI. The officer read McNeely his implied consent admonition. McNeely would give neither a breath, nor a blood, sample. The officer then directed hospital staff to draw blood. McNeely’s BAC was .154.

The Supreme Court ruled that officers need a warrant to draw blood unless there are exigent circumstances.

**Riley v California (2014) and United States v Wurie (2014) (POB 352)**
In these cases officers searched the cell phones of arrestees incident to their arrest.

The Supreme Court ruled that officers needed a warrant to search cell phones. Therefore the evidence discovered in the cell phones were suppressed.

*These are two “companion” cases – so really 14 cases!*

**Training Tips**

1. Every officer should know the basic rules of the above 26 cases – 13 where officers “win” and 13 where officers “lose.” All are in the *Peace Officers Bible (POB- numbers are the pages where located).* All are instructive and most have been elaborated on by virtue of cases at the Illinois state and 7th Circuit levels.

2. Officers should not feel that the Supreme Court is against them, and citizens should not feel that the Supreme Court is trying to take away citizens’ rights. The Supreme Court is simply weighing citizens’ rights against officers’ powers.
THE UNITED STATES SUPREME COURT TO RULE ON A TRAFFIC STOP (TIME) ISSUE.

The Supreme Court has apparently accepted on appeal an interesting important case. The opinion will probably be announced in the next few months. The question for the Supreme Court is whether the traffic stop was unreasonably prolonged in order to walk a dog around the car.

Rodriquez v United States

Facts
An officer stopped the vehicle Rodriquez was driving shortly after midnight (12:06 a.m.) because the vehicle veered slowly onto the shoulder of the highway before it jerked back onto the road.

After the stop the officer asked Rodriquez whey he swerved, Rodriquez replied that it was to avoid a pothole. The passenger would not make eye contact with the officer.

The officer asked Rodriquez if he would accompany him (the officer) to the patrol car. Rodriquez asked if he was required to do so. The officer said no. So Rodriquez decided to wait in his own vehicle.

The officer apparently did not find any problem with the “records” of either occupant during a record check.

The officer then issued a warning ticket to Rodriquez at 12:27 or 12:28.

The officer then asked for permission to walk his dog around Rodriquez’ vehicle. When Rodriquez refused to consent, the officer ordered Rodriquez out of the car.

A backup officer arrived at 12:33, and a minute later (12:34) the dog alerted on Rodriquez’ car.

This was about a half hour (30 minutes) from the moment when Rodriquez was stopped.

Rodriquez was charged with the possession with intent to distribute meth.

The Federal District Court and the 8th Circuit Court of Appeals
The Federal District Court and the 8th Circuit Court of Appeals (the federal court just west of the 7th Circuit) ruled that the few minutes that Rodriquez was held beyond the time that he should have been released and on his way was insignificant and not enough to create an unconstitutional seizure. Therefore the evidence was admissible.
Training Tips

1. It is very hard to guess how the Supreme Court will rule in (any of) the cases they take for review. The Court probably only reviews maybe 1 out of every 200 cases appealed to them.

2. This case will have a huge impact on 7th Circuit and Illinois jurisprudence.

3. Don’t confuse this scenario with all the cases that hold that officers may call a drug dog out if there is reasonable suspicion that there are drugs in the traffic offender’s car. As every officer knows, that clearly allows more time.

4. There is a case at Illinois Appellate Court level that holds that 14 minutes is too long to hold a traffic offender when there is no reasonable suspicion that the car contains drugs. In that case, an officer walked a drug dog around Baldwin’s car 14 minutes after the stop. The dog hit on the trunk. The Illinois Court Appeals ruled that the traffic stop had been unduly prolonged and suppressed the evidence. People v Baldwin, 904 NE2d 1193 (2009). (This case is on page 242 in Volume I of your Peace Officers Bible)

5. Even worse for officers, there is a 7th Circuit case, Huff v Reichert, 744 F3d 999 (7th Cir 2014) where the facts are almost indistinguishable from the facts in Rodriguez. (This case is in Volume II, page 17 of your Peace Officers Bible). In the Huff case, just decided last year the 7th Circuit ruled the officer did not deserve even qualified immunity and said the following:

   “A traffic stop can be converted into a full blown arrest if it extends beyond the time reasonably necessary to complete the purpose for which the stop was made.

6. So the $64,000 question is – will the Supreme Court affirm the cases that control every Illinois officer – or will the Supreme Court over-rule all of them. Time will tell (no pun intended).
THE 7TH CIRCUIT COURT OF APPEALS – WHEN IS A SUSPECT NOT IN CUSTODY SUCH THAT THE SUSPECT CANNOT INVOKE HIS RIGHT TO COUNSEL UNDER MIRANDA?

United States v Borostowski

Facts
Officers obtained a search warrant to look for a computer containing child pornography at the home of Borostowski (hereafter Mike). Mike lived with his parents and sister.

The officers executed the warrant at 6:05 a.m. by knocking and announcing their office. Mike, who was sleeping on the couch, came to the door. Officers immediate handcuffed him and pulled him outside. He was forced to stand outside in the cold for about 20 minutes while 13 officers secured the house.

Mike was then taken to a bedroom where the handcuffs were removed. An officer told Mike that he was not under arrest or in custody. The officer then gave Mike his Miranda warnings. Subsequently Mike asserted his right to an attorney several times. The officer continued to question Mike, and Mike gave many incriminating answers. During this period, an officer stood at the door of the bedroom.

The Federal District Court
The trial court (the federal district court) ruled that Mike was not in custody, so he had no right to ask for an attorney under Miranda. Therefore, his statements were all admissible.

The 7th Circuit Court of Appeals
The 7th Circuit reversed ruling that there were too many factors reflecting custody for the suspect to not be able to assert his right to an attorney.

Training Tips
1. The court agreed that normally questioning a suspect in his own home and telling the suspect he was not in custody would be enough to create a non-custodial atmosphere.
2. This case also discusses searching the mother’s car on the premises— with the mother’s consent — and finding the hard drive, which, of course, was constitutional.
3. Cases in the Peace Officers Bible related to the issue of questioning suspects not in custody who assert their right to an attorney on pages 474-475.
People v Bozarth

An officer, driving an unmarked car, saw a car and decided to follow it. The suspect car pulled into a driveway where the house was 100 yards away. The car drove behind a pole barn that was 175 yards from the house. The driver turned the car lights out. The officer pulled behind the car about a 1½ car lengths away.

The officer got out of his car with a gun in one hand and a flashlight in the other.

The officer asked the driver, Bozarth if the property belonged to her. She replied that it did not and that she did not know who the property belonged to.

During the conversation the officer smelled a strong odor of alcoholic beverage coming from Bozarth’s breath.

The officer returned to his patrol vehicle and turned on his emergency lights.

He returned to Bozarth’s car and asked her to perform some sobriety tests. After that, Bozarth was arrested for DUI.

The officer later testified that he thought Bozarth’s actions were suspicious and wanted to investigate – but the officer had no specific reason to believe Bozarth was committing a crime. He also testified that if Bozarth had left he probably would have turned on his lights.

The Trial Court
The trial court admitted all the evidence and found Bozarth guilty of DUI.

The Illinois Appellate Court
The Illinois Court of Appeals reversed, ruling that Bozarth was seized when the officer parked right behind her and exited from his patrol car with his gun drawn. The court further stated that another reason Borzarth was seized was because the officer testified that if Bozarth would have driven off, the officer probably would have stopped her. The court also held that the officer did not have reasonable suspicion for the stop. Therefore the evidence was suppressed.
There was a strong dissenting opinion, the judge arguing that the driver’s conduct created reasonable suspicion by parking 175 feet from the house and turning off her lights.

**Training Tips**

1. This case appears to contradict most Illinois case law in that it would appear that there is no seizure here.
   - The officer did not turn on his emergency lights or siren.
   - The officer apparently didn’t pen Bozarth’s car in.
   - If the driver did not see the officer’s weapon then the objective test would reflect that she cannot claim that she was seized.
   - Whether the officer would have stopped Bozarth if she had driven away is irrelevant, since what is in the officer’s mind is subjective, not an objective factor.
   - See the *Peace Officers Bible, Pages 202-208* for cases on the question of seizure v non-seizure of occupants of vehicles.

2. Hopefully, this case will be appealed to the Illinois Supreme Court as the decision is “bad law” -- both on the seizure issue and the reasonable suspicion issue.
QUESTIONS AND ANSWERS FROM THE JANUARY EDITION OF COURTSMART

1. When can you seize a camera, cell phone or video device?

You should be very careful when doing this as officers have seized cell phones and “lost” them on many occasions, thereby creating credibility problems for all officers.

First, officers should make sure that “their” attorneys will “back them” if they seized cell phones, etc when the cell phone contains vital evidence that cannot be procured in any other way.

Make sure you discuss this first before implementing strategies for seizing cell phones. It is very important to know how far you can go before you seize the phone that contains evidence.

A classic example would be someone videotapes a fight where someone gets killed. The person videotaping this event won’t voluntarily give up his cell phone, so the officer steals it, gets a warrant for the video – and gives the phone back.

2. What can you do if a DUI suspect passes out and you have not yet read him his implied consent warning?

Get a warrant before drawing blood.

3. If a suspect in custody asserts his rights, can an officer still question him / her?

Generally, unless the question is “emergency” questioning, an officer must wait about an hour to see if the suspect has changed his mind if the suspect asserts his right to remain silent. If he asserts his right to an attorney, the officer must wait two weeks.

4. Under what circumstances should you refuse to execute a search warrant based on the fact that the residence to be searched is different from that in the warrant?

If there is something wrong with the description on the warrant, be sure to talk to an attorney before executing it. Otherwise back off, and start over by correcting the description.
5. What are you going to do about the fact that you cannot arrest a Terry suspect who refuses to give you identification?

If that is your only “problem” – you have no other offense, you cannot arrest under state law. Talk to your attorney about whether you might be able to arrest under a local ordinance for this.

Try to get the legislature to create a statute allowing you to arrest for obstructing.

6. What should you do if an occupant of a vehicle will not get in or out of the vehicle after you have ordered them to do so?

Give them time to comply with your order – always. Tell the occupant that you will be forced to arrest them for obstructing if they refuse your lawful order. Again give them time to comply. Do not tase or pepper spray them unless you can state a threat.
QUESTIONS FROM THE FEBRUARY EDITION OF COURTSMART

1. What is the most important 4th Amendment case, in your opinion, where the United States Supreme Court ruled against officers, in the past 15 years?

2. What is the most important 4th Amendment case, in your opinion where the United States Supreme Court ruled in favor of officers in the past 15 years?

3. Do you think the Supreme Court will rule in favor of police extending traffic stops to permit drug dogs to sniff the car of a traffic offender, or not?

4. If there is no probable cause and an officer has a suspect in handcuffs, how can the officer ensure a statement taken from the suspect will be admissible?

5. Does a suspect have a 5th Amendment right to remain silent or have an attorney present during questioning if he / she is not in custody?

6. Is it constitutional for an officer to search cars on the premises if they are not named in the search warrant?

7. If an officer is unsure whether he / she has reasonable suspicion to believe occupants of a parked car is committing, has committed, or is about to commit, a crime, how should the officer approach the suspect(s) in the car.