



Ultimate Interdiction:

Case Law to Combat Trafficking

Outline

learners

In-service training for certified law enforcement, including patrol, investigations, specialty units, and administration

length of instruction

16 hours

"Ultimate Interdiction" combines two of our premier courses – Drugs on Wheels and Advanced Traffic Stops – into a comprehensive course for officers who are intent on combating trafficking. This two-day course will arm officers with invaluable tools to identify indications of trafficking, and well as the legally-recognized methods for addressing these threats to our communities.

No matter your level of experience, this course will enhance your skills and knowledge, keeping you one step ahead in the fight against drug trafficking.

Course Introduction

Instructor introduction.

- 1) Explain the course objective.
 - a) Recognize how the Fourth Amendment applies to each situation.
 - b) Demonstrate the understanding that every search and seizure requires consent, a recognized exception, or a warrant.
 - c) Demonstrate an understanding of how courts engage in a typical Fourth Amendment analysis, thus reducing lawsuits
 - d) Apply Fourth Amendment precedent to make good case law.
- 2) Encourage attendees to ask questions and share feedback with other attendees
- 3) Explain that certificates will be emailed after the class and each student will be registered in the Blue to Gold University
- 4) Go over the three disclaimers:
 - a) Laws and agency standard operating procedures may be more restrictive. Blue to Gold teaches the federal standard unless otherwise stated. Therefore, students must know their state and local requirements in addition to the federal standard.
 - b) If students have any doubts about their actions, they should seek out a legal advisor
 - c) The course is not legal advice, but legal education. Therefore, nothing we teach should be interpreted as legal advice. Check with your agency's legal advisor for legal advice.

Module One – Fundamentals

- 1) The Fourth Amendment
- 2) State constitutional provision

Module Two – Search & Seizure Golden Rules

- 1) The more you articulate why you did something, the more likely it will be upheld in court.
- 2) The more serious the crime, the more reasonable your actions are likely to be viewed.
- 3) Police cannot justify a search or seizure based on some "possibility." Instead, courts look for "probabilities."

Module Three – Legal Standards

- 1) Defining Reasonable Suspicion
 - a. "[W]henver a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person." Terry v. Ohio, 392

U.S. 1, 16 (1968)

2) Defining Probable Cause

- a. "[P]robable cause is a fluid concept — turning on the assessment of probabilities in particular factual contexts — not readily, or even usefully, reduced to a neat set of legal rules." *Maryland v. Pringle*, 540 U.S. 366, 370–71 (2003)
- b. Probable cause requires a "fair probability" of crime committed. *Illinois v. Gates*, 462 U.S. 213, 232 (1983)
- c. The Carroll Doctrine - "The Fourth Amendment has been construed, practically since the beginning of the government, as recognizing a necessary difference between a search of a store, dwelling house, or other structure in respect of which a proper official warrant readily may be obtained and a search of a ship, motor boat, wagon, or automobile for contraband goods, where it is not practicable to secure a warrant, because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought." *Carroll v. U.S.*, 267 U.S. 132 (1925)

3) The government bears the burden in a criminal case. Warrantless searches are presumptively unreasonable; searches with a warrant are presumed reasonable. "[The government bears] the burden of showing, by at least a preponderance of the evidence, that the search... fits within one of the defined exceptions to the Fourth Amendment's requirement of a warrant." *Chimel v. California*, 395 U.S. 752 (1969)

4) Two Searches

- a. Katz's "Reasonable Expectation of Privacy" Analysis
 - 1) *Katz v. U.S.*, 389 U.S. 347 (1967)
- b. Jones' "Physical Trespass with Intent" Analysis
 - 1) *U.S. v. Jones*, 565 U.S. 400 (2012)

Module Four – Checkpoints

1) There are three types of checkpoints to be analyzed: Driver's License and Registration Checkpoints, DUI Enforcement Checkpoints, and Information-Gathering Checkpoints.

- a. The reasonableness of a given police checkpoint stop is determined by balancing the gravity of the public interest sought to be advanced and the degree to which the seizures do advance that interest against the extent of the resulting intrusion upon the liberty interests of those stopped. *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000)
- b. Driver's License and Registration Checkpoints
 - i. *Delaware v. Prouse*, 440 U.S. 648, 658 (1979): We agree that the States have a vital interest in ensuring that only those qualified to do so are permitted to operate motor vehicles, that

these vehicles are fit for safe operation, and hence that licensing, registration, and vehicle inspection requirements are being observed. Automobile licenses are issued periodically to evidence that the drivers holding them are sufficiently familiar with the rules of the road and are physically qualified to operate a motor vehicle. The registration requirement and, more pointedly, the related annual inspection requirement in Delaware are designed to keep dangerous automobiles off the road. Unquestionably, these provisions, properly administered, are essential elements in a highway safety program.

c. DUI Enforcement Checkpoints

- i. In *Delaware v. Prouse*, the Supreme Court recognized it “would not credit the ‘general interest in crime control’ as justification for a regime of suspicionless stops.”
- ii. *City of Indianapolis v. Edmond*, 531 U.S. 32, 47 (2000): When law enforcement authorities pursue primarily general crime control purposes at checkpoints such as here, however, stops can only be justified by some quantum of individualized suspicion.
- iii. Sobriety checkpoints are constitutionally permissible, as they are narrowly-tailored checkpoints with a compelling government interest. *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444 (1990)

d. Information-Gathering Checkpoints

- i. *Illinois v. Lidster*, 540 U.S. 419 (2004): Information-seeking checkpoints are reasonable under the Fourth Amendment as long as the stop is brief and the questioning is not designed to elicit self-incriminating information.

e. Narcotics Checkpoint Ruse

- i. Establishing a “Narcotics Checkpoint Ahead” ruse does not violate the Fourth Amendment, as long as the vehicles stopped have committed traffic violations. *U.S. v. Williams*, 359 F.3d 1019 (2004)

f. Commercial Vehicles Inspections

- i. Warrantless administrative searches must bear a sufficient connection to the governmental interests they serve and cannot advance as their “primary purpose” “uncover[ing] evidence of ordinary criminal wrongdoing.” *Maryland v. King*, 569 U.S. 435, 448 (2013)

Module Five – Making the Stop

1) Profiling Vehicles

- a. *United States v. Sharpe*, 470 U.S. 675, 105 S. Ct. 1568 (1985): Using elements of a drug courier profile in combination with a traffic violation does not invalidate the reasonableness of a stop.

2) Pretext Stops

- a. *Whren v. United States*, 517 U.S. 806, 812, 116 S. Ct. 1769, 1774, 135 L. Ed. 2d 89 (1996): "Not only have we never held, outside the context of inventory search or administrative inspection... that an officer's motive invalidates objectively justifiable behavior under the Fourth Amendment; but we have repeatedly held and asserted the contrary."
 - b. *U.S. v. Balser*, 70 F.4th 613 (1st Cir. 2023): Horizontal Collective Knowledge and Vertical Collective Knowledge
- 3) Whisper Stops
- a. A "wall-off" or "whisper" stop occurs when local law enforcement conducts a stop (or search) based on their own reasonable suspicion (or probable cause), to keep the broader investigation under wraps. See *U.S. v. Balser*, 70 F.4th 613 (1st Cir. 2023)
 - b. *U.S. v. Noble*, 762 F.3d 509 (6th Cir. 2014): In order for the collective knowledge doctrine, or the "fellow-officer rule," to apply, the officers must sufficiently be involved in the same investigation.
- 4) Controlling Occupants
- a. "[A]ny reasonable passenger would have understood the police officers to be exercising control to the point that no one in the car was free to depart without police permission." *Brendlin v. California*, 551 U.S. 249 (2007)
 - b. *Arizona v. Johnson*, 555 U.S. 323, 333, 129 S. Ct. 781, 788, 172 L. Ed. 2d 694 (2009): "A lawful roadside stop begins when a vehicle is pulled over for investigation of a traffic violation. The temporary seizure of driver and passengers ordinarily continues, and remains reasonable, for the duration of the stop."

Module Six – Scope of a Traffic Stop

- 1) Defining the tolerable duration of a traffic stop
- a. *Rodriguez v. United States*, 575 U.S. 348 (2015): "An officer, in other words, may conduct certain unrelated checks during an otherwise lawful traffic stop.... [but] he may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual."
 - 1) Checking license status, warrants against driver, and inspecting paperwork are all related to stop
 - 2) If the driver is operating a rental car, requesting the rental agreement is part of the mission of every traffic stop
 - 3) Asking about travel plans
 - 4) Asking passenger to confirm the driver's story
 - 5) Asking about weapons
 - 6) Asking whether anything illegal is in the vehicle
 - 7) Asking to check the VIN
 - b. The "Rodriguez Moment"
 - 1) Courts now refer to the **instant** that an officer prolongs the

stop – without reasonable suspicion – as “the *Rodriguez* Moment.”

- 2) Ultimately, the question remains whether the officer pursued his investigation “in a diligent and reasonable manner,” not whether the investigation may have been accomplished in a more expeditious manner. See *United States v. Sharpe*, 470 U.S. 675 (1985)
- 3) *United States v. Anguiano*, 791 F. App'x 841, 849–50 (11th Cir. 2019): The Eleventh Circuit Court of Appeals engaged in a minute-by-minute analysis of a traffic stop, during which the defendants argued four deviations from the mission of the traffic stop occurred.

2) Asking Unrelated Questions

a. Consent

- 1) The Fourth Amendment allows officers to ask for consent during a routine traffic stop. *U.S. v. Salkil*, 10 F.4th 897 (8th Cir. 2021)

b. Unavoidable Downtime

- 1) Unavoidable downtime is when you are waiting for something to occur before you can continue the traffic stop. See *U.S. v. Buzzard*, 395 F. Supp. 3d 750 (4th Cir. 2021)

c. Multi-tasking

- 1) Multi-tasking means you are handling the traffic stop and unrelated activities at the same time. See *U.S. v. Goodwill*, 24 F.4th 612 (7th Cir. 2022)

d. Back-Up Officer

- 1) There are practically no cases regarding the constitutionality of this method. Why? Because it's the most defensible method under *Rodriguez*.

3) Identifying Passengers

a. Asking for a passenger's ID is not a Fourth Amendment search requiring justification

- 1) Demand versus request for identification
- 2) Identify state distinctions
- 3) Justifying the request for information

b. Legitimate reasons to request passenger's information

- 1) *State v. Martinez*, 2017 UT 43 (2017)

c. Running additional checks – other than warrants and criminal history

- 1) *U.S. v. Hunter*, 88 F.4th 221 (C.A.3 (Pa.), 2023)
- 2) *U.S. v. Evans*, 786 F.3d 779 (C.A.9 (Nev.), 2015)

4) High-Risk Traffic Stops

a. *Chinaryan v. City of Los Angeles*, 113 F.4th 888 (9th Cir. 2024)

Module Seven – Identifying Reasonable Suspicion

- 1) Once reasonable suspicion is identified, an officer may diligently pursue that investigation until his suspicions are confirmed – which leads to an arrest – or his suspicions are dispelled, at which point the original traffic stop must resume immediately.
 - a. In *Kansas v. Glover*, 589 U.S. 376 (2020), the Court was tasked with answering the question, “Does a records check which reveals the registered owner has a suspended driver’s license constitute reasonable suspicion to stop the vehicle?” The Court concluded that, under the facts of the case, it did.
 - b. This determination is made under the totality of the circumstances. *United States v. Arvizu*, 534 U.S. 266, 122 S. Ct. 744, 151 L. Ed. 2d 740 (2002)
 - 1) *United States v. Gomez-Arzate*, 981 F.3d 832 (10th Cir. 2020)
 - 2) *State v. Martinez*, 638 S.W.3d 740 (Tex. App. 2021)
 - 3) *State v. Garcia*, 253 S.W.3d 236 (Tex. Crim. App. 2008)
 - c. Frisking Vehicles
 - 1) *Michigan v. Long*, 463 U.S. 1032 (U.S. Mich., 1983)

Module Eight – Identifying Probable Cause

- 1) *Maryland v. Pringle*, 540 U.S. 366, 370–71 (2003): “[P]robable cause is a fluid concept — turning on the assessment of probabilities in particular factual contexts — not readily, or even usefully, reduced to a neat set of legal rules.”
- 2) Searching containers under the Carroll Doctrine
 - a. *United States v. Ross*, 456 U.S. 798, 800–01, 102 S. Ct. 2157, 2160, 72 L. Ed. 2d 572 (1982)
- 3) Does P.C. for a vehicle automatically allow you to search passengers?
 - a. *U.S. v. Di Re*, 332 U.S. 581 (1948)
 - b. Articulating the Nexus
 - 1) *State v. Wallace*, 372 Md. 137, 157–58, 812 A.2d 291, 303 (2002)
 - 2) *United States v. Anchondo*, 156 F.3d 1043 (10th Cir.1998)
- 4) Constructive Possession
 - a. Constructive possession of a drug is proven in the same manner as is constructive possession of any other kind of property. It is a legal conclusion, derived from factual evidence, that someone who does not have physical possession of a thing in fact, has legal possession of that thing.
 - 1) *Porter v. State*, 873 S.W.2d 729 (Tex. App. 1994)
 - 2) *United States v. Moreno*, 649 F.2d 309 (5th Cir. 1981)

3) Dirks v. State, 386 P.3d 1269 (Alaska Ct. App. 2017)

Module Eight – Drug Courier Profile

1) "Drug courier profiles" are valid investigative tools which can be used to identify individuals engaged in drug trafficking. United States v. Sokolow, 490 U.S. 1, 109 S. Ct. 1581 (1989)

2) Factors to Identify

1. Counter-surveillance driving
2. Slow to Stop
3. Furtive Movements
4. Avoiding Questions
5. Burner Phones
6. Sacrificial Weed
7. Lies About Travel Plans
8. Ignorant of Destination
9. Minimal Luggage
10. False Compartments
11. Rental Cars
12. Driver's Story Appears to be Rehearsed
13. Electronic Equipment to Avoid LE
14. Hard Driving
15. Odor of Narcotics
16. Masking Odors
17. Excessive Mileage on Vehicle
18. False Identification
19. Inconsistent Statements
20. Extreme Nervousness
21. Criminal History of Narcotics Violations
22. Recently Purchased Vehicle
23. Registered Owner is Not Present
24. Level of Cooperation
25. One-Way Rental
26. Verbal Fillers, Confusion, Vouching
27. Avoiding Eye Contact or Obscuring Face
28. Physically Distancing
29. Target Glancing
30. Traffickers' "Good Luck Charms"

3) THE Drug Courier

1. U.S. v. Bradford, 423 F.3d 1149 (10th Cir. 2005)

Module Nine – Warrantless Searches

- 1) Consent
 - a. Voluntariness factors
 - b. Common Authority
 - c. Scope of the Consent
- 2) Search Incident to Arrest
 - a. New York v. Belton, 453 U.S. 454, 101 S.Ct. 2860 (1981)
 - b. Arizona v. Gant, 556 U.S. 332, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009)
- 3) Community Caretaking
 - a. Dangerous Items
 - 1) Cady v. Dombrowski, 413 U.S. 433 (1973)
 - b. Inventory
 - 1) S. Dakota v. Opperman, 428 U.S. 364 (1976)
 - 2) State v. Krall, 2023 ND 8, 984 N.W.2d 669
- 4) K9s
 - a. Illinois v. Caballes, 543 U.S. 405 (2005)
 - b. Jones Searches and K9s
 - 1) U.S. v. Thomas, 726 F.3d 1086 (2013)
 - 2) State v. Howard, 169 Idaho 379, 382-83, 496 P.3d 865, 868-69 (2021), cert. denied, No. 21-975, 2022 WL 4657170 (U.S. Oct. 3, 2021)
 - 3) State v. Dorff, No. 48119, 2023 WL 2563783 (Idaho Mar. 20, 2023)
 - 4) State v. Bauler, 8 N.W.3d 892 (Iowa, 2024)
- 5) The Automobile Exception / the Carroll Doctrine
 - a. California v. Carney, 471 U.S. 386 (1985)
 - b. Chambers v. Maroney, 399 U.S. 42 (1970)
 - c. Michigan v. Thomas, 458 U.S. 259 (1982)
 - d. Collins v. Virginia, 128 S.Ct. 1663 (2018)
 - e. State distinctions

End of Class