

Poking Around Podcast

Show Notes

2022 Case Law Dojo Cases

Terry V Ohio 392 U.S. 1 (1968) The Terry case is the benchmark for what constitutes a legal stop where the U.S. Supreme Court interprets the fourth amendment's proscription against unreasonable searches and seizures. A "Terry stop" requires "specific and articulable facts which, taken together with rational inferences from those facts," support a reasonable suspicion that a person has committed, is committing, or is about to commit a crime.

State v. Post, 733 N.W.2d 634 2007 WI 60. Weaving in a single lane by itself is not reasonable suspicion necessary to conduct an investigative stop on vehicle. Particular facts of this case gave rise to reasonable suspicion based on totality of the circumstances.

State v. Rutzinski, 2001 WI 22, 241 Wis. 2d 729. The Wisconsin Supreme Court held that a cellular phone tip from an unidentified caller who believed that he or she was following a possible drunk driver provided sufficient justification for an investigative stop of that driver. The factors the Supreme Court relied upon in reaching its decision were: (1) The tip contained sufficient indicia of the informant's reliability in that the tip exposed the informant to possible identification and, therefore, to possible arrest if the tip proved false. (2) The tip reported contemporaneous and verifiable observations regarding Rutzinski's alleged erratic driving, location, and vehicle description, many of which the officer was able to verify. (3) The allegations in the tip could suggest to a reasonable officer that Rutzinski was operating his vehicle while intoxicated. (4) The exigent circumstances strongly weighed in favor of immediate police investigation.

Whren v. United States, 517 U.S. 806 (1996). The Supreme Court held that a vehicle stop that is supported by probable cause to believe the driver has committed a traffic violation is reasonable under the Fourth Amendment even if a reasonable officer, under the same circumstances, would not have made the stop absent some purpose not related to traffic enforcement. In essence, the Court held that pretextual stops do not violate the Fourth Amendment so long as the basis for the stop is *objectively* reasonable. The court concluded that the reasonableness of an officer's actions should not be based on his or her *subjective* intent.

Business/Security Checks

US v Brute (1994), 93-4193,93-4222, United States 10th Circuit – entry during security check to business, without more, is unconstitutional.

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California v Parra (1973), 30 Cal.App.3d 729 (1973), California 4th Appellate District Court – in regards to tort and trespass, court recognized police privilege to protect business and preserve life or property.

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Conviction upheld, but court noted search must be strictly limited to circumstances which rendered its initiation permissible and contraband found in a desk and in the business were the result of a general, unprivileged police search.

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Alaska v Myers, 601 P.2d 239 (1979), Alaska Supreme Court – police may enter a commercial premise after hours to protect the interests of the property owner if the security of the premises is in jeopardy and no reason to believe the owner would not consent to such an entry. Entry must be brief for the purpose of ensuring no intruders are present and person responsible for the premises must be informed of protective measures taken.

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Illinois v Gardner, 121 Ill. App.3d 464 (1984) 459 N.E.2d 676, Illinois 2nd District Appellate Court – stolen vehicle found in plain view inside of auto repair shop during routine security check and warrantless search of business after the officer found an unlocked door to the business was reasonable under the 4th Amendment.

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