



Rahm Emanuel
Mayor

Department of Police · City of Chicago
3510 South Michigan Avenue · Chicago, Illinois 60653

Eddie T. Johnson
Superintendent of Police

08 April 2019

Sydney Roberts
Chief Administrator
Civilian Office of Police Accountability
1615 West Chicago Avenue, 4th Floor
Chicago, Illinois 60622

Re: Log # 1088996
Non-concurrence with finding and penalty for:
Sergeant Ivan Ramos #2338

Dear Chief Administrator Roberts:

The Department does not concur with COPA's sustained findings for the following allegations against Sergeant Ramos:

Allegation #2: Searched [REDACTED] vehicle without justification in violation of Rule 6.

The Department believes that this allegation should be classified as *Unfounded*. The Department, therefore, does not concur with the recommended penalty of a Reprimand.

Pursuant to MCC 2-57-060(b), the undersigned provides comment when there is a disagreement to a finding and penalty.

On 03 December 2016, Officer (now Sergeant) Ramos conducted surveillance in response to citizen complaints of narcotics dealing at 4700 W. Van Buren. Sergeant Ramos observed Mr. [REDACTED] seated in a vehicle at that location. During surveillance, Sergeant Ramos observed what he believed was one narcotics transaction in which an unknown person gave [REDACTED] a "softball sized item" and in exchange Mr. [REDACTED] gave this person money. Sergeant Ramos broke surveillance and with other officers conducted a traffic stop on Mr. [REDACTED] vehicle. When the officers ordered Mr. [REDACTED] to exit the vehicle, Mr. [REDACTED] refused and locked the doors. A supervisor responded and convinced Mr. [REDACTED] to unlock his door. Sergeant Ramos handcuffed Mr. [REDACTED] while Mr. [REDACTED] was seated in the vehicle. Sergeant Ramos searched a black back pack in the rear seat and recovered one bag containing 140 bags of heroin. Another officer recovered a firearm under the front passenger seat. Sergeant Ramos recovered additional bags containing cocaine from the vehicle trunk. Mr. [REDACTED] was arrested for gun and narcotics possession and was also arrested for failure to follow a police order.¹

¹ Attachment #10, Arrest Report citing city ordinance 9-40-030.



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COPA determined that Sergeant Ramos' search of the vehicle was unjustified based exclusively on the Illinois appellate court's ruling in *People v. Trisby*.² In *Trisby*, the sole issue on appeal was the search of the defendant's pants pocket.³ Here, the defendant was a passenger in a vehicle in traffic stopped at a traffic light. The officer observed one transaction where a woman handed money to the defendant and the defendant gave the woman a small object.⁴ The appellate court found that this single transaction was insufficient probable cause to search the defendant's person.⁵

Sergeant Ramos' situation is substantially different than *Trisby*. Sergeant Ramos did not randomly observe Mr. [REDACTED] driving in traffic. Sergeant Ramos responded to citizen complaints of narcotics dealing at a specific location. Sergeant Ramos set up surveillance for the specific purpose of watching for narcotics transactions. Sergeant Ramos confirmed these complaints when he observed Mr. [REDACTED] receive a "softball sized object" in exchange for money. Finally, when Sergeant Ramos stopped Mr. [REDACTED] and lawfully ordered him to exit the vehicle, Mr. [REDACTED] locked the doors and refused to exit.

Department Education and Training Bulletin #09-04 states that there is probable cause for a vehicle search without a warrant when officers can articulate reasonable grounds to believe that evidence of a crime is in a vehicle. In this case, Sergeant Ramos saw a narcotics transaction at a location where citizens had complained of narcotics dealing. Mr. [REDACTED] was in his vehicle during the transaction and stayed in his vehicle until he was stopped. Mr. [REDACTED] locked his doors and remained in his vehicle after the officers lawfully ordered him to exit. Training Bulletin #09-04 instructs officers that when there is probable cause to believe a vehicle contains evidence of criminal activity, officers are authorized to search any area of the vehicle where the evidence may be found. Based on all of the factors Sergeant Ramos knew and observed, Sergeant Ramos had probable cause to believe the vehicle contained evidence of an illegal narcotics transaction and he was authorized to search areas of the vehicle where this evidence could reasonably be found.

[REDACTED SIGNATURE]

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² COPA Summary Report pg. 7: "It is well settled that a single hand-to-hand transaction of an unidentified object in a 'high crime' area is not sufficient for probable cause."

³ *People v. Trisby*, 989 N.E.2d 650, 654 (2013)

⁴ *Id.*

⁵ *Id.* at 655.

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Distribution: To All Sworn Personnel
Author: Attorney Andrea Hyfantis (Unit 124)
Release Date: September 2009

This bulletin revises and rescinds bulletin ETB# 01-06 of the same title.



ETB# 09-04

Jody P. Weis, Superintendent of Police

Howard W. Lodding, Assistant Deputy Superintendent

VEHICLE STOPS AND WARRANTLESS SEARCHES

The purpose of this training bulletin is to clarify when an officer can lawfully search a vehicle during a traffic stop.

In April 2009, the Supreme Court issued a ruling in the case *Arizona v. Gant* that further defines how and when officers can lawfully conduct searches of vehicles pursuant to a custodial arrest.



Following a lawful custodial arrest, search of the passenger area of a vehicle is now only lawful in limited cases.

The following sections of this bulletin provide examples of scenarios and case law to help officers better understand the circumstances that allow for warrantless searches of vehicles.

Key Point #1 Random stops are unlawful.

Scenario:

A police officer randomly stops a car to check whether the driver is licensed and the car is registered. After approaching the vehicle, the officer orders the driver to exit the vehicle. As the driver complies, a bag of cannabis drops from his jacket to the ground. The officer then places the driver under arrest for possession of cannabis.

Question:

Was the officer justified in stopping the vehicle?

Answer:

No. In *Delaware v. Prouse*, 440 U.S. 648 (1979), the United States Supreme Court held that police may not randomly stop vehicles on the public way merely to inspect a driver's license and vehicles registration. The evidence would be inadmissible, *because the stop was not based on reasonable suspicion or probable cause for any violation of law.*

UNLAWFUL VEHICLE STOP = UNREASONABLE SEIZURE

Key Point #2 During the course of a lawful stop, a police officer has the authority to order all occupants out of the vehicle and require them to remain at the scene.

Question:

When may an officer require an occupant to exit the vehicle?

Answer:

During a **lawful** vehicle stop, **ALL** of the occupants may be required to exit the vehicle. The United States Supreme Court held in *Pennsylvania v. Mimms*, 98 S.Ct.330 (1977), that the need for police safety outweighs the intrusion to the citizen.

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A police officer is at risk when approaching an occupied vehicle. Since the driver has already been lawfully detained, exiting the vehicle is just inconvenient. The authority to order an occupant out of the vehicle was extended to passengers in *Maryland v. Wilson*, 117 S. Ct. 882 (1997).

Question:

During a lawful traffic stop, may a police officer require the occupants of the vehicle to remain at the scene?

Answer:

Yes, ALL of the occupants may be required to remain at the scene. The Illinois Supreme Court held this in *People v. Gonzalez*, 704 N.E.2d 375 (1998). This authority is also automatic and based on safety concerns. However, the authority to order occupants to remain at the scene *DOES NOT justify patting down occupants.*

Key Point #3

If any of the occupants of a lawfully stopped vehicle give the officer reasonable suspicion that they are dangerous, and might access the vehicle to gain control of weapons, the passenger area of the vehicle may be searched for weapons.

Scenario:

A police officer observes a vehicle with an expired license plate and proceeds to stop the vehicle. There are two occupants. As he approaches the vehicle, it appears the passenger is putting something under the seat. When he asks to see the passenger's hands, the passenger refuses. Force is also needed to get the passenger to exit the vehicle. The officer pats the passenger down for weapons, and then looks under the seat, where he finds a handgun.

Question:

Did the officer have the authority to search the passenger area this way?

Answer:

Yes, at the initial stop or during the investigation, if the officer had reason to believe that any occupant of the vehicle was dangerous and could gain control of a weapon, the officer could legally search the passenger area of the vehicle for weapons. This vehicle search would be in addition to patting the subject down for weapons.

- **Any spaces, containers, or belongings big enough to hold weapons may be searched.** *Michigan v. Long*, 103 S. Ct. 3469 (1983).
- **It does not matter that the item searched does not belong to the person believed to be dangerous.** When the search of the passenger area is lawful, any belongings (big enough to hold the object of the search) may be searched. *Wyoming v. Houghton*, 119 S. Ct. 1297 (1999).

In *Michigan v. Long*, the officers were justified in their reasonable belief that the subject posed a danger if he were permitted to re-enter the vehicle. They were also acting reasonably in ensuring that no weapons were within his reach before permitting him to re-enter the vehicle.

The fact that the occupant was under the control of the officers during the stop did not render the officers' belief that the occupant was dangerous unreasonable.

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Key Point #4

***Arizona v. Gant* established new case law: search of the passenger area is no longer automatically lawful pursuant to arrest.**

Scenario:

Officers stop a Buick for improper use of vehicle registration. The license plate is registered to a Ford. The driver does not have a license, and a name check reveals that the driver's license was revoked. The officers place the driver under arrest, handcuff him, and place him in the back of the squad car. The passenger area of the vehicle is searched, and cannabis is found in a jacket.

Question: Were the officers justified in searching the vehicle?

Answer:

NO. The case of *Arizona v. Gant*, 129 S. Ct. 1710 (2009) has held that the search of the passenger area of the vehicle, pursuant to a lawful custodial arrest, is lawful **only if the arrestee is within reaching distance of the vehicle, or, it is reasonable to believe the vehicle contains evidence of the offense of the arrest.** Neither of these justifications is present in the scenario above. The search of the passenger area pursuant to a lawful custodial arrest is no longer automatically lawful.

Key Point #5

The "Vehicle Search" warrant exception still applies.

If probable cause exists for contraband or evidence in the vehicle, the officer may search any spaces in the entire vehicle that might contain the object of the search.

How do you know you have probable cause for the vehicle search? You can articulate reasonable grounds to believe that particular items will be found in the vehicle. This means that before you searched, you could answer the following questions with specific facts:

- What were you looking for?
- And why did you believe it would be in the vehicle?

Scenario:

Officers stop a vehicle for exceeding the speed limit. A name check of the driver reveals that his license has been revoked. The driver is searched, and cannabis is found in his pocket. The driver is handcuffed and put in the back of the squad car. The officers then search the entire vehicle, and find more cannabis under one of the seats. The officers then search the trunk and find it full of heroin.

Question:

Was the search lawful?

Answer:

Yes. Once the officers can articulate probable cause (in this case, reasonable grounds to believe more illegal drugs would be found in the car) the vehicle search exception allows this warrantless search. If there is probable cause to believe a vehicle contains evidence of criminal activity, a search of any area of the vehicle in which the evidence may be found, is authorized. *Carroll v. United States*, 45 S.Ct. 280 (1925); *United States v. Ross*, 102 S. Ct. 2157 (1982).

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Key Point #6

Officers must know the exceptions to the warrant requirement and the importance of justifying each warrantless search, with the correct legal reason at each step, in the correct order.

Scenario:

A police officer observes a vehicle with an expired license plate and proceeds to stop the vehicle. There are two occupants. As he approaches the vehicle, it appears the passenger is putting something under the seat. When he asks to see the passenger's hands, the passenger refuses. Force is also needed to get the passenger to exit the vehicle. The officer pats the passenger down for weapons, and then looks under the seat, where he finds a handgun. The officer then searches the trunk, and finds cannabis.

Question:

Were the searches of the passenger area, and now also the trunk, lawful?

Answer:

The search of the occupant was lawful as long as it was reasonable to believe he could be dangerous. *Terry v. Ohio*, 88 S. Ct. 1868 (1968). The search of the passenger area for weapons was lawful because the occupant could be dangerous and access weapons in that space. *Michigan v. Long*, Id. The search of the trunk was lawful, because after finding the gun under the seat, probable cause existed for finding more guns in the vehicle. The trunk is large enough to hold a gun. *U.S. v. Ross*, Id.

NOTE:

In the above scenario, if no evidence had been found on the occupant or in the passenger area, searching the trunk would have been illegal!

It is always best to have a warrant authorizing a search.

CONCLUSION

DURING A LAWFUL STOP, POLICE OFFICERS CAN:

- Order all the occupants out of the vehicle and require them to remain at the scene.
- Search the passenger area of a vehicle for weapons **IF** any of the occupants give the officer reasonable suspicion that they pose a threat, or might access weapons inside the vehicle.
- Search any space in the vehicle **IF** probable cause exists for contraband or evidence in the vehicle.
- Conduct inventory searches. Inventory searches are lawful, pursuant to lawful impoundment, and when done according to standard police procedure.

POLICE OFFICERS CANNOT:

- Conduct random stops. Officers cannot randomly stop a vehicle on the public way to inspect a driver's license or vehicle registration.
- Search a vehicle based on a traffic citation. The issuance of a traffic citation alone does not permit any type of warrantless search of a vehicle. The officer would have to obtain voluntary consent.
- Automatically search a vehicle because of an arrest.