



Sheriff's Office Training Bulletin

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A VEHICLE STOP BY A BORDER PATROL AGENT AWAY FROM THE BORDER LACKED REASONABLE SUSPICION OF CRIMINAL ACTIVITY.

A Border Patrol agent was on duty driving an unmarked patrol vehicle on an interstate highway in San Diego County just south of the border with Riverside County. The agent was a member of a high intensity drug trafficking area task force. He was assigned to look for illicit activity on the highways and to run records checks. The agent had been a border patrol agent for almost ten years.

The highway where the agent was patrolling, I-15, was known as a major corridor for trafficking narcotics from Mexico.

While on patrol, the agent observed an SUV on the highway. The agent did not observe anything unusual about the vehicle or about the way it was operated. The agent ran the license plate through his electronic data system and found that the vehicle had crossed the U.S.-Mexico border within the previous week. The agent also found out that the

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Protecting Open Space During the Emergency



FROM THE TRAINING MANAGER:

The Training Unit would like to thank everyone for their patience regarding the cancellation of training during COVID-19 restrictions.

We know this is not ideal and some important training was cancelled. Once things have returned to normal, training will be rescheduled.

Some may be concerned about POST and STC training requirements. At this time, POST and BSCC are monitoring developments and have expressed their willingness to work with agencies to ensure compliance, whether it be alternate forms of training, deadline extensions, or other solutions.

Depending on how the current situation evolves, it may not be necessary: the POST cycle doesn't end until Dec 31 and the STC cycle doesn't end until June 30.

The Training Unit will do our best to keep you informed of developments as things progress.

vehicle was registered to a woman who resided in Chula Vista, a city near the Mexican border. The agent ran the license plate because his practice is to run license plates to try to get a nexus to the border.

The agent pulled up next to the SUV to the driver who was driving. He was unable to see her until he rolled down his window. At that point, he looked over and saw that the driver was female. He and the woman made eye contact and maintained eye contact for a while. He noted that the woman appeared to get a good look at him.

The agent noted that the woman immediately slowed down and then got behind the agent's vehicle. The agent then moved his vehicle into the slow lane, to the right of the woman. The woman made no effort to pass him, even when the agent slowed down to approximately 50 miles per hour. They drove like that for about three miles—the agent ahead of the woman and one lane to her right. At that point, the woman passed the agent's vehicle. She had both hands on the steering wheel and did not look at the agent as she passed.

The agent initiated a vehicle stop, using his vehicle's lights and siren once he got behind the woman's SUV. The agent later explained that he based his stop on the "totality of the circumstances," citing the nexus to the border, the woman having crossed the border, the driver being a woman, the driving behavior, the lane

changes behind the agent, speed, not passing him, and the rigid posture of the driver as she drove past him.

The woman yielded to the traffic stop and the agent identified himself as a border patrol agent. The agent asked the woman for permission to search the vehicle and she consented.

In the case of People v. Mendoza, the California Court of Appeal ruled that the stop and the search violated the woman's Fourth Amendment rights against unreasonable searches and seizures.

In its written decision, the Court first stated, "The Fourth Amendment to the United States Constitution protects against unreasonable searches and seizures. The primary purpose of the Fourth Amendment is to impose a standard of reasonableness upon the exercise of discretion by government officials, including law enforcement agents, in order to safeguard the privacy and security of individuals against arbitrary invasions. A defendant may move to suppress as evidence any tangible or intangible thing obtained as a result of a search or seizure if the search or seizure without a warrant was unreasonable. A traffic stop is a seizure within the meaning of the Fourth Amendment."

The Court continued, "It is settled that circumstances short of probable cause to make an arrest may justify a police officer stopping and briefly detaining a person for questioning or other limited investigation. However, law enforcement officers are not free to detain citizens at will. To justify an investigative stop or detention the circumstances known or apparent to the officer must include specific or articulable facts causing him to suspect that (1) some activity relating to crime has taken place or is occurring or about to occur, and (2) the person he intends to stop or detain is involved in that activity."

The Court further stated, "Officers may properly draw on their own experience and specialized training to make inferences from and deductions about the cumulative

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information available to them that might well elude an untrained person. However, the officer's suspicion must be objectively reasonable. The facts must be such as would cause any reasonable police officer in a like position, drawing when appropriate on their training and experience to suspect the same criminal activity and the same involvement by the person in question. The corollary to this rule, of course, is that an investigative stop or detention predicated on mere curiosity, rumor, or hunch, is unlawful, even though the officer may be acting in complete good faith."

The Court looked at the facts of the woman's case and stated, "Here, it was not objectively reasonable to suspect [the woman] was involved in criminal activity. [The agent] said [the woman] caught his attention initially only because she was driving in a known drug trafficking corridor in a vehicle that had crossed the U.S.-Mexico border approximately a week earlier."

The Court then stated, "There's no question that driving on the I-15 is not sufficient to warrant a stop. Interstate 15 is a heavily traveled stretch of highway. The portion of the I-15 in San Diego County is among the top 20 most traveled highway stretches in the United States, averaging 295,000 vehicles a day in 2008. . . . An officer's assertion that the location lay in a 'high crime' area does not elevate facts into a reasonable suspicion of criminality. The spectrum of legitimate human behavior occurs every day in so-called high crime areas."

The Court continued, "Nor does [the woman]'s 'nexus' to the border warrant a stop. The U.S.-Mexico border is the most crossed border in the world. According to the United States Department of Transportation, Bureau of Transportation Statistics, 1,158,239 personal vehicles entered the United States from Mexico through the San Ysidro port of entry in November 2017. Thus, though [the woman]'s vehicle's recent border crossing and location on the I-15 provided some reason to look into her activities further, they provided almost no basis

for thinking she was involved in criminal activity. Those factors would draw into suspicion tens of thousands of people every day, perhaps more. The factors law enforcement rely on to justify a stop, if amenable to innocent explanation, must serve to eliminate a substantial portion of innocent travelers. [The agent] therefore needed some other basis for stopping [the woman]."

The Court then stated, "The additional factors [the agent] described were simply insufficient to warrant the stop. The agent said he also considered the fact that [the woman] slowed and moved over behind him after he pulled alongside to inspect her vehicle. However, the manner of his approach is critical to evaluating [the woman]'s reaction. He acknowledged he drove an unmarked vehicle with no signs of its relation to law enforcement. As a result, when he pulled alongside her it was his conduct that looked suspicious, not hers. The agent said he drew even on her passenger side, couldn't see her through his tinted windows, lowered his window, and then stared at her. Indeed, he said he bent forward to get a better look and their eyes met. She reacted by taking fairly innocuous action to avoid him. [The woman] didn't drive erratically, didn't change lanes repeatedly, and didn't use other evasive maneuvers. She just slowed down and pulled behind him."

The Court continued, "Given the fact that [the agent] drove an unmarked vehicle and did nothing to identify himself as law enforcement, the most natural interpretation of [the woman]'s conduct is that she sought to avoid him because she found his conduct threatening and potentially aggressive. [The agent] did not appear to make this connection but instead inferred she was trying to avoid him to cover up her criminal conduct."

The Court further stated, "We don't mean to suggest the reactions of a person under observation by law enforcement can't warrant a stop. They may, under the right circumstances. But for such a reaction to evince guilt, rather than a general fear or caution, there must be

some indication the person is aware they're being observed by law enforcement. That element is absent here. . . .”

The Court concluded, “To initiate a stop, an agent must have an objectively reasonable basis for suspicion. The agent in this case did not have such a basis.” ☆

THE CRIME OF KIDNAPPING TO COMMIT ROBBERY REQUIRES MORE THAN MOVEMENT THAT IS MERELY INCIDENTAL TO THE ROBBERY.

A worker in a nail salon stepped out of the business to smoke a cigarette. He went to a sidewalk in front of the business. Because the spot he chose was in front of a poster in the window, the patrons inside the business could not see him smoking. Although it was dark out, there was light coming from the interior of the shop. There was an alley that led from the sidewalk. The alley did not have similar lighting. It was dark in the alley.

As the worker left to smoke, a man passed him and then circled back about half a minute later. The man yelled something to the worker and ordered him to look down. When the worker looked down, he observed that the

man was pointing a gun at the man's waist area. The man ordered the worker to move back into the alley. The worker obeyed by taking three or four steps backward.

When the worker stopped, he was at the corner of the building and about a foot into the unlit alley, blocked from view. The man demanded the man's wallet, which the worker surrendered. The man told the worker that he would die unless there was money in the wallet. The man then told the worker to walk back into the shop and not to look back. The worker returned to the shop.

In the case of People v. Taylor, the California Court of Appeal ruled that the movement of the worker was insufficient to support a conviction for kidnapping to commit robbery.

In its written decision, the Court first stated, “The crime at issue is section 209's kidnapping to commit robbery, which is aggravated kidnapping, in contrast to simple kidnappings illegal under section 207. How much must kidnappers move victims to commit aggravated kidnapping? The jargon for this issue is ‘asportation.’”

The Court continued, “The statute sets two requirements: 1. The defendant must move the victim beyond movement ‘merely incidental’ to the robbery, and 2. This movement must

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increase the victim's 'risk of harm' beyond that necessarily present in the robbery."

The Court noted the challenge in determining how to decide what is "incidental" to a robbery. The Court stated, "To determine what is 'incidental' about a robbery, courts cannot ask the obvious person: the robber. [The suspect] did not testify in this case, but more fundamental than this practical obstacle is the fact robberies can be highly opportunistic, as was [the suspect]'s. [The victim] popped out for a smoke just as [the suspect] happened to walk by. In the space of 27 seconds, [the suspect] with his gun and on the prowl, apparently reacted to [the victim]'s chance appearance by deciding to go back for [the victim]'s wallet. It is unknowable whether [the suspect] in those seconds formulated some plan featuring major and incidental elements, or whether [the suspect] just formed a vague notion— 'get his wallet'—and resolved to react as events unfolded. The man who authorized the event will never say what was central or incidental."

Acknowledging the challenge, the Court then looked at whether the movement in the case was "incidental." The Court stated, "There was nothing like a classic aggravated kidnapping in this case. Rather, this robbery was just an ordinary robbery. The victim backed up four steps and ended up 12 inches into an alley, where the darkness and the corner screened the robbery, which is where robbers typically want to be: out of public view. [The suspect] never confined [the victim] in an isolated room. The whole episode lasted a mere minute and a half. This movement was trivial and incidental to the robbery. This case has no evidence of kidnapping for robbery."

The Court concluded, "The law is not always simply logical and commonsensical, but here it is, and that is desirable because criminal law aims to express and to enforce a community's shared moral intuitions. The average Californian would be surprised to hear four steps backwards could be kidnapping. And here the average Californian would be right: that is not a kidnapping under these facts."

A kidnapping to commit robbery, in violation of Penal Code section 209, requires that the defendant use force or fear to move the victim a "substantial" distance, beyond the movement that is merely incidental to the commission of the crime.

This distance must be more than slight or trivial. The movement must have increased the risk of physical or psychological harm to the victim beyond that necessarily present in the robbery. Jurors may consider all circumstances related to the movement in deciding whether it is substantial or merely incidental. When you investigate these cases, consider the actual distance traveled, the lighting, access to phones, the ability to call out for help, whether the victim is obscured from view, and whether the movement makes the victim's escape more difficult. ☆

FROM THE RANGEMASTER:

I'm Sgt Dave Weidner, your new Rangemaster, and I'd like to introduce myself. I've been with the San Mateo County Sheriff's Office for twenty years, the range staff for twelve, and just started as the new Rangemaster last month.

Let me also say thanks to Sgt Robert Pronske. Sgt Pronske oversaw many changes, including being an integral part of planning and construction of the indoor range. Sgt Pronske has built a solid foundation for which we all owe a debt of gratitude.

I know that range training has been limited by the recent construction. These projects are nearing completion and will provide exciting new resources. I look forward to planning an inclusive, integrated, and challenging range training program that will help prepare all of us for the future.