

Criminal Law Update

Summer 2008

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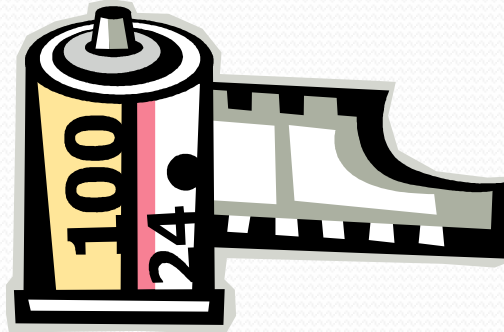
Reasonable Suspicion



- Is there reasonable suspicion to believe Rubin is Speaking While Impaired (SWI)?
- Can an officer stop a person based on a “mistake of law”?
- What is the standard for a traffic stop—reasonable suspicion or probable cause?

Actions after Stop

- Dog sniffs
- Film canisters
- Handcuffs



Grounds to Arrest and Search

- If offense is crime and officer may not arrest under state law,
 - it is statutory, not constitutional violation, to arrest and search incident to arrest
- If offense is an infraction, not a crime, under state law
 - it is statutory and constitutional violation to arrest and search incident to arrest
- If offense is crime and officer issues citation and does not arrest
 - it is constitutional violation to do incident search

Consent Searches

- *Miranda?*
- Searches of private areas



Right to Counsel

- Riddle me this:
- When is a fine of \$500 or more likely to be imposed?
 - If actually imposed?
 - If likely on facts, whether or not imposed?
 - Whenever authorized?



Did the State Prevent Access?

- *Tippett*
 - No request by defendant
- *Hatley*
 - Defendant made request, person showed up, and person made general request
- *Labinski*
 - Defendant made request and person showed up, but court finds efforts insufficient

Sexual Battery

- Elements
 - Includes force requirement, which may be satisfied by constructive force
- Sex offender registration
 - Ten-year minimum of registration
 - If against minor and probation finds highest risk, GPS for period ordered by court

Some Things Are Not Possible



Double Jeopardy and Other Bars

- D is tried for RDO and acquitted. May state bring new charge for assault on officer based on same incident?
 - Under USSC elements test?
 - No, if offenses are the same; yes, if different
 - Under NCSC same-evidence test?
 - No, if evidence supporting assault is same as RDO evidence; yes, if different.
 - Under joinder requirement in GS 15A-926(c)(2)?
 - No, even if elements and evidence are different; yes, if ends of justice require

Crawford: Quiet for Now

- Business records
- Dying declarations
- Basis of expert opinion
- Not for truth

Making Sense of 404(b)

1. Rule of inclusion means that offering party is not limited to list
2. MUST HAVE RELEVANT PURPOSE
3. If purpose is character, automatically inadmissible
4. Even if relevant purpose, inadmissible if too dissimilar or remote; probative value becomes too weak to show relevant purpose
5. Must be by facts, not conviction
6. Must balance under Rule 403

Credibility

- Rule 611(b)
 - “A witness may be cross-examined on any matter relevant to any issue in the case, including credibility.”
- Proper subjects of cross include witness’s capacity to observe, recollect, and recount

Fifth Amendment Review

- Defendant has right not to testify
 - State may not call defendant
 - Court may not call defendant
 - Co-defendant at joint trial may not call defendant
- Witness has right not to answer question if
 - Answer would tend to incriminate witness
 - Witness is not immune from prosecution
 - Witness has not waived privilege