

## CASE SUMMARIES

By Jeffery Ortinau, J.D., Legal Advisor

### Criminal Law: Warrant Checks on Passengers Allowed During Traffic Stops if Done in a Reasonable Manner

**Case Summary:** The Illinois Supreme Court recently decided a case where a police officer conducted a suspicionless warrant check on a passenger during a traffic stop. *People v. Harris*, No. 103796, 2008 Ill. LEXIS 292 (March 20, 2008). After a second review of *Harris*, the Illinois Supreme Court relied on the U. S. Supreme Court's ruling in *Illinois v. Caballes* to find that a warrant check on the occupants of a lawfully stopped vehicle does not violate Fourth Amendment rights, so long as the duration of the stop is not unnecessarily prolonged for the purpose of conducting the check and the stop is executed in a reasonable manner.

In *Harris*, the defendant was a passenger in a car stopped for a moving violation. During the course of the traffic stop the police officer asked the defendant for identification, and the defendant handed him a state identification card. The officer conducted a search of the defendant's information, which revealed the defendant had an outstanding arrest warrant. The defendant was placed into custody, and a custodial search of his person revealed a "pea-sized" rock of cocaine in his jacket.

When the Illinois Supreme Court first reviewed *Harris*, it affirmed the Appellate Court's reversal of the defendant's conviction. See *People v. Harris*, 207 Ill. 2d 515 (2003). That decision was subsequently vacated by the U.S. Supreme Court in light of the ruling in *Illinois v. Caballes*, 543 U.S. 405 (2005). On remand, the Appellate Court again reversed defendant's conviction, concluding that *Caballes* had no bearing on the case.

In finding that the Appellate Court failed to reconsider this case in light of the *Caballes* decision, the Illinois Supreme Court first acknowledged the defendant was seized for Fourth Amendment purposes when the officer made the traffic stop. A lawful traffic stop is similar to the execution of a search warrant as both are based on probable cause. The occupants of a vehicle and the occupants of a residence covered by the warrant are lawfully seized for the duration of the stop or warrant search. In *Harris*, all the passengers in addition to the driver were seized pursuant to the initial stop as the officer had probable cause after observing a traffic infraction.

After establishing the defendant was lawfully seized, the Court agreed with the State's position that the warrant check neither prolonged the nature of the traffic stop, nor did it violate the defendant's interest in his privacy. Since the warrant is a matter of public record, the defendant has no expectation of privacy in the information it contains. In applying the Supreme Court's analysis of *Caballes* to the instant case, the Court held that an officer may perform a warrant check during a traffic stop, so long as it does not unreasonably prolong the duration of the stop. The dog sniff in *Caballes* did not change the character of a lawful traffic stop as it was executed in a reasonable manner. A seizure can become unlawful, however, if it is

prolonged beyond the time reasonably required to complete the traffic stop. In *Harris*, the Court determined the seizure of the defendant was a reasonable duration, and since the warrant check did not violate a privacy interest, it did not violate the defendant's Fourth Amendment right.

In following the Supreme Court's analysis of *Caballes*, the Illinois Supreme Court partially overruled its decision in *People v. Gonzalez*, 204 Ill. 2d 220 (2003). *Gonzalez* determined the reasonableness of police conduct during a traffic stop involved a two-prong test: (1) The duration of the stop, and (2) whether the officer's actions during the course of the stop were reasonably related in scope to the circumstances that initially justified the stop. Because the Supreme Court held a dog sniff is not a search subject to the Fourth Amendment and it does not convert a lawful traffic stop into a drug investigation, it is no longer necessary to look at the second prong of *Gonzalez* to determine if the officer's actions are related to the purpose of the initial stop. Thus, the duration prong is the sole focus of the scope inquiry. The warrant check on the defendant in the instant case did not unreasonably prolong the traffic stop, therefore it did not violate the defendant's Fourth Amendment rights.

The defendant then argued that the officer's request for his identification violated his Fourth Amendment rights because his compliance was not voluntary. The Court used the general principles of *Florida v. Bostick* in addressing the defendant's claim. *Florida v. Bostick*, 501 U.S. 429 (1991). Under *Bostick*, an individual is "seized" when an officer by means of physical force or show of authority, has in some way restrained the liberty of a citizen so long as a reasonable person would feel free to disregard the police and go about his business, the encounter is consensual and no reasonable suspicion is required. If, however, when all the circumstances surrounding the incident are taken into account, the conduct of the police would lead a reasonable innocent person under identical circumstances to believe that he or she was not free to decline the officer's requests or otherwise terminate the encounter, that person is seized.

The Court found the defendant was free to decline the officer's request for identification even though he was not free to terminate the encounter. An innocent passenger in the defendant's position would feel free to decline to provide his driver's license, notwithstanding the fact that the driver of the car was about to be arrested. Asking for one's identification does not amount to interrogation, and an innocent passenger would have no reason to feel threatened. The defendant's compliance in tendering his identification was voluntary under *Bostick*, therefore his Fourth Amendment rights were not violated.

Thanks to Michael Sorich, ASA Cook County, for the use of the above information