

CHAPTER 6

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6.1 GENERALLY

In order to stop a motor vehicle, an officer must have reasonable articulable suspicion that a public offense is occurring or has occurred. There are many legitimate reasons for such a stop which include, but are not limited to suspicious activity, traffic violations, and equipment violations. The objective reasoning for the stop is the only relevant issue for review. The subjective mind set of the officer is irrelevant. Pursuant to *Whren vs. United States*, 517 U.S. 806, 813 (1996), the reasonableness of a traffic stop does not depend upon the subjective intentions of an officer. In other words, the days of arguing whether a traffic stop was a *pretext* for other, unstated, reasons are history. See also *State v. Lopez*

Utah Code Ann. §77-7-2 provides that an officer may make an *arrest* under authority of a warrant or may, without warrant, arrest a person:

- (1) for any public offense committed or attempted in the presence of any peace officer; "presence" includes all of the physical senses or any device that enhances the acuity, sensitivity, or range of any physical sense, or records the observations of any of the physical senses;

(2) when he has reasonable cause to believe a felony or a class A misdemeanor has been committed and has reasonable cause to believe that the person arrested has committed it;

(3) when he has reasonable cause to believe the person has committed a public offense, and there is reasonable cause for believing the person may:

- (a) flee or conceal himself to avoid arrest;
- (b) destroy or conceal evidence of the commission of the offense; or
- (c) injure another person or damage property belonging to another person.

Generally speaking, any arrest for a DUI will have been committed in the presence of the officer.

6.2 STANDARD FOR STOPPING A MOTOR VEHICLE

The general standard for reasonable suspicion has been long-settled under *Terry v. Ohio*, 392 U.S. 1 (1968):

[I]n justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonable warrant intrusion.

Id., at 21.

In the context of impaired driving investigation, there are numerous activities which may give rise to reasonable suspicion to stop a vehicle.

6.3 REASONABLE SUSPICION

6.3.1 TRAFFIC AND EQUIPMENT VIOLATIONS

Observation of a traffic law violation is perhaps the most defensible reason for stopping a vehicle. So long as the officer can articulate the observation of the violation, a court should hold the stop to be lawful.

6.3.2 SUSPICIOUS DRIVING

In addition to patently obvious traffic law violations, officers may obtain reasonable suspicion by observing other suspicious driving activities that do not, by themselves, constitute an offense. The National Highway Safety Administration identifies a number of clues which may be used in order to form reasonable suspicion for a stop. These include:

Clues related to problems in maintaining proper lane position:

- Weaving within a lane;
- Weaving across lane lines;
- Straddling a lane line;
- Drifting;
- Swerving;
- Almost striking a vehicle or other object; and
- Turning with a wide radius, or drifting during a curve.

Clues related to speed and braking problems:

- Stopping problems (too far, too short, too jerky);
- Accelerating for no reason,
- Varying speed; and
- Slow speed.

Clues related to vigilance problems:

- Driving without headlights at night;
- Failure to signal a turn or lane change, or signaling inconsistently with actions;
- Driving in opposing lanes or the wrong way on a one-way street;
- Slow response to traffic signals;
- Slow or failure to respond to officer's signals, and
- Stopping in the lane for no apparent reason.

Clues related to judgment problems:

- Following too closely;

- Improper or unsafe lane change;
- Illegal or improper turn (too fast, jerky, sharp, etc.)
- Driving on other than the designated roadway;
- Stopping inappropriately in response to an officer,
- Inappropriate or unusual behavior; and
- Appearing to be intoxicated.

It should be noted that while some of the above-referenced behaviors will be violations of the traffic code, those that are not may be insufficient to form reasonable suspicion on their own. Officers should be able to articulate a set of behaviors which, in the totality of the circumstances, led the officer to believe that the driver was impaired.

6.3.3 ANONYMOUS AND CITIZEN INFORMANT TIPS

"A reasonable suspicion may be based upon an informant's tip so long as it is sufficiently reliable." *State v. Grovier*, 808 P.2d 133, 135 (Utah Ct. App. 1991) In order to determine the reliability of an informant's tip, the courts have set forth a three part test which analyzes the following:

1. Type of tip or informant involved;
2. Whether the informant gave enough detail about the observed criminal activity to support a stop; and
3. Whether the police officer's personal observations confirm the dispatcher's report of the informant's tip

Regarding anonymous tips, courts routinely hold that, "because an anonymous caller's basis of knowledge and veracity are typically unknown, anonymous tips are toward the low-end of the reliability scale. *State vs. Roth*, 827 P.2d 255, 257 (Utah Ct. App. 1992).

When dealing with an anonymous tip, prosecutors must elicit as much corroborating evidence from the officer as possible. This must include as much detail as possible about the time and location of the offense, particulars of the offense, description of the vehicle and occupants, as well as the ability of the informant to observe the behavior. Prosecutors should advise law enforcement that an additional driving pattern or observations of

impairment must be obtained in order to make a valid stop from an anonymous informant.

Citizen informants, on the other hand, generally have much greater indicia of reliability and are more easily supported in court. In *Kaysville City vs. Mulcahy*, 943 P.2d 231, 235 (Utah Ct. App 1997), the Court of Appeals addressed the reliability of citizen informants:

In contrast [to an anonymous informant], an identified citizen informant is high on the reliability scale. We simply assume veracity when a citizen-informant provides information as a victim or witness of crime. This is because citizen informers, unlike police informers, volunteer information out of concern for the community and not for personal benefit. Further weighing in favor of the reliability and veracity of a named citizen-informant is that the informant is exposed to possible criminal and civil prosecution if the report is false. And, by providing his or her name, a citizen-informant makes it possible for the police to verify the facts underlying the report.

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The final factor is whether the police officer's personal observations confirm the dispatcher's report of the informant's tip. The officer may corroborate the tip either by observing the illegal activity or by finding the person, the vehicle and the location substantially as described by the informant. Certainly, officers are encouraged to investigate the suspect immediately, rather than to allow the suspect to drive so that the officer may observe the driving. Otherwise, the risk that the suspect will be involved in an accident increases, which is not in the public's interest." Lastly, regarding this factor, "where the reliability of the information is increased, less corroboration is necessary.

Before proceeding further, we think it vital to emphasize that the tip in this case reported a drunk driver who was at that time on the road. We therefore must consider the ever-changing equation used to balance the rights of an individual to be free from unwarranted intrusions of his or her freedom of movement and right to privacy with the right of the public to be protected from unreasonable danger. This

equation and the balance change with the facts presented.

Internal quotations and citations omitted.

6.4 REASONABLE SUSPICION NOT NECESSARY

There are times and situations when reasonable suspicion is not necessary for an officer to approach a vehicle or begin an investigation. This will occur when the officer is not using a show of force or authority to stop or detain a vehicle. For example, an officer approaching a vehicle that is already stopped or disabled is not a “stop” and does not need to be supported by reasonable suspicion.

6.5 ODOR OF ALCOHOL IS REASONABLE SUSPICION

There will certainly be times when an officer has contact with a driver that was not precipitated by suspicion of impaired driving. This may occur either at an accident scene, a casual encounter, or perhaps a stop for a simple traffic violation such as speeding. The Utah courts have consistently held that upon the detection of an odor of alcohol coming from the driver, that the officer will then have reasonable suspicion to detain the driver further in order to investigate a possible DUI case. *Bountiful City vs. Maestas*, 788 P.2d 231 (Utah Ct. App 1990).

6.6 PROBABLE CAUSE TO ARREST FOR DUI

Utah Code Ann. § 41-6a-508 outlines the standard for making a DUI arrest:

41-6a-508. Arrest without a warrant for a driving under the influence violation.

A peace officer may, without a warrant, arrest a person for a violation of Section 41-6a-502 when the peace officer has probable cause to believe the violation has occurred, although not in the peace officer's presence, and if the peace officer has probable cause to believe that the violation was committed by the person.

In a judicial determination of whether an officer has probable cause to arrest for driving under the influence of alcohol, a court “ask whether from

the facts known to the officer, and the inferences which fairly might be drawn therefrom, a reasonable and prudent person in his position would be justified in believing that the suspect had committed the offense". *Layton City v. Noon* 736 P.2d 1035 (Utah Ct. App. 1987). This determination will always be a fact-sensitive analysis, but if an officer can clearly articulate evidence that meets each of the elements for the offense of DUI, a court should find that probable cause existed.

updated 03.22.2007

