

BEING STOPPED BY THE POLICE

AUGUST 10,2022

HON. MARC LOVECCHIO (RET.)

BEING STOPPED BY THE POLICE

OPTION 1:

CRY AND BEG

BEING STOPPED BY THE POLICE

OPTION 2:

GET MAD, ARGUE, INSULT

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COMMONWEALTH V. CHISEBWE, 2022

PA.SUPER 114 (6-28-22)

STATUTE ALLOWS DRIVERS TO
PRODUCE REQUIRED DOCUMENTS LIKE
LICENSE WITHIN 15 DAYS AND REGISTRATION
WITHIN 5 DAYS

NOT IF YOU ARE COMBATIVE AND
BELIGERENT!

“THE LANGUAGE IN THE STATUTE
THAT ALLOWS DRIVERS ADDITIONAL TIME
PERIODS TO PRESENT PROOF OF THE REQUIRED
DOCUMENTS, DOES NOT EXTEND TO
BELLIGERENT AND COMBATIVE BEHAVIOR OF
THE LICENSEE”

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OPTION 3:

[HTTPS://WWW.ACLUPA.ORG](https://www.aclupa.org)

[HTTPS://WWW.QCC.EDU](https://www.qcc.edu)

[HTTPS://WWW.NOLO.COM](https://www.nolo.com)

[HTTPS://WWW.CICCARELLI.COM](https://www.ciccarelli.com)

[HTTPS://WWW.YOUCAHBG.ORG](https://www.youcahbg.org)

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OPTION 4:

[HTTPS://WWW.RISKOLOGY.COM](https://www.riskology.com)

-BE COURTEOUS AND POLITE

-ONLY ANSWER THE REQUIRED
QUESTIONS

-DO NOT ANSWER ANY OTHER
QUESTIONS

-RESIST EVERY REQUEST OF THE POLICE
UNTIL YOU ARE FORCED TO COMPLY

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OPTION 5:

PAY ATTENTION TODAY

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WHAT IS A STOP?

- MERE ENCOUNTER
- INVESTIGATORY DETENTION
- CUSTODIAL ARREST

COURT MUST CONDUCT AN OBJECTIVE EXAMINATION OF THE TOTALITY OF THE CIRCUMSTANCES.

LUCZKI, 2019 PA SUPER 179 (6-7-19)

JOHNSON, 2019 PA SUPER 1 (1-3-19)

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MERE ENCOUNTER

ANY INFORMAL OR FORMAL INTERACTION BETWEEN AN OFFICER AND INDIVIDUAL WHERE THERE IS NO OFFICIAL COMPULSION TO STOP OR RESPOND.

DIX, 2019 PA SUPER 102 (4-1-19)

THOMAS, 2022 PA SUPER 62 (4-1-22)

“YO, CAN YOU HOLD UP A SECOND”

MERE ENCOUNTER. POLICE DID NOT ACTIVATE LIGHTS OR SIREN, VISIBLY BRANDISH WEAPONS, SHOW FORCE, USE COMMANDING TONES, OBSTRUCT ABILITY TO CONTINUE, OR INFORM THAT NOT FREE TO LEAVE

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INVESTIGATIVE DETENTION

A SEIZURE IS ESTABLISHED WHEN THE POLICE RESTRICT MOVEMENT, REQUEST IDENTIFICATION OR ASK ABOUT A CRIME OR CRIMINAL CONDUCT.

THE BRIEF DETENTION OF AN INDIVIDUAL FOR AN INVESTIGATION.

IT SUBJECTS THE INDIVIDUAL TO A STOP AND A REASONABLE PERIOD OF DETENTION BUT DOES NOT INVOLVE THE FUNCTIONAL EQUIVALENT OF AN ARREST

PARKER, 161 A.3d 357 (PA. SUPER. 2017)

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INVESTIGATIVE DETENTION

- REQUIRES REASONABLE SUSPICION
- SPECIFIC OBSERVATIONS WHICH, IN CONJUNCTION WITH REASONABLE INFERENCES DERIVED FROM OBSERVATIONS, LEAD THE OFFICER TO REASONABLY CONCLUDE, IN LIGHT OF HIS/HER EXPERIENCE, THAT CRIMINAL ACTIVITY IS AFOOT AND THE PERSON STOPPED IS INVOLVED IN THAT ACTIVITY.

LUCZKI, 2019 PA SUPER 179 (6-7-19)

- DUE WEIGHT MUST BE GIVEN TO SPECIFIC REASONABLE INFERENCES THAT THE OFFICER IS ENTITLED TO DRAW FROM THE FACTS AND HIS/HER EXPERIENCE.

WALLS, 2019 PA SUPER 80 (3-19-19)

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CUSTODIAL ARREST

A CUSTODIAL DETENTION OCCURS WHEN THE NATURE AND CONDITIONS OF AN INVESTIGATION BECOME SO COERCIVE AS TO BE, PRACTICALLY SPEAKING, THE FUNCTIONAL EQUIVALENT OF AN ARREST.

DIX, 2019 PA SUPER 102 (4-1-19)

-REQUIRES PROBABLE CAUSE

FACTS AND CIRCUMSTANCES WITHIN KNOWLEDGE OF OFFICER, AT TIME OF STOP, AND OF WHICH OFFICER HAS REASONABLY TRUSTWORTHY INFORMATION, ARE SUFFICIENT TO WARRANT A MAN OF REASONABLE CAUTION, THAT SUSPECT HAS COMMITTED OR IS COMMITTING A CRIME.

BOZEMAN, 2019 PA SUPER 70 (3-8-19)

LUCZKI, 2019 PA SUPER 179 (6-7-19)

-WHAT IS REQUIRED IS A PROBABILITY, NOT
A PRIMA FACIE OR LIKELIHOOD.

BOZEMAN, 2019 PA SUPER 70 (3-8-19)

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SO WHAT IS IT?

ALTHOUGH SIMILAR CASES MAY SERVE AS "GUIDEPOSTS", NO SINGLE FACTOR CONTROLS, AND EACH CASE MUST INVOLVE AN INDEPENDENT REVIEW OF THE TOTALITY OF THE CIRCUMSTANCES.

NON-EXCLUSIVE FACTORS TO CONSIDER:

- NUMBER OF OFFICERS
- OFFICER'S DEMEANOR AND TONE
- LOCATION AND TIMING OF INTERACTION
- VISIBLE PRESENCE OF WEAPONS
- QUESTIONS ASKED
- WHETHER OFFICER INFORMS CITIZEN THAT HE/SHE IS SUSPECTED OF CRIME
- USE OF LIGHTS AND/OR SIREN

LUCZKI, 2019 PA SUPER 179 (6-7-19)

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WHETHER THE Demeanor AND
CONDUCT OF THE POLICE WOULD HAVE
COMMUNICATED TO A REASONABLE PERSON
THAT HE OR SHE WAS NOT FREE TO LEAVE
OR OTHERWISE TERMINATE THE
ENCOUNTER.

LUCZKI, 2019 PA SUPER 179 (6-7-19)

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AS WE ALL KNOW BY NOW, POLICE CAN STOP FOR A MVC VIOLATION BUT NEED PC, OR THEY STOP TO INVESTIGATE BUT THEY NEED RS.

SO WHAT IS PC TO STOP FOR A MVC VIOLATION?

LOTS OF CONFUSION IN THIS AREA!

-INCONSISTENT DECISIONS.

-NO PC WHERE VIOLATION IS MOMENTARY OR MINOR.

-BUT SEE CEPHUS, 2019 PA SUPER 125 (4-25-19). UNTIL SUPREME COURT OR LEGISLATURE CLARIFY, OFFCIERS MUST BE GIVEN A SUFFICIENT DEGREE OF LATITUDE TO FURTHER COMMONWEALTH'S INTEREST OF ENFORCING

RULES AND REGULATIONS THAT WERE
DESIGNED FOR SAFETY.

-READ STATUTE CAREFULLY

-DETERMINE IF DANGER TO OTHER
MOTORISTS

-STILL ARGUE MOMENTARY OR
MINOR

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HOW ABOUT REASONABLE SUSPICION???

YES-

-REGISTERED OWNER HAD WARRANT.

JEFFERSON, 2021 PA SUPER 116 (6-7-21)

-IN WHOLE OR IN PART UPON FACTS OBSERVED
BY A RELIABLE SOURCE SUCH AS ANOTHER
OFFICER OR AN IDENTIFIED CITIZEN TIPSTER.

WALLS, 2019 PA SUPER 80 (3-19-19)

-911 CALL IMPLIED THAT TIPSTER HAD
KNOWLEDGE BASED ON CONTEMPORANEOUS
OBSERVATIONS, DETAILS OF INCIDENT WERE
EXACT, AND ONLY ONE MINUTE PASSED
BEFORE ENCOUNTER WITH POLICE.

PRICE, 2019 PA SUPER 19 91-28-19)

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HOW ABOUT REASONABLE SUSPICION???

NO-

-NO REQUIREMENT TO USE TURN SIGNAL TO PULL INTO PARKING SPACE. TILLERY, 2021 NPA SUPER 53 (3-26-21)

-CAR DRIVES INTO CHURCH FIELD. COP PULLS BEHIND. CAR CAN'T GET OUT. NO RS. NO MVC VIOLATIONS, NO SPEEDING, STAYED IN LANE, USED TURN SIGNAL, NO FACTS INDICATING THAT ASSISTANCE NEEDED (PUBLIC SERVANT EXCEPTION) HAMPTON, 2029 PA SUPER 38 (2-12-19)

-DRIVING TOO SLOWLY IN PASSING LANE. COP WANTED DRIVER TO GET OUT OF WAY. DRIVER PULLS OVER ON LEFT SIDE OF ROADWAY. WILSON, 2020 PA SUPER 205 (8-21-20)

-CAR LEGALLY PARKED. COP ASKS TO PULL DOWN WINDOW. NO. COP DIRECTS SUCH.

INVESTIGATIVE DETENTION-NO RS. POWELL,
2020 PA SUPER 19 (2-3-20)

CAN IT ESCALATE TO INVESTIGATORY
DETENTION REQUIRING RS?

YES-

-RETENTION OF ID CARD TO CONDUCT
WARRANT CHECK, ASKING IF ANYTHING ELSE
IN CAR OR BACKPACK. COST, J-70-19 (PA 1-22-
20)

-JUSTICE WECHT OPINION

-EXTRAORDINARY NERVOUSNESS, BEING
FIDGETY NOT ENOUGH. MATTIS, 2021 PA
SUPER 83 (4-30-21).

-ONCE PRIMARY STOP HAS CONCLUDED,
OFFICER'S AUTHORITY TO DETAIN WITHOUT
CASUE EXTINGUISHES. SINGLETARY, 2021 PA
SUPER 251 (12-17-21).

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ONCE LEGALLY STOPPED, WHAT CAN THEY DO?

-ASK A MODERATE NUMBER OF QUESTIONS TO DETERMINE IDENTITY, COMPLIANCE WITH LICENSE, REGISTRATION AND INSURANCE REQUIREMENTS.

-ASK MODERATE NUMBER OF QUESTIONS TO TRY TO OBTAIN INFORMATION COMPELLING OR DISPELLING SUSPICIONS.

-MAY ORDER DRIVER AND PASSENGERS TO EXIT OR REMAIN IN VEHICLE UNTIL STOP IS COMPLETED.

-IF DURING THIS PROCESS, ADDITIONAL SUSPICION ARISES BEFORE INITIAL STOP'S PURPOSE IS FULFILLED, THEY CAN FURTHER DETAIN AND INVESTIGATE.

WRIGHT, 2019 PA SUPER 358 (12-19-19); TOBY MALLOY, 2021 PA SUPER 90 (5-7-21)

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ONCE LEGALLY STOPPED, WHAT CAN THEY DO?

CAN THE POLICE FRISK THE DRIVER OR PASSENGERS?

YES, IF THEY REASONABLY BELIEVE THAT THEIR SAFETY OR THE SAFETY OF OTHERS IS THREATENED. BOZEMAN, 2019 PA SUPER 70 (3-8-19)

-COURT IS GUIDED BY COMMON SENSE GIVING PREFERENCE TO OFFICER SAFETY. WRIGHT, 2019 PA SUPER 358(12-19-19)

-FURTIVE MOVEMENTS, IMMEDIATELY EXITING VEHICLE, EXCESSIVE NERVOUSNESS, "BLADING", PRESSING UP AGAINST CAR, NOT EXITING WHEN DIRECTED, REACHING IN DIFFERENT AREAS OF CAR, WEARING BALLISTIC VEST!

BEING STOPPED BY THE POLICE

ONCE LEGALLY STOPPED, WHAT CAN THEY DO?

CAN THE POLICE FRISK THE DRIVER OR PASSENGER?

-DON'T FORGET PLAIN TOUCH DOCTRINE.

-IF POLICE DETECT AN OBJECT, IT MAY ONLY BE REMOVED IF:

(1) THERE IS RS THAT THE OBJECT IS A WEAPON

(2) IT IS IMMEDIATELY APPARENT ONLY BY TOUCH, THAT THE OBJECT IS ILLEGAL CONTRABAND.

IN RE: T.W., J-6-21 (PA 10-20-21)

CAN POLICE SEARCH AREA OF VEHICLE WITHIN DRIVER'S CONTROL?

NOT UNLESS THERE IS RS TO BELIEVE THAT DRIVER IS ARMED AND DANGEROUS AND CAN GAIN CONTROL OF WEAPONS.

ARRINGTON, 2020 PA SUPER 138 (6-9-20)

-NO RS IN ARRINGTON. DEFENDANT WAS REMOVED, HANDCUFFED, TAKEN TO REAR OF CAR AND OUT OF REACH OF COMPARTMENT.

-NOTE. DEFENDANT'S AGITATION WAS A NON-FACTOR. "IT IS A RARE PERSON WHO IS NOT AGITATED BY SOME EXTENT WHEN STOPPED BY THE POLICE."

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SEARCH OF VEHICLE

POLICE NEED BOTH PC AND EXIGENT CIRCUMSTANCES. ALEXANDER, J-51-20 (PA. 12-22-20); SHAW, 2021 PA SUPER 19 (2-17-21)

-ARTICLE I, SECTION 8 OF THE PA CONSTITUTION AFFORDS GREATER PROTECTION THAN THE FOURTH AMENDMENT.

-EXIGENCY IS NOT SUBJECT TO A PRECISE DEFINITION AND THE NEEDS OF LAW ENFORCEMENT MUST BE SO COMPELLING THAT THE SEARCH IS OBJECTIVELY REASONABLE.

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SEARCH OF VEHICLE

PROBABLE CAUSE TO SEARCH

-SMELL OF MARIJUANA NOT ENOUGH.
BARR,II, 240 A.3d 1263(PA.SUPER. 2020)

-CANNOT INFER CRIMINAL ACTIVITY
FROM POSSESSION OF CONCEALED
FIREARM. HICKS, 208 A.3d 916 (PA 2019)

-YES WHERE PASSENGER ZONED OUT,
PARA ON FLOOR, PREVIOUS DRUG HISTORY.
BUMBARGER, 2020 PA SUPER 65 (3-16-20)

-DON'T FORGET PLAIN VIEW DOCTRINE.
IT PERMITS THE WARRANTLESS SEIZURE OF
AN OBJECT WHEN OFFICER VIEWS FROM
LAWFUL VANTAGE POINT AND THE OBJECT
IS IMMEDIATELY INCRIMINATING.
BUMBARGER, 2020 PA SUPER 65 (3-16-20)

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PC FOUND TO SEARCH BOTH THE VEHICLE AS WELL AS THE BACKPACK IN IT!

VEHICLE: SMELL OF MARIJUANA, NO MM CARDS, NO ONE CLAIMED TO BE A MM PATIENT, ADMISSION OF SMOKING, ROACHES IN CONSOLE, RAW MARIJUANA SECRETED IN UNDERWEAR.

BACKPACK: NEEDED INDEPENDENT PC. IRATE WITH OFFICERS, TOLD THAT THEY CANNOT SEARCH BAG BY MOTHER, YELLED AT OFFICERS, TOLD THAT CAN'T PAT DOWN, MOVED BP TO BACK SEAT WHILE BEING FOLLOWED, LEFT THE SCENE ONCE BP WAS LOCATED.

MOORE, 2021 PA SUPER 202 (10-12-21)

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REFUSING TO SUBMIT TO BLOOD TEST NOT
ILLEGAL, NOR CAN A BLOOD TEST BE
COMPELLED EXCEPT....

REFUSING TO SUBMIT TO BLOOD TEST AFTER
BEING SERVED WITH A VALID SEARCH
WARRANT IS SUFFICIENT FOR A CONVICTION OF
OBSTRUCTING JUSTICE. PALCHANES, 2019 PA
SUPER 351 (11-27-19)

LUNACY!!

DEFENDANT WAS CONVICTED OF SUMMARY
DOG VIOLATIONS AND TOOK A DE NOVO
APPEAL. HE DIED BEFORE THE SUMMARY
APPEAL HEARING. THE COURT DISMISSED THE
APPEAL BECAUSE HE DID NOT SHOW UP.
REALLY? YES. THE SUPERIOR COURT REVERSED.
THE CHARGES WERE ABATED BECAUSE
DEFENDANT HAD A RIGHT TO BE PRESENT BUT

COULDN'T BE PRESENT. HEYBOER, 2022 PA
SUPER 125 (7-26-22).

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CLUES AS TO DRIVING:

TOO WIDE, NOT STOPPING, NOT LEAVING QUICKLY ENOUGH; DRIVING TOO SLOWLY, MVC VIOLATIONS, WEAVING, NOT USING HEADLIGHTS.... ANYTHING NOT PERFECT.

CLUES TO RS OR PC THAT DRIVER IMPAIRED:

FUMBLING OF DOCUMENTS, ODOR OF SUBSTANCE, GLASSY EYES, SLURRED SPEECH, CANS OR BOTTLES, STAGGERING, ODORS, DISHELVED, FAILURE TO FOLLOW DIRECTIONS, TOO TALKY, TOO LOUD, TOO NERVOUS, TOO QUIET OR CALM, ADMISSIONS.....ANYTHING AND EVERYTHING.

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CONCLUSION

- RS TO STOP FOR SUSPECTED ACTIVITY
- PC TO STOP FOR CRIME OR MVC VIOLATION
- ONCE LAWFULLY STOPPED CAN REQUIRE ID, PAPERWORK, CAN ASK QUESTIONS TO DISPEL SUSPICIONS, AND ASK TO GET OUT OF CAR
- CAN'T BE TOO LONG AND NEED FURTHER CAUSE IF BEYOND PURPOSE OF STOP
- CAN'T FRISK UNLESS RS TO BELIEVE THAT ARMED AND DANGEROUS
- CAN'T SEARCH THE COMPARTMENT AREA UNLESS RS THAT ARMED AND DANGEROUS AND CAN OBTAIN ACCESS TO WEAPONS
- CAN'T SEARCH CAR UNLESS PC AND EXIGENT CIRCUMSTANCES
- CAN'T MAKE YOU TAKE PBT OR BLOOD TEST, ANSWER ANYMORE QUESTIONS OR DO FST