



Enforcement & Training Committee

September 15

2014

The following report contains charges and final work products as of September 15, 2014. Committee meeting minutes are available upon request.

**FINAL
REPORT**



Submitted by: Matt Majors (TN), Chair

A handwritten signature in black ink, appearing to read "Matt Majors".

2014 Enforcement and Training Committee

Attachment # 3

Case Law Samples – Charge # 5

Training and Certification Subcommittee

Jurisdiction: Court of Criminal Appeals Texas

Case Name: **George Kenneth Schenekl, Appellant v. The State of Texas**

30 S.W.3d 412 (2000) October 25, 2000

Reason for the Stop: Routine water safety check without probable cause or reasonable suspicion, as authorized by state statute. Appellant was subsequently arrested for B.W.I.

Argument: Whether or not the stop violated the Appellant's 4th Amendment Rights.

Opinion: Statute is constitutional stop was not unreasonable.

Link to Decision:

http://scholar.google.com/scholar_case?case=7623375451632174309&q

Jurisdiction: Supreme Court of Georgia

Case Name: **Peruzzi v. The State**

567 S.E.2nd 15 (2002) July 15, 2002

Reason for the Stop: Suspicionless stop of vessel for check of required safety equip. Appellant was subsequently arrested for BWI

Argument: Whether or not the stop violated the Appellant's 4th Amendment Rights

Opinion: "In passing we note that in upholding the constitutionality of OCGA § 52-7-25, Georgia joins a growing list of states that recognize the legitimacy of suspicionless boat safety inspections and their minimal impact on the privacy of boaters."

Link to Decision:

http://scholar.google.com/scholar_case?case=11165154840957281122&q

Jurisdiction: Supreme Judicial Court Maine

Case Name: **State of Maine v. Charles Giles**

669 A2d 192 (1996) January 3, 1996

Reason for the Stop: Random Coast Guard safety checks as authorized under 14 U.S.C.A. § 89 (1995) stop was not based on probable cause or reasonable suspicion. Giles subsequently arrested for B.W.I.

Argument: Whether or not the stop violated the Appellant's 4th Amendment Rights

Opinion: "Defendant...argues that the suspicionless stop of his vessel was in violation of his right to be free from unreasonable searches and seizures, guaranteed by the Maine Constitution. Defendant correctly states that the Maine Constitution may be more protective of his right than the United States Constitution. Thus far, however, we have interpreted the Maine provision as coextensive with federal law. Moreover, we have not adopted an exclusionary rule for illegal search and seizure beyond that mandarte by Mapp v. Ohio. Defendant offers no persuasive argument for doing so on this occasion."

Link to Decision:

http://scholar.google.com/scholar_case?case=15811736351541809346&q

Jurisdiction: District Court of Appeal Florida

Case Name: **Robert C. Sherman and Michael Adrian Sherman, Appellants, v. State of Florida**

419 So.2d 375 (1982) Sept. 14, 1982

Reason for the Stop: Officer conducted a safety check on a trailered boat in close proximity to the boat launch. No probable cause or reasonable suspicion of wrongdoing was present. Both Appellants were subsequently arrested for possessing and importing methaqualone.

Argument: Whether or not the silence of the Appellant constituted consent to conduct a safety check.

Opinion: "Clearly there was no actual, verbal consent. The appellants cooperated with the officers and may be deemed to have acquiesced to their apparent authority, but as previously noted this has not been considered equivalent to consent." "The decision of the trial court denying appellants' motion to suppress should therefore be reversed.

Link to Decision:

http://scholar.google.com/scholar_case?case=683495191981768340&q

Jurisdiction: Supreme Court of Florida

Case Name: State of Florida, Petitioner v. Constantino Casal and Omar Garcia, Respondents

410 So.2d 152 (1982) Jan. 14, 1982

Reason for the Stop: Marine Patrol had received several complaints about traps being raided. Officers decided to stop and conduct a safety/reg check of a vessel in the area. Respondent did not have reg on-board. Officer asked to come aboard and was assisted onboard by the Respondent. While looking for the reg, officer asked to see what was in a compartment, Respondents were arrested for possession of marijuana.

Argument: Whether or not the stop and search violated the Respondents 4th Amendment rights due to not being based on probable cause or reasonable suspicion.

Opinion: "In sum we find that state's interest in random stopping and brief detention of motorboats for the limited pupose of checking fishing permits, registration certificates and safety equipment outweighs a person's interest in being completely free from such limited intrusion. In light of the absence of less restrictive alternatives which would accomplish the state's goals, spot checks of motorboats are not unreasonable under the 4th Amendment. The district court erred in holding the State marine officers must have probable cause to stop a vessel for the limited purposes discussed above."

Link to Decision:

http://scholar.google.com/scholar_case?case=5667074926012380363&q

Jurisdiction: Supreme Court of Arkansas

Case Name: State of Arkansas, Appellant, v. Robert M. Allen, Appellee

2013 Ark.35 41312

Reason for the Stop: Officer randomly stops Appelle's boat for a safety inspection. Subject subsequently arrested for B.W.I.

Argument: Whether or not the stop violated the Appelle's 4th Amendment Rights

Opinion: Appelle filed a motion to dismiss the warrantless search (safety check). The circuit granted the motion, concluding that granting "a law enforcement officer the

unfettered right to stop and check a vessel at will removes" the Fourth Amendment requirement that "the stop must be reasonable under the circumstances." The circuit court found that where a vessel is "legally registered and illuminated, [and]...being operated in an unremarkable fashion, by an adult with one adult passenger on an un-congested part of Lake Hamilton at 11:00 PM...the stop of the Defendant's pontoon boat" was "unreasonable and violated Defendant's rights under the 4th Amendment" The Supreme Court affirmed the circuit court's decision.

Link to Decision:

http://scholar.google.com/scholar_case?case=13312764390346559370&q

Jurisdiction: Court of Appeals of Ohio

Case Name: The State of Ohio, Appellee, v. Carr, Appellant

173 Ohio App.3d 436 (2007) 39365

Reason for the Stop: Officer stopped the Appellant for a random safety check. Appellant subsequently arrested for B.W.I.

Argument: Whether or not the stop violated the Appellant's 4th Amendment Rights

Opinion: "We recognize that the state has a strong interest in ensuring boating and waterway safety for its citizens, but that interest can be realistically promoted through means other than random, sporadic stops with no limitations placed upon the officer's discretion in the field. The practicality of checkpoints either at docks or marinas or on the water (either at points of entry or no wake zones) will depend on the specific body of water, but the use of checkpoints can be accomplished in order to decrease the intrusiveness of the stops and limit the discretion of the officers and consequent potential for abuse." The Court of Appeals reversed the lower court's conviction of the Appellant.

Link to Decision:

http://scholar.google.com/scholar_case?case=10811661590294592769&q

Jurisdiction: Court of Appeals of Oregon

Case Name: State of Oregon, Respondent, v. David Lecarros, aka David Le Caros, Appellant.

66 P.3d 543 (2003) 187 Or. App. 105 March 27, 2003

Reason for the Stop: Random safety check pursuant to ORS 830.035 (1) which states "a peace officer may stop any boat and direct it to a suitable pier or anchorage for boarding. Operator was subsequently arrested for B.W.I.

Argument: Defendant moved for exclusion of all the evidence obtained as a result of his encounter arguing evidence from the stop violated the Oregon Constitution and the 4th Amendment of the U.S. Constitution. If the stop was for purposes of criminal activity he maintained, it was unlawful because the officers did not have any suspicion of criminal conduct. If the stop was administrative or regulatory, it was unlawful because no statute or rule **imposed limits on officer discretion**. The trial court denied his motion.

Opinion: The Court of Appeals said the following; "ORS 830.035 (1) suffices as a source of legal authority to conduct the seizure. Further, that statute authorizes the State Marine Board to promulgate implementing regulations. However, neither that agency nor any other governmental entity has created rules to limit the discretion of

these Multnomah County officers in carrying out boat searches or seizures, nor could the officers articulate any such rules. Indeed, their uncontradicted testimony establishes that the decision to seize or not to seize any particular craft was entirely within their discretion. So long as ORS 830.035 (1) is not supplemented by rules governing its enforcement so as to eliminate officer discretion it cannot lawfully authorize warrantless, suspicionless seizures. The seizure therefore violated defendant's rights under Art. I, section 9 and his motion to suppress should have been granted.

Link to Decision:

http://scholar.google.com/scholar_case?case=10513162524429442981&q

Jurisdiction: United States Court of Appeals, Ninth Circuit

Case Name: United States of America, Plaintiff- Appellant, v. John Walter Piner and Salvatore Joseph Gallina, Defendants- Appellees.

608 F.2d 358 (1979) September 5, 1979

Reason for the Stop: C.G. boarding San Francisco Bay for a routine safety inspection that was done "on a random basis", and that there were "no suspicious circumstances." Appellees were subsequently arrested for importation of marijuana possession with intent to distribute and conspiracy to import and distribute

Argument: Did the trial court err by granting the Defendant's Motion to Suppress as evidence the seized marijuana.

Opinion: The 9th Circuit Court of Appeals said the following. "If the purpose of the random stop is to ascertain and discourage noncompliance with safety regulations, we see no reason why this purpose cannot sufficiently be accomplished during the day- light hours. Thus, reliance on this less intrusive means eliminates the need for stops and boardings after dark where no cause to suspect noncompliancace exists. We conclude that the random stop and boarding of a vessel after dark for safety and registration inspection without cause to suspect non- compliance is not justified by the governmental need to enforce compliance with safety regulations and constitutes a violation of the 4th Amendment. A stop and boarding after dark must be for cause, requiring at least a reasonable and articulable suspicion of non-compliance, or must be conducted under the administrative standards soo drafted that the decision to search is not left to the sole discretion of the Coat Guard officer.

Link to Decision:

http://scholar.google.com/scholar_case?case=12151490944530391775&q

Jurisdiction: Court of Appeals of North Carolina

Case Name: State of North Carolina v. Glenn Edward Pike.

532 S.E.2d 543 (2000) July 18, 2000

Reason for the Stop: Random safety inspection/officer did not observe any illegal activity or violations. Defendant was subsequently arrested for O.U.I. in violation of N.C. Gen. Stat. § 75A- 10 (b1)(2)

Argument: Whether a Wildlife Resources Commission officer may stop to conduct a safety inspection of a motor vessel on the waters of N.C. w/o reasonable, articlable suspicion of criminal activity to justify the stop.

Opinion: At time of trial the defendant filed a motion to suppress stating the warrantless stop was a violation of his 4th Amendment right to freedom from unreasonable search and seizure. The trial court suppressed the evidence of the stop which resulted in the dismissal of the charges. The state appealed. The Court of Appeals stated, "We hold then, that pursuant to N.C. Gen. Stat. § 75-17(a), the officers' stopping defendant without probable cause--for the purpose of inspecting defendant's vessel--was reasonable. We note that defendant's vessel passed its inspection. However, it was defendant himself who did not pass inspection--and the officers needed not even board defendant's vessel to know this (they pulled alongside). Therefore, we further hold that once the officers stopped defendant for inspection purposes, they had the right to arrest him pursuant to N. C. Gen. Stat. § 113- 136, having (at the time) reasonable cause to believe defendant was operating the vessel while impaired. Again, we find the "plain view" doctrine applicable."

Link to Decision:

http://scholar.google.com/scholar_case?case=18371695029033881662&q

Jurisdiction: Court of Appeal St of Louisiana

Case Name: St. v Eppinette

Reason for the Stop: Violation of 4th Amendment

Argument: Officer stopped def w/out Reas. Susp.

Opinion: Court found the officer didn't need reason for stop due to need to maintain and regulate for safety.

Link to Decision:

STATE	CURRENT MINIMUM REQUIREMENT FOR VESSEL BOARDING	CASE LAW
Arkansas	Reasonable Suspicion	St. v. Allen (above)
Maryland	Reasonable Articulate Suspicion	
Colorado	Reasonable Susp for Boardings-No min for "stops"	
Georgia	Reasonable Susp is recommended, not necessary	
Massachusetts	Probable Cause	
New Hampshire	Articulate Suspicions	St. v. McKeown
Ohio	Reasonable Suspicion	Ohio HB 29
Hawaii	Reasonable Suspicion	
Wisconsin	Reasonable Articulate Suspicion	
Pennsylvania	Probable Cause if vessel in motion	
Missouri	Probable Cause	
Michigan	Reasonable Suspicion	
West Virginia	Reasonable Suspicion	
Kentucky	Unwritten Requirement-Reasonable Suspicion	