

CRIMINAL PROCEDURE

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Search and Seizure: *O'Boyle* and Other Recent Decisions

1. What Constitutes a Seizure?

Rice v. State, 2004 WY 130, 100 P.3d 371 (Wyo. 2004). Where police officer approached car parked in convenience store parking lot and knocked repeatedly on the driver's window until the driver finally sat up and opened the door, officer's initial contact with driver did "not constitute a seizure and, thus, [did] not invoke Fourth Amendment protection."

2. What Qualifies as a Valid Reason for Conducting (or Extending) a Traffic Stop?

Lindsay v. State, 2005 WY 34, 108 P.3d 852 (Wyo. 2005). Where officer extended a traffic stop while he used police radio to inquire of rental car company whether it wanted to press charges for defendant's unauthorized use of rental car, validity of detention did not depend on whether this inquiry was pretext for extending the detention. Under federal constitution at least, "subjective intentions play no role in ordinary probable cause analysis."

O'Boyle v. State, 2005 WY 83, 117 P.3d 401 (Wyo. 2005). As it had previously in *D'Amato v. State*, 2003 WY 13, 64 P.3d 100 (Wyo. 2003), the Court expressed in *dicta* its "disapproval of the use of traffic violations as a pretext to conduct narcotics investigations."

3. What Limitations Must Police Observe with Respect to the Scope and Duration of a Traffic Stop?

Campbell v. State, 2004 WY 106, 97 P.3d 781 (Wyo. 2004). Where traffic stop was based on fact that vehicle's registration had expired, questions to driver about whether he had drugs in the vehicle exceeded the legitimate scope of the investigatory detention and so violated the Fourth Amendment.

O'Boyle v. State, 2005 WY 83, 117 P.3d 401 (Wyo. 2005). Where traffic stop was based on speeding violation, questions to driver about, e.g., his reasons for driving rather than flying and the courses his son was taking at Northeastern University, exceeded the legitimate scope of the investigatory detention and so violated the Fourth Amendment: under the Fourth Amendment, "questioning during a traffic stop must be

limited to the purpose of the stop and may not be extended absent valid consent, a reasonable suspicion of other illegal activity, or officer safety concerns.”

Lindsay v. State, 2005 WY 34, 108 P.3d 34 (Wyo. 2005). Extension of stop for one hour, sixteen minutes, as officer inquired about driver’s authority to operate rental car outside California, was justified by officer’s reasonable suspicion that defendant was not authorized by rental car company to operate car.

O’Boyle v. State, 2005 WY 83, 117 P.3d 401 (Wyo. 2005). In addition to the categorical “reasonableness” limitations imposed by Fourth Amendment, the Wyoming Constitution imposes a particularized requirement that the search or seizure be “reasonable under all the circumstances.” This requirement was violated when officer questioned defendant extensively during initial phase of stop about matters unrelated to the underlying purpose of the stop.

4. May the Officer Pose Additional Questions to the Subject After Advising the Subject that He Is Free to Go?

Campbell v. State, 2004 WY 106, 97 P.3d 781 (Wyo. 2004). Where initial questioning of defendant exceeded the legitimate scope of the traffic stop under federal constitution, and where “trooper did not tell Campbell that he was free to leave the scene or that Campbell could refuse to give his consent to the continued detention and dog sniff,” defendant’s subsequent consent to additional detention was not sufficiently voluntary to purge the taint of the initial unconstitutional detention.

O’Boyle v. State, 2005 WY 83, 117 P.3d 401 (Wyo. 2005). Where initial questioning of defendant exceeded the legitimate scope of the traffic stop under federal constitution, and where defendant “was not informed that he did not have to answer any more questions or that he had a right to leave,” the defendant’s subsequent consent to additional questioning outside the patrol vehicle and his consent to search were not sufficiently voluntary to remove the taint of the initial unconstitutional detention under the federal constitution.

Rice v. State, 2004 WY 130, 100 P.3d 371 (Wyo. 2004). Where officer, after terminating *lawful* investigatory detention and instructing the defendant that he was free to go, asked defendant “if he could ask him some additional questions,” defendant’s submission to additional questioning was voluntary and so did not violate federal constitution.

5. What Burden Must the State Satisfy under the State Constitution to Prove that the Subject’s Consent to Further Questioning Is Valid?

O’Boyle v. State, 2005 WY 83, 117 P.3d 401 (Wyo. 2005). State failed to prove that defendant’s consent to further questioning was voluntary under state constitution where (1) the officer, before seeking defendant’s consent, already had questioned defendant illegally for seven minutes about matters unrelated to the underlying purpose

of the stop; and (2) the defendant “was not advised that he did not have to answer any more questions or had the right to leave.” In reaching this conclusion, Court applies rule that “the waiver of a constitutional right must appear by ‘clear and positive testimony.’” “There should be no question that consent was really voluntary, given with a desire to invite search and not merely to avoid resistance.”

But compare Gompf v. State, 2005 WY 112, ___ P.3d ___ (Wyo. 2005). “Knock and talk” conducted by police officers at residence did not violate Fourth Amendment, given the occupants’ consent to the initial contact with the police and given the lack of any “evidence that the officers acted in a manner that would communicate to a reasonable person that he could not refuse their requests.”

6. When Is a Dog Sniff Permissible?

Illinois v. Caballes, 125 S.Ct. 834 (2005). Dog sniff conducted during a lawful traffic stop that reveals no information other than the location of a controlled substance does not implicate the Fourth Amendment.

Morgan v. State, 2004 WY 95, 95 P.3d 802 (Wyo. 2004). In light of defendant’s failure adequately to brief the state constitutional issue, Court “reserve[d], for another time, the question whether Article 1, Section 4 of our state Constitution provides greater protection from warrantless canine sniffs than the Fourth Amendment.”