

PROBABLE CAUSE AND THE CONSENT TO SEARCH YOUR VEHICLE

by: Chester Brost

The riding season is in full swing, and as many weathered enthusiasts know, the parties, events and good times are only the half of it. While accidents and bike theft are indeed misfortunate, sometimes even tragic, there is also an element of the season that many don't take into consideration when making their plans for the day, and that's the police. And because this season brings out the authoritarian in full force to place his demands upon us, you should also always be prepared to find yourself roadside with your papers in hand and a squad car(s) in the rearview before it occurs. In doing so, there are a few things that you should know.

Since 1925, the United States Supreme Court has recognized the unique nature of motorized vehicles in the scheme of the Fourth Amendment (think search and seizure). For the most part, vehicle searches are done without a warrant, on the side of the road. Countless vehicles are stopped on highways and public streets everyday, and it is not uncommon for police officers to have probable cause to believe that contraband (alcohol, drugs, weapons, etc.) may be found in the vehicle, and if probable cause justifies the search of a lawfully stopped vehicle, you have to remember that it justifies the search of EVERY part of the vehicle and its contents that may conceal the OBJECT of the search. This can include saddle bags, tool pouches etc. But, probable cause MUST exist.

What qualifies as probable cause? As is the case with most vague terms, its easier to come up with some common characteristics than a definition because probable cause ranges from the obvious (empty beer cans on the floor board, the smell of burn marijuana) to the ridiculous (large amounts of kleenex on the floor board; rationale: cocaine users frequently wipe their nose, soap crystals [tide] found in passenger compartment; rationale: used as a drug masking agent), and while these examples fall within what's called the "plain view" doctrine there are some other characteristics that should be mentioned. The most commonly used catch all factor in assessing probable cause is nervousness of the driver, and while most will become nervous when pulled over, an "officer safety alert" and a criminal record based upon gang activity (Club or gang? depends on who's talking) will surely be found acceptable for the police to detain you for further questioning. However, you have to remember that the police may detain a motorist ONLY as long as necessary to run document checks, and a detention may last only as long as necessary to effectuate the purpose of the stop, unless the motorist consents, there can be no continued detention absent an objective suspicion even if the driver is acting nervous, or has an officer safety alert attached to his name. However, an accumulation of several factors (nervousness, inconsistent answers, delay in pulling over, criminal record, delay in producing documents, etc.) that alone would not cause suspicion, can easily turn into probable cause. So it's always best to have all documentation readily available, and if you really have to have it, you really have to hide it (contraband, that is).

Which brings me to consent to search. Many cases concerning consent searches of homes and residences involve consideration of police ruses and tactics designed to obtain consent. In the context of vehicles, police do not generally have to resort of such techniques. The typical automobile search consent is given during a roadside encounter of traffic stop where it is obvious to the citizen (or other) that his is being requested by a law enforcement officer to submit to a search.

Why an American citizen, law abiding or otherwise, already delayed, would give consent to a search of his personal and private property by a stranger acting under authoritarian rule, is beyond the scope of my imagination. Hundreds of people in this country are no longer at liberty to move freely about based upon their consent to search.

However, if you find that an officer holds your license, he MUST have reasonable and articulable suspicion to request a consent to search or to ask questions about drugs or weapons and you have the Right to question his questions and refuse his requests for consent and information.

Should you, however, find yourself consenting to a search you must remember that you the Right to "limit" the search and even withdraw your consent. But! Once you consent, the procedure usually entails your being placed into a locked squad car where you cannot communicate with the officer conducting the search. This tactic is used to negate your Right to limit or withdraw your consent, because your failure to limit or withdraw consent to certain objects will be considered evidence that you consented to their inclusion in the scope of the search. And, obviously, consent cannot be withdrawn after incriminating evidence is found during the search.

So why consent? Perhaps you have nothing to hide, this may very well be true, but we don't always know what our passengers have in their pockets and should a passenger decide to discard contraband between your back seats, well, let me recap: consent cannot be withdrawn after incriminating evident is found.

Should you refuse to consent to search, the police may then request that you wait for a canine to arrive to sniff the vehicle, and though this request may be enunciated as a demand, making you feel as though you are not free to leave, remember, as long as the purpose of the stop have been effectuated, you are indeed free to leave.

And lastly, should you ever find yourself hand cuffed, face down on the trunk of a police cruiser being placed under arrest, if you remember to do anything, remember to exercise your Right to remain silent, because in the words of United States Supreme Court Justice Clarence Thomas, "The law does not mean what we think it to mean, it means what it says." And the law says that ANYTHING you say CAN BE and WILL BE used AGAINST YOU! And trust me, it will be used against you. Silence cannot be misquoted, nor can it hurt you. Ride safe. Chuck


If you have any questions or would like more information regarding your Right, feel free to drop me a line at:

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