



Colorado Police Quarterly

**The Official Journal of the Colorado
Association of Chiefs of Police**

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Editorial Mission Statement



Colorado Police Quarterly: ***The Official Journal of the Colorado Association of Chiefs of Police***

The editorial mission statement of the *Colorado Police Quarterly* is to provide a resource of information among law enforcement professionals. The journal serves as a professional forum for the dissemination of original research, legal updates, training strategies as well as best practices and literature reviews. The journal incorporates the expertise of both practitioners and academics to achieve these goals. Promoting the publication of peer-reviewed research and providing sound advice from practitioners for law enforcement within the state of Colorado are the journal's main goals.

The editorial board of the *Colorado Police Quarterly* considers for publication the following types of articles:

Commentaries: Short papers of a philosophical nature addressing important issues, innovative training strategies, and best practices are invited. The journal welcomes the thoughts and comments of the association's members and its other readers.

Legal Updates: Pertinent reviews of legal cases and articles addressing legal issues are published as well.

Original Research: Research articles of interest to the members of the Colorado Association of Chiefs of Police are welcome.

Literature and Book Reviews: The journal publishes literature and book reviews of well-documented manuscripts on pertinent topics and newly available texts within the discipline.

Letters to the Editor: Relevant letters are published, with authorship, on important topics.

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The State of the CACP: President's Report

Gary Barbour



Greetings! The past two months since the Grand Junction conference have been busy ones for the CACP Board. There is a lot going on, and it looks like it is not going to slow down.

Financial Condition of the CACP

Our finances are stable, and we continue to closely monitor our funds. The income from conferences, training classes, testing materials, accreditations, executive certifications, and dues are what sustain us and make it possible for us to continue to represent our members. We are still working on the possibility of hiring a professional management company. As any of the recent presidents can tell you, there is an enormous amount of practically daily association business that requires attention. As chiefs, we already have full-time jobs and the added workload can be challenging. Until we are confident that we can afford to hire a professional manager we will not do so. This is an ongoing project.

Line of Duty Death Response Team

Chief Nick Metz of Aurora brought a great idea with him when he arrived here from Seattle a number of months ago. He proposed at the CACP mid-year conference this past February that we collectively establish a Line of Duty Death Response Team. This will be an inter-agency task force trained to respond to agencies that have experienced such a horrendous event. Anyone that has ever been through one of these knows how quickly the ensuing work overwhelms even larger agencies. The County Sheriffs of Colorado and the Colorado Association of Chiefs of Police are each contributing \$1000 to help this effort get off the ground. A fund has been established through the Colorado Police Chiefs Foundation, a 501 c 3 organization, to accept donations for the LODD. Donations may be sent to CACP, 6060 South Quebec Street, Greenwood Village, CO, 80111. Please note on the check that it is intended for the Line of Duty Death Response Team, or LODDRT.

Accreditation News

Currently the police departments in Boulder, Greeley, Lafayette, Basalt, Manitou Springs, and Elizabeth are undergoing or have recently completed the process of getting their CACP accreditations renewed. The benefits of accreditation include:

- Provides a professional benchmark for measuring policies and practices
- Assures the community and its elected representatives of a high quality of service
- Ensures procedures are documented and staff is given clear guidance
- Enhances the recruitment and retention of qualified staff
- Ensures that staff is trained and functions according to established policy and procedure
- Strengthens an institution's defense against complaints and lawsuits
- Boosts institutional pride and employee morale
- Provides periodic, professional review of department operations, administration, and services

The cost is nominal and the work involved helps to focus staff on critical functions that might otherwise get overlooked. There are presently 35 agencies with CACP accreditation. There are 12 agencies whose accreditation has expired. Chief Schultz is actively encouraging them to submit their applications for renewal.

There are currently 29 assessors for accreditation. Chief Jerry Garner of Greeley is the most recent addition to the roster.

Executive Certification

Law Enforcement Executive Certification by CACP provides a statement about a police chief's professional accomplishments, educational credentials, service to law enforcement, and dedication to the community. It is a tangible way to illustrate a successful career. The application process is easy, although all the work you did to get to it was not. Take a look at the application that can be downloaded from our website. See if you have what it takes to become a certified law

enforcement executive. The presentation of the certificate in front of your town board or city council is good, too. Chief Rick Brandt of Evans has been overseeing this process for the past couple of years. Presently, we have 58 active members certified and 6 of those were added this year.

Committee Work

A number of CACP members provide additional support through their work on committees. We could not be effective or accountable if these members were not involved as they are:

- Awards – Mike Root, Platteville
- Membership – Chris Heberer, Fountain
- Technical Assistance – Karl Wilmes, Federal Heights, & Bob Pence, FBI retired
- Professional Standards – Paul Schultz, Cañon City
- LE Executive Certification – Rick Brandt, Evans
- SACOP – Tom Wickman, Frisco
- Legislative – Mike Phibbs, Auraria

State Committees & Task Forces

- Criminal Discovery Task Force – John Jackson, Greenwood Village
- Commission on Criminal & Juvenile Justice – Bill Kilpatrick, Golden
- Substance Abuse Trend & Response Task Force – Mike Root, Platteville
- Interagency Task Force on Drunk Driving – Bob Ticer, Loveland
- RMIN Executive Board – Walt Vanatta, Craig
- Colorado Emergency Mobilization – Dwight Henninger, Vail
- Crime Victim Services Board – Dan Brennan, Wheat Ridge
- Victim Rights Act Committee – Dan Brennan, Wheat Ridge
- State All Hazards Advisory Committee (SAHAC) – Dave King, Parker
- State Meth Task Force – Jerry Garner, Greeley
- Colorado Municipal League liaison – Rick Brandt, Evans
- Cold Case Task Force – Robert White, Denver; Greg Testa, Boulder; Doug Stephens, Littleton
- POST Board – Dan Brennan, Wheat Ridge; John Collins, Englewood; John Dyer, Rifle; and Robert White, Denver
- Marijuana Working Group – John Mackey, Edgewater
- Colorado Mounted Rangers Task Force – Chris Malanka, Idaho Springs

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Leadership for Successful Community Policing: Not for the Faint of Heart!

Dennis McLaughlin



Just visit the website of any police department across Colorado, or for that matter across the United States, and you will be hard pressed to find one that does not tout community policing as its primary guiding philosophy or strategy. A close assessment of some police agencies, however, will reveal that the concept of community policing has become little more than a buzz phrase, an outdated program, a bare-bones effort, or worse yet, operationally nonexistent.

A resurgence of historical community policing ideology came about in the 1970s. These historical concepts began serving as tools for revitalizing policing and for police departments to retool and to redefine what it means to “serve and protect.” For the past few decades, it has become cutting-edge, progressive, or at least trendy for police departments to announce that they prescribe to some form of a community policing philosophy or program. The unfortunate side is that many departments have simply “announced,” but have failed in their operational implementation of community policing. The true test of a department who embraces community policing as its primary missional strategy is in actions and results, not in strategies that are more conversational than operational. In a successful community policing environment, there must be a certain level of community satisfaction, which can be exacted through the use of specific performance measures.

From a broad perspective, we have seen evidence of late, by way of recent events across the United States, depicting operational failure in positive citizen engagement and community policing. From a micro perspective, there is evidence that all too many community policing programs have become stale or outdated, are just hanging around dying a slow death, or have failed entirely.

My intent in addressing this emerging concern is not to rehash the visible components of community policing such as building trusting relationships with community members, working with other municipal departments, developing crime prevention programs, addressing quality of life issues, or engaging in problem-solving efforts. There are sufficient articles and books written about what a successful community policing program should look and feel like from the community’s perspective. Rather, my objective is to briefly address why, in my observations, that some police departments have experienced community policing stagnation, decline, or failure.

To accomplish this, it is important that I reemphasize the existence of two primary components of community policing: external and internal. When police leaders work to establish a community policing program, the primary focus typically becomes the external operational components. After all, isn’t that where the “rubber meets the road”? There is, however, a danger in focusing exclusively on the external components and ignoring the internal. The risk is that police leaders, intentionally or unintentionally, fail to give credence to the internal necessities of a successful community policing philosophy or program. A community policing program will never reach its full potential without being first developed on a strong internal foundation. These internal components include engaging the staff to formulate ideas, developing enthusiasm, building internal connections, energizing line staff, instilling confidence, delegating responsibility, recognizing the value in others, building teams, and maintaining open lines of dialogue. Developing the nuts and bolts of a successful community policing program comes from the line-level staff and not

upper-level leadership. A community policing program must certainly be directed and energized by the vision of top leadership, but if the internal groundwork necessary for a successful community policing program is ignored, there will be little interest by line staff in creating the “nuts and bolts” of the program, therefore, the outcome will likely be flat.

Some police leaders will argue that command-level leadership is exclusively responsible for setting the tone of the department and identifying which programs will be embraced and how they will be delivered. It is incumbent upon staff only to follow orders and carry out programs without hesitation or reservation. After all, didn't policing evolve as a paramilitary operation and structure? The chief and command staff are expected to make all administrative and operational decisions.

I would argue a different perspective. The reason many leaders lack trust and respect from their departments and communities, and are unsuccessful in genuine community policing efforts, can often be discovered in their failure to believe in their own people. These leaders are unwilling to seek genuine input from staff. They fail to promote an internal vision of two-way trust and accountability that brings community policing to bear on the department's mission. They are slow in allowing first-line supervisors and line officers to make operational decisions. They are reluctant to relinquish control and push decisions downward. They are unenthusiastic about taking staff ideas seriously. They are hesitant to recognize that simply because a lower-level officer has a different idea or approach doesn't mean the result will be less effective.

Is this not why successful leaders hire quality people, train them appropriately, develop them professionally, believe in them, support them, and then get out of their way so they can do their job of carrying out the department's mission? Community policing is about all members of the department from the chief downward believing in shared responsibilities, teamwork and accountability, internal and external problem solving, and developing trusting relationships inside and outside the department. It is about the chief and command staff modeling community policing internally so line staff can model it externally in their daily activities. Most importantly, however, successful community policing is about recognizing that all department members, top to bottom, are accountable to one another and to the community.

Here is my final thought for police leaders: care for your mission; care for your people; bring the two together with an energetic and articulate vision of community policing; model community policing internally and externally; develop trust; let go of some control; stay engaged; coach; mentor; demonstrate positive customer service; accept and share responsibility. This type of community policing leadership is not easy, but it will have a momentous impact on the quality of the program as well as the department as a whole; it will instill confidence in your staff (and here is the best part), your staff will take the mission to heart and will instill confidence and build trust throughout the community. This sort of leadership is *not for the faint of heart*. But after all without it, how can we live up to the admonition of Sir Robert Peel? - *The police at all times should maintain a relationship with the public that gives reality to the historic tradition that the police are the public and that the public are the police.*

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Heart Rate Variability: A Key to Police Officers' Health and Performance

Carmine Grieco, PhD, CSCS, and Andrew Thompson, PhD, CSCS



Physical fitness and mental fitness are critical components to both cognitive and motor-performance capabilities for police officers and other first responders. These tactical athletes are in a unique position to experience and to operate under high levels of both physical and psychological stress. How they respond to work and life stress can have significant implications on their health and performance. When stress is balanced with an adequate response and recovery, positive increases in fitness and resilience occur. When stress is unbalanced or is improperly responded to, health and performance can drastically suffer. With respect to this balance, there exist a fine line separating too much from too little and therein rests the “art” of training and the implementation of heart rate variability (HRV).



HRV testing represents a “new,” non-invasive and affordable technology that easily can be incorporated into law enforcement operations to predict, monitor, and enhance performance. Biologically, HRV describes the beat-to-beat fluctuations in the cardiac cycle (Task Force, 1996). Variations arise from the body’s balance between sympathetic (“fight or flight”) and parasympathetic (“rest and digest”) responses. Additionally, fluctuations in HRV with respect to acute and chronic stress provide insight into individual differences in stress perception and adaptation. The ability for HRV to quantify the systemic dichotomy between responses provides a reliable and practical metric for the tactical athlete or tactical strength and conditioning coach to physiologically and psychologically assess health and performance (Clausen et al., 2016; Saus et al., 2006).

Specifically, HRV has been used as an index of general fitness, to indicate readiness to train, combat readiness, and as a biomarker for over-training (Sandercock et al., 2005; Fogt et al., 2009; Aubert et al., 2003). Moreover, the ability for HRV to quantify the psychological perception of stress lends credence to its use in monitoring the sympathetic response, the association to cognitive and motor performance under duress, and in tracking impaired responses to or recovery from stressful bouts, which can result in anxiety and depression disorders (e.g., post-traumatic stress disorder). Thus, HRV assessment may enable the prediction of performance for potential operator selection, monitor the effectiveness of training interventions, and aid in identifying acute and chronic disease status.

HRV is actually not a new technology, having been commonly used in research for over 40 years. What makes this a “new” concept is the fact that, until very recently, the equipment necessary to effectively measure HRV was bulky, prohibitively expensive and incompatible with field-based testing. It is now commonly incorporated into commercially available heart rate monitors and smart phone apps as an exquisitely sensitive tool that is capable of providing important insight and actionable “intel” on the state of physiological/psychological readiness and recovery in tactical athletes. Few tools may prove as useful and cost-effective as HRV testing for the tactical athlete.

For more information about how to implement HRV into a training and fitness program for police officers, please contact one of us directly. We are glad to help.

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Conducting Local Research and the Benefits of Using a “Walking Survey”

Katie L. Dreiling, PhD



Abstract

The call for evidence-based practices and community policing strategies puts policing agencies in a unique position to conduct research that involves obtaining input from local community members on certain public safety issues. However, there are few agencies that have the necessary resources to carry out large-scale, scholarly research projects. Data collection can be especially challenging, as many agencies lack the time commitment, financial resources, and qualified personnel to conduct such projects. One method of data collection, the “walking survey,” may provide a cost-effective way to gather quality data from local community members. A recent study on public knowledge and opinion of sex offenders and sex offender policy used this method of delivering a survey, and the results showed that response rates were high in gathering a representative sample, while maintaining relatively low cost and time commitment. Advantages and disadvantages of other survey delivery methods are also discussed in this article.

Introduction

The evidence-based practices (EBPs) movement within the criminal justice system calls upon agencies across all fields to study and validate their programs and policies, not only to determine “what works” in crime prevention, but often to secure funding as well. For many, this is no easy feat given that agencies may lack the necessary resources (i.e. financial, personnel, time, and expertise) to do such independent research. Nonetheless, the expectation is becoming more widespread (Orchowsky, 2014). Additionally, the community policing movement urges policing agencies to be proactive in building ties and working closely with community members to address public safety concerns. Because public perceptions and attitudes towards crime and punishment can shape policy and funding decisions within the criminal justice system, bridging the community policing philosophy with EBPs should be a natural fit. Yet, there are several challenges agencies must overcome when making the commitment to conduct research and evaluate various programs and policies, and the use of a “walking survey” may provide agencies with a cost-effective option for gathering data from local community members.

Current Methods of Delivering Surveys

Collecting data from and about local communities can be quite challenging if an agency has limited resources. Data collection can be expensive, time consuming, and it requires a certain amount of manpower with knowledge and experience in social science research methodology. One of the most commonly used tools in gathering data from populations is the basic survey. “Government programs designed to provide assistance to various communities often rely on the results of surveys to determine program effectiveness” (Rea & Parker, 2014, p. 3). There are a variety of ways to deliver this type of research instrument: mail, telephone, web-based/electronic, or face-to-face. The following offers brief a summary of the benefits and downfalls of each method of delivery.

Mail-Out Surveys

Mailing a survey to a sample of predetermined respondents, who then complete the questionnaire on their own and

return the survey by mail is perhaps considered by many to be a somewhat outdated and slow method of delivery. It can be time consuming to pursue this method, especially when the process calls for pre-mailers and follow-up mailers to ensure decent response rates, which can take several weeks. Additionally, as the cost of printing and postage continues to increase, this method quickly proves to be rather expensive as the number of respondents sought increases. The larger the sample, the better in terms of processing accurate statistics. However, according to Nardi (2006), "...response rates tend to be lowest for mailed questionnaires, and it is not unusual for researchers to receive only 20 to 30 percent of the questionnaires" (p. 68), which can seriously impact the generalizability of results. Low response rates can also imply self-selection bias. "For instance, poorly educated respondents or those with reading or language deficiencies tend to exclude themselves from this form of survey" (Rea & Parker, 2014, p. 9). On the other hand, there are several advantages with this method. Mailed surveys do not require trained (or paid) interviewers; they are convenient for respondents, as they can complete them on their own time, in the privacy of their own home; they allow for greater anonymity; they can establish credibility through professional or scholarly presentation; and there is no potential for interviewer-induced bias (Albaum & Smith, 2012; Rea & Parker, 2014).

Telephone Surveys

Unlike mail-out surveys, telephone surveys require some interaction between an interviewer and respondent. This method requires interviewers to be trained specifically on how to administer the survey as well as ethical research standards regarding human subjects and confidentiality. And, unless they agree to volunteer their time, this approach can be costly to provide payment for a team of interviewers. Researchers also have much less control over response rates through telephone surveys. Respondents can simply choose not to answer their phone when they see an unfamiliar number, and if they do choose to answer, it is often more difficult to establish credibility and trust over the phone given the impersonal nature, leading to many respondents ending the interaction by hanging up (Rea & Parker, 2014). Conversely, telephone interviews tend to get better response rates compared to mail-out surveys (Albaum & Smith, 2012), and can be less time consuming, since data can be collected at a much faster rate. They offer a high degree of anonymity compared to face-to-face interviews, and they cost much less than mail-out surveys (Rea & Parker, 2014).

Web-Based Surveys

As a more technologically advanced option, web-based surveys offer similar advantages as mail-out surveys (convenience, anonymity, credibility, no training or paying of interviewers, and no interviewer-induced bias), while decreasing the issues of time consumption and financial cost due to printing and postage. However, a major disadvantage of this method is that some populations do not have access to the technology required to participate in the survey (Rea & Parker, 2014), thus, influencing the nature of the sample. Just as it is easy to ignore or hang up on a telephone interview, it can be easy for respondents to delete an email, ignore a link, or quit a web-based survey at any time. "The growing volume of interpersonal communication in contemporary societies is increased by uninvited personal communications of direct marketing and the survey research industry (Vehovar, Slavec, & Berzelak, 2012, p. 290). Therefore, it is no surprise with such message overload, response rates can be very low with web-based surveys. In their meta-analysis comparing response rates among web-based and mail-out surveys, Shih and Fan (2009) found web-based surveys generally have lower response rates (about 20% lower on average) than mail-out surveys.

Face-to-Face Interviews

Conducting a face-to-face survey can be done a couple different ways: going door-to-door or via the intercept method, where interviewers are stationed at a specific location and they request interviews with passersby. The intercept method avoids logistical issues concerning time and travel costs; however, the environment may have distractions or respondents may be in a hurry, causing them to rush through the questionnaire (Albaum & Smith, 2012). In general, the face-to-face method can be time consuming and costly due to travel time and expenses, and interviewers must be trained and are often paid. Additionally, they offer less anonymity and there is always the potential for interviewer-induced bias, especially if interviewers are not well trained. Face-to-face surveys do have several advantages, however. The door-to-door method allows the respondent to complete the survey (via interview) in a familiar environment, although some may feel uncomfortable talking with a stranger. This method provides the opportunity to gain a better sample, as nearly all of the potential respondents in a selected area can be contacted

(Albaum & Smith, 2012). The face-to-face method also provides more influence over response rates. Stalans (2012) claimed the way in which interviewers frame a survey's introduction and request for participation may affect respondents' willingness to participate. For example, factors that may increase the likelihood of participation include: tailoring the request to the respondent's needs, interests, or values; prompting a sense of civic duty; introducing reciprocity or incentives; presenting legitimate authority and credibility of the researcher; and inducing sensitivity to negative consequences if one chooses not to participate. In general, one can argue the face-to-face method is more personal, making it more likely that individuals will agree to participate. Nardi (2006) argued, "Response rates tend to be the highest with face-to-face interviews" (p. 70).

Conducting a "Walking Survey"

By slightly modifying the face-to-face (or door-to-door) method of delivering a questionnaire, a "walking survey" can help off-set some of the costs and inconveniences of some of the other methods. In a study on public knowledge and opinion of sex offenders and sex offender policy (Dreiling, 2010), this method provided a cost-effective means of gathering data with high response rates from a representative sample. The first step involved developing a sampling frame by using the United States Census Bureau website.

Developing the Sampling Frame

By narrowing the sampling frame area down to specific "census blocks" provided by the United States Census Bureau, this study used a stratified geographic cluster sample to gather data from 244 adult community members from Sioux Falls, South Dakota (Dreiling, 2010). Data collection took place within six neighborhoods throughout the city. First, using the United States Census Bureau website, the total number of geographic "census tracts" were obtained for the city of Sioux Falls. "Census tracts are small, relatively permanent statistical subdivisions of a county," and they normally follow visible features and typically average about 4,000 inhabitants (U.S. Census Bureau, 2011). Next, the median income was determined for each census tract. All of the census tracts were then divided into "low," "medium," and "high" income groups: low = \$0 to \$29,999; medium = \$30,000 to \$59,999; and high = \$60,000 and up. The median incomes for the census tracts in Sioux Falls ranged from \$23,289 to \$76,697. Next, two census tracts were randomly chosen from each income group. From there, one "census block group," which is a subdivision of a census tract, was randomly chosen from each census tract. Finally, individual "census blocks," which are subdivisions within a "block group" and which tend to correspond to individual city blocks bounded by streets (U.S. Census Bureau, 2011), were chosen randomly in clusters for sampling. Thus, each income group consisted of two separate neighborhoods randomly chosen to be sampled, in order to gain a representative sample based on income.

Delivering the Survey

Once the census blocks were chosen, they were mapped out and every household within the designated boundaries was sampled. Volunteer research assistants were assigned (in pairs for safety precautions) to a specific area to sample, using a specified script to solicit participation in the survey. When approaching a household, research assistants were to inquire about the resident's interest in participating in the study. Upon agreement to participate in the study, a questionnaire was left with the resident so he or she could fill out the survey in private. Once completed, the resident was instructed to leave the questionnaire out on their front step, sealed in the envelope provided, and the research assistants would return later that same day to pick up the questionnaire. Two rounds were completed for each neighborhood in order to return to any households that were originally not home on the first round.

Response Rates

Within the six neighborhoods chosen, a total of 758 homes were sampled, and of those households, contact was established with 339 residents (45%). Of those who were home at the time of the survey drop-off, 244 volunteered to participate in the survey, for a response rate of 72% for those who were home at the time of survey distribution. The number of surveys returned was fairly similar across all three income areas: low = 67%, medium = 75%, high = 71%.

Discussion

The use of a “walking survey” proved to be a cost-effective method to gather data for the purposes of this study. Although it took manpower, time, and energy to conduct, the response rates were quite high for those who were home at the time of administering the survey. It took approximately one month to complete the data gathering process with volunteer research assistants, which is much more cost-efficient than using the mail-out method. This approach also received much higher response rates than most telephone or web-based surveys are known to acquire. Using the face-to-face approach to establish initial contact with potential respondents allowed research assistants to employ many of the known tactics likely to increase participation. For example, the script was tailored in such a way to appeal to respondents’ interests and values regarding a serious crime prevention issue, thereby, simultaneously prompting a sense of civic duty concerning public safety. Additionally, research assistants identified their affiliation with a nearby university, and the survey was accompanied by a professional cover letter to establish credibility and legitimacy. Given the sensitive nature of the survey topic, sex crimes and sex offender policy, allowing respondents the opportunity to complete the survey in the privacy of their own home and when convenient for them provided greater anonymity and flexibility. Another benefit was that research assistants needed minimal training due to the limited interaction between them and the respondents. Lastly, because this method of delivering a survey does not necessarily require individuals to have a lot of training or expertise in various interviewing techniques, a researcher or agency may consider using volunteers in lieu of paid professionals to distribute a survey. With EBPs and the community policing philosophy becoming more prominent in the field of policing, many agencies are beginning to explore the realm of research and evaluation, as well as increasing their interactions and ties with local community members. And, because public perceptions and attitudes have been known to shape criminal justice policies and practices, it makes sense for policing agencies take a proactive role in conducting research that involves seeking input from their local community. While many agencies have limited resources for such endeavors, a “walking survey” may provide a cost-effective way to gather quality data.

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Utah v. Strieff

United States Supreme Court, 14-1373. Decided June 20, 2016

Phillip J. Baca, Esq.



The Attenuation Doctrine provides for admissibility of unconstitutionally seized evidence when the connection between unconstitutional police conduct and evidence is sufficiently remote or has been interrupted by some intervening circumstances.

Facts:

An anonymous caller left a message on a police drug tip line reporting “narcotics activity” at a residence. Detective Fackrell subsequently investigated and conducted intermittent surveillance of the residence for approximately three hours over the course of about one week. During that time, he observed short term traffic at the house. The traffic was not terribly frequent, but was frequent enough that it raised his suspicion. In Detective Fackrell’s view, the traffic was more than one would observe at a typical house, with visitors often arriving and then leaving within a couple of minutes. Fackrell concluded that the traffic at the residence was consistent with drug sales.

During his surveillance, Fackrell saw Strieff leave the house (he did not see him enter) and walk down the street towards a convenience store. As Strieff approached the store, Fackrell ordered Strieff to stop in the parking lot. Strieff did so. Fackrell testified that he detained Strieff because Strieff was leaving the house he had been watching and that he believed there was drug activity there. When the stop was made, Fackrell identified himself as a police officer, and then asked Strieff what he was doing at the house.

Fackrell also asked Strieff for his identification, which was provided. Fackrell cleared Strieff for wants and warrants, which revealed that Strieff was wanted on a traffic warrant. Fackrell arrested Strieff, performed a search incident to arrest and found a baggie of methamphetamine and other drug paraphernalia in Strieff’s pocket. Strieff was charged with possession. He filed a motion to suppress the drugs as a result on an unconstitutional stop (no reasonable suspicion).

Issue(s):

What happens when an illegal stop leads to the discovery of an outstanding warrant? And when that warrant is executed, what happens when drugs and paraphernalia are found incident to that arrest? Should the evidence obtained during the search incident to the arrest be suppressed when the stop was unconstitutional from the start? NO.

Court Decision:

The trial court and Utah Court of Appeals denied Strieff’s motion to suppress. The Utah Supreme Court agreed with Strieff. However, the U.S. Supreme Court agreed with the lower court decisions that the evidence should be allowed and denied Strieff’s motion to suppress.

Restatement of the Law:

Over the years the U.S. Supreme Court has recognized several *exceptions to the Exclusionary Rule of Evidence, one of which is called the “Attenuation Doctrine.”* This doctrine *provides for admissibility of evidence when the*

connection between unconstitutional police conduct and evidence is sufficiently remote or has been interrupted by some intervening circumstances, *Hudson v. Michigan*, 547 U.S. 586, 593 (2006). The doctrine evaluates the causal link between the government's unlawful act and the discovery of evidence.

Court Reasoning:

The ***factors, articulated in Brown v. Illinois***, 422 U.S. 590 (1975) are used by courts in legal analyses to determine whether the Attenuation Doctrine is applicable to the facts of a case. The three factors are temporal proximity, intervening circumstances, and flagrant police misconduct are used as described below:

1. ***Temporal proximity*** – (example) how much time did it take police to stop the suspect and arrest him and under what circumstances?
2. ***Intervening circumstances*** – (example) did the suspect make a confession, or volunteer some other information to law enforcement to indicate he committed a crime?
3. ***Flagrant police misconduct*** - (example) did police act in an unlawful manner to discover evidence, or is there a pattern of misconduct for that officer or police department as a whole.

The three *Brown* factors lead to the conclusions that the evidence is admissible under the attenuation doctrine. The first factor (temporal proximity) between the initially unlawful stop and the search favors suppressing the evidence. Officer Fackrell discovered drug contraband on Strieff only minutes after the illegal stop. In contrast, the second factor, intervening circumstances, strongly favors the State. The existence of a valid warrant, predating the investigation and entirely unconnected with the stop, favors finding sufficient attenuation between the unlawful conduct (the stop) and the discovery of the evidence (search incident to arrest). That warrant authorized Fackrell to arrest Strieff, and once the arrest was authorized, his search of Strieff incident to that arrest was undisputedly lawful. The third factor, flagrant police misconduct, also strongly favors the State. Fackrell was at most negligent, but his errors in judgment hardly rise to a purposeful or flagrant violation of Strieff's Fourth Amendment rights. After the unlawful stop, his conduct was lawful, and there is no indication that the stop was part of any systematic or recurrent police misconduct.

Bottom Line:

In this case, there was no flagrant police misconduct and the police officer discovered a valid, pre-existing and untainted arrest warrant for an individual's arrest, evidence seized pursuant to that arrest is admissible even when the police officer's stop of the individual was unconstitutional, because the discovery of the warrant attenuated the connection between the stop and the evidence.

A word of caution: Even though the evidence (drugs) in this case was admitted for the purpose of the criminal trial, the ruling doesn't prevent Strieff from filing a civil lawsuit against Fackrell for violation of his Fourth Amendment rights for illegally seizing him (no reasonable suspicion to make the stop). So, you don't want to make unconstitutional stops hoping that an arrest warrant exists, which would subsequently allow you to perform a search incident to the arrest with the hope of finding contraband.

Vasquez v. United States

10th Circuit Court of Appeals, 14-3278. Decided August 23, 2016

Phillip J. Baca, Esq.



Reasonable suspicion requires that an officer articulate a particularized and objective basis to believe a person is involved in criminal activity.

Facts:

In 2011, Kansas Highway Patrol Officers Richard Jimerson and Dax Lewis stopped Vasquez as he was driving through Kansas because they could not read his temporary tag. Immediately after the stop was made, the officers realized the tag was valid. However, they continued talking to Vasquez and asked several questions about his travel plans. Vasquez responded that he had recently moved to Maryland.

Vasquez had no warrants and his license was valid. After issuing a warning and walking away, but before getting back into his patrol car, Officer Lewis inquired if he could ask a few more questions, to which Vasquez consented. Lewis asked if there were any drugs in the car, which Vasquez denied. Lewis then asked if he could search the car and Vasquez refused. To justify detaining Vasquez after the initial stop, officers noted that he had insurance for newer cars but was driving an older one, that he had pillows and blankets in the front and back seats, that he seemed nervous, and that he was coming from Colorado, a state which had legalized medical marijuana. (It would take another year for Colorado to legalize recreational marijuana.)

The officers detained Vasquez for an additional 15 minutes until a K-9 unit arrived. The K-9 search did not reveal anything illegal. The officers found nothing illegal in Vasquez's car, but they did find themselves facing a federal civil rights lawsuit shortly after. The officers claimed qualified immunity and said that Vasquez's Colorado license plate and other suspicious facts justified extending the length of the seizure.

Issue:

Did Vasquez's continued detention after he refused the consent to search his car and the subsequent K-9 search violate his constitutional rights? Yes.

Did the officers have a valid claim to qualified immunity? No.

Court Decision:

The trial court granted qualified immunity to the officers. The 10th Circuit overturned that decision and remanded the case back to the district court for further proceedings.

Restatement of the Law:

To determine whether a traffic stop constituted an unreasonable seizure, we consider: (1) whether the *stop was justified at its inception*; and (2) whether "the *officer's actions during the detention were reasonably related in scope to the circumstances which justified the interference* in the first place." *United States v. Wood*, 106 F.3d 942, 945 (10th Cir. 1997).

An investigative detention must be temporary, lasting no longer than necessary to effectuate the purpose of the stop, and the scope must be carefully tailored to its underlying justification. *Id.* Absent the detainee's valid consent, ***the scope or duration of an investigative detention may be expanded beyond its initial purpose only if the detaining officer, at the time of the detention, has "a particularized and objective basis for suspecting the particular person stopped of criminal activity."*** *United States v. Lambert*, 46 F.3d 1064, 1069 (10th Cir. 1995)

This Court has ***repeatedly admonished*** law enforcement ***that once an officer has been assured that a temporary tag is valid, he "should explain to Defendant the reason for the initial stop and then allow her to continue on her way without requiring her to produce her license and registration."*** *United States v. Edgerton*, 438 F.3d 1043, 1051 (10th Cir. 2006); see also *United States v. Pena-Montes*, 589 F.3d 1048, 1055 (10th Cir. 2009).

Court Reasoning:

The officers claimed qualified immunity and said that Vasquez's license plate justified extending the length of seizure. The Tenth Circuit Court disagreed. ***Being from Colorado, alone, is not a supportable justification for someone's search and seizure:*** As we have said previously, "that the *defendant was traveling from a drug source city or a drug source state, does little to add to the overall calculus of suspicion.*" Such a factor is "so broad as to be indicative of almost nothing."

Moreover, other federal circuits have concluded the ***state of residence of a detained motorist is an "extremely weak factor, at best"*** in the reasonable suspicion calculus because "interstate motorists have a better than equal chance of traveling from a source state to a demand state." ***Twenty-five states have legalized medical marijuana, the 10th Circuit noted. The officer's justification would allow police to stop and search more than half the nation's citizens.*** "It is wholly improper to assume that an individual is more likely to be engaged in criminal conduct because of his state of residence," the court concluded.

Vasquez's conduct did not create reasonable suspicion. Here a driver is traveling from Colorado to Maryland, on a major interstate; in an older car despite owning a newer car; with blankets and a pillow obscuring items in the back seat; who did not have items visible that an officer expected to see; and who was and continued to be nervous when pulled over by police officers late at night. Such conduct does not raise an inference of reasonable suspicion. The officers impermissibly relied on Vasquez's status as a resident of Colorado to justify the search of his vehicle.

Bottom Line:

How do the factors the officers listed indicate suspicious behavior? The officers recited these factors as a list of unrelated facts (so says the court). Officers must explain why the factors considered together are suspicious, and not simply recite isolated factors, leaving it to the courts to glean how the facts create reasonable suspicion.



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Authors' Biographies



Dennis McLaughlin has 30 years of police experience in agencies in Colorado, Oklahoma, and Texas. He is currently serving as Chief of Police for Breckenridge Police Department. Prior to Breckenridge PD, he was a lieutenant/watch commander and Canine Unit Commander at Plano Police Department in Texas where he was employed for 14 years. While at Plano, he held various positions including administrative lieutenant, professional standards sergeant, patrol sergeant and full time police academy trainer. He began his law enforcement career at Weld County Sheriff's Office followed by several years at Lakewood Police Department, and served as Investigative Commander and PIO at Bryan County Sheriff's Department in Oklahoma. Chief McLaughlin is a graduate from the School for Executive Leadership at the Institute for Law Enforcement Administration (ILEA) as well as the SWAT Command and Leadership School from NTOA. He also holds a Ph.D. in theology/ethics from Trinity Theological Seminary, a master's degree in theology from Thomas Theological Seminary, a bachelor's degree in psychology from Columbia College and a graduate certificate in police management from the University of North Texas.



Carmine Grieco received his PhD from Old Dominion University and is now an Assistant Professor of Kinesiology at Colorado Mesa University. A personal trainer with over 15 years training experience, he successfully made the transition from personal trainer to University professor in 2012. Carmine is a past West Virginia state director of the National Strength and Conditioning Association (NSCA) and the current state director for the American Society of Exercise Physiologists (ASEP). Carmine's research focuses heavily on heart rate variability (HRV) as a measure of autonomic response. Carmine is particularly interested in the unique challenges faced by tactical athletes. He is currently collaborating with Andrew Thompson, from Tufts University and the U.S Army Natick Soldier Research, Development and Engineering Center (NSRDEC), on a project involving HRV.



Andrew G. Thompson earned his master's degree in Human Movement Sciences from Old Dominion University and a PhD in Kinesiology, with emphasis in psychophysiology and motor behavior, from Auburn University. He is now a Postdoctoral Scholar with the Center for Applied Brain and Cognitive Sciences, which is a joint research venture between Tufts University and the U.S. Army Natick Soldier Research, Development and Engineering Center. Dr. Thompson's work focuses on applying classical and contemporary methods to predict, monitor, and enhance cognitive and motor learning/performance in high-stakes conditions and high-stress environments. He is an expert in exercise physiology and psychomotor behavior and has conducted and published several studies using heart rate variability as a metric for autonomic resource allocation.



Kate Dreiling is an Assistant Professor of Criminal Justice at Colorado Mesa University. She received her Bachelor of Arts and Master of Science in Criminal Justice from St. Cloud State University and went on to earn her Doctorate in Sociology from South Dakota State University. Dr. Dreiling has prior experience in the corrections field, primarily working with juveniles in a variety of settings from detention to community-based sex offender treatment. She is very active on campus and in the local community concerning the prevention of violence against women, specifically concerning sexual assault and intimate partner violence. She is an active member of the Mesa County Domestic Violence Task Force and serves on the Sexual Assault Prevention Team at Colorado Mesa University.



Philip J. Baca is the Director of the Jefferson County Sheriff's Office and Lakewood Combined Regional Law Enforcement Academy. He served for fifteen years with the Denver Police Department in various positions, ultimately attaining the rank of lieutenant before he left law enforcement to practice law for seven years. During this time, he continued to develop law enforcement training programs and materials. Mr. Baca was selected as the initial Director of the Highlands Ranch Law Enforcement Academy. Two years later, Mr. Baca went to the Jefferson County Sheriff's Office to manage its training academy and Support Services Division. While at Jefferson County, he served as the Captain of the Support Services Division, Captain of the Patrol Division, and as the Division Chief of the Criminal Investigations Division. Mr. Baca served as the Chief of Police in Commerce City from 2008 to 2012, and then he returned to the Jefferson County Sheriff's Office. Mr. Baca earned his bachelor's degree in Pre-Law/Political Science from Colorado State University, and his Juris Doctor from the University of Denver. Shortly thereafter he was admitted to the Colorado State Bar as a practicing attorney. Mr. Baca can practice law in all Colorado courts, the United States District Court, and the 10th Circuit Court of Appeals. Additionally, he is a graduate of the 216th Session of the FBI National Academy.

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