

July 18, 2005

LEGAL BULLETIN NO. 05-05

**SUBJECT: Length of Detention During a Traffic Stop**

In the case of *State of Missouri v. Jose M. Granado*, the Missouri Supreme Court handed down an opinion which provides guidance for officers as to how long a person may be detained during a traffic stop.<sup>1</sup>

The facts of the *Granado* case are as follows:

A trooper stopped a truck driven by Jose Granado because it was weaving outside its lane. The trooper put Granado in his patrol car, issues Granado a warning and told him he was free to go. Before Granado got back in his truck to leave, however, the trooper asked for permission to search the truck and its contents, noting that there had been discrepancies in the stories given by Granado and a passenger in the truck. Granado refused to give permission, but the trooper stated that the vehicle could not be moved and a K-9 unit was on its way to sniff the truck. The trooper testified that the cousin seemed nervous and was pacing outside the truck. After the K-9 unit arrived, the dog indicated on the bed cover. The trooper then unlocked the bed cover and found a black duffle that contained 36 pounds of marijuana packaged in vacuum-sealed bundles. Granada and his cousin were arrested. At trial the cousin admitted that the drugs were his, and Granado knew nothing about them. The court overruled Granado's motion to suppress the drugs, and he was convicted of possession of a controlled substance with intent to deliver.

Granado appealed that decision, and the Missouri Supreme Court en banc reversed the lower court's decision. The Missouri Supreme Court found that at the time the trooper began the search, the purpose of the traffic stop already was complete, and a search could not be conducted without new and articulable suspicion that Granado had committed a crime. There was nothing in the record showing the trooper had reasonable suspicion that Granada was engaged in further criminal activity, as there were no specific facts that developed between the time Granado got out of the patrol car and returned to his truck that justified detaining him further. Although the trooper told Granado he was free to leave, the court found that a reasonable person would not have felt free to leave due to the trooper's statements that the vehicle and its contents were being detained, awaiting the arrival of the K-9 unit. Because the traffic stop was completed at the time the trooper initiated the search, any search thereafter required new and articulable suspicion that Granado had committed a crime.

The court noted that even if officers do not have reasonable suspicion to further detain a driver at the completion of a traffic stop, an officer could question the driver if

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<sup>1</sup> *State of Missouri v. Jose M. Granado*, SC86192 (Mo. 2004).

the encounter turns into a consensual one. “So long as the person is free to leave, the officer can talk to him and is free to ask whether he has contraband on his person, or in his car, or in his residence.”

The court also acknowledged in this case the trooper might have had the right to search Granado’s vehicle based on his suspicious behavior during the traffic stop and the possible inconsistencies in Granado’s and his passenger’s statements if the search request had occurred prior to handing Granado the warning ticket and telling him that he was free to go.

This case further reinforces a line of cases which have been handed down by the courts of Missouri concerning how long a driver can be detained during a traffic stop in order to attempt to obtain consent to search. The Supreme Court in this case relied on its previous holding in the case of *State of Missouri v. Randy T. Barks*.<sup>2</sup>

In the *Barks* case, the court held that under the Fourth Amendment, law enforcement officers who make a routine stop based on a violation of state traffic laws may detain a person only for as long as necessary to conduct a reasonable investigation of the traffic violation. That investigation may include asking for the driver’s license and vehicle registration, asking the driver to sit in the patrol car, and asking the driver about his or her destination and purpose. Absent reasonable suspicion that Barks was involved in criminal activity based on specific and articulable facts, the patrol officer did not have authority to detain Barks after giving him his speeding ticket.

Again, these two (2) cases reinforce the care which must be taken not to improperly prolong a traffic stop by continuing to detain an individual without reasonable suspicion of criminal activity.

Questions about any aspect of these cases may be referred to the Office of the General Counsel. The full text of this case can be accessed at <http://www.courts.mo.gov/Courts/PubOpinions.nsf/0f87ea4ac0ad4c0186256405005d3b8e/4b290c7a2965493886256f4600761ce1?OpenDocument>.

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<sup>2</sup> *State of Missouri v. Randy T. Barks*, SC85735 (Mo. 2004).