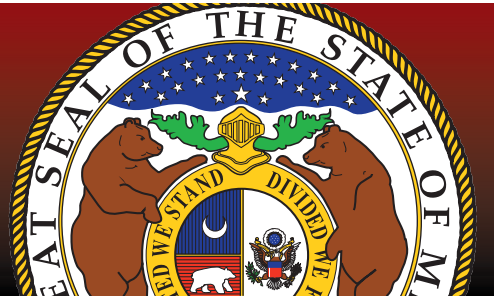


MISSOURI CRIMINAL LAW UPDATE

CHRIS KOSTER, ATTORNEY GENERAL



OCTOBER CASE LAW UPDATE...



This month, we discuss four new cases and one old one. In the first case, the Eighth Circuit considers whether a hearing-impaired suspect may sue police under the Americans with Disabilities Act for not providing an interpreter. Next, the Missouri Supreme Court reviews the validity of an extended traffic stop in which police discovered a large amount of PCP in the trunk of a rental car. Our third and fourth cases, both from the Missouri Supreme Court, concern whether, on weapon charges, the State must prove that a firearm was functional. Finally, we offer an update on a case we discussed back in February.

Chris Koster
Attorney General



AMERICANS WITH DISABILITIES ACT

DOUGLAS BAHL V. RAMSEY COUNTY SHERIFF'S DEPARTMENT, U.S. COURT OF APPEALS, EIGHTH CIRCUIT, CASE NUMBER 11-2869 (OCTOBER 9, 2012)

KEY FACTS – St. Paul Police pulled over a hearing-impaired driver named Bahl, who communicates primarily by sign language or in writing. After a struggle at the scene, Bahl was transported to the hospital and provided a written notice of the charges against him. When investigators had difficulty questioning him later due to his hearing impairment, they terminated the interview rather than obtaining a sign-language interpreter. Bahl sued under the Americans with Disabilities Act, but the district court granted summary judgment in favor of the police.

COURT RULING – The court of appeals affirmed the lower court's ruling that police had not violated the ADA by failing to offer Bahl an interpreter during his traffic stop or when presenting him a written notice of the charges against him. However, it reversed and remanded for a jury to decide if police had overstepped the ADA by terminating Bahl's interview rather than obtaining an interpreter solely to save money.

CAUTIONARY NOTE – Cautionary Note: Missouri law also requires the aid of a certified interpreter when police question a hearing-impaired suspect. While there is no requirement that a suspect be interviewed at all (and given a chance to provide his version of events), terminating an interview solely out of a desire to avoid the expense of an interpreter may well violate the ADA.

EXTENDED DETENTION

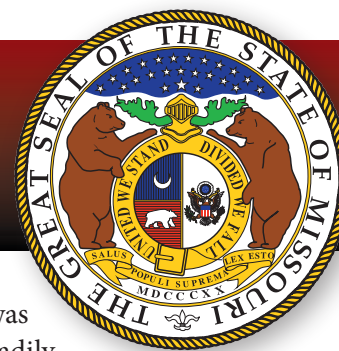
STATE V. MELVIN STOVER, MISSOURI SUPREME COURT, CASE NUMBER SC91760 (SEPTEMBER 25, 2012)

KEY FACTS – The Highway Patrol pulled over two people in a rental car with California plates. As the trooper approached the vehicle, he observed gift bags and other items in the passenger compartment but no luggage. Both driver and passenger said they had flown to Las Vegas and were driving home to Washington, D.C., but they gave conflicting reports as to when they flew and why they chose to drive back. When a criminal history check revealed that the passenger had prior drug charges, the trooper requested consent to search the

continued >>>

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vehicle for narcotics. The driver became argumentative so the trooper radioed for a canine unit, approximately 26 minutes into the stop. The unit arrived 19 minutes later, and the dog alerted on the trunk. Police opened the trunk to find some of the driver's personal effects near a suitcase containing a large quantity of PCP.

COURT RULING – The trooper had reasonable suspicion to detain the vehicle based on his initial questioning of the driver and passenger during the traffic stop. The quantity of PCP and its proximity to the driver's property were sufficient evidence of possession and intent to deliver to support the jury's guilty verdict of first degree trafficking.

CAUTIONARY NOTE – Officers may ask basic questions—where drivers are from, where they have been, and where they are going—during a traffic stop as long as the questioning does not extend the detention. Any detention beyond the time necessary to write a ticket and run a records check must be justified by information developed during that initial time period. The difference between a valid extended detention and an invalid extended detention will often be the ability of officers to explain why they suspected criminal activity from their initial questioning and observations.

PROOF OF FUNCTIONALITY

**STATE V. LARRY WRIGHT,
MISSOURI SUPREME COURT,
CASE NUMBER SC92257 (OCTOBER 16, 2012);
ROLLAN WILLIAMS V. STATE,
MISSOURI SUPREME COURT,
CASE NUMBER SC92250 (OCTOBER 16, 2012)**

KEY FACTS – Wright was arrested on multiple charges but only convicted for concealing a loaded nine millimeter handgun hidden in his waistband. During his trial, prosecutors never introduced evidence that the gun was functional.

Williams was arrested for holding a gun to his estranged wife's head and forcing her to give him \$100, but the weapon was never found. Although he was convicted of robbery in the first degree, armed criminal action, and exhibiting a weapon, prosecutors did not introduce any

evidence that the weapon was functional or otherwise “readily capable of lethal use.”

COURT RULING – The “functionality” of a weapon is not an element in the offense of exhibiting a weapon, nor of carrying a concealed weapon. The State still bears the burden of disproving this “special negative defense,” but only if the defendant first introduces evidence that the gun was nonfunctional. Moreover, a firearm is presumptively capable of lethal use, and a defendant may not escape conviction by destroying or discarding the weapon to prevent the State from testing it.

CAUTIONARY NOTE – These cases recognize that a defendant may introduce evidence that a weapon was nonfunctional to defeat a weapons charge. The best practice is therefore to have proof on hand that the weapon was functional.

CASE UPDATE

**STATE V. TYLER MCNEELEY,
MISSOURI SUPREME COURT,
CASE NUMBER SC91850 (JANUARY 17, 2012)**

Back in our February Newsletter, we noted that the Missouri Supreme Court found no automatic exception to the Fourth Amendment that would permit police without a warrant to take a blood sample from a detainee suspected of driving while intoxicated. The United States Supreme Court has since agreed to review that ruling. The high court will likely hear argument this spring and issue a decision in May or June. Until then, the Missouri Supreme Court's ruling remains in effect, and police still need to show something more than probable cause that a suspect is intoxicated to justify taking a blood sample without first obtaining a warrant.

For additional information on these cases please contact Page Bellamy, Chief Counsel, Public Safety Division at 573-751-4418; Shaun Mackelprang, Chief Counsel, Criminal Division at 573-751-0272; or Terrence Messonnier, Assistant Attorney General, Public Safety at 816-889-5031.