

BUGDEN & ISAACSON, LLC
Attorneys · At · Law

445 East 200 South
Suite 150
Salt Lake City, UT
84111
801-467-1700
TARA@BILAW.NET

WALTER F. BUGDEN, JR.
TARA L. ISAACSON

CARS, DRUGS, ALCOHOL, AND ROCK AND ROLL

Cars are important to all of us. Beyond the obvious importance of transportation, cars are an extension of our personality, and most of us take pride in our vehicles and enjoy driving them.

Bumper Stickers

The First Amendment guarantees our right to express our views on whatever floats your boat. But having said that, bumper stickers consisting of pot plants, slogans about legalizing marijuana, etc., are guaranteed to bring more attention to your vehicle. So, if you are trying to avoid an encounter with the police, don't put those kind of bumper stickers on your car.

Right of Privacy

Contrary to what you might believe, a man's home is his castle and in his home, a citizen has a fairly substantial expectation of privacy. Police officers are not entitled to just willy nilly enter your home without a search warrant.

The same cannot be said with a car. The expectation of privacy that a citizen possesses in relationship to his "ride," is minimal. There is very little that a police officer needs to do to justify searching your car without a warrant.

I know that many college kids think that smoking dope in a vehicle on the way to the ski resort, concert, or whatever, is a great way to jump start the evening. Although it might indeed be a way to reduce your inhibitions and to intensify those crescendo moments of joy and giggles, smoking pot in a vehicle is a very stupid thing to do.

Here's why. Pot, as we all know, has a strong odor. Raw pot has an odor and burnt pot has an even stronger odor that lingers in a vehicle. If you are pulled over by a policeman for a traffic infraction, and you roll down your window, 99 out of 100 policemen will detect the noticeable and distinct odor of burnt marijuana. As soon as the odor is detected, you are toast. The odor alone justifies the police officer searching your entire vehicle (glove box, under the seats, between the seats, trunk, closed containers in the car—you name it, the officer can search anywhere). The officer does not need your consent. Because of the mobility of a vehicle, the U.S. Supreme Court has ruled over and over again that a police officer is entitled to search your vehicle without obtaining a search warrant if the officer can articulate probable cause to believe that the vehicle contains fruits of a crime. In this case, marijuana residue or pot leaves and flakes.

In most states, a conviction for either a drug or possession of paraphernalia (rolling papers, smoking pipe, etc.), results in the revocation of your license for six months. That is a fairly significant penalty.

Accordingly, the lesson to be learned is that, notwithstanding how fun it might seem, smoking marijuana in your vehicle is dumb, dumb and dumber.

Don't Consent

There are any number of circumstances where the police officer, having lawfully stopped you for a traffic infraction, will make a request that will sound much more like a demand to search your vehicle for weapons, alcohol, or drugs. Unless the officer has claimed that he smelled marijuana in the vehicle (in which case, as previously indicated, he does not need your consent), the officer may try to intimidate you into giving your consent for a general exploratory search of the vehicle. If you are a young college kid with long hair, you can count on the officer trying to get you to waive your constitutional right to require that he/she obtain a warrant before searching your car.

My advice is to never, never consent. The officer is not entitled to search and you should **politely** decline the officer's request for permission to search your vehicle. You can tell him/her you are in a hurry, you can tell him/her that you would like to go on your way, but don't consent.

The officer's next ploy might be to tell you that he/she is going to get a drug sniffing dog. Tell him/her fine, but don't consent. They might be bluffing and the dog may not "hit" on the marijuana in your toilet kit. Don't consent, don't consent, don't consent. Refuse the request for consent politely.

There is now a long line of cases that deal with the length of detention for a traffic stop. The basic concept is that the officer is entitled to stop you only so long as is necessary to fulfill the purpose for the initial traffic stop. That means the officer

is entitled to ask for license, registration, and proof of insurance. He is also entitled to write you a ticket for speeding or whatever reason he stopped you. But beyond that, he is not entitled to extend the stop by asking for permission to search your car, trunk, or anything else. So if you believe that the officer is extending the search beyond the purpose of the initial stop (speeding, tail light out, etc.), you are entitled to politely say, "Officer, please give me the ticket and let me go on my way."

Open Containers

It is a mistake to keep old beer bottles, cans, etc., in your car. Lots of people are fairly sloppy and keep old cans or bottles in the back of their vehicle. Do not do that. The presence of old cans may give the officer the opportunity to search your car without a warrant to look for other open containers. Almost all states have a law against possessing open containers in a vehicle.

Plus, if you are under 21, you will be strictly liable for having the open container in your car. It won't matter that you are not drinking at the moment that the officer stopped you.

Rock & Roll

Rock on baby!

DUI

My thoughts about the drunk driving situation are attached.