

HOW A CRIMINAL CASE PROCEEDS THROUGH THE JUDICIAL SYSTEM

By Robert Sberna

THE TRAFFIC STOP

On a late night, a city police cruiser is following a light colored Honda with two occupants. The police officer has observed the Honda swerve across the center line twice. Suspecting that the driver may be impaired by alcohol or drugs, the officer decides to stop the vehicle. He clicks on his microphone and tells dispatch his location and the Honda's description and license plate info.

Once he receives confirmation from a dispatcher, he flips on his overhead lights. After traveling a block further, the Honda pulls to the right-hand curb and coasts to a stop. The officer parks about a car-length behind the Honda, offsetting his vehicle to the left as protection against traffic approaching from the rear.

Stepping from his car, the officer walks to the Honda briskly but carefully, focusing his attention on the movements of the driver and passenger while also being attentive to traffic. Not only must he avoid being hit by a passing car, but he must also be aware of the possibility

that the occupants of the Honda may have friends who would attempt to interfere with him.

A traffic stop. An event that occurs millions of times a year in the U.S., it's a seemingly routine duty of a police officer, yet also one of the most potentially dangerous. An officer who approaches a car on a deserted street late at night is acutely aware of his vulnerability. He has no idea who is in the vehicle, what their intentions are, and whether they are armed. The occupants could be coworkers carpooling home or two people who just robbed a bank and are desperate to avoid capture.

To minimize the risk of a bad outcome—both for the police and the occupants—an officer uses a variety of tactical measures. He shines bright spotlights at the car, speaks in an authoritative tone, and



stands behind the passenger's door so the driver and passenger have to turn in their seats to see him. To the person who has been pulled over, these actions may seem unnecessary, heavy-handed, and even rude. However, the tactics are designed to provide an element of safety for the officer and prevent the traffic stop from escalating into a confrontation.

As the officer steps up to the vehicle, he glances at the back seat to confirm that nobody is there, then looks closely at the front seat occupants to make sure their hands are empty and in plain sight. He motions for the driver, an African-American male in his early 30s, to roll down his window. As the window lowers, he immediately smells a strong odor of alcohol. The



officer then introduces himself and tells the driver that he was stopped because he crossed the center line. Just as he is about to ask for his driver's license and proof of insurance, he notices the passenger, a white male in his 40s, lean forward and reach his right arm towards the car's floorboard in a furtive manner.

In a split-second, the officer processes various possibilities: Does he have a weapon? Is he stashing drugs under the seat? Is he reaching for a can of soda in the door's side pocket?

Perceiving danger and relying on his experience and training, the officer pulls his gun from its holster and orders both men to freeze. He then uses his remote microphone to call for backup. A moment later, responding officers handcuff the men and begin searching the car. Under the passenger's seat, they find a loaded 9mm pistol. Instantly, a "routine" traffic stop has



become a high-risk situation. Both men are arrested.

The driver, Mike, is charged with OVI after he consented to a "breathalyzer" test that registered above the legal limit for impairment. Mike is also cited for failing to driving in marked lanes. The passenger, Frank, faces felony charges of improperly handling a firearm in a motor vehicle and transporting a concealed weapon without a permit.

THE BOOKING PROCESS

After their arrests, Frank and Mike are taken to the City Police Department, where they are read their Miranda warning prior to being questioned. The Miranda warning, which is triggered after a person is officially taken into custody and before questioning can begin, requires police officers to clearly advise the person arrested of the following Constitutional rights:



"You have the right to remain silent."

"If you give up the right to remain silent, anything you say can be used against you in court."

"You have the right to have an attorney present during questioning."

"If you cannot afford an attorney, one will be appointed for you free of charge."

Once you tell police officers that you're exercising your right to remain silent, they are not allowed to continue questioning you.

After “Mirandizing” Mike and Frank, City Police attempt to interview the men. When asked who owned the pistol found in the car, both men say they didn’t know it was there. When an officer asks Frank why he was reaching for the pistol, he says he was only scratching his ankle. The men decline to answer further questions.

Frank and Mike are then transported to the Lake County Adult Detention Facility (jail) where they are booked—a process that creates an official arrest record. They are photographed and fingerprinted, and their possessions are collected. A records clerk does a computerized background check and a search for outstanding warrants. Bail bond is set according to a predetermined schedule that is based on the seriousness of their crimes. In general, accused offenders must post bail as a guarantee that they will return to court for their scheduled appearances. Usually, individuals who are charged with lower level offenses (misdemeanors) are released if he/she can post the amount of bond listed on the schedule of bonds previously set by the Municipal Court. Mike, who is charged with misdemeanor OVI (operating a vehicle under the influence of alcohol or drugs) and doesn’t have a criminal history, is released on such a bond. He is scheduled for an arraignment the next business day.

Based on the seriousness of Frank’s felony offenses, no bond can be posted that night and he will remain in jail until his initial appearance in Municipal Court on the next business day.

THE INITIAL APPEARANCE, ARRAIGNMENT AND PRELIMINARY HEARING

The next day, both men appear at City Municipal Court, where Mike is arraigned, a proceeding in which he is formally advised of the charges against him and asked to enter a plea to the charges. He has retained his own attorney and he pleads “not guilty.” The court magistrate then schedules a pretrial hearing. Mike is charged with a misdemeanor, so his case will remain in municipal court.



Because municipal courts lack jurisdiction to hear felony cases such as Frank’s, he will not be arraigned at this point. However, he does make an initial appearance before the municipal court judge, where he is informed of the charges against him, advised of his legal rights and the court sets the amount of Frank’s bond. Because Frank is unable to afford a defense attorney, he is assigned counsel from the Lake County Public Defender’s Office.

Although a municipal court judge can’t preside over a felony case, the judge has the authority to determine if there is “probable cause” to believe that a felony was committed and that Frank committed the felony. That determination is made at a preliminary hearing. Preliminary hearings are held in open court. Frank is present at the hearing with his attorney and the City Municipal Prosecutor must present evidence to the municipal judge of the defendant’s criminal conduct. Following the hearing, the judge will decide whether to dismiss the case (finding no probable cause), reduce it to a misdemeanor (and hear it in municipal court), or bind it over to the Lake County Common Pleas Court.

The accused can elect to waive his preliminary hearing and have his case sent directly to Common Pleas Court. Frank does not waive his preliminary hearing. At Frank’s preliminary hearing, the judge finds probable cause that Frank committed a felony and sends the case to the Common Pleas Court. The Common Pleas Court is located in Painesville, the county seat.

MUNICIPAL COURT

Mike's pretrial hearing provides the opportunity for his attorney and the City Prosecutor to discuss the disposition of his case. Oftentimes, a prosecutor will make an offer to resolve the case without going to trial, a process known as plea bargaining. In fact, more than 90 percent of court cases don't go to trial. For the prosecutor, plea bargains help the court to reduce its backlog of cases. Also, by avoiding a trial, the prosecutor can mitigate the unpredictability of a jury verdict or a judge's decision. While it's sometimes in the best interests of a defendant to exercise his Constitutional right to a trial, there can be advantages to accepting a plea offer. Those advantages can include a lesser charge or lesser sentence than what might be received if a jury returns a guilty verdict.

If a plea bargain is not offered or accepted, the accused can choose to plead as charged or proceed to trial. In this situation, however, the city prosecutor offers to drop the marked lane charge in exchange for pleading guilty to OVI. After consulting with his attorney, Mike accepts the prosecutor's offer. He is now scheduled for a sentencing hearing.

COMMON PLEAS COURT

After Frank's case is bound over to Common Pleas Court, the Lake County Prosecutor's Office prepares to present his case to the Grand Jury, a panel of nine private citizens that determines if there is probable cause to indict on felony criminal charges. Alternatively, the County Prosecutor's Office can attempt to proceed by way of a Bill of Information (which requires the defendant to waive his right to indictment by the Grand Jury). If the offer of a Bill of Information is accepted, the case goes directly to Common Pleas Court and a plea of guilty is entered.



When Frank decides not to waive his right to have the Grand Jury hear his case, the prosecutor's office subpoenas witness to testify before the Grand Jury. Like the City Municipal Judge at the preliminary hearing, the Grand Jury must also hear sufficient evidence to find "probable cause" that Frank committed a felony. Unlike preliminary hearings, Grand Jury hearings are secret* and Frank is not present when his case is presented. After hearing the evidence, the Grand Jury returns an Indictment charging Frank with the felony criminal offenses.

Frank appears in Common Pleas Court to be arraigned on the Indictment. Frank pleads not guilty and his bond, set by the Municipal Court is continued.

During the defense preparations, Frank's attorney files a motion to suppress evidence—the loaded gun—found by police in the car. The attorney argues that police did not have probable cause to search the car. The pre-trial motion is denied by the judge, allowing the gun to be admitted as evidence at trial.

To aid in the preparation of their case, defense attorneys are entitled to review the prosecution's evidence and information against their clients. This advance disclosure is called discovery and includes items such as police reports, witness statements, and forensic reports.

After seizing the loaded handgun, police submitted it to the Lake County Crime Laboratory, where forensic scientists analyzed it for fingerprints, touch DNA and also determined that it was operable. The scientists compared the fingerprints and DNA recovered from the gun and cartridges to samples they collected from Mike and Frank. Because Frank was arrested on a felony charge, police were required by law to take a DNA sample, which they did by swabbing the inside of his cheek. Mike, accused of a



misdeemeanor, was exempt from the law, but he consented to a cheek swab on his attorney's advice. The forensic tests concluded that the DNA and fingerprints collected from the gun matched the samples taken from Frank. Mike's samples, however, were not a match.

The Prosecutor's Office—reflecting confidence in the strength of its evidence—offers Frank a plea bargain at the same time that discovery documents are turned over.

In return for pleading guilty to the concealed weapons charge, the Prosecutor's Office has agreed to drop the charge of improperly handling a firearm in a motor vehicle. The Prosecutor's Office also offers to make a joint recommendation (with defense counsel) of eight months in prison.

After reviewing the discovery materials, Frank and his attorney are not optimistic about their chances at trial. In addition, the severity of the firearms charges and Frank's prior criminal history, which included prison time, could result in a stiff sentence if he is found guilty.

In Lake County's criminal justice system, defendants must accept a plea deal at least two weeks before a trial is scheduled to begin. With the two-week period almost up, Frank decides to accept the prosecutor's offer.

SENTENCING

The City Municipal Judge in Mike's case handed down his sentence immediately after Mike pleaded to the OVI charge. His punishment included a license suspension, probation, a suspended jail sentence, and a fine. While the consequences of his traffic offense were costly, Mike saved himself the additional time and legal expense of going to trial.

Frank's sentencing hearing takes place a month after his guilty plea. The Common Pleas Judge has reviewed the sentencing recommendation as well as the pre-sentence report from the Lake County Adult Probation Office, which takes into account Frank's prior criminal record as well as his background. The judge agrees to adopt the sentencing recommendation after considering all factors, including Frank's risk to the community and his likelihood of reoffending.

Frank, in turn, risked exposing himself to two felony convictions if he refused the prosecutor's plea deal and went to trial. If he was found guilty, it's likely that he would have received at least a one-year prison sentence.

At Frank's sentencing hearing, he is ordered to prison for eight months. He also must forfeit the seized gun. He is immediately taken to the Lake County Adult Detention Facility where he is held temporarily while he awaits transport to prison.

*(Why are Grand Jury hearings secret? If some preindictment proceedings were made public, many prospective witnesses would be hesitant to come forward voluntarily. Witnesses called to appear before the grand jury may be less likely to testify fully and frankly. There is the risk that persons about to be indicted may flee, or would try to influence witnesses or individual members of the grand jury. Of great importance, persons who are accused but exonerated by the grand jury are not held up to public ridicule.)

CRIMINAL PROSECUTION STEPS for Lake County, Ohio

