

Appendix E: Kernats, Michael. *Inspection, Search and Seizure of Motor Vehicles and Drivers*. Wisconsin Department of Transportation, Office of General Counsel (July, 2002).

Inspection, Search and Seizure of Motor Vehicles and Drivers

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The Fourth Amendment, as well as Federal and State statutes and administrative rules, limit the authority of state law enforcement officers to - stop and inspect motor vehicles and driver records. Stops and searches made pursuant to a valid warrant are usually trouble free. However, most stops and searches of motor vehicles are made without a warrant.

A warrantless search does not violate the Fourth Amendment if either of two general conditions are satisfied. First, no warrant is required if there is no violation of a person's reasonable expectation of privacy. Second, no warrant is required even if a person has a reasonable expectation of privacy, but the search falls within an established exception to the warrant requirement.

Warrantless searches of motor vehicles and drivers are authorized under a number of Fourth Amendment exceptions including:

The automobile exception to the Fourth Amendment,

The consent exception,

The plain view exception,

The pervasively regulated business exception.

The investigatory stop exception,

The search incident to arrest exception,

The stop and frisk exception,

The vehicle inventory exception,

All of these exceptions apply to the inspection and search of motor vehicles and drivers. Most of these exceptions are listed in Wis. Stat. section 968.10.

Automobile Exception

The automobile exception allows law enforcement officers to stop and search a vehicle if there is probable cause to believe that

the vehicle contains evidence of a crime and there are exigent circumstances making it impractical to obtain a warrant before a search. Every part of the vehicle can be searched, including the trunk and closed containers. This exception is based on 2 justifications, vehicles are mobile and drivers have a reduced expectation of privacy.

Carroll v. U.S., 267 U.S. 132 (1925).

Chambers v. Maronev, 399 U.S. 42 (1970).

Coolidge v. New Hampshire, 403 U.S. 443 (1971).

U.S. v. Ross, 456 U.S. 798 (1982).

California v. Acevedo, 500 U.S. 565 (1991).

Whren v. U.S., 517 U.S. 806 (1996).

As long as police have probable cause for a traffic stop, it is irrelevant whether the police also intended to make a drug bust. Policeman's subjective intent is irrelevant, as long as there is objective evidence of probable cause for a traffic offense.

Wyoming v. Houghton, 526 U.S. 295 (1999).

If police have probable cause to believe that a vehicle contains evidence of a crime (drugs in this case), police may search any containers in the vehicle that may contain the object of the search, whether the container belongs to the driver or a passenger.

Florida v. White, 526 U.S. 559 (1999).

If police have probable cause to believe that a vehicle is contraband, because it is subject to civil forfeiture under a state drug forfeiture law, the vehicle can be seized from a public place without first obtaining a warrant.

Maryland v. Dyson, 527 U.S. 465 (1999).

In a per curiam decision, the Supreme Court stated that the "automobile exception" does not require a separate finding of exigency. All that is required for a warrantless search of a motor vehicle is a finding of probable cause. "If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment...permits police to search the vehicle without more."

Consent Exception

Law enforcement officers can search a vehicle, including any closed containers in the vehicle, if the owner or driver voluntarily consents to a search. The totality of circumstances test is used in determining whether consent is voluntary.

Schneckloth v. Bustamonte, 412 U.S. 218 (1973).

Florida v. Jimeno, 500 U.S. 248 (1991).

Florida v. Bostick 501 U.S. 429 (1991).

In a random search of bus passengers, officers may ask for consent to search luggage. Consent is valid if a reasonable person would feel free to decline the request to search and terminate the encounter with the officer.

Ohio v. Robinette, 519 U.S. 33 (1996).

4th amdt does not require, as condition to giving voluntary consent to search by defendant who has been lawfully detained in a traffic stop, that the defendant first be informed that he is free to go. Explains Whren decision.

U.S. v. Drayton, ___ U.S. ___, 70 U.S.L.W. 4553 (June 2002)

In a random search of bus passengers, officers may ask for consent to search luggage. Consent is valid if a reasonable person would feel free to decline the request to search and terminate the encounter with the officer. Police officers are not required to advise persons that they can refuse to consent to a search.

State v. Williams, ___ Wis. 2d ___, 2002 WI 94 (July 2002).

A consent search is valid if the person who consented to the search was legally detained and was free to go. This was a vehicle search. The stop was initially justified because of a speeding violation, a warning was issued and the driver was told he was free to go before asking for consent to search. Applied U.S. v. Drayton.

Plain View Exception

A law enforcement officer has probable cause to seize an item in plain view, without a warrant, if the item is seen from a lawful vantage point, the officer has a legal right of physical access, and the item's illegal nature is immediately apparent.

Cardwell v. Lewis, 417 U.S. 583 (1974).

When there is probable cause to believe that a vehicle has been used in a crime, and there are exigent circumstances, police may make a limited external examination of the vehicle. Vehicle must be parked on the street or otherwise subject to public view.

Harris v. U.S., 390 U.S. 234 (1968).

Objects in the plain view of a law enforcement officer, who has the right to be in the position to have that view, are subject to seizure and introduction into evidence.

Texas v. Brown, 460 U.S. 730 (1983).

A law enforcement officer may seize an object in plain view if the officer has probable cause to believe that the object is contraband or evidence of a crime. The officer does not have to be certain that the object is contraband or evidence of a crime.

Horton v. California, 496 U.S. 128 (1990).

Objects in plain view may be seized even if the discovery of the objects is not inadvertent.

Pervasive Regulation Exception

California v. Carney, 471 U.S. 386 (1985).

Persons have a reduced expectation of privacy in motor vehicles because of government's pervasive regulation of motor vehicle travel on public highways.

New York v. Class, 475 U.S. 106 (1986).

Persons have no reasonable expectation of privacy in vehicle identification number. Police can enter a vehicle to look for a VIN. VIN plays an important role in the pervasive regulation of motor vehicles.

New York v. Burger, 482 U.S. 691 (1987).

Warrantless inspections of pervasively regulated businesses are authorized. In order to justify a warrantless inspection: (1) there must be a substantial government interest, (2) warrantless inspection must be necessary to

further the government interest, and (3) there must be a certain minimum level of certainty and regularity to provide an adequate substitute for a warrant.

U.S. v. Seslar, 996 F. 2d 1058 (10th Cir. 1993).

International Brotherhood of Teamsters v. Dept. of Transportation, 932 F. 2d 1292 (9th Cir. 1991).

U.S. v. Dominagez-Prieto, 923 F. 2d 464 (6th Cir. 1991).

Commercial trucking industry is pervasively regulated.

V-1 Oil Company v. Means, 94 F. 3d 1420 (10th Cir. 1996).

Wyoming State Trooper stopped and inspected a commercial motor vehicle. Court found that commercial trucking industry is pervasively regulated and that Burger requirements applied. No warrant was required. Court found no 4th amendment violation.

Investigatory Stop Exception

Delaware v. Prouse, 440 U.S. 648 (1979).

Police must have reasonable suspicion to justify an investigatory traffic stop. Police cannot randomly stop motorists to check driver license or registration without reasonable suspicion.

United States v. Cortez, 449 U.S. 411 (1981).

Reasonable suspicion is based upon various objective observations and conclusions of a law enforcement officer, based upon the officer's training and experience. This information must raise a reasonable suspicion that a particular individual is engaged in wrongdoing.

United States v. Sokolow, 490 U.S. 1 (1989).

Reasonable suspicion is less than probable cause, but there must be at least a minimum level of objective justification for making an investigatory stop.

Florida v. Bostick, 501 U.S. 429 (1991).

Brown v. Texas, 443 U.S. 47 (1979).

Refusal to answer a law enforcement officer's questions does not constitute reasonable suspicion justifying an

investigatory stop.

Alabama v. White, 496 U.S. 325 (1990).

Under the totality of circumstances test, an anonymous telephone tip, corroborated by independent police investigation, provided sufficient reliability to provide reasonable suspicion for police to make an investigatory stop of defendant's vehicle.

Florida v. J.L., 529 O.S. 266, 120 S. Ct. 1375 (2000).

Applies the Alabama v. White anonymous tip analysis. An uncorroborated anonymous tip that a suspect had a gun is not enough to justify an investigatory stop and frisk.

Ornelas v. U.S., 517 U.S. 690 (1996).

Probable Cause and Reasonable Suspicion explained.

"Articulating precisely what reasonable suspicion and probable cause means is not possible. They are commonsense nontechnical conceptions that deal with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians act...We have described reasonable suspicion simply as a particularized and objective basis for suspecting the person stopped of criminal activity...and probable cause to search as existing where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found...The principal components of a determination of reasonable suspicion or probable cause will be the events which occurred leading up to the stop or search, and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion or to probable cause."

U.S. v. Arvizu, ___ U.S. ___, No. 00-1519, 70 U.S.L.W. 4076 (2002)

Reasonable suspicion justifying a brief investigatory stop of a person or vehicle must be analyzed under the totality of circumstances test. Law enforcement officers may draw on their experiences and specialized training to make inferences and deductions about whether reasonable suspicion exists. A determination that reasonable suspicion exists need not rule out the possibility of innocent conduct.

State v. Griffin, 183 Wis. 2d 327 (Ct. App. 1994).

Absence of a license plate, or an LAF plate, constitutes reasonable suspicion sufficient to justify an investigatory

stop of a motor vehicle.

State v. Williams, 2001 WI 21, 241 Wis. 2d 631 (2001).

An anonymous telephone tip, corroborated by law enforcement officers, provided reasonable suspicion for a traffic stop. There must be evidence of the tipsters reliability, veracity, and basis of knowledge, but this can be corroborated by an officer's observation or independent investigation. The test of a citizen-informant's reliability is less strict than for a police-informant. Use the totality of circumstances test.

Search Incident to Arrest Exception

New York v. Belton, 453 U.S. 454 (1981).

During a lawful custodial arrest of the occupant of an automobile, police may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile, including the contents of any containers found within the passenger compartment. The search is restricted to the area of the suspect's custody and control.

U.S. v. Robinson, 414 U.S. 218 (1973).

Arizona v. Evans, 514 U.S. 1 (1995).

4th amdmt exclusionary rule does not require suppression of evidence gained during an arrest made on the basis of a computer record that was erroneous because of clerical mistakes by court employees.

Knowles v. Iowa, 525 U.S. 113 (1998).

Search incident to arrest exception cannot be used if driver is merely issued a traffic citation, rather than arrested.

State v. Fry, 131 Wis. 2d 153 (1986).

Police may search the locked glove compartment of a vehicle, as well as all closed containers, locked or unlocked; as part of search incident to arrest. The validity of a search incident to arrest is determined by the legality of the arrest and whether the search was limited to an area from which the defendant might gain possession of a weapon or evidentiary items.

State v. Seibel, 163 Wis. 2d 164 (1991).

Police need only "reasonable suspicion" not "probable cause" to draw blood in a search incident to arrest for a traffic accident.

State v. Bohlina, 173 Wis. 2d 529 (1993)

State v. Krajewski, 2002 WI 97, ___ Wis. 2d ___ (2002)

Police can withdraw blood without a warrant, and without the suspect's consent, to obtain evidence of intoxication from a person lawfully arrested for a drunk-driving related violation or crime. There must be a clear indication that the blood draw will produce evidence of intoxication, the blood sample must be taken by a reasonable method and in a reasonable manner, and the arrestee must present no reasonable objection to the blood draw.

Atwater v. City of Lago Vista, 531 U.S. 990 (2001).

Law enforcement officers have the authority to arrest without a warrant for minor offenses punishable only by a fine if the officer has probable cause to believe that an offense has been committed. The Court ruled that an arrest made under these circumstances does not violate the constitutional fourth amendment prohibition against unreasonable searches and seizures.

Stop and Frisk Exception

Stop and Frisk means a brief, temporary, investigative stop in a public place, based on less than probable cause. A law enforcement officer may pat down the suspect for weapons. In a routine traffic stop, an officer can pat down the driver or other occupants of the vehicle and look into the vehicle to search for weapons, if there is reasonable suspicion that persons may be armed.

Terry v. Ohio, 392 U.S. 1 (1968).

Adams v. Williams, 407 U.S. 143 (1972).

Pennsylvania v. Mimms, 434 U.S. 106 (1977).

Michigan v. Long, 463 U.S. 1032 (1983).

Maryland v. Wilson, 519 U.S. 408 (1997).

Law enforcement officer may, as a matter of course, order the passenger of a lawfully stopped vehicle to exit the vehicle. Extends Pennsylvania v. Mimms, which allowed police to order

the driver of a lawfully stopped vehicle to exit.

Illinois v. Wardlow, 528 U.S. 119 (2000)

Unprovoked flight from a law enforcement officer is a pertinent factor in determining reasonable suspicion for a stop and frisk for weapons.

State v. Morgan, 197 Wis. 2d 200 (1995).

Appropriate standards for conducting a "Terry" search for weapons. "Pat-down searches are justified when an officer has a reasonable suspicion that a suspect may be armed. The officer's reasonable suspicion must be based on 'specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. The test is objective...the determination of reasonableness is made in light of the totality of the circumstances known to the searching officer...an officer making a "Terry" stop need not reasonably believe that an individual is armed; rather, the test is whether the officer 'has a reasonable suspicion that a suspect may be armed.'...an officer's perception of an area as 'high-crime' can be a factor justifying a search."

State v. Griffith, 236 Wis. 2d 48, 2000 WI 72 (2000).

Police can request passengers in motor vehicles to provide identifying information, if the vehicle has been lawfully stopped.

Vehicle Inventory Exception

Law enforcement officers can search a vehicle that has been impounded to inventory the contents of the vehicle. Currently, -DSP does not authorize inventory searches.

South Dakota v. Opperman, 428 U.S. 364 (1976).

Police may seize evidence in "plain view" during an inventory search.

Colorado v. Bertine, 479 U.S. 367 (1987).

Reasonable police regulations relating to inventory procedures, administered in good faith, are necessary to satisfy the 4th amdmt.

Cady v. Dombrowski, 413 U.S. 433 (1973).

This is a vehicle impoundment and inventory case, but the court also ruled that if police have reason to believe that there is a gun in the vehicle, a search for the gun is justified because of "concern for the safety of the general public."

Drug-Sniffing Dogs

Drug-sniffing dogs can be used without a warrant, and without probable cause or reasonable suspicion. This is because the use of a trained dog, in a public place for a reasonable amount of time, is not a search under the 4th Amendment.

U.S. v. Place, 462 U.S. 696 (1983).

Edmond v. Goldsmith, 183 F.3d 659 (7th Cir. 1999).

The Good Faith Exception

When law enforcement officers obtain evidence in reasonable (good faith) reliance on a search warrant issued by an independent, neutral magistrate, the evidence should not be suppressed even if the affidavit used to obtain the warrant is defective or inadequate.

U.S. v. Leon, 468 U.S. 897 (1984).

State v Eason, ___ Wis. 2d ___, 2001 WI 98 (2001).

Vehicle Checkpoints

Michigan Dent. of State Police v. Sitz, 496 U.S. 444 (1990).

Roadblocks and vehicle checkpoints are constitutional. Description of requirements for valid roadblocks.

United States v. Martinez-Fuerte, 428 U.S. 543 (1976).

Roadblocks designed to intercept illegal aliens found to be constitutional.

Bond v. U.S., 529 U.S. 334 1462 (2000).

Bus validly stopped at Border Patrol checkpoint. But agent's search of luggage by manipulation and squeezing was unreasonable.

Indianapolis v. Edmond, 531 U.S. 32 (2000).

A roadblock established to intercept drivers carrying drugs was unreasonable and violated the 4th amendment. The purpose behind a roadblock is critical to its legality. The roadblock in this case was not intended to protect highway safety, but to apprehend drug offenders. The roadblock would have been legal if it had been intended to discover violations of traffic laws, and was not a pretext for drug enforcement. Stopping a vehicle at a roadblock is a seizure within the meaning of the 4th amendment.

Home Search Cases

Although the warrantless entry of a home is generally prohibited, law enforcement officers can make a valid warrantless arrest or search in a person's home if they have probable cause and exigent circumstances justify entry, or if they have consent to enter.

Payton v. New York, 445 U.S. 573 (1980).

Welsh v. Wisconsin, 466 U.S. 740 (1984).

State v. Rodgers, 119 Wis. 2d 102 (1984).

State v. Hughes, 233 Wis. 2d 280, 2000 WI 24 (2000).

State v. Richter, 235 Wis. 2d 524, 2000 WI 58 (2000).

Interrogation

Miranda v. Arizona, 384 U.S. 436 (1966)

Berkemer v. NcCarty, 468 U.S. 420 (1984).

Pennsylvania v. Bruder, 488 U.S. 9 (1988).

Law enforcement officers are not required to give Miranda warnings as part of a routine traffic stop. Miranda warnings are required when there is a custodial arrest and interrogation.

Dickerson v. U.S., 530 U.S. 428 (2000).

Reaffirmed Miranda. The Miranda warnings are constitutional guarantees that cannot be overruled by Congress.

U.S. v. Murray, 89 F. 3d 459 (7th Cir. 1996).

There was no custodial arrest and interrogation, even though police locked subject in the back seat of police cruiser during traffic stop.

State v. Morgan, 2002 WI App ___, ___, Wis. 2d ___, No. 01-2148-CR (April 4, 2002).

There was a custodial arrest and interrogation but no Miranda warnings, so the statement was suppressed. To determine whether a person is in custody, use the totality of circumstances test, including the defendant's freedom to leave, the purpose, place, and length of the interrogation, and the degree of restraint. When considering degree of restraint, consider whether the suspect is handcuffed, whether a weapon is drawn, whether a frisk is performed, whether questioning took place in a police vehicle, and the number of police officers involved.

WISCONSIN STATUTES

Chapter 110

Section 110.07, Traffic Officers, Powers and Duties

Section 110.075, Motor Vehicle Inspection

Chapter 194

Section 194.11, Inspection of premises or vehicles

Section 194.31, Inspection of records

Chapter 345

Section 345.21, Authority to Arrest With Warrant

Section 345.22, Authority to Arrest Without Warrant

Chapter 968

Section 968.10, Search and Seizures

A search of a person, object or place may be made and things may be seized when the search is made:

- (1) Incident to a lawful arrest
- (2) With consent
- (3) Pursuant to a valid search warrant
- (4) With the authority and within the scope of a right of

lawful inspection

(5) Pursuant to a search during an authorized temporary questioning

(6) As otherwise authorized by law

Sections 968.12, 968.13, 968.14, 968.15, 968.16, 968.17,
968.18, 968.19, 968.20, 968.21, 968.22, 968.23, Search
Warrants

Section 968.135, Criminal Subpoenas

Section 968.24, Temporary Questioning Without Arrest

Section 968.25, Search During Temporary Questioning

Section 349.02, Police and Traffic Officers Authority (no vehicle checkpoints)

WISCONSIN ADMINISTRATIVE RULES

Chapter Trans 312, Weigh Station Stopping Requirements

Chapter Trans 325, Motor Carrier Safety Regulations

Chapter Trans 326, Motor Carrier Safety Regulations for Hazardous Materials

Chapter Trans 327, Motor Carrier Safety

FEDERAL ADMINISTRATIVE RULES

49 CFR Part 390, Motor Carrier Safety Regulations, General

Section 390.9, State and local laws

Section 390.15, Investigations and Special Studies

Section 390.31, Copies of Records or Documents

49 CFR Part 391, Qualification of Drivers

Section 391.23, Investigation and Inquiries

49 CFR Part 392, Driving of Commercial Motor Vehicles

Section 392.71, Radar detectors prohibited

49 CFR Part 393, Parts and Accessories Necessary for Safe Operation

49 CFR Part 395, Hours of Service of Drivers

Section 395.8, Driver's Record of Duty Status

Section 395.13, Drivers declared out of service

Section 395.15, Automatic On-Board Recording Devices

49 CFR Part 396, Inspection, Repair and Maintenance

Section 396.9, Inspections of Motor Vehicles

Section 396.21, Record keeping

49 CFR Part 397, Hazardous Materials

Section 397.3, State and local laws

Secondary Materials

3 and 4 Wayne LaFave, Search and Seizure, A Treatise on the Fourth Amendment, (3rd Edition 1996 and Supp. 2001)

Federal District Court for the Western District of Wisconsin

George v. Ammon, Case No. 97-C-156-S (W.D. Wisconsin)

Mr. George, a commercial truck operator, filed a lawsuit against a DSP inspector her DSP supervisors, concerning a stop and inspection in April 1996. The inspector performed a CMV inspection, and also searched the interior of the cab and sleeper compartment for toll receipts, duplicate log books, alcohol and weapons. Mr. George challenged the out-of-service order issued by the inspector and the search of the interior of his vehicle.

The court issued an order in favor of DSP on the out-of-service order issue. However, the court declined to make a decision about the search issue. Although it did not rule on the search issue, the court stated that a warrantless inspection of a CMV may be allowed under the "pervasively regulated business exception" or the "automobile exception."

Unfortunately, the court was unwilling to rule that these

exceptions applied to the sleeper compartment of a CMV without first having the facts developed at trial. The court stated that "The sleeper berth appears more a motel room or a home which cannot be searched absent consent, exigent circumstances or a warrant." Before the case went to trial, the parties settled and so the court did not make a decision on the search issue.