

ANTHONY BANDIERO, ESQ.

OKLAHOMA

Search & Seizure Survival Guide

A FIELD GUIDE FOR LAW ENFORCEMENT



OKLAHOMA



Blue to Gold

Oklahoma Search & Seizure Survival Guide

A FIELD GUIDE FOR LAW ENFORCEMENT



Anthony Bandiero, JD, ALM

Blue To Gold Law Enforcement Training, LLC
SPOKANE, WASHINGTON

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Blue to Gold, LLC
12402 N Division St #119
Spokane, WA 99218
info@bluetogold.com
www.bluetogold.com

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Oklahoma Search & Seizure Survival Guide

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Note: This is a general overview of the classical and current United States court decisions related to search and seizure, liability, and confessions. As an overview, it should be used for a basic analysis of the general principles but not as a comprehensive presentation of the entire body of law. It is not to be used as a substitute for the opinion or advice of the appropriate legal counsel from the reader’s department. To the extent possible, the information is current. However, very recent statutory and case law developments may not be covered.

Additionally, readers should be aware that all citations in this book are meant to give the reader the necessary information to find the relevant case. Case citations do not comply with court requirements and intentionally omit additional information such as pin cites, internal citations, and subsequent case developments. The citations are intended for police officers. Lawyers must conduct due diligence and read the case completely and cite appropriately.

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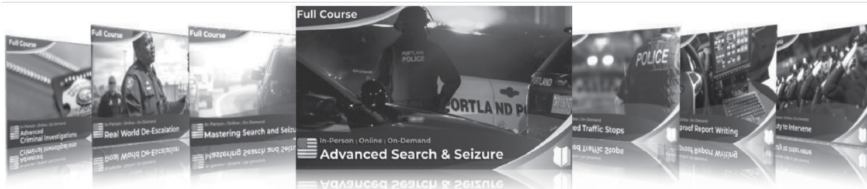


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Overview

Let's Start with the Basics	13
Consensual Encounters	46
Investigative Detentions.....	77
Arrests.....	114
Vehicles.....	158
Homes	206
Businesses & Schools	267
Personal Property.....	287
Technology Searches	296
Miscellaneous Searches & Seizures.....	321
Search Warrants	339
Law Enforcement Liability.....	364
Index	395

Note about case citations:

The case names cited throughout this book are not formatted according to the Bluebook citation style, which is widely recognized in legal writing. Instead, these citations are presented in a more straightforward manner, primarily to facilitate ease of reference for readers who may wish to delve deeper into the cases themselves. This approach is adopted to enhance the accessibility of the material, especially for those who might not be familiar with the intricacies of legal citation formats. By presenting case names in a clear and direct way, the book aims to encourage readers to explore these cases further, providing a gateway to understanding the legal principles and precedents discussed more deeply.

Table of Contents

Let's Start with the Basics.....	13
Fourth Amendment.....	14
Oklahoma Constitution Article II, Section 30.....	16
Three Golden Rules of Search & Seizure	17
The Right 'To be Left Alone'.....	19
Decision Sequencing.....	20
C.R.E.W.....	21
Fourth Amendment Reasonableness.....	23
Private Searches.....	26
“Hunches” Defined	30
Reasonable Suspicion Defined.....	33
Probable Cause Defined.....	35
Collective Knowledge Doctrine.....	38
What is a “Search” Under the Fourth Amendment?	41
What is a “Seizure” Under the Fourth Amendment?.....	43
Consensual Encounters	46
Consensual Encounters	47
Knock and Talks	51
Investigative Activities During Consensual Encounter	55
Asking for Identification	59
Removing Hands from Pockets.....	62
Transporting to Police Station.....	65
Consent to Search.....	67
Third-Party Consent	72
Mistaken Authority to Consent.....	75
Investigative Detentions	77

Specific Factors to Consider	78
Detaining a Suspect.....	81
Officer Safety Detentions.....	83
How Long Can Detentions Last?.....	85
Investigative Techniques During a Stop.....	87
Identifications - in the Field.....	89
Unprovoked Flight Upon Seeing an Officer	90
Detentions Based on an Anonymous Tip	92
Handcuffing and Use of Force	96
Detaining Victims or Witnesses.....	98
Patdown for Weapons	100
Patdown Based on Anonymous Tips	104
Plain Feel Doctrine.....	106
Involuntary Transportation	108
Detaining People Who Publicly Record Police Officers.....	111
Arrests	114
Lawful Arrest	115
Entry into Home with Arrest Warrant	120
Warrantless Entry to Make Arrest.....	122
Collective Knowledge Doctrine	124
Meaning of “Committed in the Officer’s Presence?”	127
Line-Ups	129
Protective Sweeps.....	132
When to “Un-arrest” a Suspect	136
“Contempt of Cop” Arrests.....	139
Arrests at Public Protests	142
Search Incident to Arrest	144
Search Prior to Formal Arrest	146
Search Incident to a “Temporary” Arrest.....	148

Attempt to Swallow Drugs	150
DUI Breath Tests	151
DUI Blood Tests.....	153
Searching Vehicle Incident to Arrest	155

Vehicles 158

General Rule.....	159
Scope of Stop Similar to an Investigative Detention	161
Community Caretaking Stops.....	163
Reasonable Suspicion Stops	165
Stops to Verify Temporary Registration	167
DUI Checkpoints	169
Information Gathering Checkpoints	171
Legal Considerations for Any Checkpoint	173
Ordering Passengers to Stay in, or Exit Vehicle.....	174
Consent to Search a Vehicle	176
Frisking People Who Ride in Police Vehicle	179
Searching Vehicle and Occupants for Weapons	181
K9 Sniff Around Vehicle	183
Searching Vehicle Incident to Arrest	187
Searching Vehicle with Probable Cause	190
Dangerous Items Left in Vehicle	193
Inventories	194
Identifying Passengers.....	198
Unrelated Questioning	200
Constructive Possession.....	202

Homes 206

Overview & Standing.....	207
Hotel Rooms, Tents, RVs, and so Forth.....	210

Knock and Talks	214
Open Fields	217
Curtilage	219
Plain View Seizure.....	222
Trash Searches.....	225
Consent to Search by Co-Occupants	227
Parental Consent to Search Child’s Room	230
Mistaken Authority to Consent.....	232
Protective Sweeps.....	234
Warrantless Entry Under Hot and Fresh Pursuit	237
Warrantless Arrest at Doorway	241
Warrantless Entry to Make Arrest.....	244
Warrantless Entry for an Emergency.....	245
Warrantless Entry for Officer Safety	247
Warrantless Entry for Arrest Team.....	248
Warrantless Entry to Investigate Child Abuse.....	251
Warrantless Entry to Protect Property	253
Warrantless Entry to Investigate Homicide Crime	255
Warrantless Entry to Prevent Destruction of Evidence.....	256
Warrantless Entry Based on “Ruse” or Lie.....	258
Convincing Suspect to Exit Based on “Ruse” or Lie.....	261
Detaining a Home in Anticipation of a Warrant	263
Surround and Call-Out	265
Businesses & Schools.....	267
Warrantless Arrest Inside Business.....	268
Customer Business Records.....	270
Heavily Regulated Businesses	272
Fire, Health, and Safety Inspections.....	274
Government Workplace Searches	276

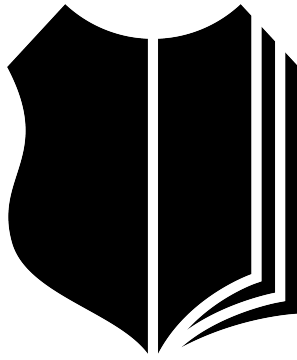
School Searches	277
Student Drug Testing.....	281
SROs, Security Guards, and Administrators.....	282
Use of Force Against Students.....	285
Personal Property	287
Searching Containers.....	288
Single Purpose Container Doctrine	289
Searching Abandoned or Lost Property.....	291
Searching Mail or Packages.....	294
Technology Searches	296
Sensory Enhancements	297
Flashlights.....	298
Binoculars.....	300
Night Vision Goggles	302
Thermal Imaging.....	303
Cell Phones, Laptops, and Tablets	305
Cell Phone Location Records	306
Aerial Surveillance	308
Drones.....	310
Pole Cameras.....	313
Automatic License Plate Readers.....	316
GPS Devices	318
Obtaining Passwords.....	319
Miscellaneous Searches & Seizures	321
Cause-of-Injury Searches	322
Medical Procedures.....	324
Discarded DNA	327
Fingernail Scrapes	329

Arson Investigations	330
Airport & Other Administrative Checkpoints	332
Border Searches	335
Probationer & Parolee Searches	337
Search Warrants	339
Overview	340
Why Get a Warrant, Even if You Don't Need to?.....	342
Particularity Requirement	343
Anticipatory Search Warrant	344
Confidential Informants.....	346
Sealing Affidavits.....	348
Knock and Announce	350
Detaining Occupants Inside and in Immediate Vicinity	353
Frisking Occupants	356
Handcuffing Occupants.....	358
Entry into Home with Arrest Warrant	360
Wrong Address Liability	362
Receipt, Return, and Inventory,	363
Law Enforcement Liability	364
Exclusionary Rule.....	365
Exceptions to the Exclusionary Rule.....	367
Fruit of the Poisonous Tree	368
Standing to Object.....	369
Good Faith Exception.....	371
Attenuation.....	373
Inevitable or Independent Discovery.....	375
Duty to Protect	378
Duty to Intervene.....	380

Supervisor Liability.....	382
Unequal Enforcement of the Law	384
Behavior that “Shocks the Conscience”	385
Deliberate Indifference	387
Sharing Crime Scene Photos on Social Media.....	389
§ 1983 Civil Rights Violations	390
§ 242 Criminal Charges	391
Bringing Non-Essential Personnel Into the Home	392
Qualified Immunity	393
Index.....	395

"If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself."

— James Madison, Father of the Fourth Amendment, 1788



Vehicles

General Rule

You may stop a vehicle if you have reasonable suspicion or probable cause that an offense has been, or will be, committed. It doesn't matter what you subjectively thought about the driver or passengers (unless racial profiling). What matters is objective reasonableness. However, it would be unlawful to unreasonably extend the stop while you pursued a *hunch*. If you develop reasonable suspicion that the occupants are involved in criminal activity, then you may diligently pursue a means of investigation that will confirm or dispel those suspicions.

Legal Standard

A vehicle may be lawfully stopped if:

- There is a **community caretaking** purpose;
- You have **reasonable suspicion** for any occupant, or
- You have **probable cause** for any occupant.

Note: The scope of a traffic stop is similar to an investigative detention. Therefore, the officer must **diligently pursue** the reason for the stop and not **measurably extend** the stop for reasons unrelated to the original reason for the stop unless additional reasonable suspicion or probable cause develops.

Oklahoma Case Examples

These cases represent binding authority from Oklahoma, the 10th Circuit, or U.S. Supreme Court. It's important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

Traffic Stops Are Based on Objective Reasonableness:

In *Whren v. United States*, the Supreme Court addressed the issue of whether the temporary detention of a motorist, when police have probable cause to believe a civil traffic violation has occurred, is inconsistent with the Fourth Amendment's prohibition against unreasonable seizures. The Court held that the constitutional reasonableness of traffic stops does not depend on the actual motivations of the individual officers involved. The case arose from an incident where plainclothes police officers in an unmarked car in Washington D.C. observed a truck with temporary license plates and youthful occupants, which remained stopped at an intersection for an unusually long time. When the officers stopped the vehicle

for an infraction and approached the vehicle, they observed drugs in plain view and arrested the occupants.

The Court, in its unanimous decision, emphasized that the Fourth Amendment's concern with "reasonableness" allows certain actions to be taken in certain circumstances, regardless of the subjective intent of the officers. The Court stated, "the fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action." This ruling effectively established that as long as there is objective justification for a traffic stop, such as a traffic violation, the stop is constitutionally reasonable, irrespective of an officer's subjective intent.¹

¹ *Whren v. United States*, 517 U.S. 806 (1996)

Scope of Stop Similar to an Investigative Detention

The scope of a routine traffic stop is similar to an investigative detention. As one court stated, this is because “the usual traffic stop is more analogous to a so-called ‘Terry stop’ than to a formal arrest.”

It also makes sense that a DUI stop will take longer than an equipment violation. And a traffic stop will last longer if you’re writing a ticket rather than just giving a verbal warning. Remember, as long as you’re diligently working on the original reason for the stop you should be fine. However, once that reason for the stop is over, the driver must be allowed to leave.¹

Finally, you may ask miscellaneous questions without additional reasonable suspicion, but those inquiries must not measurably extend the stop.

Legal Standard

The duration of a traffic stop is determined by these factors:

- Once the stop is made, you must **diligently pursue** the reason for the traffic stop;
- Unrelated questioning must not **measurably extend** the stop unless additional reasonable suspicion or probable cause develops.

Oklahoma Case Examples

These cases represent binding authority from Oklahoma, the 10th Circuit, or U.S. Supreme Court. It’s important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

Scope of Traffic Stops is Similar to Terry Stops:

In the Supreme Court case *Berkemer v. McCarty*, the Court addressed the nature of traffic stops and their relation to Terry stops. The Court held that the typical traffic stop is more analogous to a Terry stop than to a formal arrest. This distinction is crucial in determining the applicability of Miranda rights during such stops. The Court explained, “The comparatively nonthreatening character of detentions of this sort explains the absence of any suggestion in

¹ United States v. Salzano, 1998 U.S. App. LEXIS 17140 (10th Cir. Kan. 1998)

our opinions that Terry stops are subject to the dictates of Miranda. The similarly non-coercive aspect of ordinary traffic stops prompts us to hold that persons temporarily detained pursuant to such stops are not 'in custody' for the purposes of Miranda." This ruling emphasizes that the usual traffic stop, being public and often brief, does not create the same coercive environment as a formal arrest, thus not triggering the need for Miranda warnings.¹

Non-binding Case Examples

These cases represent persuasive authority from other courts outside of Oklahoma and the 10th Circuit. Though not binding, they have been selected for inclusion here because if officers in Oklahoma find themselves in a similar situation, the outcome will likely be the same, at least in federal court.

Stop Was Not Measurably Extended by Asking About Drug Possession:

Officer did not exceed the scope of the stop by inquiring if defendant had drugs or weapons in his possession even though the reasonable suspicion leading to the stop concerned a robbery. Based on the driver's answers, reasonable suspicion developed for drug possession.²

¹ Berkemer v. McCarty, 468 U.S. 420 (1984)

² Medrano v. State, 914 P.2d 804 (Wyo.1996)

Community Caretaking Stops

You may make a traffic stop on a vehicle if you believe any of the occupants' safety or welfare is at risk. If you determine that the occupant does not need assistance, you must terminate the stop or transition the stop into a consensual encounter. Otherwise, you would need to articulate reasonable suspicion (e.g. DUI) or other criminal involvement (e.g. domestic violence).

Stranded motorists fall under this rule. It's not illegal for a vehicle to break down. So, you cannot demand ID, or otherwise involuntarily detain stranded motorists unless you can articulate that they are involved in criminal activity.

Remember, these are essentially "implied" consensual encounters unless you have a reasonable suspicion of criminal activity. In other words, if someone needs help there's a reason to believe they would have impliedly consented to police assistance. Once there's no more consent, the occupants must be left alone.

Legal Standard

A vehicle may be stopped if:

- You have a **reason to believe** one of the occupants needs police or medical assistance; and
- Once you determine that no further assistance is required, the occupant **must be left alone or the encounter converted to a consensual one.**

Oklahoma Case Examples

These cases represent binding authority from Oklahoma, the 10th Circuit, or U.S. Supreme Court. It's important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

Community Caretaking Function Justified by Concern for Individual's Safety:

In *United States v. Garner*, the Tenth Circuit articulated a significant justification for the application of the community caretaking function by law enforcement, balancing public safety with individual Fourth Amendment rights. The court delineated the scenario that led to the police intervention: "Officer Boyd had received a report of 'a man down, said to be unconscious in a half sitting, half slumped over position for several hours.' When he

arrived at the scene, Officer Boyd found Mr. Garner, and he thus had reasonable grounds to conclude that Mr. Garner might be in need of medical assistance." The court further concluded that "the government's interest in community caretaking outweighed Mr. Garner's interest in being free from arbitrary interference," emphasizing that the public's interest in ensuring the health and safety of individuals can sometimes supersede personal liberty concerns.¹

The Scope of Traffic Stops and Community Caretaking:

In *Cady v. Dombrowski*, the Supreme Court explored the boundaries of law enforcement's community caretaking functions, particularly in the context of traffic stops. The Court held that under certain circumstances, police officers could search a vehicle without a warrant. This decision was grounded in the recognition that vehicles, due to their mobility and the regulatory environment surrounding them, have a reduced expectation of privacy compared to homes.

A key aspect of the ruling was the acknowledgment that police officers often perform community caretaking functions—such as ensuring public safety and order—that do not necessarily align with the detection and investigation of crime. The Court found that the warrantless search of a vehicle, which was believed to contain a firearm, was permissible under the community caretaking exception. This decision underscored the idea that the Fourth Amendment's protection against unreasonable searches and seizures must be balanced with practical considerations related to public safety and the unique nature of automobiles.²

Non-binding Case Examples

These cases represent persuasive authority from other courts outside of Oklahoma and the 10th Circuit. Though not binding, they have been selected for inclusion here because if officers in Oklahoma find themselves in a similar situation, the outcome will likely be the same, at least in federal court.

Community Care-Taking Stop Unreasonable Based on Passenger Who Appeared Extremely Drunk:

An officer observed a staggering suspect get into the *passenger* seat of a car. The officer wanted to make sure he was not in need of medical attention. The court held the stop unreasonable, since he was not the driver and did not appear to be in medical distress.³

¹ *United States v. Garner*, 416 F.3d 1208 (10th Cir. 2005)

² *Cady v. Dombrowski* is 413 U.S. 433 (1973)

³ *People v. Madrid*, 168 Cal. App. 4th 1050 (Cal. App. 1st Dist. 2008)

Reasonable Suspicion Stops

You may stop a vehicle if you have individualized reasonable suspicion that any occupant may be involved in criminal activity. Probable cause is not required.

Legal Standard

A vehicle and its occupants may be detained if:

- You can articulate **facts and circumstances** that would lead a **reasonable officer** to believe that one of the occupants has been, is, or is about to be, involved in **criminal activity**;
- Once the stop is made, you must **diligently pursue** a means of investigation that will **confirm or dispel** your suspicions;
- If your suspicions are **dispelled**, the occupants must be **immediately released** or the stop converted into a consensual encounter.

Oklahoma Case Examples

These cases represent binding authority from Oklahoma, the 10th Circuit, or U.S. Supreme Court. It's important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

Traffic Stops and Reasonable Suspicion:

In *United States v. Arvizu*, the Supreme Court addressed the scope of traffic stops and the concept of reasonable suspicion. The case involved Ralph Arvizu, who was stopped by a border patrol agent while driving in a remote area of Arizona. The agent's decision to stop Arvizu was based on a combination of factors, including the behavior of Arvizu and his passengers, the type of vehicle, the location, and the time of day. The Supreme Court emphasized the importance of considering the "totality of the circumstances" in determining whether there was reasonable suspicion for a stop.

The Court criticized the approach of the Ninth Circuit Court of Appeals. The Ninth Circuit had individually evaluated and dismissed several factors considered by the border patrol agent. The Supreme Court, however, held that this "divide-and-conquer" analysis was inconsistent with the principle of considering the totality of the circumstances. The Court stated, "Although an officer's reliance on a mere 'hunch' is insufficient to justify a stop, the likelihood of criminal activity need not rise to the level required

for probable cause, and it falls considerably short of satisfying a preponderance of the evidence standard.”¹

Non-binding Case Examples

These cases represent persuasive authority from other courts outside of Oklahoma and the 10th Circuit. Though not binding, they have been selected for inclusion here because if officers in Oklahoma find themselves in a similar situation, the outcome will likely be the same, at least in federal court.

Stop of Possible Stolen Truck, Even With Different Plates, Reasonable:

Observation of a truck that matched the description of one that had just been stolen in a carjacking, but with a different license plate that appeared to be recently attached, and with two occupants who generally matched the suspects’ description, constituted the necessary reasonable suspicion to justify the defendant’s detention.²

Terry Stop Conducted After Officer Told Driver, “Sit Tight”:

Suspect was subjected to a Terry stop at the time the police car parked behind the car in which he sat, where three officers shined their flashlights into the car, and one officer told the suspect to “sit tight.”³

¹ United States v. Arvizu, 534 U.S. 266 (2002)

² United States v. Hartz, 458 F.3d 1011 (9th Cir. Wash. 2006)

³ U.S. v. Young, 707 F.3d 598 (6th Cir. 2012)

Stops to Verify Temporary Registration

You cannot stop a vehicle solely to verify that a temporary registration is valid or not fraudulent. Even if you have a “hunch” that the registration is fake, you still need articulate individualized articulable suspicion that a vehicle may have fraudulent registration. It is irrelevant that based on your “training and experience” temporary permits are often forged.¹

Legal Standard

A vehicle with temporary registration may be stopped if:

- You can articulate **facts and circumstances** that would lead a reasonable officer to believe that the temporary registration may be **fraudulent, altered, expired, or belongs to another vehicle**; and
- Once the stop occurs, you must **diligently pursue** whether the registration is legitimate. If it is, you no longer have reason to detain the vehicle and you should **immediately allow it to leave**, unless the stop is converted to a consensual encounter or you develop reasonable suspicion for a different crime.

Oklahoma Case Examples

These cases represent binding authority from Oklahoma, the 10th Circuit, or U.S. Supreme Court. It's important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

Law Enforcement and Reasonable Suspicion in Traffic Stops:

Though no U.S. Supreme Court case deals with stopping a vehicle for reasonable suspicion, in the case *Kansas v. Glover*, the Court addressed the issue of whether a police officer violates the Fourth Amendment by initiating a traffic stop after learning that the registered owner of a vehicle has a revoked driver's license. The Court held that when an officer lacks information negating an inference that the owner is the driver of the vehicle, the stop is reasonable. The case arose when Kansas charged Charles Glover, Jr., with driving as a habitual violator after a traffic stop revealed he

¹ *People v. Hernandez*, 45 Cal. 4th 295 (Cal. 2008)

was driving with a revoked license. Glover filed a motion to suppress evidence from the stop, arguing the officer lacked reasonable suspicion. The Supreme Court found that under the Fourth Amendment, an officer can initiate a brief investigative traffic stop when they have "a particularized and objective basis for suspecting the particular person stopped of criminal activity." The Court emphasized that while a mere 'hunch' does not create reasonable suspicion, the standard required is considerably less than proof of wrongdoing by a preponderance of the evidence and less than necessary for probable cause.

This decision implies that police can stop and confirm temporary registration based on reasonable suspicion derived from specific and articulable facts, aligning with the scope of permissible traffic stops under the Fourth Amendment.¹

Non-binding Case Examples

These cases represent persuasive authority from other courts outside of Oklahoma and the 10th Circuit. Though not binding, they have been selected for inclusion here because if officers in Oklahoma find themselves in a similar situation, the outcome will likely be the same, at least in federal court.

Stop To Verify Temporary Tag Held To Be Unlawful:

In November, a deputy stopped a vehicle with expired license plates. The deputy confirmed through dispatch that the registration had expired two months earlier but the renewal was "in process." The deputy also observed that a temporary operating permit with the number "11" (i.e. November) had been taped to the window. Court held the stop unlawful and evidence was suppressed.²

¹ Kansas v. Glover, 140 S. Ct. 1183 (2020)

² People v. Brendlin, 45 Cal. 4th 262 (Cal. 2008)

DUI Checkpoints

The Supreme Court has upheld DUI checkpoints because the state's interest in preventing drunk driving accidents is outweighed by the minimal intrusion upon drivers who are temporarily stopped.¹ Nevertheless, some states have outlawed DUI checkpoints and some prosecutors refuse to take these cases. Check before setting up a checkpoint.

Also, don't get sucked-in by drivers who record you at checkpoints. Often these drivers roll down their window a few inches and refuse to answer any questions. If you think they're sober and just playing games, let them go! The purpose of a DUI checkpoint is to get drunk drivers off the road, not teach people to stop being jackasses. On the other hand, if you cannot reasonably determine that the driver is not intoxicated, then keep your cool, take your time, follow protocol, and investigate.

Legal Standard

A vehicle may be stopped at a DUI checkpoint if:

- The checkpoint furthers a **legitimate state interest** and is established by a **high-ranking** police official;
- There is a plan in place that **minimizes police discretion** on who may be stopped absent reasonable suspicion;
- Based on that plan, vehicles are stopped in a **systematic method**;
- The means used to determine whether a driver is under the influence are **minimally intrusive**; and
- Driver wait time **does not become unreasonable**.

Oklahoma Case Examples

These cases represent binding authority from Oklahoma, the 10th Circuit, or U.S. Supreme Court. It's important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

Evaluating Intrusion at Sobriety Checkpoints:

Geopfert v. State ex rel. Dept. of Public Safety, decided by the Court of Appeals of Oklahoma, addressed the legality of a sobriety

¹ Mich. Dep't of State Police v. Sitz, 496 U.S. 444 (1990)

checkpoint conducted by the Moore Police Department on New Year's Eve. The court paralleled the intrusion experienced at DUI checkpoints to those upheld in other contexts, determining it to be minor and constitutionally permissible. The Court stated, "The roadblock was successful in removing some intoxicated drivers from the New Year's traffic. The officer did not arrest Geopfert until he observed Geopfert was intoxicated... Under the specific circumstances herein involved, the roadblock does not violate the Fourth Amendment."¹

The U.S. Supreme Court's Analysis of DUI Checkpoints and the Fourth Amendment:

In *Michigan Dept. of State Police v. Sitz*, the Supreme Court addressed the constitutionality of sobriety checkpoints under the Fourth Amendment. The Court recognized that a "Fourth Amendment 'seizure' occurs when a vehicle is stopped at a checkpoint," but the central question was whether such seizures are "reasonable" under the Fourth Amendment.

The court held, "No one can seriously dispute the magnitude of the drunken driving problem or the States' interest in eradicating it. Media reports of alcohol-related death and mutilation on the Nation's roads are legion. The anecdotal is confirmed by the statistical. 'Drunk drivers cause an annual death toll of over 25,000 and in the same time span cause nearly one million personal injuries and more than five billion dollars in property damage.'"

Ultimately, the Court held that the sobriety checkpoints were constitutionally permissible, concluding that the slight intrusion on motorists' Fourth Amendment rights was outweighed by the state's substantial interest in preventing drunk driving.²

Non-binding Case Examples

These cases represent persuasive authority from other courts outside of Oklahoma and the 10th Circuit. Though not binding, they have been selected for inclusion here because if officers in Oklahoma find themselves in a similar situation, the outcome will likely be the same, at least in federal court.

Evasive Driving Away From Roadblock Is Reasonable Suspicion:

"Evasive behavior in response to a roadblock" may contribute to reasonable suspicion that the driver is possibly DUI.³

¹ *Geopfert v. State ex rel. Dept. of Public Safety*, 884 P.2d 1218 (1994)

² *Dep't of State Police v. Sitz*, 496 U.S. 444 (1990)

³ *United States v. Smith*, 396 F.3d 579 (4th Cir. N.C. 2005)

Information Gathering Checkpoints

Police are permitted to set up checkpoints in order to gather information concerning a serious crime that has been recently committed. An example would be asking motorists if they witnessed a fatal accident that occurred a week ago.

Legal Standard

A vehicle may be stopped at an information-gathering checkpoint if:

- There was a **serious crime** recently committed;
- The means used to determine whether an occupant was a witness to the crime are **minimally intrusive**; and
- Driver wait time **does not become unreasonable**.

Oklahoma Case Examples

These cases represent binding authority from Oklahoma, the 10th Circuit, or U.S. Supreme Court. It's important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

Fake “Drug Checkpoint Ahead” Ruse Not Unlawful as Long as Stop Was Based on Reasonable Suspicion or Probable Cause:

Posting a sign for a fictitious drug checkpoint, to create opportunity for law enforcement officers to observe a motorist's suspicious behavior of taking an exit ramp after the sign, was not illegal police activity, and officer's search and seizure of a package voluntarily abandoned by the motorist at the top of the exit ramp therefore did not violate Fourth Amendment.¹

Fourth Amendment Implications of Information-Gathering Checkpoints:

In the Supreme Court case *Illinois v. Lidster*, the Court examined the constitutionality of police checkpoints for information gathering. The case arose from an incident where police set up a highway checkpoint to gather information about a hit-and-run accident. The Court's decision emphasized the distinction between checkpoints for general crime control and those for specific information gathering. The Court held that the police stops at the checkpoint were reasonable and hence constitutional.

¹ U.S. v. Flynn, 309 F.3d 736 (10th Cir. 2002)

The Court differentiated this case from *Indianapolis v. Edmond*, which involved checkpoints for detecting drug crimes and was found unconstitutional due to its general crime control purpose. In contrast, the *Lidster* checkpoint was not to determine if the vehicle's occupants were committing a crime, but rather to ask for public assistance in providing information about a crime likely committed by others. The Court noted, "The stop's primary law enforcement purpose was not to determine whether a vehicle's occupants were committing a crime, but to ask vehicle occupants, as members of the public, for their help in providing information about a crime in all likelihood committed by others."¹

¹ *Illinois v. Lidster*, 540 U.S. 419 (2004)

Legal Considerations for Any Checkpoint

Police supervisors should address the following factors in any checkpoint operations plan.

Legal Standard

If police set up a checkpoint, keep these considerations in mind:

- The decision to establish a sobriety checkpoint, the selection of the site, and the **procedures** for the operation of the checkpoint, are made and established by **supervisory** law enforcement personnel;
- Motorists are stopped according to a **neutral formula**, such as every third, fifth or tenth driver;
- Adequate **safety precautions** are taken, such as proper lighting, warning signs, and signals, and clearly identifiable official vehicles and personnel;
- The location of the checkpoint was determined by a policy-making official, and was reasonable, i.e., on a road having a **high incidence** of alcohol-related accidents or arrests;
- The time the checkpoint was conducted and its duration reflect “**good judgment**” on the part of law enforcement officials;
- The checkpoint exhibits indicia of its **official nature** (to reassure the public of the authorized nature of the stop);
- The average length and nature of the detention is **minimized**; and finally,
- The checkpoint is preceded by **publicity**.

Ordering Passengers to Stay in, or Exit Vehicle

The Supreme Court has stated that passengers are seized under the Fourth Amendment during traffic stops. This means that they may challenge the constitutionality of the stop if they are later charged with a crime.¹

You're allowed to order passengers out of a vehicle, or alternatively, order them to stay in the vehicle if they demand to leave, even if they haven't committed an offense. The courts understand the risks associated with traffic stops, and the intrusion upon controlled passengers is minimal.

Legal Standard

Any occupant inside a vehicle may be ordered to stay, or exit vehicle if:

- The stop was based on **reasonable suspicion** or **probable cause**; and
- You can articulate **any legitimate reason** (i.e. officer safety or need to interview separately).

Oklahoma Case Examples

These cases represent binding authority from Oklahoma, the 10th Circuit, or U.S. Supreme Court. It's important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

Ordering Occupants to Exit Vehicle and Subsequent Arrest:

In *Staub v. State*, the Court of Criminal Appeals of Oklahoma held that officers were justified in stopping to offer assistance to a vehicle stopped in a traffic lane at 2:00 a.m. on a cold winter morning and, after occupants made no response, the officer was further justified in asking the occupants to get out of the car. The Court also established that where an officer was justified in asking occupants to get out of the car and it was then discovered that one passenger was intoxicated, the officer was entitled to arrest such passenger for public intoxication. The Court stated, "The subsequent failure of the occupants to respond normally to the

¹ *Brendlin v. California*, 551 U.S. 249 (2007)

officers' efforts gave Walsh reasonable grounds to request that they get out of the vehicle. Such a simple request did not constitute an arrest. The officers were discharging a legitimate investigative function and exercising justifiable discretion for their own safety.”¹

Scope of Ordering Passengers Out of a Car During a Traffic Stop:

In the Supreme Court case of *Maryland v. Wilson*, the Court addressed the issue of law enforcement's authority to order passengers out of a vehicle during a traffic stop. The Court acknowledged the inherent dangers to officers during traffic stops, especially when there are multiple occupants in a vehicle. While recognizing that the basis for ordering passengers out is not as strong as for the driver, the Court still found the additional intrusion on passengers to be minimal. The Court held, "danger to an officer from a traffic stop is likely to be greater when there are passengers in addition to the driver in the stopped car. While there is not the same basis for ordering the passengers out of the car as there is for ordering the driver out, the additional intrusion on the passenger is minimal. We therefore hold that an officer making a traffic stop may order passengers to get out of the car pending completion of the stop.”²

Officer Can Order Occupant out of Vehicle for any Legitimate Reason:

“[O]nce a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle ... and may order passengers to get out of the car pending completion of the stop as well.”³

Passengers May Challenge Stop Under Fourth Amendment:

"A traffic stop necessarily curtails the travel a passenger has chosen just as much as it halts the driver." Therefore, they may challenge the reason for the stop.⁴

¹ *Staub v. State*, 526 P.2d 1155 (1974)

² *Maryland v. Wilson*, 117 S. Ct. 882 (1997)

³ *Arizona v. Johnson*, 129 S. Ct. 781 (2009)

⁴ *Brendlin v. California*, 551 U.S. 249 (2007)

Consent to Search a Vehicle

There is no Fourth Amendment violation if you seek consent to search a vehicle from a lawfully stopped driver.¹ Whether consent was voluntarily given will be judged by the totality of the circumstances. Finally, if consent to search is obtained, it will not be considered an unreasonable extension of the traffic stop.

Legal Standard

A person may consent to a search of a vehicle if:

- The person's consent was **freely and voluntarily given**;
- He had **apparent authority** to give consent to search the area or item; and
- You did not exceed the **scope** provided, expressed or implied. Scope is determined by objectively viewing the situation from the suspect's position. Where would a reasonable person think you would search? It's not based simply on where police think evidence would be found.
- Courts may look at four factors when evaluating whether or not the scope of the search was exceeded: **time, duration, area, and intensity**.
 - Time: Was the search executed within the time frame contemplated by the suspect?
 - Duration: Was the search unreasonably lengthy?
 - Area: Did officers search areas where the item sought could be found?
 - Intensity: Did the methods used to search exceed the bounds of consent?

Things that help consent:²

- Telling person they do not have to allow the search
- Telling person what you are searching for
- Fewer officers
- Plain clothes

¹ *Schneekloth v. Bustamonte*, 412 U.S. 218 (1973)

² Clark County Nevada DA Search and Seizure Manual for Lawyers (2015)

- No weapons displayed
- No trickery such as hinting “no prosecution”
- Relatively short contact before consent given
- Friendly tone of voice, not threatening or commanding.
- Giving Miranda warnings (especially if person is in custody)
- All factors about the person giving consent such as: age, experience with the police, physical and mental condition, fluency in English.

Things that hurt consent:¹

- Display of weapons or hand on weapon
- Large number of police, especially uniformed
- Deceit or trickery about either purpose or outcome
- Officer’s threatening demeanor, tone of voice
- A claim that police have authority to do the search anyway such as false claim that police have a warrant
- Negatives about the person giving consent (young, lower intelligence, drunk, poor English).

Oklahoma Case Examples

These cases represent binding authority from Oklahoma, the 10th Circuit, or U.S. Supreme Court. It’s important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

Voluntary Consent in Vehicle Search:

In *Coffia v. State*, the Oklahoma Court of Criminal Appeals focused on whether the defendant's consent to search his vehicle was voluntary following a motorist assist interaction. The court affirmed that the consent was indeed voluntary, highlighting that the officer's conduct was non-coercive, marked by politeness and an absence of intimidating actions such as touching the defendant, displaying a weapon, or using a commanding tone of voice. The court emphasized the voluntariness of the consent with the statement, "The record supports a finding that a reasonable person would have felt free to leave and that Coffia's consent was voluntarily given."²

¹ Clark County Nevada DA Search and Seizure Manual for Lawyers (2015)

² *Coffia v. State*, 191 P.3d 594 (2008)

Consent to Search and Closed Containers:

In the Supreme Court case *Florida v. Jimeno*, the Court addressed the scope of an individual's consent to search a motor vehicle and the implications for closed containers within the vehicle. The Court examined the differing expectations of privacy in a car versus a closed container and the extent to which a general consent to search a car extends to such containers. The Court noted, "A suspect may of course delimit as he chooses the scope of the search to which he consents. But if his consent would reasonably be understood to extend to a particular container, the Fourth Amendment provides no grounds for requiring a more explicit authorization."

The decision in this case suggests that the scope of consent for a vehicle search is subject to the reasonable understanding of what the consent encompasses, including whether it extends to closed containers within the vehicle.¹

The Scope of Consent to Search Is Normally Defined by the Object of the Search:

The officer informed the driver that he believed drugs were in the car, and that he would be looking for narcotics in the car. "We think that it was objectively reasonable for the police to conclude that the... consent to search [driver's] car included consent to search containers within that car which might bear drugs. A reasonable person may be expected to know that... contraband goods rarely are strewn across the trunk or floor of a car. The authorization to search in this case, therefore, extended beyond the surfaces of the car's interior to the paper bag lying on the car's floor."²

¹ *Florida v. Jimeno*, 111 S. Ct. 1801 (1991)

² *Id.*

Frisking People Who Ride in Police Vehicle

Whether you may patdown a person depends on why he is in your patrol vehicle. If you're being nice and giving someone a ride home (e.g. mom and kids on freezing day) then you must seek consent. If, on the other hand, you had no choice but to transport them (e.g. take driver off highway after accident) then you may conduct a patdown for weapons.

Legal Standard

A person receiving a **courtesy ride** may be frisked for weapons if:

- You have received **consent** to patdown the suspect;¹
- If consent is denied, a **compulsory** patdown is likely unlawful (maybe no ride should be offered).

A person being transported under a **legal** or **policy obligation** may be frisked for weapons if:

- You first ask for **consent** (recommended);
- If consent is denied, a patdown for weapons will likely be considered reasonable if you were **legally required** to transport the person, or **agency policy** allows patdowns under the circumstances.²

Oklahoma Case Examples

These cases represent binding authority from Oklahoma, the 10th Circuit, or U.S. Supreme Court. It's important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

Police Don't Have To Take Unnecessary Risks:

The touchstone of our analysis is still Terry. While in Terry the suspect patted down was suspected of being armed and thus Terry does not control this case on its facts, the reasoning of Terry leads us to the conclusion that the patdown of McCargo did not violate his Fourth Amendment rights. In Terry, the Court held that police may frisk a person if they have a reasonable belief that the person is armed and dangerous. Paramount in the Court's reasoning was that

¹ People v. Scott, 16 Cal. 3d 242 (Cal. 1976)

² People v. Tobin, 219 Cal. App. 3d 634 (Cal. App. 1st Dist. 1990)

the Fourth Amendment should not require the police to investigate crime with their safety unduly at risk. “Certainly it would be unreasonable to require that police officers take unnecessary risks in the performance of their duties.... We cannot blind ourselves to the need for law enforcement officers to protect themselves and other prospective victims of violence in situations where they may lack probable cause for an arrest.” Weighing this important interest in police and public safety against the “brief, though far from inconsiderable,” intrusion on an individual's privacy, the Court concluded that a frisk for weapons was permissible.¹

³ United States v. McCargo, 464 F.3d 192 (2d Cir. N.Y. 2006) (Court refers to Terry analysis)

Searching Vehicle and Occupants for Weapons

If you can reasonably articulate that any occupant is armed and dangerous, you may conduct a patdown for weapons. This applies even if the occupant is not suspected of any crime.¹ Courts recognize the inherent danger of traffic stops and provide officers wide discretion when it comes to officer safety.

Legal Standard

Any occupant may be frisked for weapons if:

- You can articulate that the occupant is **armed and dangerous**; and
- You may only patdown the suspect's **outer clothing**.
- Note: If you feel an item that's not a weapon but it's **immediately apparent** (i.e. no manipulation) as contraband, evidence, fruits or instrumentalities of a crime, then you can reach into the person's clothing a retrieve it.

A frisk of a vehicle may be conducted when:

- You have reason to believe a weapon may be **inside** the vehicle;
- The occupant has **access** to the vehicle:
 - May return to vehicle later (i.e. not under arrest)²
 - Occupant could break away from police
 - In handcuffs, but mechanical devices may fail or hands squeezed through
- The frisk includes areas or containers inside the **passenger compartment** where the person could gain immediate access.

¹ Arizona v. Johnson, 555 U.S. 323 (2009)

² State v. Chang, 147 Wash. App. 490 (2008)

Oklahoma Case Examples

These cases represent binding authority from Oklahoma, the 10th Circuit, or U.S. Supreme Court. It's important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

Traffic Stops Are Inherently Dangerous:

“Every traffic stop is a confrontation....That expectation becomes even more real when the motorist or a passenger knows there are outstanding arrest warrants or current criminal activity that may be discovered during the course of the stop.”¹

May Conduct Protective Sweep if an Occupant Is Considered Armed and Dangerous:

In the Supreme Court case *Michigan v. Long*, the Court addressed the extent to which law enforcement officers can search a motor vehicle for weapons during a lawful traffic stop. The case arose when police officers, after observing erratic driving, stopped David Long and subsequently conducted a protective sweep of his vehicle, finding marijuana. The Supreme Court held “that the protective search of the passenger compartment was reasonable under the principles articulated in *Terry* and other decisions of this Court.” This decision expanded the scope of permissible searches during a traffic stop, allowing officers to search areas of a vehicle where they reasonably believe weapons may be hidden if they have an articulable suspicion that the suspect is potentially dangerous.²

Non-binding Case Examples

These cases represent persuasive authority from other courts outside of Oklahoma and the 10th Circuit. Though not binding, they have been selected for inclusion here because if officers in Oklahoma find themselves in a similar situation, the outcome will likely be the same, at least in federal court.

Protective Sweep Upheld Despite Stopping Wrong Suspects:

“Based on information obtained during the investigation of a series of armed robberies of drug dealers, law enforcement officers used “felony stop” tactics to stop a vehicle under the belief that it carried armed and dangerous suspects for whom arrest warrants had been issued.” Based on the totality of the circumstances, the protective search was reasonable.³

¹ *United States v. Dennison*, 410 F.3d 1203 (10th Cir. Colo. 2005)

² *Michigan v. Long*, 463 U.S. 1032 (1983)

³ *United States v. Holmes*, 376 F.3d 270 (4th Cir. S.C. 2004)

K9 Sniff Around Vehicle

Generally, there's no Fourth Amendment protection of the air around a vehicle. Therefore, you may run a drug detection canine around a vehicle during a traffic stop or when the vehicle is left in a place that you're lawfully allowed to be, like a parking lot. Canine alerts give you probable cause to either search it under the mobile conveyance exception or to apply for a warrant.

Keep in mind two important restrictions. First, do not intentionally command the canine to touch, climb, or jump onto a vehicle as this would be a search in violation of *U.S. v. Jones*.¹ Second, a canine sniff cannot extend the traffic stop unless you had reasonable suspicion for a drug offense.

Legal Standard

If **no reasonable suspicion** exists that drug evidence is inside the vehicle, then:

- You may conduct a **free-air sniff** around the vehicle as long as there is **no break in the investigation** that led to the stop; and
- The free-air sniff must **not extend** the stop.

If **reasonable suspicion** exists that drug evidence is inside the vehicle, then:

- You may continue to **detain** the vehicle for a **reasonable amount of time** for a drug canine to arrive on scene; and
- You may conduct a **free-air sniff around the vehicle**, but may not make a physical intrusion in or on the vehicle without probable cause.

Oklahoma Case Examples

These cases represent binding authority from Oklahoma, the 10th Circuit, or U.S. Supreme Court. It's important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

Reasonable Suspicion for Extended Traffic Stop and K-9 Sniff:

In *State v. Lewis*, the Oklahoma Court of Criminal Appeals upheld the extension of a traffic stop and the use of a drug detection dog

¹ United States v. Jones, 565 U.S. 400 (2012)

based on reasonable suspicion. The court determined that the deputy had valid reasons to prolong the traffic stop and deploy his K-9 partner for an open-air sniff of the vehicle. The defendant was traveling from one known drug-related location to another, and the vehicle's three occupants, including the defendant, had prior criminal drug-related histories. Additionally, two of the three occupants exhibited nervous behavior during the stop, contributing to the deputy's suspicion. The court noted, "As the evidence was sufficient to support a finding of reasonable suspicion that the occupants were engaged in drug trafficking, we find no Fourth Amendment violation in Deputy Girdner's continued detention of Appellee to allow for the open air sniff by the drug detection dog."¹

No Search Occurred When K9 Deployed Around Cars in Motel Parking Lot:

"Neither defendant, resident of motel, or even motel owner had legitimate expectation of privacy in motel's parking lot, and thus, police officer's entry of motel parking lot with dog for canine sniff of vehicles parked in lot was not a "search" under Fourth Amendment, where parking lot was open and visible from public roads bordering it and was not fenced, no gate prevented unauthorized entry, and no signs restricted entry to parking lot."²

Canine Sniffs Are Not Searches Under the Fourth Amendment:

In the case of *Illinois v. Caballes*, the Supreme Court addressed the issue of whether the use of a drug-detection dog during a lawful traffic stop, without reasonable suspicion of drug-related activity, violates the Fourth Amendment. The Court concluded that a canine sniff, which occurred during a traffic stop that was lawful at its inception and otherwise executed in a reasonable manner, did not infringe upon the defendant's constitutionally protected interest in privacy. The Court reasoned that "conducting a dog sniff would not change the character of a traffic stop that is lawful at its inception and otherwise executed in a reasonable manner, unless the dog sniff itself infringed respondent's constitutionally protected interest in privacy." This decision was based on the understanding that a canine sniff by a well-trained narcotics-detection dog reveals only the presence or absence of narcotics, a contraband item, and thus does not compromise any legitimate interest in privacy.³

Free-Air Sniffs Cannot Extend Traffic Stops Without Reasonable Suspicion:

¹ *State v. Lewis*, 498 P.3d 779 (2021)

² *U.S. v. Ludwig*, 10 F.3d 1523 (10th Cir. 1993)

³ *Illinois v. Caballes*, 543 U.S. 405 (2005)

Officer Struble stopped Rodriguez for a traffic violation. After handling all matters related to the stop, including checking licenses and issuing a warning, Struble asked for permission to walk his drug-sniffing dog around Rodriguez's vehicle. Rodriguez refused, but Struble detained him until a second officer arrived and the dog alerted to drugs in the vehicle. This led to Rodriguez's indictment on federal drug charges. The key issue was whether Struble's extension of the stop, by approximately seven to eight minutes for the dog sniff, without reasonable suspicion, was permissible.

The Court's analysis focused on the balance between the intrusion on an individual's privacy and the promotion of legitimate governmental interests. The Court noted, "a seizure that is lawful at its inception can violate the Fourth Amendment if its manner of execution unreasonably infringes interests protected by the Constitution." This statement underscores the Court's concern with the extension of a traffic stop beyond its initial purpose without additional reasonable suspicion.¹

Non-binding Case Examples

These cases represent persuasive authority from other courts outside of Oklahoma and the 10th Circuit. Though not binding, they have been selected for inclusion here because if officers in Oklahoma find themselves in a similar situation, the outcome will likely be the same, at least in federal court.

Use of K9 During a Stop Is Reasonable:

No violation where one officer wrote a ticket while another ran a drug dog.²

Instinctual Touching Is Lawful and Not a Search Under the Fourth Amendment:

"[A]bsent police misconduct, the instinctive actions of trained drug dogs do not expand the scope of an otherwise legal dog sniff to an impermissible search without a warrant or probable cause. The term instinctive implies that a dog enters a car without assistance, facilitation, or other intentional action by its handler. Thus, during a lawful detention, when a drug dog's leap into a car is instinctual rather than orchestrated by police conduct, courts have upheld the legality of such a search. Further, a dog's independent act of entering a vehicle is lawful where the dog was attracted into the car by the smell of contraband."³

¹ Rodriguez v. United States, 135 S. Ct. 1609 (2015)

² United States v. Hernandez-Mendoza, 600 F.3d 971 (8th Cir. S.D. 2010)

³ State v. Randall, 169 Idaho 358 (2021) (Note, Idaho does not permit instinctual touching)

Directing a K9 To Jump Onto or Touch a Vehicle Is a Search:

A “K-9 officer made upward gestures, purportedly “[p]resenting areas for [Nero] to sniff.” The K-9 officer later testified that Nero alerted during his explicit contact with Dorff's vehicle, i.e., after Nero stood up and put his front paws on the front driver side door and window....

Applying these principles to the instant case, a Fourth Amendment “search” occurred here because the State's drug dog, Nero, inter-meddled with (and thereby trespassed against) Dorff's vehicle for the purpose of obtaining information. As a preliminary matter, it cannot be overemphasized that a “search” occurred here because Nero trespassed against Dorff's vehicle for the purpose of obtaining information about, or related to, the vehicle.¹

Note: It is imperative that handlers never direct their K9 to physically touch vehicles without either consent or probable cause first. A free air sniff is not a search. But directing a K9 to touch cars for the purpose of gathering information is a search.

¹ State v. Dorff, 526 P.3d 988 (Idaho 2023)

Searching Vehicle Incident to Arrest

If you arrest any vehicle occupant, you may search the vehicle incident to arrest if the suspect is within the lunge distance from the vehicle and unsecured (rare situation). Here, you are mainly looking for weapons or a means to escape. Once the suspect is secured you may no longer automatically search the vehicle incident to arrest.¹

You may also search a vehicle if you have reason to believe evidence of the crime is inside the vehicle. No warrant is required. Two things should be noted. First, “reason to believe” evidence is inside the vehicle is a lower standard than probable cause. And second, it doesn’t matter if the suspect doesn’t have immediate access to the vehicle. Still, this type of search must be conducted contemporaneously (i.e. soon after) with arrest.

Legal Standard

When a suspect is **arrested and unsecured**, his vehicle may be searched if (this will be a rare search):

- The suspect is within the **lunge distance** of the vehicle;
- You reasonably believe that the suspect may gain access to the inside of the vehicle; and
- You may search for **weapons, evidence, and a means of escape**.

When a suspect is **arrested and secured**, his vehicle may be searched if:

- You have **reason to believe² evidence of the crime** for which he was arrested may be inside the vehicle;
- You **do not exceed the scope** of search necessary to find the evidence; and
- When you **no longer have reason to believe** evidence of the crime is inside the vehicle, the **search must end** unless you develop additional probable cause to search for something else.

¹ Arizona v. Gant, 556 U.S. 332 (2009)

² U.S. v. Vinton, 594 F.3d 14 (2010)

Oklahoma Case Examples

These cases represent binding authority from Oklahoma, the 10th Circuit, or U.S. Supreme Court. It's important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

Officer Can Search a Vehicle if Reasonable To Believe Evidence Is in the Vehicle:

An officer is permitted to conduct a vehicle search when an arrestee is within reaching distance of the vehicle or it is reasonable to believe the vehicle contains evidence of the offense of the arrest.¹ Note: you can still conduct a probable cause or inventory search if appropriate.

Search After Issuing Speeding Ticket Unlawful:

Defendant was stopped by a police officer for speeding and was issued a citation rather than arrested. The officer then conducted a full search of defendant's car, incident to the citation. The officer found a bag of marijuana and a "pot pipe." Defendant was then arrested and charged with violation of Iowa state laws dealing with controlled substances. The Supreme Court held the search unlawful, since the officer did not arrest the defendant or gain consent.²

Arrest of an Occupant Does Not Permit Search of Fellow Occupant:

Officers arrested an occupant for possession of fraudulent government documents. This arrest permitted the search of the vehicle, but not a fellow passenger absent consent or a lawful arrest.³

Non-binding Case Examples

These cases represent persuasive authority from other courts outside of Oklahoma and the 10th Circuit. Though not binding, they have been selected for inclusion here because if officers in Oklahoma find themselves in a similar situation, the outcome will likely be the same, at least in federal court.

Police Search of a "Container Within a Container" Permissible As Long as Probable Cause Exists for Each Container:

A container within a container is within the scope of the vehicle search so long as the second container is a place which could hold the item for which there is probable cause to search.⁴

¹ Arizona v. Gant, 556 U.S. 332 (2009)

² Knowles v. Iowa, 525 U.S. 113 (1998)

³ U.S. v. Di Re, 332 U.S. 581 (1948)

⁴ U.S. v. Ford, 88 F.3d 1350, 45 Fed. R. Evid. Serv. 174 (4th Cir. 1996)

Search of Coin Box Upheld for Ammunition:

A search of the coin box and bank bag, found within the vehicle, was upheld, but only because they could have contained “ammunition and paperwork related to the firearms investigation.”¹

Lawful Search of Car After Wanted Suspect Threw Drugs Under It:

Though officers initially approached the suspect to execute an outstanding bench warrant for failure to appear, search of the vehicle was lawful after suspect threw a bundle of cocaine under the car and had \$1,010 on his person.²

¹ United States v. Casteel, 717 F.3d 635 (8th Cir.2013)

² Robbins v. Commonwealth, 336 S.W.3d 60 (Ky.2011)

Searching Vehicle with Probable Cause

If you have probable cause that a vehicle contains evidence or contraband, you can usually conduct a warrantless search.¹

There are two reasons why the Supreme Court allows these searches:

1. Ready mobility of the vehicle means evidence could leave the jurisdiction before obtaining a warrant; and
2. Vehicles have a lowered reasonable expectation of privacy because they are heavily regulated.

Legal Standard

A vehicle may be searched without a warrant if:

- You have **probable cause** that contraband or evidence is inside the vehicle;
- You have **lawful access** to the vehicle (i.e. not within curtilage or in a backyard);
- The vehicle appears to be **readily mobile** (e.g. can be mobile with little to no repair); and
- Your search does not exceed the **scope** of the probable cause.

Oklahoma Case Examples

These cases represent binding authority from Oklahoma, the 10th Circuit, or U.S. Supreme Court. It's important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

Probable Cause in Vehicle Searches for Alcoholic Beverages:

In *Gomez v. State*, the Court of Criminal Appeals of Oklahoma addressed a scenario involving the search of a vehicle based on the detection of an alcoholic odor. The Court held that the officer had probable cause to search the defendant's vehicle for an open container of alcohol based on the observation of the defendant crossing the centerline, the smell of alcohol, and the presence of

¹ *Md. v. Dyson*, 527 U.S. 465 (1999)

alcoholic beverage containers inside the vehicle. The Court stated, “If probable cause justifies search of lawfully stopped vehicle, it justifies search of every part of vehicle that may conceal object of search including all containers within vehicle without showing of individual probable cause for each container.”¹

The Motor Vehicle Exception Applied to Broken-Down Vehicle:

Automobile exception to search warrant requirement was applicable to vehicle that was temporarily immobile due to mechanical problem, where problem was readily repairable.²

Note: I call this the the AAA rule. In other words, if the vehicle can become mobile by AAA (e.g., gas, flat tire, dead battery) or small mechanical repairs then the vehicle still falls under the motor vehicle exception.

If Probable Cause Exists To Search a Vehicle, Police May Search all Containers, Including Those of a Non-Arrested Occupant:

“If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search. This applies broadly to all containers within a car, without qualification as to ownership.”³

Police May Search a Vehicle in the Same Manner As if They Had a Warrant:

“The scope of a warrantless search based on probable cause is no narrower-and no broader-than the scope of a search authorized by a warrant supported by probable cause. Only the prior approval of the magistrate is waived; the search otherwise is as the magistrate could authorize.”⁴

Motor Vehicle Searches Do Not Require Exigency:

“As we recognized nearly 75 years ago in *Carroll v. United States*, (1925), there is an exception to this requirement for searches of vehicles. And under our established precedent, the “automobile exception” has no separate exigency requirement. when we said that in cases where there was probable cause to search a vehicle “a search is not unreasonable if based on facts that would justify the issuance of a warrant, even though a warrant has not been actually

¹ *Gomez v. State*, 168 P.3d 1139 (2007)

² *United States v. Mercado*, 307 F.3d 1226 (10th Cir. 2002)

³ *Wyoming v. Houghton*, 526 U.S. 295 (1999)

⁴ *United States v. Ross*, 456 U.S. 798 (1982)

obtained.” ... we repeated that the automobile exception does not have a separate exigency requirement: “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.”¹

The Motor Vehicle Exception Doesn’t Authorize Searching a Vehicle Within Curtilage:

“[I]t is a settled rule that warrantless arrests in public places are valid, but, absent another exception such as exigent circumstances, officers may not enter a home to make an arrest without a warrant, even when they have probable cause. That is because ‘being arrested in the home involves not only the invasion attendant to all arrests but also an invasion of the sanctity of the home.’ Likewise, searching a vehicle parked in the curtilage involves not only the invasion of the Fourth Amendment interest in the vehicle but also an invasion of the sanctity of the curtilage.”²

¹ *Maryland v. Dyson*, 527 U.S. 465 (1999)

² *Collins v. Virginia*, 138 S. Ct. 1663 (2018)

Dangerous Items Left in Vehicle

If you have reason to believe a dangerous item was left inside a vehicle, which may endanger public safety if left unattended, you may secure the item for safekeeping.

Legal Standard

A vehicle may be entered without a warrant if:

- You have **reason to believe** a dangerous item is left unattended inside the vehicle; and
- Leaving the item inside the vehicle unattended would pose a **risk to the community** (i.e. community caretaking).

Oklahoma Case Examples

These cases represent binding authority from Oklahoma, the 10th Circuit, or U.S. Supreme Court. It's important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

Warrantless Search for Gun Upheld:

Chester Dombrowski was a Chicago officer who was drunk and involved in a one-car traffic accident while driving a rental car in Wisconsin. He identified himself as a Chicago officer to the investigating officers, who understood that Chicago police officers were supposed to carry their weapons at all times. Dombrowski had no weapon on him, and none were found in the passenger compartment. They had the car towed to a private garage several miles from the police station. Dombrowski was arrested for drunk driving and then taken to the hospital. One of the officers returned to the car to retrieve Dombrowski's service revolver. While looking for it, the officer found evidence which strongly suggested that Dombrowski was involved in a crime of violence. When confronted with the evidence, he gave the location of a body. He was ultimately convicted of first degree murder.

The Supreme Court upheld the gun search under community caretaking.¹

¹ Cady v. Dombrowski, 413 U.S. 433 (1973)

Inventories

You may conduct an inventory search whenever you impound a vehicle. The main purpose of the inventory is specific—to protect your agency from false allegations about stolen or damaged property and protect the owner from theft or damage caused by tow companies. These inventories are searches, but they are not for evidence. Of course, plain view applies.

You cannot use vehicle inventories as a pretext to search a vehicle for contraband. This behavior is unlawful and can result in the suppression of evidence and 1983 lawsuits. In other words, officers cannot use inventories as a loophole to the probable cause requirement.¹ Additionally, some states require police to give on-scene owners the opportunity to take possession of their vehicle, if feasible, instead of towing it.²

Finally, if you want to inventory a locked container, develop probable cause or get consent. I would not break it open under your inventory policy.

Legal Standard

A vehicle may be inventoried when:

- Your agency has an **inventory policy** which minimizes your discretion;
- Your primary reason for towing the vehicle is legitimate and not simply a loophole to search a vehicle for criminal evidence;
- The policy **describes** what may be searched and inventoried; and
- It's recommended you articulate a legitimate **community caretaking** rationale such as blocking traffic, illegally parked, no license or registration, or risk of theft or vandalism.

¹ Colorado v. Bertine, 479 U.S. 367 (1987)

² Commonwealth v. Naughton, 2003 Mass. Super. LEXIS 65 (Mass. Super. Ct. 2003)

Oklahoma Case Examples

These cases represent binding authority from Oklahoma, the 10th Circuit, or U.S. Supreme Court. It's important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

Inventory Search and Arrest for Controlled Substance Possession:

In *Fallon v. State*, the defendant was stopped for speeding and erratic driving, leading to his arrest for DUI, and a subsequent inventory search of his vehicle revealed illegal drugs. During the inventory, officers found a locked briefcase in the trunk and obtained the defendant's consent before opening it, which the Court of Criminal Appeals of Oklahoma noted as crucial in adhering to Fourth Amendment standards. The court emphasized that the inventory search, including the opening of the locked briefcase, adhered to "regularized police policy" making it constitutionally valid. The court highlighted, "Because the inventory search was authorized pursuant to regularized police policy and therefore valid, the incriminating evidence discovered in the briefcase was properly admitted into evidence by the trial court and not violative of the Fourth Amendment to the Federal Constitution"¹

Vehicle Inventory Searches and Community Caretaking Functions:

In the case of *Colorado v. Bertine*, the Supreme Court emphasized that the policies behind the warrant requirement are not implicated in an inventory search, as these searches are part of routine, noncriminal procedures and are not primarily aimed at criminal investigations. The Court stated, "The standard of probable cause is peculiarly related to criminal investigations, not routine, noncriminal procedures... The probable-cause approach is unhelpful when analysis centers upon the reasonableness of routine administrative caretaking functions, particularly when no claim is made that the protective procedures are a subterfuge for criminal investigations."²

Officer Had Tow Driver Unlock Door:

An officer towed a car that had been illegally parked. He asked the tow driver to open the car and the officer continued his inventory. Drugs were found in the glovebox and the owner was charged.³

¹ *Fallon v. State*, 725 P.2d 603 (Okl.Cr.1986)

² *Colorado v. Bertine*, 107 S. Ct. 738 (1987)

³ *South Dakota v. Opperman*, 428 U.S. 364 (1976)

Officer Opened Locked Suitcase During Inventory:

During an inventory search an officer forced open a locked suitcase and found drugs. Evidence suppressed because the agency's written policy did not tell officers that they could break open *locked* containers.¹

Non-binding Case Examples

These cases represent persuasive authority from other courts outside of Oklahoma and the 10th Circuit. Though not binding, they have been selected for inclusion here because if officers in Oklahoma find themselves in a similar situation, the outcome will likely be the same, at least in federal court.

Officer Admitted That Inventory Was a Ruse to Search—Not Good:

The narcotics team wanted defendant stopped on a traffic offense, and deputies stopped him for failing to signal a turn. Upon determining that Torres was an unlicensed driver, they impounded his truck. The lead deputy testified that he was "basically using the inventory search as the means to go look for whatever narcotics-related evidence might be in the truck". He did not establish any "community caretaking function warranting the impoundment." The court suppressed three pounds of methamphetamine, cocaine, a rifle, and over \$113,000 in cash found in defendant's home.²

Lawful Inventory When Officer Looked Under Ripped Carpet:

The inventory search, including search under the floor carpeting, was within the department's policy, which authorized the search of all interior areas. Here, the carpet was "ripped up," which drew the officer's attention, the officer simply lifted an already loose flap of carpet that appeared to have been tampered with based on his reasonable belief that it might be concealing a hiding place for items, and the officer did not search under all of the carpeting, but just the portion that appeared to have been disturbed.³

Tow of Suspected Mobile PCP Lab Valid:

Officers responded to a house fire and observed a vehicle with a suspected PCP lab inside. Tow was reasonable because the vehicle was unregistered, appeared abandoned, and the owner could not be identified.⁴

Note: this vehicle could also have been searched under the mobile conveyance exception.

¹ Florida v. Wells, 495 U.S. 1 (1990)

² People v. Torres, 188 Cal. App. 4th 775 (Cal. App. 4th Dist. 2010)

³ U.S. v. Jackson, 682 F.3d 448 (6th Cir. 2012)

⁴ United States v. Bullette, 854 F.3d 261 (4th Cir. 2017)

Statutory Authority To Tow a Vehicle May Not Be Enough; You Should Also Articulate a Community Caretaking Rationale:

Generally, the Community Caretaking Doctrine has been held to apply (allowing for the impoundment of a vehicle) only when the vehicle, if left at the scene, is parked illegally, blocks traffic or passage, or stands at risk of theft or vandalism.¹

Failure to Actually Inventory Items Resulted in Suppression of Evidence:

Since the trooper failed to produce any actual inventory, the search was not justified as an inventory search. Instead, it was an unlawful rummaging through a protected area (i.e. motorcycle).²

Inventories Must Be Conducted in Good Faith:

An inventory search “must be carried out pursuant to standardized official department procedures and must be administered in good faith in order to pass constitutional muster.”³

¹ People v. Lee, 40 Cal.App.5th 853 (2019)

² State v. Greenwald, 109 Nev. 808 (1993)

³ Weintraub v. State, 110 Nev. 287 (1994)

Identifying Passengers

There is no constitutional violation by requesting that a passenger identify himself.¹ However, you may not *demand* identification when you have no reasonable suspicion that the passenger was involved in criminal activity.

My advice is to not push the issue unless you have developed reasonable suspicion that the passenger may be involved in criminal activity.

Legal Standard

If you want to identify a passenger, then:

- You may **request** identification, without reasonable suspicion, but may not demand it;
- If you have **reasonable suspicion** that the passenger was involved in criminal activity, you **may demand identification**. Failure to identify may be an arrestable offense under state law.

Oklahoma Case Examples

These cases represent binding authority from Oklahoma, the 10th Circuit, or U.S. Supreme Court. It's important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

Lawful Inquiry Into Passenger Identity During Traffic Stops:

In *Coffia v. State*, a decision from the Court of Criminal Appeals of Oklahoma, the court explored the Fourth Amendment implications of police actions during traffic stops, specifically focusing on the lawfulness of asking a passenger for identification and conducting a status check. In this case, officers during a traffic stop requested the driver's license of a passenger and performed a status check, actions that the court ultimately upheld as constitutional. The court ruled, "We hold that the public interest in asking for a license and conducting a status check outweighed the minimal intrusion involved and did not violate the Fourth Amendment under the circumstances of this case."²

¹ *People v. Vibanco*, 151 Cal. App. 4th 1 (Cal. App. 6th Dist. 2007)

² *Coffia v. State*, 191 P.3d 594 (Okla. Crim. App. 2008)

Law Enforcement May Demand Identification With Reasonable Suspicion:

In the case of *Hiibel v. Sixth Judicial District Court of Nevada, Humboldt County*, the Supreme Court addressed the issue of law enforcement's authority to demand identification from a person under reasonable suspicion. The Court upheld the conviction of the petitioner, who was arrested for refusing to identify himself during a stop that was justified under reasonable suspicion. The Court emphasized that "Asking questions is an essential part of police investigations. In the ordinary course a police officer is free to ask a person for identification without implicating the Fourth Amendment." This decision reaffirms the principle that law enforcement officers, when they have reasonable suspicion of involvement in criminal activity, can briefly stop a person and take additional steps to investigate further, including asking for (and demanding) identification.¹

Non-binding Case Examples

These cases represent persuasive authority from other courts outside of Oklahoma and the 10th Circuit. Though not binding, they have been selected for inclusion here because if officers in Oklahoma find themselves in a similar situation, the outcome will likely be the same, at least in federal court.

Officers May Ask Passenger for Identification:

A traffic stop "may include asking a passenger for identification and running a computer check if the passenger consents to the request for identification."²

Asking for Identification Doesn't Implicate the Fourth Amendment:

Asking passenger for identification while he was lawfully detained did not implicate the Fourth Amendment because the police did not need to have reasonable suspicion in order to ask questions or request identification.³

¹ *Hiibel v. Sixth Judicial Dist. Court of Nev., Humboldt Cty.*, 542 U.S. 177 (2004)

² *United States v. Cloud*, 594 F.3d 1042 (8th Cir. Minn. 2010)

³ *People v. Vibanco*, 151 Cal. App. 4th 1 (Cal. App. 6th Dist. 2007)

Unrelated Questioning

The Supreme Court stated, “An officer’s inquiries into matters unrelated to the justification for the traffic stop...do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop.”

Officers may ask various questions, such as where the driver is coming from, going to, passengers identification, etc. However, you should stay away from criminal-type questions (e.g. drugs) unless you have a reason for asking. Otherwise, courts may find the stop unlawfully expanded without reasonable suspicion.

Legal Standard

Inquiries into matters unrelated to the reason for the stop are permissible if:

- Your inquiries do not **measurably extend** the traffic stop; and
- The unrelated inquiries should **resemble a consensual encounter**, otherwise a court may view it as an investigative detention requiring reasonable suspicion.

Oklahoma Case Examples

These cases represent binding authority from Oklahoma, the 10th Circuit, or U.S. Supreme Court. It's important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

Unrelated Questioning Post-Traffic Stops Must Not Prolong Detention:

In *State v. Goins*, the Court of Criminal Appeals of Oklahoma dealt with the legality of searching a vehicle after the original purpose of a traffic stop has been resolved. The court held that a search is not per se illegal after the conclusion of a traffic stop's initial purpose, and that further detention for questioning unrelated to the initial stop can be justified if the officer has reasonable suspicion of illegal activity or if the encounter becomes consensual. The court emphasized, "A traffic stop may become a consensual encounter, requiring no reasonable suspicion, if the officer returns the license

and registration and asks questions without further constraining the driver by an overbearing show of authority."¹

An Officer May Further Detain Occupant With Additional Reasonable Suspicion:

"[T]he officer may detain the driver for questioning unrelated to the initial stop if he has an objectively reasonable and articulable suspicion that illegal activity has occurred or is occurring. ... A variety of factors may contribute to the formation of an objectively reasonable suspicion of illegal activity."²

Unrelated Inquiries Cannot Measurably Extend Stop:

In *Arizona v. Johnson*, the Supreme Court addressed questioning of passengers about matters unrelated to the traffic violation. The Court held that "an officer's inquiries into matters unrelated to the justification for the traffic stop do not convert the encounter into something other than a lawful seizure, so long as the inquiries do not measurably extend the stop's duration." This ruling clarifies that while officers can ask questions unrelated to the traffic violation, such inquiries should not prolong the duration of the stop beyond what is necessary for addressing the traffic issue.³

¹ *State v. Goins*, 84 P.3d 767 (2004)

² *United States v. Hunnicutt*, 135 F.3d 1345 (10th Cir. Okla. 1998)

³ *Arizona v. Johnson*, 555 U.S. 323 (2009)

Constructive Possession

If you discover contraband inside a vehicle with multiple occupants and no one wants to claim ownership, you may charge all occupants with constructive possession. However, it's not enough that the contraband was simply in the vehicle. You also need to articulate why the arrested occupants likely knew the contraband was inside the vehicle. For example, if burglary tools were found in the trunk that would not permit you to arrest passengers without articulating that the passengers probably knew the tools were there.

Alternatively, you could choose which occupant is the most culpable (usually the driver) and only charge him. Nothing requires you to arrest everyone under constructive possession. If you could arrest all, you may arrest one.

Legal Standard

Multiple occupants may be charged for constructively possessing contraband when:

- You articulate that there was at least a **fair probability** that the arrested **occupant knew** that contraband was inside the vehicle; and
- The occupant **had the ability to possess the** contraband in the past, present, or future.

Oklahoma Case Examples

These cases represent binding authority from Oklahoma, the 10th Circuit, or U.S. Supreme Court. It's important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

Constructive Possession in Vehicle Inventory Search:

Rudd v. State, decided by the Court of Criminal Appeals of Oklahoma, involved an inventory search of the defendant's car trunk after a fatal accident, revealing baggies of marijuana. The court found the search reasonable under the Fourth Amendment and the evidence sufficient to infer the defendant's control over the drugs, despite his claim of ignorance about the trunk's contents. The Court affirmed the conviction for Unlawful Possession of Marijuana with Intent to Distribute, holding that "Constructive possession may be established by ownership, dominion and control over the contraband. Possession may also be inferred when the

contraband is found in a place which is exclusively accessible or used by the accused and subject to his dominion and control.”¹

Constructive Possession of Drugs During a Traffic Stop:

In the Supreme Court case of *Maryland v. Pringle*, the Court addressed the issue of constructive possession during a traffic stop. The case involved a scenario where a car with three occupants was stopped for speeding, and a subsequent search revealed cocaine and cash. The Supreme Court held that the officer had probable cause to arrest Pringle, one of the passengers, for possession of a controlled substance. The Court reasoned that the presence of drugs and cash in the car, combined with the lack of information from any of the occupants about the ownership of these items, made it reasonable to infer that any or all of the occupants had knowledge of and exercised dominion and control over the cocaine. The Court stated, "We think it an entirely reasonable inference from these facts that any or all three of the occupants had knowledge of, and exercised dominion and control over, the cocaine. Thus, a reasonable officer could conclude that there was probable cause to believe Pringle committed the crime of possession of cocaine, either solely or jointly." This decision underscored the principle that proximity to contraband, combined with other circumstantial evidence, can establish probable cause for arrest under the Fourth Amendment. The Court differentiated this scenario from others where mere proximity to criminal activity does not establish probable cause, emphasizing the specific context of a small automobile and the likelihood of a common enterprise among the occupants.²

Non-binding Case Examples

These cases represent persuasive authority from other courts outside of Oklahoma and the 10th Circuit. Though not binding, they have been selected for inclusion here because if officers in Oklahoma find themselves in a similar situation, the outcome will likely be the same, at least in federal court.

Courts Look at 15 Factors for Constructive Possession:

The “affirmative link” analysis is used to review the evidence of the accused's knowledge and control of the contraband. Among the factors to be considered in determining whether an affirmative link exists are: (1) the defendant's presence when the search warrant was executed; (2) whether the contraband was in plain view; (3) the defendant's proximity to and the accessibility of the narcotic; (4) whether the defendant was under the influence of narcotics when arrested; (5) whether the defendant possessed other

¹ *Rudd v. State*, 649 P.2d 791 (1982)

² *Maryland v. Pringle*, 540 U.S. 366 (2003)

contraband or narcotics when arrested; (6) whether the defendant made incriminating statements when arrested; (7) whether the defendant attempted to flee; (8) whether the defendant made furtive gestures; (9) whether there was an odor of the contraband; (10) whether other contraband or drug paraphernalia were present; (11) whether the defendant owned or had the right to possess the place where the drugs were found; (12) whether the place where the drugs were found was enclosed; (13) whether the accused was the driver of the automobile in which the contraband was found; (14) whether the appellant was found with a large amount of cash; and (15) whether the conduct of the accused indicated a consciousness of guilt.¹

All Suspects Involved in a Hand-To-Hand Transaction Were Lawfully Arrested:

Two officers observed three suspects, in two vehicles, exchanging objects between their vehicles. Based on reasonable suspicion that they witnessed a hand-to-hand transaction, they made a stop. Drugs were eventually located and the court upheld the arrest of all suspects based on constructive possession, even though the drugs were only found in one vehicle.²

Associate Can Be Arrested When He Willfully and Knowingly Exercises Control:

It is well-established that one need not actually possess the controlled dangerous substance to violate the prohibition against possession thereof, as constructive possession is sufficient. The mere presence in an area where drugs are located or the mere association with one possessing drugs does not constitute constructive possession. A person may be deemed to be in joint possession of a drug which is in the physical custody of a companion, if he willfully and knowingly shares with the other the right to control it.³

Boyfriend Who Stayed With Girlfriend Had Constructive Possession of Full-Auto AK-47:

Defendant argues that the officer did not have probable cause to believe that he actually or constructively possessed the firearm. He asserts that the bedroom where the AK-47 was found belonged to his girlfriend, and there was no evidence at the time of the arrest that he had knowledge of its existence. The court disagreed because

¹ McQuarters v. State, 58 S.W.3d 250, 259 (Tex. App. 2001)

² United States v. Lopez, 441 Fed. Appx. 910 (3d Cir. Pa. 2011)

³ Eyer v. Evans, 2004 U.S. Dist. LEXIS 1266 (E.D. La. Jan. 28, 2004)

the defendant stayed at the apartment, and suspiciously sat on a bed when asked about the firearm.¹

Passenger Was in Constructive Possession of Large Amount of Narcotics:

There was probable cause to arrest the only passenger in a vehicle in which 37 pounds of marijuana were discovered by border control agents as the vehicle attempted to cross from Tijuana, Mexico into the United States. Here, the facts and circumstances support a fair probability that the passenger was linked to the crime of drug trafficking. He was a passenger in a car loaded with a commercial quantity of marijuana, the car belonged to neither occupant, and the car was procured under suspicious circumstances. Given these facts, a prudent and experienced police officer might reasonably suspect that the passenger is involved in drug smuggling.²

¹ United States v. Brooks, 270 Fed. Appx. 382 (6th Cir. Ohio 2008)

² U.S. v. Buckner, 179 F.3d 834 (9th Cir. 1999)



Index

AIRPORT & OTHER ADMINISTRATIVE CHECKPOINTS, 332

ARRESTS

“Contempt of Cop” Arrests, 139
Collective Knowledge Doctrine, 124
Drugs, attempt to swallow, 150
DUI blood tests, 153
DUI breath tests, 151
Lawful, 115
Line-Ups, 129
Meaning of “Committed in the Officer’s Presence?” 127
Private searches, 26
Protective sweeps, 132
Public protests, arrests at, 142
Search, “temporary” arrest, 148
Search, incident to, 144
Search, prior to formal arrest, 146
Vehicle search, incident to, 155
Warrant, entry with, 120
Warrantless entry, 122
When to “Un-arrest” a Suspect, 136

ARSON INVESTIGATIONS, 330

BORDER SEARCHES, 335

BUSINESSES & SCHOOLS

Customer business records, 270
Fire, health, and safety inspections, 274
Government workplace searches, 276
Heavily regulated businesses, 272
School searches, 277
SROs, security guards, and administrators, 282
Student drug testing, 281
Use of force against students, 285
Warrantless arrest inside business, 268

C.R.E.W., 21

CAUSE-OF-INJURY SEARCHES, 322

CHECKPOINTS

Airport & other administrative, 332
DUI, 169

COLLECTIVE KNOWLEDGE DOCTRINE, 38, 124

CONFIDENTIAL INFORMANTS, 346

CONSENSUAL ENCOUNTERS

Asking for Identification, 59
Consensual Encounters, 47
Consent to search, 67
Investigative activities during Consensual Encounter, 55
Knock and Talks, 51
Mistaken authority to consent, 75
Removing hands from pockets, 62
Third-party consent, 72
Transporting to Police Station, 65

DECISION SEQUENCING, 20

DISCARDED DNA, 327

DUI

blood tests, 153
breath tests, 151
checkpoints, 169

FINGERNAIL SCRAPES, 329

FOURTH AMENDMENT

Fourth Amendment, 14
Reasonableness, 23
Search, 41
Seizure, 43

HOMES

Child’s room, parental consent to search, 230
Co-occupants, consent to search, 227
Curtilage, 219
Detaining a home in anticipation of a warrant, 263
Fresh pursuit, 237
Hot pursuit, 237
Hotel rooms, 210
Knock and talks, 214
Mistaken authority to consent, 232
Open fields, 217
Overview and standing, 207

Plain view seizure, 222
 Protective sweeps, 234
 RVs, 210
 “Ruse” or lie, convincing suspect to exit, 261
 Surround and call-out, 265
 Tents, 210
 Trash searches, 225
 Warrantless arrest at doorway, 241
 Warrantless entry based on “ruse” or lie, 258
 Warrantless entry for an emergency, 245
 Warrantless entry for officer safety, 247
 Warrantless entry to investigate child abuse, 251
 Warrantless entry to investigate homicide crime, 255
 Warrantless entry to make arrest, 244
 Warrantless entry to prevent destruction of evidence, 256
 Warrantless entry to protect property, 253

HUNCHES, 30

INVESTIGATIVE ACTIVITIES, 55

INVESTIGATIVE DETENTIONS

Anonymous tip, 92
 Detaining a suspect, 81
 During stop, 87
 Factors to consider, 78
 Field identifications, 89
 Flight, upon seeing officer, 90
 Handcuffing, 96
 Involuntary Transportation, 108
 Length of detention, 85
 Officer safety detentions, 83
 Patdown, 100, 104
 Plain Feel Doctrine, 106
 Recording of Officer, 111
 Use of force, 96
 Victims, detaining, 98
 Witnesses, detaining, 98

KNOCK AND ANNOUNCE, 350

KNOCK AND TALKS,

Consensual Encounters, 51
 Homes, 214

LAW ENFORCEMENT LIABILITY

Attenuation, 373
 Behavior that “shocks the conscience”, 385
 Deliberate indifference, 387
 Duty to intervene, 380
 Duty to protect, 378
 Exclusionary rule, 365
 Exclusionary rule, exceptions, 367
 Fruit of the poisonous tree, 368
 Good faith exception, 371
 Inevitable or independent discovery, 375
 Non-essential personnel, bringing into the home, 392
 Qualified immunity, 393
 Section 1983 civil rights violations, 390
 Section 242 criminal charges, 391
 Social media, sharing crime scene photos on, 389
 Standing to object, 369
 Supervisor liability, 382
 Unequal enforcement of the law, 384

LEFT ALONE, RIGHT TO BE, 19

MEDICAL PROCEDURES, 324

MISCELLANEOUS SEARCHES & SEIZURES

Airport & other administrative checkpoints, 332
 Arson investigations, 330
 Border searches, 335
 Cause-of-injury searches, 322
 Discarded DNA, 327
 Fingernail scrapes, 329
 Medical procedures, 324
 Probationer & parolee searches, 337

OKLAHOMA CONSTITUTION, 16

PATDOWNS

Based on anonymous tip, 104
 For weapons, 100

PERSONAL PROPERTY,

Abandoned or Lost Property, 291
 Searching containers, 288
 Mail or Packages, 294

Single Purpose Container Doctrine, 289

PLAIN FEEL DOCTRINE, 106

PRIVATE SEARCHES, 26

PROBABLE CAUSE, 35

PROBATIONER & PAROLEE SEARCHES, 337

PROTECTIVE SWEEPS

Arrests, 132
Homes, 234

REASONABLE SUSPICION

Border search, 335
Community caretaking, 163
Confidential informants, 346
Consensual encounters, 47
Defined, 33
Detaining a suspect, 81
Drug testing, students, 281
Handcuffing, 96
Hands in pockets, removing, 62
Hot pursuit, 237
Hunches, 30
Identification, asking for, 59
K9, 183
Knock and talks, 51, 214
Length of detention, 85
Passengers, 174, 198, 202
Protective sweep, 132, 234
Recording of police, 111
School search, 277, 282
Stops, 165
Unrelated questioning, 200
Vehicles, 165, 167

REASONABLENESS, 23

RIGHT 'TO BE LEFT ALONE', 19

SEARCH WARRANTS

Anticipatory search warrant, 344
Confidential informants, 346
Detaining occupants inside and in immediate vicinity, 353
Frisking occupants, 356
Handcuffing occupants, 358

Knock and announce, 350
Overview, 340
Particularity requirement, 343
Receipt, return, and inventory, 363
Sealing affidavits, 348
Serving arrest warrant at residence, 360
Wrong address liability, 362

SEARCH

Arrest, incident to, 144
Border searches, 335
Cause of injury searches, 322
Child's room, parental consent to search, 230
Consent to search a vehicle, 176
Co-occupants, consent to search by, 227
Defined, 41
Government workplace searches, 276
Prior to formal arrest, 146
Private Searches, 26
Probationer & parolee searches, 337
School searches, 277
Searching vehicle incident to arrest, 187
Searching vehicle with probable cause, 190
Technology searches, 297-319
"Temporary" arrest, 148
Trash searches, 225
Vehicle search, incident to arrest, 187

SEIZURE (See also MISCELLANEOUS SEARCHES & SEIZURES)

Defined, 43

TECHNOLOGY SEARCHES

Aerial surveillance, 308
Automatic license plate readers, 316
Binoculars, 300
Cell phones, laptops and tablets, 305
Cell phone location records, 306
Drones, 310
Flashlights, 298
GPS devices, 318
Night vision goggles, 302
Obtaining passwords, 319
Pole cameras, 313
Sensory enhancements, 297
Thermal imaging, 303

VEHICLES

Checkpoints, DUI, 169
 Checkpoints, information gathering, 171
 Checkpoints, legal considerations, 173
 Community caretaking, 163
 Consent to search a vehicle, 176
 Constructive possession, 202
 Dangerous items left in vehicle, 193
 Frisking people who ride in police vehicle, 179
 General rule, 159
 Inventories, 194
 K9 sniff around vehicle, 183
 Ordering passengers to stay in, or exit vehicle, 174

Passengers, identifying, 198
 Reasonable suspicion, 165
 Scope of stop similar to an investigative detention, 161
 Searching vehicle and occupants for weapons, 181
 Searching vehicle incident to arrest, 187
 Searching vehicle with probable cause, 190
 Temporary registration, verification of, 167
 Unrelated questioning, 200

WRONG ADDRESS LIABILITY, 362



ABOUT THE AUTHOR

Anthony Bandiero, JD, ALM

Anthony is an attorney and retired law enforcement officer with experience as both a municipal police officer and sergeant with a state police agency. Anthony has studied constitutional law for over twenty years and has trained countless police officers around the nation in search and seizure.

View his bio at [BlueToGold.com/about](https://www.BlueToGold.com/about)

OKLAHOMA

Search & Seizure

Survival Guide

Your job as an officer is almost completely controlled by the Fourth and Fifth Amendments. Therefore, you need a reference that can break down these important constitutional doctrines into easy-to-apply checklists. That's what this book does. If you need guidance in the field, pick up this book. When you get back to the station and need help articulating the legal standards for your report, pick up this book.

There are other legal references out there and I highly recommend you read them. But this book has one serious competitive advantage: it was written by a retired police officer-turned-attorney who has been in your shoes, and knows what you need to know.



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