

ANTHONY BANDIERO, ESQ.

NORTH DAKOTA

# Search & Seizure Survival Guide

A FIELD GUIDE FOR LAW ENFORCEMENT

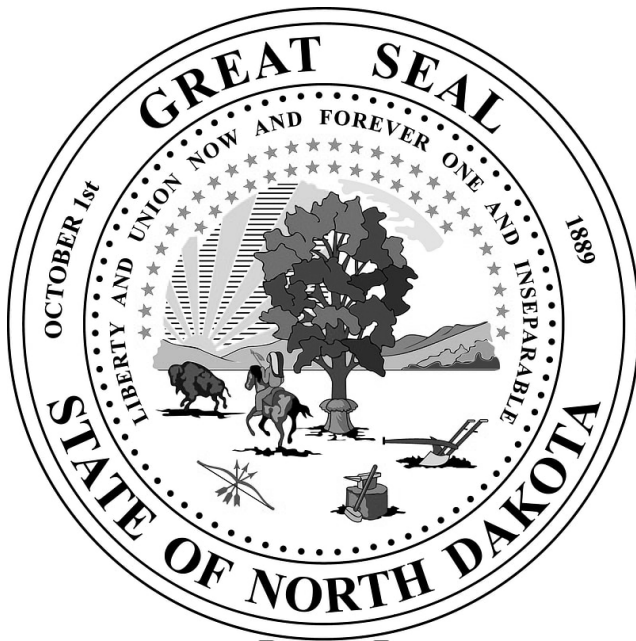


 Blue to Gold

# North Dakota Search & Seizure Survival Guide

---

A FIELD GUIDE FOR LAW ENFORCEMENT



**Anthony Bandiero, JD, ALM**

Blue To Gold Law Enforcement Training, LLC  
SPOKANE, WASHINGTON

Copyright © 2024 by Anthony Bandiero.

All rights reserved. No part of this publication may be reproduced, distributed or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher, except in the case of brief quotations embodied in critical reviews and certain other noncommercial uses permitted by copyright law. For permission requests, write to the publisher, addressed "Attention: Permissions Coordinator," at the address below.

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

Ordering Information:

Quantity sales. Special discounts are available on quantity purchases by government agencies, police associations, and others. For details, contact us at the address above.

North Dakota Search & Seizure Survival Guide  
ISBN 979-8321048559

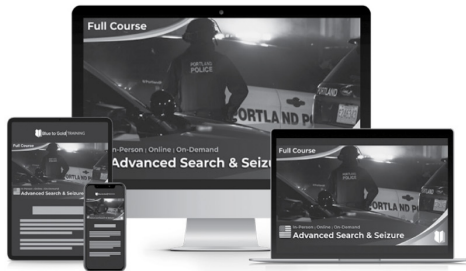
Last updated 03-2024

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.

# ADDITIONAL RESOURCES

## FREE WEEKLY WEBINARS



VISIT [WWW.BLUETOGOLD.COM/CALENDAR](http://WWW.BLUETOGOLD.COM/CALENDAR) FOR MORE DETAILS

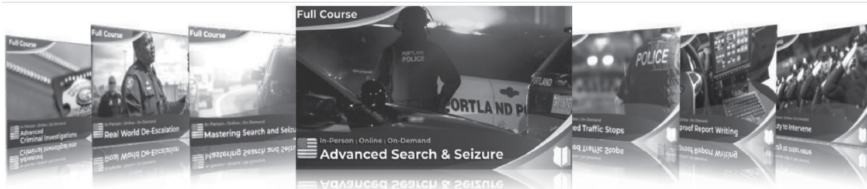


### **ASK THE EXPERT!**

Submit your questions

[bluetogold.com/show](http://bluetogold.com/show)

## ON-DEMAND COURSE AVAILABLE



VISIT [WWW.UNIVERSITY.BLUETOGOLD.COM](http://WWW.UNIVERSITY.BLUETOGOLD.COM) FOR MORE DETAILS

**BlueToGold**



# Overview

Let's Start with the Basics .....	13
Consensual Encounters .....	46
Investigative Detentions.....	76
Arrests.....	112
Vehicles.....	156
Homes .....	204
Businesses & Schools .....	262
Personal Property.....	282
Technology Searches .....	291
Miscellaneous Searches & Seizures.....	316
Search Warrants .....	334
Law Enforcement Liability.....	358
Index .....	388

## 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

<b>Let's Start with the Basics</b> .....	<b>13</b>
Fourth Amendment.....	14
North Dakota Constitution Article I, Section 8 .....	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
<b>Consensual Encounters</b> .....	<b>46</b>
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 .....	71
Mistaken Authority to Consent.....	74
<b>Investigative Detentions</b> .....	<b>76</b>
Specific Factors to Consider .....	77

Detaining a Suspect.....	80
Officer Safety Detentions.....	82
How Long Can Detentions Last?.....	84
Investigative Techniques During a Stop.....	86
Identifications - in the Field.....	88
Unprovoked Flight Upon Seeing an Officer .....	89
Detentions Based on an Anonymous Tip .....	91
Handcuffing and Use of Force .....	94
Detaining Victims or Witnesses.....	96
Patdown for Weapons.....	98
Patdown Based on Anonymous Tips .....	102
Plain Feel Doctrine.....	104
Involuntary Transportation .....	106
Detaining People Who Publicly Record Police Officers.....	109
<b>Arrests .....</b>	<b>112</b>
Lawful Arrest .....	113
Entry into Home with Arrest Warrant .....	118
Warrantless Entry to Make Arrest.....	121
Collective Knowledge Doctrine .....	122
Meaning of “Committed in the Officer’s Presence?” .....	125
Line-Ups .....	128
Protective Sweeps.....	131
When to “Un-arrest” a Suspect .....	134
“Contempt of Cop” Arrests.....	137
Arrests at Public Protests .....	140
Search Incident to Arrest .....	142
Search Prior to Formal Arrest .....	144
Search Incident to a “Temporary” Arrest.....	146
Attempt to Swallow Drugs .....	148

DUI Breath Tests .....	149
DUI Blood Tests.....	151
Searching Vehicle Incident to Arrest .....	153
<b>Vehicles .....</b>	<b>156</b>
General Rule.....	157
Scope of Stop Similar to an Investigative Detention .....	159
Community Caretaking Stops.....	161
Reasonable Suspicion Stops .....	163
Stops to Verify Temporary Registration .....	165
DUI Checkpoints .....	167
Information Gathering Checkpoints .....	169
Legal Considerations for Any Checkpoint .....	171
Ordering Passengers to Stay in, or Exit Vehicle.....	172
Consent to Search a Vehicle .....	174
Frisking People Who Ride in Police Vehicle .....	177
Searching Vehicle and Occupants for Weapons .....	179
K9 Sniff Around Vehicle .....	181
Searching Vehicle Incident to Arrest .....	185
Searching Vehicle with Probable Cause .....	188
Dangerous Items Left in Vehicle .....	191
Inventories .....	192
Identifying Passengers.....	196
Unrelated Questioning .....	198
Constructive Possession.....	200
<b>Homes .....</b>	<b>204</b>
Overview & Standing.....	205
Hotel Rooms, Tents, RVs, and so Forth.....	208
Knock and Talks .....	212



Open Fields .....	215
Curtilage .....	217
Plain View Seizure.....	220
Trash Searches .....	223
Consent to Search by Co-Occupants .....	225
Parental Consent to Search Child’s Room .....	227
Mistaken Authority to Consent.....	229
Protective Sweeps.....	231
Warrantless Entry Under Hot and Fresh Pursuit .....	234
Warrantless Arrest at Doorway .....	237
Warrantless Entry to Make Arrest.....	239
Warrantless Entry for an Emergency.....	240
Warrantless Entry for Officer Safety .....	242
Warrantless Entry for Arrest Team.....	243
Warrantless Entry to Investigate Child Abuse.....	246
Warrantless Entry to Protect Property .....	248
Warrantless Entry to Investigate Homicide Crime .....	250
Warrantless Entry to Prevent Destruction of Evidence.....	251
Warrantless Entry Based on “Ruse” or Lie.....	253
Convincing Suspect to Exit Based on “Ruse” or Lie.....	256
Detaining a Home in Anticipation of a Warrant .....	258
Surround and Call-Out .....	260
<b>Businesses &amp; Schools.....</b>	<b>262</b>
Warrantless Arrest Inside Business.....	263
Customer Business Records.....	265
Heavily Regulated Businesses .....	267
Fire, Health, and Safety Inspections.....	269
Government Workplace Searches .....	271
School Searches .....	272

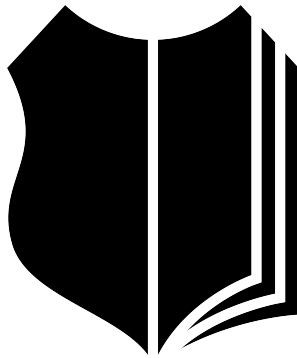
Student Drug Testing.....	276
SROs, Security Guards, and Administrators.....	277
Use of Force Against Students.....	280
<b>Personal Property .....</b>	<b>282</b>
Searching Containers.....	283
Single Purpose Container Doctrine.....	284
Searching Abandoned or Lost Property.....	286
Searching Mail or Packages.....	289
<b>Technology Searches .....</b>	<b>291</b>
Sensory Enhancements .....	292
Flashlights.....	293
Binoculars.....	295
Night Vision Goggles .....	297
Thermal Imaging.....	298
Cell Phones, Laptops, and Tablets .....	300
Cell Phone Location Records .....	301
Aerial Surveillance .....	303
Drones.....	305
Pole Cameras.....	308
Automatic License Plate Readers.....	311
GPS Devices .....	313
Obtaining Passwords.....	314
<b>Miscellaneous Searches &amp; Seizures .....</b>	<b>316</b>
Cause-of-Injury Searches .....	317
Medical Procedures.....	319
Discarded DNA .....	322
Fingernail Scrapes .....	324
Arson Investigations .....	325

Airport & Other Administrative Checkpoints .....	327
Border Searches .....	330
Probationer & Parolee Searches .....	332
<b>Search Warrants .....</b>	<b>334</b>
Overview .....	335
Why Get a Warrant, Even if You Don't Need to?.....	336
Particularity Requirement .....	337
Anticipatory Search Warrant .....	338
Confidential Informants.....	340
Sealing Affidavits.....	342
Knock and Announce .....	344
Detaining Occupants Inside and in Immediate Vicinity	347
Frisking Occupants .....	350
Handcuffing Occupants.....	352
Entry into Home with Arrest Warrant .....	354
Wrong Address Liability .....	356
Receipt, Return, and Inventory, .....	357
<b>Law Enforcement Liability .....</b>	<b>358</b>
Exclusionary Rule.....	359
Exceptions to the Exclusionary Rule.....	361
Fruit of the Poisonous Tree .....	362
Standing to Object.....	363
Good Faith Exception.....	365
Attenuation.....	367
Inevitable or Independent Discovery.....	369
Duty to Protect .....	372
Duty to Intervene .....	374
Supervisor Liability.....	376

Unequal Enforcement of the Law .....	378
Behavior that “Shocks the Conscience” .....	379
Deliberate Indifference .....	381
Sharing Crime Scene Photos on Social Media.....	383
§ 1983 Civil Rights Violations .....	384
§ 242 Criminal Charges .....	385
Bringing Non-Essential Personnel Into the Home .....	386
Qualified Immunity .....	387
<b>Index .....</b>	<b>388</b>

***"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.

### North Dakota Case Examples

These cases represent binding authority from North Dakota, the 8th 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.<sup>1</sup>

---

<sup>1</sup> *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.<sup>1</sup>

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.

### North Dakota Case Examples

These cases represent binding authority from North Dakota, the 8th 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 our opinions that Terry stops are subject to the dictates of Miranda.

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

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.<sup>1</sup>

---

## Non-binding Case Examples

These cases represent persuasive authority from other courts outside of North Dakota and the 8th Circuit. Though not binding, they have been selected for inclusion here because if officers in North Dakota 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.<sup>2</sup>

---

<sup>1</sup> Berkemer v. McCarty, 468 U.S. 420 (1984)

<sup>2</sup> 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.**

### North Dakota Case Examples

These cases represent binding authority from North Dakota, the 8th 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 and Fourth Amendment Seizures:

In *State v. Halfmann*, the Court clarified that an officer acting within the community caretaking capacity does not automatically engage in a Fourth Amendment seizure. Specifically, the situation involved an officer who, without restraining the defendant's liberty, approached a vehicle that the defendant had voluntarily stopped. The use of amber lights was deemed a procedural measure rather than a method of seizure, illustrating that, "The law makes a distinction between the approach of an already stopped vehicle and the stop of a moving vehicle. It is not a seizure for an officer to

simply walk up and talk to a person standing in a public place or to a driver seated in an already stopped car.”<sup>1</sup>

### **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.<sup>2</sup>

---

### **Non-binding Case Examples**

These cases represent persuasive authority from other courts outside of North Dakota and the 8th Circuit. Though not binding, they have been selected for inclusion here because if officers in North Dakota 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.<sup>3</sup>

---

<sup>1</sup> *State v. Halfmann*, 518 N.W.2d 729 (N.D. 1994)

<sup>2</sup> *Cady v. Dombrowski* is 413 U.S. 433 (1973)

<sup>3</sup> *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.

### North Dakota Case Examples

These cases represent binding authority from North Dakota, the 8th 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.”<sup>1</sup>

---

## **Non-binding Case Examples**

These cases represent persuasive authority from other courts outside of North Dakota and the 8th Circuit. Though not binding, they have been selected for inclusion here because if officers in North Dakota 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.<sup>2</sup>

### **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.”<sup>3</sup>

---

<sup>1</sup> United States v. Arvizu, 534 U.S. 266 (2002)

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

<sup>3</sup> 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.<sup>1</sup>

### 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.

### North Dakota Case Examples

These cases represent binding authority from North Dakota, the 8th 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 was driving with a revoked license. Glover filed a motion to

<sup>1</sup> *People v. Hernandez*, 45 Cal. 4th 295 (Cal. 2008)

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.<sup>1</sup>

---

## Non-binding Case Examples

These cases represent persuasive authority from other courts outside of North Dakota and the 8th Circuit. Though not binding, they have been selected for inclusion here because if officers in North Dakota find themselves in a similar situation, the outcome will likely be the same, at least in federal court.

### **Stop To Verify Temporary Tag Held 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.<sup>2</sup>

---

<sup>1</sup> Kansas v. Glover, 140 S. Ct. 1183 (2020)

<sup>2</sup> 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.<sup>1</sup> 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**.

### North Dakota Case Examples

These cases represent binding authority from North Dakota, the 8th 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.

#### DUI Checkpoints and Constitutional Rights:

In *City of Bismarck v. Uhden*, the Supreme Court of North Dakota upheld the constitutionality of DUI checkpoints, affirming that they do not violate the state's prohibition against unreasonable searches

---

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

and seizures. The court stated, “The City has an important interest in controlling the problem of drunk driving. To determine the reasonableness of the stop, this interest “must be balanced with the degree to which this checkpoint advances the public interests, and the severity of the interference with individual liberty caused by the checkpoint.”<sup>1</sup>

### **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's decision revolved around the balance between the state's interest in preventing drunk driving and the individual's right to privacy. 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.<sup>2</sup>

---

### **Non-binding Case Examples**

These cases represent persuasive authority from other courts outside of North Dakota and the 8th Circuit. Though not binding, they have been selected for inclusion here because if officers in North Dakota 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.”<sup>3</sup>

---

<sup>1</sup> *City of Bismarck v. Uhden*, 513 N.W.2d 373 (1994)

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

<sup>3</sup> *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**.

### North Dakota Case Examples

These cases represent binding authority from North Dakota, the 8th 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.

### 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.

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."<sup>1</sup>

---

## Non-binding Case Examples

These cases represent persuasive authority from other courts outside of North Dakota and the 8th Circuit. Though not binding, they have been selected for inclusion here because if officers in North Dakota find themselves in a similar situation, the outcome will likely be the same, at least in federal court.

### **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.<sup>2</sup>

---

<sup>1</sup> Illinois v. Lidster, 540 U.S. 419 (2004)

<sup>2</sup> U.S. v. Flynn, 309 F.3d 736 (10th Cir. 2002)

## 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.<sup>1</sup>

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).

### North Dakota Case Examples

These cases represent binding authority from North Dakota, the 8th 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.

#### **Passenger's Fourth Amendment Rights Not Violated by Officer's Request to Exit Vehicle:**

In *State v. Heitzmann*, the Supreme Court of North Dakota held that a passenger's Fourth Amendment rights were not violated when an officer asked him to step out of a pickup for the purpose of conducting a search of the vehicle incident to the driver's arrest. The Court reasoned that the officer was justified by safety reasons and by the need to search the passenger compartment of the vehicle. The Court also upheld the officer's patdown and pocket search of the passenger, finding that the officer had a reasonable and articulable suspicion that the passenger was armed and dangerous. The Court stated, "To conduct the search safely and

---

<sup>1</sup> *Brendlin v. California*, 551 U.S. 249 (2007)

thoroughly, it was both necessary and reasonable for Smith to ask Gilberts and the other passenger to briefly leave the car.”<sup>1</sup>

### **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.”<sup>2</sup>

### **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.”<sup>3</sup>

### **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.<sup>4</sup>

---

<sup>1</sup> *State v. Heitzmann*, 632 N.W.2d 1 (2001)

<sup>2</sup> *Maryland v. Wilson*, 117 S. Ct. 882 (1997)

<sup>3</sup> *Arizona v. Johnson*, 129 S. Ct. 781 (2009)

<sup>4</sup> *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.<sup>1</sup> 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:<sup>2</sup>

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

<sup>1</sup> *Schneekloth v. Bustamonte*, 412 U.S. 218 (1973)

<sup>2</sup> 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:<sup>1</sup>

- 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).

## North Dakota Case Examples

These cases represent binding authority from North Dakota, the 8th 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 Vehicle Search Consent in North Dakota:

In *State v. Guscette*, the North Dakota Supreme Court examined the voluntary nature of consent in a vehicle search case. The Court found Guscette’s consent to search her vehicle for illegal items was voluntary, noting she wasn’t coerced or under duress, wasn’t nervous, and there was no show of force by the officer. Despite her later objection to her purse being searched, the court stated, “The court found Guscette put no limitations on her initial consent to search the vehicle, and by the time Guscette may have withdrawn her consent, the contraband had already been discovered.”<sup>2</sup>

### 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

<sup>1</sup> Clark County Nevada DA Search and Seizure Manual for Lawyers (2015)

<sup>2</sup> *State v. Guscette*, 2004 ND 71, North Dakota Supreme Court (2004)

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.<sup>1</sup>

### **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."<sup>2</sup>

---

<sup>1</sup> Florida v. Jimeno, 111 S. Ct. 1801 (1991)

<sup>2</sup> 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;<sup>1</sup>
- 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.<sup>2</sup>

## North Dakota Case Examples

These cases represent binding authority from North Dakota, the 8th 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 pat-down 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 the Fourth Amendment should not require the police to investigate

<sup>1</sup> People v. Scott, 16 Cal. 3d 242 (Cal. 1976)

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

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.<sup>1</sup>

---

<sup>3</sup> 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.<sup>1</sup> 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)<sup>2</sup>
  - 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.

## North Dakota Case Examples

These cases represent binding authority from North Dakota, the 8th 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.

<sup>1</sup> Arizona v. Johnson, 555 U.S. 323 (2009)

<sup>2</sup> State v. Chang, 147 Wash. App. 490 (2008)

## **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.<sup>1</sup>

---

### **Non-binding Case Examples**

These cases represent persuasive authority from other courts outside of North Dakota and the 8th Circuit. Though not binding, they have been selected for inclusion here because if officers in North Dakota 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.<sup>2</sup>

#### **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.”<sup>3</sup>

---

<sup>1</sup> *Michigan v. Long*, 463 U.S. 1032 (1983)

<sup>2</sup> *United States v. Holmes*, 376 F.3d 270 (4th Cir. S.C. 2004)

<sup>3</sup> *United States v. Dennison*, 410 F.3d 1203 (10th Cir. Colo. 2005)

## K9 Sniff Around Vehicle

Generally, there's no Fourth Amendment protection of the air around a vehicle (not all states agree, like WA, PA, and NM). 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*.<sup>1</sup> 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.

### North Dakota Case Examples

These cases represent binding authority from North Dakota, the 8th 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.

#### Concurrent Dog Sniffs During Traffic Stops:

In *State v. Vetter*, the North Dakota Supreme Court examined the intricacies of conducting a dog sniff for drugs during a traffic stop,

---

<sup>1</sup> United States v. Jones, 565 U.S. 400 (2012)

without unlawfully extending its duration. The case specifically looked into a scenario where, during a lawful stop for speeding, one officer inquired about illegal contents in the vehicle while another officer, who arrived on scene, took over the ticket-writing duties. This division of tasks allowed for a dog sniff to be conducted simultaneously. The court clarified the legality of such actions, stating, "If there are two officers present and one is performing the mission of the traffic stop while the other contemporaneously conducts a dog sniff, there is no violation because there is no delay or extension of the stop."<sup>1</sup>

### **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.<sup>2</sup>

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

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

---

<sup>1</sup> *State v. Vetter*, 927 N.W.2d 435 (2019)

<sup>2</sup> *Illinois v. Caballes*, 543 U.S. 405 (2005)



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.<sup>1</sup>

---

## Non-binding Case Examples

These cases represent persuasive authority from other courts outside of North Dakota and the 8th Circuit. Though not binding, they have been selected for inclusion here because if officers in North Dakota 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.<sup>2</sup>

### **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."<sup>3</sup>

### **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."<sup>4</sup>

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

---

<sup>1</sup> *Rodriguez v. United States*, 135 S. Ct. 1609 (2015)

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

<sup>3</sup> *State v. Randall*, 169 Idaho 358 (2021) (Note, Idaho does not permit instinctual touching)

<sup>4</sup> *U.S. v. Ludwig*, 10 F.3d 1523 (10th Cir. 1993)

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.<sup>1</sup>

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.

---

<sup>1</sup> 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.<sup>1</sup>

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 believe<sup>2</sup> 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.

<sup>1</sup> Arizona v. Gant, 556 U.S. 332 (2009)

<sup>2</sup> U.S. v. Vinton, 594 F.3d 14 (2010)

## North Dakota Case Examples

These cases represent binding authority from North Dakota, the 8th 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.

### **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."<sup>1</sup>

### **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.<sup>2</sup> 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.<sup>3</sup>

### **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.<sup>4</sup>

---

## Non-binding Case Examples

These cases represent persuasive authority from other courts outside of North Dakota and the 8th Circuit. Though not binding, they have been selected for inclusion here because if officers in North Dakota find themselves in a similar situation, the outcome will likely be the same, at least in federal court.

---

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

<sup>2</sup> Arizona v. Gant, 556 U.S. 332 (2009)

<sup>3</sup> Knowles v. Iowa, 525 U.S. 113 (1998)

<sup>4</sup> U.S. v. Di Re, 332 U.S. 581 (1948)

**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.<sup>1</sup>

**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.<sup>2</sup>

---

<sup>1</sup> U.S. v. Ford, 88 F.3d 1350, 45 Fed. R. Evid. Serv. 174 (4th Cir. 1996)

<sup>2</sup> 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.<sup>1</sup>

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.

## North Dakota Case Examples

These cases represent binding authority from North Dakota, the 8th 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 and Vehicle Search in Response to Suspicious Activity:

In *State v. Washington*, the Supreme Court of North Dakota affirmed that law enforcement officers had reasonable suspicion and probable cause to search the defendant's vehicle. The officers observed a vehicle abruptly stopping in a parking lot near a bar where a break-in alarm had been triggered. Despite attempts to interact with the occupants, there was no response, leading to the

---

<sup>1</sup> *Md. v. Dyson*, 527 U.S. 465 (1999)

use of a locksmith to gain entry. The court held, "The officers' use of a locksmith to open the vehicle door to effectuate the arrest of the occupants was eminently reasonable under the Fourth Amendment." The evidence observed in plain view inside the vehicle further supported the probable cause for arrest and search.<sup>1</sup>

**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."<sup>2</sup>

**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."<sup>3</sup>

**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 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."<sup>4</sup>

**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,

---

<sup>1</sup> *State v. Washington*, 737 N.W.2d 382 (2007)

<sup>2</sup> *Wyoming v. Houghton*, 526 U.S. 295 (1999)

<sup>3</sup> *United States v. Ross*, 456 U.S. 798 (1982)

<sup>4</sup> *Maryland v. Dyson*, 527 U.S. 465 (1999)

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.”<sup>1</sup>

---

## **Non-binding Case Examples**

These cases represent persuasive authority from other courts outside of North Dakota and the 8th Circuit. Though not binding, they have been selected for inclusion here because if officers in North Dakota find themselves in a similar situation, the outcome will likely be the same, at least in federal court.

### **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.<sup>2</sup>

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.

---

<sup>1</sup> Collins v. Virginia, 138 S. Ct. 1663 (2018)

<sup>2</sup> United States v. Mercado, 307 F.3d 1226 (10th Cir. 2002)



## 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).

### North Dakota Case Examples

These cases represent binding authority from North Dakota, the 8th 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.<sup>1</sup>

---

<sup>1</sup> 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.<sup>1</sup> Additionally, some states require police to give on-scene owners the opportunity to take possession of their vehicle, if feasible, instead of towing it.<sup>2</sup>

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.

### North Dakota Case Examples

These cases represent binding authority from North Dakota, the 8th 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.

<sup>1</sup> Colorado v. Bertine, 479 U.S. 367 (1987)

<sup>2</sup> Commonwealth v. Naughton, 2003 Mass. Super. LEXIS 65 (Mass. Super. Ct. 2003)

### **Inventory Search Upheld Despite Suspicions:**

In *State v. Syvertson*, following the defendant's arrest for driving under suspension and subsequent vehicle impoundment, the North Dakota Supreme Court ruled that the inventory search did not violate the Fourth Amendment rights, despite the officer's suspicions stemming from an unrelated possible abduction. The Court emphasized, “[An] inventory search does not somehow become illegal upon the discovery of incriminating objects which do not take the police by complete surprise.”<sup>1</sup>

### **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.”<sup>2</sup>

### **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.<sup>3</sup>

### **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.<sup>4</sup>

---

## **Non-binding Case Examples**

These cases represent persuasive authority from other courts outside of North Dakota and the 8th Circuit. Though not binding, they have been selected for inclusion here because if officers in North Dakota find themselves in a similar situation, the outcome will likely be the same, at least in federal court.

---

<sup>1</sup> *State v. Syvertson*, 1999 ND 137 (1999)

<sup>2</sup> *Colorado v. Bertine*, 107 S. Ct. 738 (1987)

<sup>3</sup> *South Dakota v. Opperman*, 428 U.S. 364 (1976)

<sup>4</sup> *Florida v. Wells*, 495 U.S. 1 (1990)

**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.<sup>1</sup>

**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.<sup>2</sup>

**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 vehicle was unregistered, appeared abandoned, and the owner could not be identified.<sup>3</sup>

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

**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.<sup>4</sup>

---

<sup>1</sup> People v. Torres, 188 Cal. App. 4th 775 (Cal. App. 4th Dist. 2010)

<sup>2</sup> U.S. v. Jackson, 682 F.3d 448 (6th Cir. 2012)

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

<sup>4</sup> People v. Lee, 40 Cal.App.5th 853 (2019)

**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).<sup>1</sup>

**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.”<sup>2</sup>

---

<sup>1</sup> State v. Greenwald, 109 Nev. 808 (1993)

<sup>2</sup> Weintraub v. State, 110 Nev. 287 (1994)

## Identifying Passengers

There is no constitutional violation by requesting that a passenger identify himself.<sup>1</sup> 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.

### North Dakota Case Examples

These cases represent binding authority from North Dakota, the 8th 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 Justifies Prolonging Traffic Stop:

In *State v. Marsolek*, the court affirmed the extension of a traffic stop for a drug investigation. Key to this determination was the officer's interaction with the vehicle's occupants, including the request for identification from passengers, which, alongside the driver's nervous behavior, peculiar indirect route between two cities under the guise of "sightseeing," the driver's history of drug convictions, and a motion towards the front seat suggesting object concealment justified the extended stop. The court noted, "Reasonable suspicion had already been established prior to the time the needle was found in Larson's pocket. Thus, all of the subsequent activities Deputy Morten conducted after he left Larson's vehicle without returning to his patrol car to issue a citation, including the two-minute conversation with the troopers discussing their suspicions about illegal contents in the car and

---

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

ordering Larson out of the vehicle to continue to question him, were supported by reasonable suspicion to justify prolonging the stop."<sup>1</sup>

### **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.”<sup>2</sup>

### **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.<sup>3</sup>

---

## **Non-binding Case Examples**

These cases represent persuasive authority from other courts outside of North Dakota and the 8th Circuit. Though not binding, they have been selected for inclusion here because if officers in North Dakota find themselves in a similar situation, the outcome will likely be the same, at least in federal court.

### **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.<sup>4</sup>

---

<sup>1</sup> *State v. Marsolek*, 2021 ND 175 (2021)

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

<sup>3</sup> *Hiibel v. Sixth Judicial Dist. Court of Nev., Humboldt Cty.*, 542 U.S. 177 (2004)

<sup>4</sup> *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.

### North Dakota Case Examples

These cases represent binding authority from North Dakota, the 8th 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 During Traffic Stop:

In *U.S. v. Olivera-Mendez*, the Eighth Circuit Court of Appeals examined the legality of unrelated questioning during a traffic stop. The court held that brief questions about drug trafficking, unrelated to the initial purpose of the stop for speeding, did not violate the Fourth Amendment even if they extended the detention by 25 seconds. The court emphasized that “mere police questioning does not constitute a seizure,” and such questioning, without prolonging the stop, does not create an additional Fourth Amendment event.<sup>1</sup>

#### 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

---

<sup>1</sup> *U.S. v. Olivera-Mendez*, 484 F.3d 505 (8th Cir. 2007)



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.<sup>1</sup>

### **Unrelated Inquiries Cannot Measurably Extend Stop:**

"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."<sup>2</sup>

---

## **Non-binding Case Examples**

These cases represent persuasive authority from other courts outside of North Dakota and the 8th Circuit. Though not binding, they have been selected for inclusion here because if officers in North Dakota find themselves in a similar situation, the outcome will likely be the same, at least in federal court.

### **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."<sup>3</sup>

---

<sup>1</sup> Arizona v. Johnson, 555 U.S. 323 (2009)

<sup>2</sup> Arizona v. Johnson, 555 U.S. 323 (2009)

<sup>3</sup> United States v. Hunnicutt, 135 F.3d 1345 (10th Cir. Okla. 1998)

## 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.

### North Dakota Case Examples

These cases represent binding authority from North Dakota, the 8th 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 a Minor's Alcohol Possession Case:**

In *Interest of K.S.*, decided by the Supreme Court of North Dakota, revolves around a minor, K.S., charged with possession of alcohol under a constructive possession theory. The Court held that minors could only be culpable for actual, not constructive, possession of alcohol. The Court affirmed that for a minor to be culpable for possession of alcohol under NDCC 5–01–08, actual dominion or control over the alcoholic beverage must be proven, not merely constructive possession. The Court stated, "K.S.'s mere presence in a house where alcohol is accessible, without any actual control of

the alcohol, is insufficient, as a matter of law, to support a determination of minor in possession of alcohol."<sup>1</sup>

### **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.<sup>2</sup>

---

### **Non-binding Case Examples**

These cases represent persuasive authority from other courts outside of North Dakota and the 8th Circuit. Though not binding, they have been selected for inclusion here because if officers in North Dakota 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

---

<sup>1</sup> *In Interest of K.S.*, 500 N.W.2d 603 (1993)

<sup>2</sup> *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.<sup>1</sup>

### **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.<sup>2</sup>

### **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.<sup>3</sup>

### **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

---

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

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

<sup>3</sup> 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.<sup>1</sup>

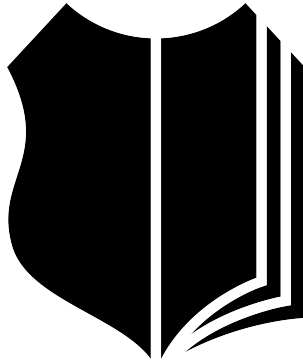
### **Passenger Was in Constructive Possession of Large Amount of Narcotics:**

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.<sup>2</sup>

---

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

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



# Index

**AIRPORT & OTHER ADMINISTRATIVE CHECKPOINTS, 327****ARRESTS**

“Contempt of Cop” Arrests, 137  
 Collective Knowledge Doctrine, 122  
 Drugs, attempt to swallow, 148  
 DUI blood tests, 151  
 DUI breath tests, 149  
 Lawful, 113  
 Line-Ups, 128  
 Meaning of “Committed in the Officer’s Presence?” 125  
 Private searches, 26  
 Protective sweeps, 131  
 Public protests, arrests at, 140  
 Search, “temporary” arrest, 146  
 Search, incident to, 142  
 Search, prior to formal arrest, 144  
 Vehicle search, incident to, 153  
 Warrant, entry with, 118  
 Warrantless entry, 121  
 When to “Un-arrest” a Suspect, 134

**ARSON INVESTIGATIONS, 325****BORDER SEARCHES, 330****BUSINESSES & SCHOOLS**

Customer business records, 265  
 Fire, health, and safety inspections, 269  
 Government workplace searches, 271  
 Heavily regulated businesses, 267  
 School searches, 272  
 SROs, security guards, and administrators, 277  
 Student drug testing, 276  
 Use of force against students, 280  
 Warrantless arrest inside business, 263

**C.R.E.W., 21****CAUSE-OF-INJURY SEARCHES, 317****CHECKPOINTS**

Airport & other administrative, 327  
 DUI, 167

**COLLECTIVE KNOWLEDGE DOCTRINE, 38, 122****CONFIDENTIAL INFORMANTS, 340****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, 74  
 Removing hands from pockets, 62  
 Third-party consent, 71  
 Transporting to Police Station, 65

**DECISION SEQUENCING, 20****DISCARDED DNA, 322****DUI**

blood tests, 151  
 breath tests, 149  
 checkpoints, 167

**FINGERNAIL SCRAPES, 324****FOURTH AMENDMENT**

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

**HOMES**

Child’s room, parental consent to search, 227  
 Co-occupants, consent to search, 225  
 Curtilage, 217  
 Detaining a home in anticipation of a warrant, 258  
 Fresh pursuit, 234  
 Hot pursuit, 234  
 Hotel rooms, 208  
 Knock and talks, 212  
 Mistaken authority to consent, 229  
 Open fields, 215  
 Overview and standing, 205

Plain view seizure, 220  
Protective sweeps, 231  
RVs, 208  
“Ruse” or lie, convincing suspect to exit, 256  
Surround and call-out, 260  
Tents, 208  
Trash searches, 223  
Warrantless arrest at doorway, 237  
Warrantless entry based on “ruse” or lie, 253  
Warrantless entry for an emergency, 240  
Warrantless entry for officer safety, 242  
Warrantless entry to investigate child abuse, 246  
Warrantless entry to investigate homicide crime, 250  
Warrantless entry to make arrest, 239  
Warrantless entry to prevent destruction of evidence, 251  
Warrantless entry to protect property, 248

## **HUNCHES, 30**

## **INVESTIGATIVE ACTIVITIES, 55**

### **INVESTIGATIVE DETENTIONS**

Anonymous tip, 91  
Detaining a suspect, 80  
During stop, 86  
Factors to consider, 77  
Field identifications, 88  
Flight, upon seeing officer, 89  
Handcuffing, 94  
Involuntary Transportation, 106  
Length of detention, 84  
Officer safety detentions, 82  
Patdown, 98, 102  
Plain Feel Doctrine, 104  
Recording of Officer, 109  
Use of force, 94  
Victims, detaining, 96  
Witnesses, detaining, 96

## **KNOCK AND ANNOUNCE, 344**

### **KNOCK AND TALKS,**

Consensual Encounters, 51  
Homes, 212

## **LAW ENFORCEMENT LIABILITY**

Attenuation, 367  
Behavior that “shocks the conscience”, 379  
Deliberate indifference, 381  
Duty to intervene, 374  
Duty to protect, 372  
Exclusionary rule, 359  
Exclusionary rule, exceptions, 361  
Fruit of the poisonous tree, 362  
Good faith exception, 365  
Inevitable or independent discovery, 369  
Non-essential personnel, bringing into the home, 386  
Qualified immunity, 387  
Section 1983 civil rights violations, 384  
Section 242 criminal charges, 385  
Social media, sharing crime scene photos on, 383  
Standing to object, 363  
Supervisor liability, 376  
Unequal enforcement of the law, 378

## **LEFT ALONE, RIGHT TO BE, 19**

## **MEDICAL PROCEDURES, 319**

### **MISCELLANEOUS SEARCHES & SEIZURES**

Airport & other administrative checkpoints, 327  
Arson investigations, 325  
Border searches, 330  
Cause-of-injury searches, 317  
Discarded DNA, 322  
Fingernail scrapes, 324  
Medical procedures, 319  
Probationer & parolee searches, 332

## **NORTH DAKOTA CONSTITUTION, 16**

### **PATDOWNS**

Based on anonymous tip, 102  
For weapons, 98

### **PERSONAL PROPERTY,**

Abandoned or Lost Property, 286  
Searching containers, 283  
Mail or Packages, 289



Single Purpose Container Doctrine, 284

## **PLAIN FEEL DOCTRINE, 104**

## **PRIVATE SEARCHES, 26**

## **PROBABLE CAUSE, 35**

## **PROBATIONER & PAROLEE SEARCHES, 332**

## **PROTECTIVE SWEEPS**

Arrests, 131

Homes, 231

## **REASONABLE SUSPICION**

Border search, 330

Community caretaking, 161

Confidential informants, 340

Consensual encounters, 47

Defined, 33

Detaining a suspect, 80

Drug testing, students, 276

Handcuffing, 94

Hands in pockets, removing, 62

Hot pursuit, 234

Hunches, 30

Identification, asking for, 59

K9, 181

Knock and talks, 51, 212

Length of detention, 84

Passengers, 172, 196, 200

Protective sweep, 131, 231

Recording of police, 109

School search, 272, 277

Stops, 163

Unrelated questioning, 198

Vehicles, 163, 165

## **REASONABLENESS, 23**

## **RIGHT 'TO BE LEFT ALONE', 19**

## **SEARCH WARRANTS**

Anticipatory search warrant, 338

Confidential informants, 340

Detaining occupants inside and in immediate vicinity, 347

Frisking occupants, 350

Handcuffing occupants, 352

Knock and announce, 344

Overview, 335

Particularity requirement, 337

Receipt, return, and inventory, 357

Sealing affidavits, 342

Serving arrest warrant at residence, 354

Wrong address liability, 356

## **SEARCH**

Arrest, incident to, 142

Border searches, 330

Cause of injury searches, 317

Child's room, parental consent to search, 227

Consent to search a vehicle, 174

Co-occupants, consent to search by, 225

Defined, 41

Government workplace searches, 271

Prior to formal arrest, 144

Private Searches, 26

Probationer & parolee searches, 332

School searches, 272

Searching vehicle incident to arrest, 185

Searching vehicle with probable cause, 188

Technology searches, 292-314

"Temporary" arrest, 146

Trash searches, 223

Vehicle search, incident to arrest, 185

## **SEIZURE (See also MISCELLANEOUS SEARCHES & SEIZURES)**

Defined, 43

## **TECHNOLOGY SEARCHES**

Aerial surveillance, 303

Automatic license plate readers, 311

Binoculars, 295

Cell phones, laptops and tablets, 300

Cell phone location records, 301

Drones, 305

Flashlights, 293

GPS devices, 313

Night vision goggles, 297

Obtaining passwords, 314

Pole cameras, 308

Sensory enhancements, 292

Thermal imaging, 298

**VEHICLES**

Checkpoints, DUI, 167  
Checkpoints, information gathering, 169  
Checkpoints, legal considerations, 171  
Community caretaking, 161  
Consent to search a vehicle, 174  
Constructive possession, 200  
Dangerous items left in vehicle, 191  
Frisking people who ride in police vehicle, 177  
General rule, 157  
Inventories, 192  
K9 sniff around vehicle, 181  
Ordering passengers to stay in, or exit vehicle, 172

Passengers, identifying, 196  
Reasonable suspicion, 163  
Scope of stop similar to an investigative detention, 159  
Searching vehicle and occupants for weapons, 179  
Searching vehicle incident to arrest, 185  
Searching vehicle with probable cause, 188  
Temporary registration, verification of, 165  
Unrelated questioning, 198

**WRONG ADDRESS LIABILITY, 356**



## 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](http://BlueToGold.com/about)

NORTH DAKOTA

# 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.



**Blue to Gold**

Visit: [Bluetogold.com](https://bluetogold.com)

Training | Legal Updates | Free Webinars