

JTIP Handout: Lesson 19 – Fourth Amendment Challenges

FOURTH AMENDMENT ANALYSIS CHEAT SHEET

Each of these questions must be considered and answered when preparing each Motion to Suppress under the Fourth Amendment.

1. *Is there any fruit? (What are we trying to suppress?)*
2. *Does your client have standing to challenge the intrusion?*
3. *What level of intrusion or seizure was there? When did it occur?*
4. *Was the seizure justified? (Will depend on the level of seizure)*
5. *Was the scope of the search justified?*
6. *Which fruits are the result of the illegality?*

Is there any fruit?	Is there suppressible evidence (physical evidence, statement, identification)
Does your client have standing?	<ol style="list-style-type: none">1. Violation of respondent's personal rights?2. Reasonable expectation of privacy?3. Did the client abandon the evidence seized?
Is there a seizure? What is the level of seizure?	Encounter/Contact <ul style="list-style-type: none">• Stop• Frisk• Arrest• Search
What is the standard for justification?	<p><u>Warrant</u></p> <ul style="list-style-type: none">• Presumptively valid <p><u>Unless:</u></p> <ul style="list-style-type: none">• Facially invalid• Lacks particularity• <i>Franks</i> issue (deliberately false)• Stale evidence <p><u>No Warrant</u></p> <ul style="list-style-type: none">• Stop = Reasonable Articulate Suspicion (RAS)• Frisk = RAS + Armed and Dangerous• Arrest = Probable Cause (PC)• Search = Warrant

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	<p><u>Unless Exception:</u></p> <ul style="list-style-type: none"> • Consent • Plain view • Auto exception • Search Incident to Valid Arrest (SIVA) (order of arrest and search does not matter as long as PC) • Exigent circumstances • Abandoned
<p>Within the scope?</p>	<p><u>Warrant:</u> Officers must not exceed the scope of the warrant in executing it. If a warrant is for illegal weapons, then officers may not search small containers wherein such weapons cannot fit.</p> <p><u>Frisk:</u> Must be limited to pat-down of outer clothing.</p> <ul style="list-style-type: none"> • <i>Terry v. Ohio</i> • <i>Minnesota v. Dickerson</i> – no manipulation <p><u>Consent</u> = Voluntary Consent</p> <ul style="list-style-type: none"> • <i>U.S. v. Matlock</i> (Third party’s consent to search, so long as that person has the actual or apparent authority to provide consent) <p><u>Search Incident to Valid Arrest (SIVA)</u> = <i>Chimel</i> (must be within the person’s grab area)</p> <ul style="list-style-type: none"> • Automobile: grab area includes the complete interior of the car, but not the trunk. • The <i>Arizona v. Gant</i> Court clarified that “<i>Belton</i> does not authorize a vehicle search incident to a recent occupant’s arrest after the arrestee has been secured and cannot access the interior of the vehicle.” <p><u>Automobile search:</u> Searching officers must have probable cause to believe that seize-able objects are concealed in the vehicle. <i>Wyoming v. Houghton</i>, 526 U.S. 295, 300-01 (1999).</p>
<p>Is the evidence the fruit of the illegality?</p>	<p>The prosecution has the burden of proving that evidence is untainted by an unconstitutional search or seizure. <i>See Harrison v. United States</i>, 392 U.S. 219, 224-26 (1968); <i>Brown v. Illinois</i>, 422 U.S. 590, 604 (1975); <i>Rawlings v. Kentucky</i>, 448 U.S. 98, 107, 110 (1980)</p> <p>Independent source? Inevitable discovery?</p>

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ANNOTATED BIBLIOGRAPHY¹

This bibliography is limited to Supreme Court case law, unless otherwise noted. Defenders must consult local case law for more specific information on how these cases have been interpreted in their particular jurisdiction. Much of Fourth Amendment litigation is fact-specific; therefore, defenders are also encouraged to search for cases both within their jurisdiction and outside of it to find scenarios that are directly on point to the defender's case.

CASES

Constitutional Standards for Stop or Arrest

Katz v. United States, 389 U.S. 347 (1967)

The U.S. Supreme Court held the government's actions of listening to and recording petitioner while using a public telephone booth was a violation of privacy and constituted a search and seizure. The protection of Fourth Amendment freedom from unreasonable searches rests on a whether a person has a constitutionally protected reasonable expectation of privacy. Defendant communicated illegal wagering information over a telephone in a public telephone booth, while the government recorded the conversation with an electronic device attached to the outside of the telephone booth. The U.S. Supreme Court held the telephone booth taping as a search and seizure that did not comply with constitutional standards.

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

The U.S. Supreme Court held that for police investigation purposes, there are times when a suspect can be forced to stop and interact with police without that stop being an arrest that requires probable cause. In order for the stop to be valid under the Fourth Amendment, an officer must have reasonable articulable suspicion that the suspect has committed or is committing a crime. The Court goes on to say that a frisk search of a suspect is also permissible short of an arrest, provided that the officer has reasonable articulable suspicion that the suspect is armed and dangerous and that the frisk is necessary for officer safety during the stop.

Dunaway v. New York, 442 U.S. 200 (1979)

The U.S. Supreme Court held the detention and custodial interrogation of petitioner constituted an arrest, triggering the traditional safeguards against illegal arrest under the Fourth Amendment. Upon a lead possibly implicating petitioner, police officers retrieved petitioner from a neighbor's house, transported him to the police station and

¹ All case summaries are provided for informational purposes only. Counsel should never rely solely on the synopsis of the facts, holdings or analyses herein because, by their nature, these are only brief and incomplete summaries and interpretations of the cases. All counsel have an obligation to read and review the cases themselves for a full understanding of the materials.

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detained him in an interrogation room, without probable cause. Police officers questioned defendant without *Miranda* warnings. The U.S. Supreme Court found the petitioner was seized for Fourth Amendment purposes, and the seizure was without probable cause, violating the Fourth Amendment.

Hayes v. Florida, 470 U.S. 811 (1985): Fingerprinting is subject to 4th Amendment analysis, and cannot be done within the context of a Terry stop. Investigative detentions at the police station for fingerprinting cannot be squared with the Fourth Amendment absence probable cause or a warrant. The ambulatory nature of taking a person from his home to the police station contributes to this circumstance being an arrest rather than an investigatory stop.

United States v. Sokolow, 490 U.S. 1 (1989): This decision explicitly rejects that “reasonable articulable suspicion” can be determined by formula.

Berkemer v. McCarty, 468 U.S. 420 (1984): Terry stops are characterized by their nonthreatening nature. A police officer with reasonable suspicion may stop and ask a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer’s suspicions. In ordinary traffic stops, the subjects are not “in custody” for purposes of *Miranda*.

United States v. Crittendon, 888 F.2d 326 (4th Cir. 1989): handcuffing someone does not convert the stop into an arrest “as long as the methods of restraint are reasonable to the circumstances”. See also *United States v. Perate*, 719 F.2d 706 (4th Cir. 1983) (having weapons drawn does not automatically convert a stop into an arrest); *United States v. Bautista*, 684 F.2d 1286 (9th Cir. 1982); *United States v. Taylor*, 857 F.2d 210 (4th Cir. 1988).

O’Connor v. Ortega, 480 U.S. 709 (1987)

Public employer intrusions on employee privacy for non-investigatory work-related purposes, and for investigations related to work-related misconduct, should be judged by the standard of reasonableness.

Reid v. Georgia, 448 U.S. 438 (1980)

An investigatory stop must be based on more than an inchoate and un-particularized suspicion.

Florida v. Royer, 460 U.S. 491 (1983)

The brief detainment of defendant to verify suspicion that he was a drug courier did not violate the Fourth Amendment; however, the movement of defendant to a small police room exceeded the limits of an investigative stop.

United States v. Sharpe, 407 U.S. 675 (1985)

A 20-minute detention of a suspect meets Fourth Amendment’s standard of reasonableness, where the police pursued a method of investigation that was likely to

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confirm or dispel suspicions quickly, during which time it was necessary to detain defendant.

United States v. Hensley, 469 U.S. 221 (1985)

Reliance on a “wanted flyer” issued with reasonable suspicion that person on the flyer committed an offense justifies a stop to check identification, to ask questions or to detain the person briefly while attempting to obtain further information.

Michigan v. Chesternut, 486 U.S. 567 (1988): The police can be said to have seized an individual only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave. The reasonable person standard ensures that Fourth Amendment protection does not vary with the state of mind of the particular individual being approached. “We conclude that the police conduct in this case ... would not have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.”

United States v. Cabellos, 654 F.2d 177 (2nd Cir. 1981): An arrest required probable cause when officers blocked in the suspect’s car and ordered him from the car with guns drawn and little reason to believe the suspect was armed.

Privacy in Objects/Abandonment

California v. Hodari D., 499 U.S. 621 (1991)

The U.S. Supreme Court held that a package of cocaine abandoned while a juvenile ran from police officers was not fruit of seizure. The juvenile did not comply with police officers’ orders to halt, but instead ran from the officers and dropped the package of cocaine. The juvenile was not seized by officers until the officers tackled him, which occurred after the abandonment of a package of cocaine. The U.S. Supreme Court held the package was abandoned prior to the seizure, thus not the fruit of a seizure. A seizure requires the person being seized to have submitted to the officer’s authority or be physically restrained.

United States v. Colbert, 474 F.2d 174 (5th Cir. 1973): Defendants voluntarily abandoned briefcases when they set them down and denied any knowledge of them upon being questioned by police. Police pursuit or the existence of a police investigation does not render abandonment involuntary. The primary focus is on the intent of the person, and all relevant factors should be considered. The question is whether the person has voluntarily discarded, left behind, or otherwise relinquished his interest in the property so that he could no longer retain a reasonable expectation of privacy with regard to it at the time of the search.

Schools

New Jersey v. T.L.O., 469 U.S. 325 (1985)

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The U.S. Supreme Court held that the Fourth Amendment’s prohibition on unreasonable searches and seizures applies to searches conducted by public school officials. Defendant, a student, was found smoking in the school bathroom but denied the act. Her denial prompted the Vice Principal to search her purse, in which he found marijuana and paraphernalia that indicated she sold marijuana. The Court found that students have a lessened privacy expectation and that a school has legitimate interests, extending beyond law enforcement, to maintain an environment in which learning can take place. Thus, the legality of the school search depends on the reasonableness under the circumstances. The U.S. Supreme Court found that while the Fourth Amendment does apply to searches and seizures conducted by public school officials, the search in this case did not violate the Fourth Amendment.

School District No. 92 of Pottawatomie County v. Earls, 536 U.S. 822 (2002)

The U.S. Supreme Court held that drug testing all students who participated in competitive extracurricular activities, without individualized suspicion, was a reasonable means of preventing and deterring drug use, and thus did not violate the Fourth Amendment. The U.S. Supreme Court held the school had an important interest in preventing and deterring drug use, and that students who participated in extracurricular activities had a lessened expectation of privacy because they voluntarily joined organizations that had rules and regulations the rest of the student body was not required to follow.

Vernonia School District 47J v. Acton, 515 U.S. 646 (1995)

The U.S. Supreme Court held the public school’s policy to drug test student athletes does not violate the Fourth Amendment. The U.S. Supreme Court held random drug testing of student athletes by urinalysis did not violate the Fourth Amendment, as the students had a lesser privacy expectation than the general population.

Lower Courts remain divided on whether students have a reasonable expectation of privacy in school lockers:

- Lower court decisions concluding students have a reasonable expectation of privacy in their lockers: *Commonwealth v. Snyder*, 597 N.E.2d 1363, 1366 (Mass. 1992); *In Interest of Isaiah B.*, 500 N.W.2d 637, 641 (Wis. 1993); *State v. Jones*, 666 N.W.2d 142, 147-48 (Iowa 2003).
- Lower court decision concluding students have a reduced expectation of privacy in their locker: *Commonwealth v. Cass*, 709 A.2d 350, 356-57 (Pa. 1998).

Safford Unified School Dist. No. 1 v. Redding, 129 S.Ct. 2633 (2009). After a search of a female youth’s backpack for drugs turned up nothing, a female teacher took her to the bathroom to search her clothes, requiring her to strip to her undergarments, again finding nothing. The teacher then asked her to shake out her undergarments, pulling them away from her body. No pills were ever found. The girl’s parents sued. The

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Supreme Court found that the “strip search” here is categorically different from other searches, and that the scope of the search was unreasonable.

Privacy in Places

United States v. Dunn, 480 U.S. 294 (1987)

The U.S. Supreme Court provided a four-prong analysis for weighing the extent of curtilage surrounding a home: 1) the proximity of the home to the area; 2) whether the area is within an enclosure surrounding the home; 3) the nature and uses to which the area is put; and 4) the steps taken by the resident to protect the area from observation by a passerby. The defendant was convicted of offenses related to the manufacturing of controlled substances. The conviction relied upon evidence gathered when officers crossed a perimeter fence and interior fences, stopped by a locked gate, shined a flashlight inside and observed a drug laboratory. The U.S. Supreme Court held the area near the barn was not within the curtilage of the house for Fourth Amendment purposes.

Kyllo v. United States, 533 U.S. 27 (2001)

The U.S. Supreme Court held the Government’s use of a device, not generally used by the public, to explore a private home’s details that would have been unknowable without physical intrusion, constitutes a search. The use of this type of device is presumptively unreasonable without a warrant. The U.S. Government suspected petitioner grew marijuana in his home and used a thermal-imaging device to scan and find heat emanating at a greater rate from the roof and side wall in comparison to the rest of the house. Based on the heat emanation, government agents obtained a warrant, searched the house and found marijuana growing. The U.S. Supreme Court held the imaging was an unlawful search.

Minnesota v. Carter, 525 U.S. 83 (1998)

Defendants who were in another person's apartment for only a short time had no legitimate expectation of privacy in the apartment, under the facts of that case.

Stoner v. California, 376 U.S. 483 (1964)

Defendant who was a guest in a hotel room is entitled to constitutional protection against unreasonable searches and seizures, and a hotel employee cannot consent to the search of a hotel room.

United States v. Karo, 468 U.S. 705 (1984)

A person has a reasonable expectation of privacy in one’s storage locker.

Oliver v. United States, 466 U.S. 170 (1984)

Fourth Amendment protections accorded to persons, houses, papers and effects do not extend to open fields.

Lo-Ji Sales, Inc. v. New York, 442 U.S. 319 (1979)

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The search of a retail store and the seizure within a retail store mandates compliance with the Fourth Amendment, as the invitation to the public to enter the store does not negate Fourth Amendment protections.

Warrants

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

The U.S. Supreme Court held evidence obtained by reasonable reliance on a search authorized by a warrant issued by a magistrate that is ultimately found invalid should not be excluded. If the officers have no reasonable ground for believing the warrant was properly issued, then suppression of the evidence is appropriate. Police received a tip defendant was involved in drug-dealing, began surveillance of the defendant's home and had a magistrate write a warrant. The police conducted a search, but the warrant was later found invalid due to lack of probable cause. The U.S. Supreme Court held the officers had a reasonable reliance on the search warrant issued by a detached, neutral magistrate, and this reliance met an objective standard of reasonableness.

United States v. Jeffers, 342 U.S. 48 (1951)

Court excluded evidence of contraband narcotics seized on the premises of a person other than the defendant during a search without a warrant.

Marshall v. Barlow's, Inc., 436 US 307 (1978)

Federal legislation empowering employer agents to search work area for safety hazards and violations is unconstitutional, as it authorizes inspections without warrant or the equivalent of a warrant.

Michigan v. Summers, 452 U.S. 692 (1981)

Police have a limited authority to detain occupants on premises while searching for contraband with a warrant based on probable cause.

Franks v. Delaware, 438 U.S. 154 (1978)

There is a presumption of validity for affidavits supporting search warrants, and there is a requirement for the presence and proof of deliberate falsehood or reckless disregard for the truth to negate probable cause.

United States v. Matlock, 415 US 164 (1974)

Evidence is admissible from a search conducted without a warrant but with voluntary consent from a third-party who has common authority over, or other sufficient relationship to, the premises or effects sought to be inspected.

Georgia v. Randolph, 547 U.S. 103 (2006)

A co-tenant cannot provide consent to permit police officials to enter without a warrant when another co-tenant is physically present and provides a clear, expressed opposition

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to the entry)

Arizona v. Hicks, 480 U.S. 321 (1987)

Police must have probable cause to seize items in plain view.

Cupp v. Murphy, 412 US 291 (1973)

Very limited searches done to preserve highly evanescent evidence conducted with probable cause do not violate the Fourth Amendment.

Stop and Frisk

Minnesota v. Dickerson, 508 U.S. 366 (1993)

The search of the defendant's jacket exceeded the scope of a frisk permitted by *Terry*, when the police went into the defendant's pocket to retrieve a small bag that ultimately turned out to contain cocaine; officers are restricted to an open-handed pat of the outer clothing and may only exceed that pat if the touch reveals "immediately apparent" contraband.

Ybarra v. Illinois, 444 U.S. 85 (1979): During the course of executing a search warrant on a tavern, police frisked all patrons of the tavern. They felt a cigarette pack "with objects in it" in one patron's pocket, left him to search others, then returned to seize the cigarette pack, which contained heroin. The Court found that the mere presence of a person in proximity to others who are suspected of criminal activity, without more, is insufficient to find probable cause to search or reasonable articulable suspicion that the Defendant was armed and dangerous. His presence at the suspicious tavern with the suspicious tavern keeper was not sufficient.

Searches

Sibron v. New York, 392 U.S. 40 (1968)

The U.S. Supreme Court held a search conducted prior to police establishing probable cause is unlawful, even if the search turns up evidence that would lead to a valid arrest. Police observed petitioner talking with known narcotic addicts over the course of eight hours before they approached petitioner and put a hand into petitioner's jacket pocket and retrieved a tinfoil envelope, which turned out to contain heroin. The U.S. Supreme Court found the police officer lacked probable cause to arrest petitioner prior to the search, and thus the retrieval of the heroin was invalid because it did not occur incident to a lawful arrest.

Washington v. Chrisman, 455 U.S. 1 (1982)

A police officer has the authority to monitor the movements of a person lawfully arrested after the arrest, and the Fourth Amendment does not prohibit the seizure of evidence discovered in plain view during the course of the police monitoring the movements of the person lawfully arrested.

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Illinois v. Lafayette, 462 U.S. 640 (1983)

It is reasonable under the Fourth Amendment for police to search the personal belongings of a person under lawful arrest as part of the routine administrative procedure at a police station incident to booking and jailing the suspect.

Maryland v. King, ___ U.S. ____ (2013)

When officers make an arrest supported by probable cause to hold for a serious offense and bring the suspect to the station to be detained in custody, taking and analyzing a cheek swab of the arrestee's DNA is, like fingerprinting and photographing, a legitimate police booking procedure that is reasonable under the Fourth Amendment.

Rawlings v. Kentucky, 448 U.S. 98

A search *prior* to arrest may still be a lawful search incident to arrest if police had probable cause to arrest on other grounds prior to the search, but simply hadn't.

Chimel v. California, 395 U.S. 752, 763 (1969)

"There is ample justification, therefore, for a search of the arrestee's person and the area 'within his immediate control' – construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence."

United States v. Lefkowitz, 285 U.S. 452 (1932)

Discusses the reasonableness of searching desks, cabinet and baskets in a place of business and the seizures of items incident to the arrest.

Riley v. California, 134 S. Ct. 2473 (2014)

This United States Supreme Court case held that police must obtain a warrant to search a cell phone's data, absent exigent circumstances. In previous cases, the Supreme Court has held that an officer may conduct a search incident to arrest of any personal property in a suspect's immediate control in which there may be a weapon or object that can pose a threat to the officer or if there is any potential that a suspect will destroy evidence. Courts determine the validity of these searches by balancing the state's interest in officer safety and evidence preservation against the individual's privacy interest. In the instant case, officers conducting two different arrests searched individuals' cell phones claiming justification under this Fourth Amendment exception. The Court supports their ruling citing the minimal danger data contained in cell phones can pose, the large amount of extremely private information that is generally on modern cell phones, and the minimal risk of destruction of evidence. It further explains the historical justifications for the search incident to arrest doctrine, and how those justifications cannot apply to modern cell phones. The Court noted that any serious public safety concerns can be addressed through the exigent circumstances exception to the warrant requirement.

Fruit of the Poisonous Tree

Silverthorne Lumber Co. v. United States, 251 U.S. 385 (1920)

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Police illegally obtained books, papers, and documents. They ultimately returned the illegally obtained materials, but not before making copies and taking photographs, prepared a new indictment based on the information, and then served the Defendants with a subpoena to produce the originals. The court found that the government could not use the knowledge obtained by the illegal search to further the prosecution.

Wong Sun v. United States, 371 U.S. 471 (1963)

The U.S. Supreme Court held verbal statements made during the course of an unlawful search should be inadmissible under the “fruits of the poisonous tree” doctrine. Police officers investigated the sale of narcotics by unlawfully entering the laundry facility the defendant operated. The unlawful entry resulted in verbal statements and found narcotics introduced as evidence during the trial. The U.S. Supreme Court held the verbal statements and the narcotics derived from the unlawful search, and thus were inadmissible.

Segura v. United States, 468 U.S. 796 (1984)

The Court accepts the independent source doctrine. Police entered a premises illegally in the process of securing it against destruction of evidence following the arrest of Defendants, and observed contraband. They requested a search warrant the next day without mentioning the illegal entry. The Supreme Court held that excluding the evidence was not warranted when probable cause to search had an independent source.

Murray v. United States, 487 U.S. 533 (1988)

Finding that excluding evidence obtained during execution of a search warrant obtained without informing the court that the police had previously illegally entered the facility prior to obtaining probable cause would put the prosecution in a worse position than it would have been if no violation had occurred when the illegally gathered information had a later-identified independent source. The court emphasized that the police did not include illegally obtained information on their application for a search warrant.

Nix v. Williams, 467 U.S. 431 (1984)

During transportation of a murder suspect, police officers illegally questioned the suspect about the location of the body. The suspect led the transporting officers to the body. If the prosecution can show by a preponderance of the evidence that the illegally obtained information ultimately or inevitably would have been discovered by lawful means, then it is not to be suppressed. The Court announced that it was accepting the inevitable discovery doctrine as a limitation upon the fruit of the poisonous tree doctrine on the basis that while prosecution should not be put in a better position because of illegal conduct by police, neither should it be put in a worse position than it would be otherwise. The court likened the inevitable discovery doctrine to the independent source rule, saying that the two are different but have similar rationale.

Utah v. Strieff, 136 S.Ct. 2056 (2016). Where the police made an unconstitutional investigatory stop and learned that the suspect was subject of a valid arrest warrant, the evidence seized in the search incident to arrest was admissible against him in

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subsequent proceedings. Fruit of the poisonous tree doctrine applies only where its deterrence benefits outweigh the social costs. Where there is an independent basis of detention, unknown at the time of the original detention but later discovered, the taint is sufficiently attenuated to cleanse the search.

United States v. Crews, 445 U.S. 463 (1980)

The U.S. Supreme Court held pre-trial identifications and verbal statements are subject to Fourth Amendment exclusion when applying the “fruit of the poisonous tree” doctrine. Police conducted an unlawful arrest of the defendant, during which the police took photos of the defendant. Police used the photos of the defendant to obtain a pre-trial identification of the defendant by the victims. The U.S. Supreme Court held the pre-trial identification derived from the unlawful arrest, and thus was inadmissible.

Other Notable Fourth Amendment Cases

Amos v. United States, 255 U.S. 315 (1921)

Evidence collected by the police without a warrant violated Fourth and Fifth Amendment rights, and defendant’s petition to exclude the evidence made after the jury was sworn but before any evidence was offered was not too late and should have been granted.

Exigent Circumstances

Wilson v. Arkansas, 514 U.S. 927 (1995)

The Fourth Amendment reasonableness inquiry includes whether or not officers knock and announce their presence and authority before entering.

Hudson v. Michigan, 547 U.S. 586 (2006)

Police officers do not need to knock and announce their presence when circumstances present a threat of physical violence, if there is reason to believe advanced notice will result in destroyed evidence, or if knocking and announcing would be futile.

Search Incident to Valid Arrest

United States v. Robinson, 414 U.S. 897 (1973)

A search incident to a valid arrest can extend beyond a frisk to a full search, if there is a reasonable belief the person possesses further evidence of a crime other than the crime for which the initial arrest was made.

Utah v. Strieff, 136 S.Ct. 2056 (2016). Where the police made an unconstitutional investigatory stop and learned that the suspect was subject of a valid arrest warrant, the evidence seized in the search incident to arrest was admissible against him in subsequent proceedings. Fruit of the poisonous tree doctrine applies only where its deterrence benefits outweigh the social costs.

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Valid Consent

Schneekloth v. Bustamonte, 412 U.S. 218 (1973): The voluntariness of a consent to search is determined by totality of the circumstances. The person's subjective knowledge of the right to refuse consent is not the sine qua non of an effective consent, though it can be one factor to consider. The consent must not be coerced by explicit or implicit means, by implied threat or covert force.

Florida v. Jimeno, 500 U.S. 248 (1991). The consent to search a container in the Defendants' car came with an implicit consent to search a bag found within the container. The officer had informed the Defendants that he suspected they were in possession of drugs and that he would be searching for narcotics. The standard for measuring the scope of a suspect's consent to search is reasonableness – what would a reasonable person have understood by the exchange between the officer and the suspect.

Plain View

Horton v. California, 496 U.S. 128 (1990): An object that comes into view during a search incident to arrest that is appropriately limited in scope under existing law may be seized without warrant. If the officer lawfully came to the place from which the evidence could be plainly viewed, its incriminating character is immediately apparent, and he or she has a lawful right of access to the object itself, seizure does not violate the Fourth amendment.

Automobiles

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

The U.S. Supreme Court held the police officer had probable cause to believe the passenger in the car committed the crime, and thus had the authority to conduct a warrantless search. Court based its determination of probable cause on an examination of the events leading up to the arrest and whether those facts, “viewed from the standpoint of an objectively reasonable police officer,” were sufficient to justify the arrest.

Florida v. Harris, 568 U.S. ___ (2013)

A positive dog sniff of an automobile presumptively provides probable cause to search the car provided that the dog has been certified by a “bona fide organization” or if the dog has recently completed a training program successfully. This is true even if the subsequent search turns out to be based on a false positive result from the dog (i.e., the drug the dog is trained or certified to detect is not in the car, but the search uncovers other contraband). A defendant can still challenge any evidence of the dog's reliability as it applies to the totality of the circumstances in determining whether the officer had probable cause to search.

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

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a *passenger* in an automobile that is stopped by police was seized and entitled to challenge the stop.

Rakas v. Illinois, 439 U.S. 128 (1978)

Passengers who do not have a possessory or property interest in the automobile are not entitled to challenge searches of glove compartments or the area under a seat, because the passengers do not have a legitimate expectation of privacy in those areas.

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

Evidence found in plain sight in a car under police custody while police officers take actions to protect the car is not the result of an illegal search.

Almeida-Sanchez v. United States, 413 U.S. 266 (1973)

The United States Border Patrol's search of a car without a warrant, without probable cause or consent, 20 miles north of the Mexican border, was not justified on the basis of any special rules applicable to automobile searches and was not a border search, thus violating Fourth Amendment rights.

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

Police with probable cause may search a passenger's belongings found in a car that have the capability to hide the object of the search, and the Court must evaluate the search or seizure first under common law and then by balancing the individual's privacy interests against the government's legitimate interests.

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

A highway sobriety checkpoint operated pursuant to guidelines and at which uniformed officers stop every vehicle briefly to examine for signs of intoxication does not violate the Fourth Amendment.

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

Police may search the passenger compartment of a vehicle incident to the arrest of a recent occupant *only* if it is reasonable that the vehicle might contain evidence related to the arrest or that the arrested occupant might access the vehicle at the time of the search and not after the arrested occupant no longer has access to the vehicle. **This case clarified years of misinterpretation of *New York v. Belton*, 453 U.S. 454, 460-61 (1981). Anytime a prosecutor or a judge cites *Belton*, the attorney should be aware of how *Gant* requires *Belton* to be interpreted.**

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

Evidence discovered during a legitimate inventory search of an arrestee's automobile is admissible, unless a bad faith inventory search, *i.e.*, the sole purpose for conducting the inventory being to investigate the case; then the search violates the Fourth Amendment.

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

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The safety of police and others justifies a protective search when police have reasonable belief that the suspect poses a danger, and expanding *Terry* to find reasonable the protective search of the passenger compartment of a vehicle as to ensure the suspect has no weapons within reach.

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

Police officers can order the driver out of the motor vehicle when lawfully stopping a driver, as exiting the vehicle is a *de minimus* additional intrusion to the already-stopped vehicle.

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

The search of a vehicle without a warrant does not violate the Fourth Amendment if there is probable cause to believe there is contraband in the vehicle, and the search is with the scope of what a magistrate could authorize by warrant)

Rios v. United States, 364 U.S. 253 (1960)

A passenger who drops a package to the floor of the taxicab in which he is riding is not abandoning the package.

United States v. Jacobsen, 466 U.S. 109 (1984)

Federal government agents' assertion of dominion and control over a package and its contents retrieved from a private freight carrier did constitute a seizure for Fourth Amendment purposes.

United States v. Newman, 490 F.2d 993 (10th Cir. 1974): Where a traffic stop was legal, but where there was no proof that the defendants were harboring illegal aliens, he had no probable cause to look in the containers in the back of the truck for illegal aliens and this constituted a search. Because the search was illegal, marijuana discovered there was fruit of the poisonous tree. The fact that the defendants fled from the stop after the illegal search had begun did not make the remainder of the search valid.

ADDITIONAL READINGS

Marsha L. Levick and Elizabeth-Ann Tierney, *The United States Supreme Court Adopts a Reasonable Juvenile Standard in J.D.B. v. North Carolina for Purposes of the Miranda Custody Analysis: Can a More Reasoned Justice System for Juvenile Be Far Behind?*, 47 Harv. C.R.-C.L.L. Rev. 501 (2012)

- With due respect to the authors below, this is probably the single most important thing for juvenile defenders to read. The authors examine *J.D.B.* and explore how its limited holding can be argued in other contexts, such as in duress defenses, justification, provocation, negligence standards, and others. The authors do not discuss the Fourth Amendment context explicitly, but the article provides the

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framework for examining how to use the reasonable child standard in contexts outside the strict confines of *J.D.B.*.

Sarah Jane Forman, *Countering Criminalization: Toward a Youth Development Approach to School Searches*, 14 SCHOLAR 301 (2010)

- Forman argues that search and seizure practices in America’s high schools are developmentally inappropriate. She discusses the U.S. Supreme Court’s endorsement of adolescent brain development and its implications for school search jurisprudence. She concludes with recommendations for a developmentally appropriate balance between safety and privacy in the context of school searches.

Lourdes M. Rosado, *Minors and the Fourth Amendment: How Juvenile Status Should Invoke Different Standards for Searches and Seizures on the Street*, 71 N.Y.U. L. REV. 762 (1996).

- Rosado argues that an understanding of youths’ cognitive, emotional, social and moral development can inform courts’ analyses of whether a minor has voluntarily consented to a search or has been seized by law enforcement officials.
- She concludes that “[c]ourts should generally recognize a lower threshold for what constitutes a seizure of a juvenile as compared to an adult, [and that] Courts should [...] conduct case-by-case evaluations of both the circumstances of the stop and the maturity of the juvenile defendant.”

Emily Buss, *Constitutional Fidelity Through Children’s Rights*, 2004 SUP. CT. REV. 355 (2004).

- Specifically regarding the Fourth Amendment, Buss argues: “A developmentally focused analysis of the Fourth Amendment would ask not whether a search is expected to give offense to a student’s privacy sensibilities, but, rather, what message the search conveys about the nature and extent of a student’s privacy interests against the state. While this question does not lend itself to easy answers, it more coherently captures the stakes of school searches for children than a test that assumes children’s privacy sensibilities are (or ought to be) relatively fixed.”

Kristin N. Henning, *When Parental Authority Goes Too Far: The Fourth Amendment Rights of Minors in the Parents’ Home*, 53 WM. & MARY L. REV. 55 (2011)

- Henning argues that parental authority too often prevails over children’s rights, even when context and demonstrated capacity would support affirmation of those rights. She urges the use of third-party consent as a framework from which to analyze the Fourth Amendment rights of minors in conflict with their parents and

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State searches within the minors' bedrooms and other intimate spaces of the family home.

J.D.B. v. North Carolina, 564 U.S. 261 (2011): A vital case on the impact of adolescent development on juvenile justice jurisprudence. By its terms, it requires the police and courts to consider the youth's known or apparent age in determining whether the person is in custody for purposes of Miranda, meaning that the "reasonable person" standard of Miranda becomes a "reasonable child" standard. This has implications in a great number of areas and circumstances.

State Material

Georgia

Ga. Const. Art. I, § I, ¶ XIII: The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue except upon probable cause supported by oath or affirmation particularly describing the place or places to be searched and the persons or things to be seized. (mirrors US constitution almost exactly)

Ga. Code Ann. § 17-5-30: statute outlining procedure for filing motion to suppress evidence obtained in an unlawful search/seizure

Ga. Code Ann. § 17-5-28: statute authorizing detention and search of persons during the execution of a search warrant

Ga. Code Ann. § 17-5-1: statute authorizing search of a person and the area within the person's immediate presence incident to lawful arrest

Ga. Code Ann. § 17-5-21: statute specifying grounds for lawful search warrant

Ga. Code Ann. § 17-5-27: statute authorizing use of force in executing a search warrant

Ga. Code Ann. § 17-5-100: statute outlining circumstances under which an officer may verify a person's immigration status

Ga. Code Ann. § 20-8-5: statute delineating law enforcement powers of school police, including the power to make arrests

Ga. DOE Policy SS-6001: State school policy for conducting searches and seizures of students and their property

Ga. DOE Policy SS-6020: State school policy outlining the student code of conduct, including search and seizure of students and their property

In re S.B., 207 Ga. App. 60 (1993): approaching a person and requesting consent to search is not a seizure; officers may generally ask questions and request consent to search so long as they don't convey a message that compliance with the request is required.

State v. Young, 234 Ga. 488 (1975): defined three groups of people who make searches related to the Fourth Amendment – 1) private persons; 2) governmental agents whose conduct is state action invoking the Fourth Amendment; and 3) governmental law enforcement agents for whose violations of the Fourth Amendment the exclusionary rule will be applied. School officials fall into the second category as "state officers whose

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action is state action bringing the Fourth Amendment into play; but they are not state law enforcement officials, with respect to whom the exclusionary rule is applied.” (Ohio Court of Appeals gives strong critique of this case in *State v. Polk*, 57 N.E.3d 318 (2016)) *State v. K.L.M.*, 278 Ga. App. 219 (2006): When a law enforcement officer participates in a school search, probable cause to search is required.

In re T.A.G., 292 Ga. App. 48 (2008): affirmed the juvenile court’s finding that a school official was acting as an agent of the police when questioning a child in custody when a law enforcement officer was involved in the interview

Ortiz v. State, 306 Ga. App. 598 (2010): resource officer's mere presence during school administrator's search of student did not amount to police participation implicating the exclusionary rule. (distinguishes *In re T.A.G.*)

Lenz v. Wilburn, 51 F.3d 1540 (11th Cir. 1995): minors may give third-party consent to entry of another’s property so long as the circumstances surrounding the consent must demonstrate that it was voluntarily given, free of duress or coercion

In re J.T., 297 Ga. App. 636 (2009): police officers had reasonable suspicion of criminal activity to warrant investigative stop of juvenile.

In re J.T., 239 Ga. App. 756 (1999): child’s mere presence in a known drug area provided no reasonable suspicion for police officer's attempted detention of him.

In re J.B., 314 Ga. App. 678 (2012): officers' stop of juvenile was a second-tier, investigative detention that required officers to have particularized and objective basis for suspecting that juvenile was or was about to be involved in criminal activity; officers, who first encountered juvenile while waiting for him near exit of path from vacant lot to street, stopped him and directed him to return to vacant lot, and no reasonable person in juvenile's position would have felt free to decline officers' request or otherwise terminate encounter.

In re T.J.B., 237 Ga. App. 824 (1999): Child bicyclist's deliberate attempts to avoid contact with law enforcement officers by evasively maneuvering in an area known for illegal drug transactions did not provide a particularized and objective basis for suspecting criminal activity sufficient to justify an investigatory stop.

Boyd v. State, 315 Ga. App. 256 (2012): applied *J.D.B.* and held that State failed to show that incriminating custodial statement by 15–year–old defendant was made voluntarily after a knowing and intelligent waiver of right against self-incrimination where the child made only minimal head gestures when asked whether he understood his rights, the interviewing officer did not reveal that defendant might be charged with serious felony offenses before entreating him to “straighten out what in the hell happened this evening,” and the child was interrogated without aid of an attorney or a parent.

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Jackson v. State, 334 Ga. App. 469 (2015): applied *J.D.B.* and held that a 17-year-old's *Mirandized* statements to police were freely and voluntarily where the defendant was accompanied to the police station by his aunt, his step-father joined him there, he was separated from them by a partition instead of being taken to a separate room, the agent who conducted the interrogations utilized a waiver form to advise defendant of his Miranda rights prior to interviewing him, and the defendant acknowledged that he understood his rights at the time of the interrogation and that he was waiving them.

State v. Cartwright, 329 Ga. App. 154 (2014): officer may conduct brief investigatory stop of car if RAS of criminal conduct even if officer may have been mistaken as to fact or law regarding whether an offense may have been committed so long as the officer was acting in good faith

Montoya v. State, 232 Ga. App. 24 (1998): even if officer has improper motivation to stop a car, this does not render the stop unconstitutional; rather, the validity of stop doesn't depend on officer's actual state of mind but on an "objective assessment of his actions in light of all the facts and circumstances confronting him at that time."

Solano-Rodriquez v. State, 295 Ga. App. 896 (2009): proper test for whether a seizure on a bus is whether passenger feels free to decline to answer an officer's questions rather than free to leave bus

Barber v. State, 317 Ga. App. 600 (2012): unprovoked flight, coupled with other suspicious factors, may give rise to reasonable suspicion sufficient to justify third tier stop; additionally, officer's seizure of bag of cocaine that defendant had discarded during foot chase did not implicate Fourth Amendment.

State v. Pennyman, 248 Ga. App. 446 (2001): reasonable suspicion may exist based on collective knowledge of police when there is reliable comm'n between the officer supplying the info and the officer acting on that info (e.g., a BOLO dispatch provides basis for RAS)

State v. Allen, 298 Ga. 1 (2015): dog-sniff conducted while officer was awaiting return of computer records check was not improper

Louisiana

La. Const. art. 1 § 5: "Any person adversely affected by a search or seizure conducted in violation of this Section shall have standing to raise its illegality in the appropriate court." This has been interpreted to allow a Defendant to raise the privacy concerns of a third party.

State v. Coleman, 188 So. 3d 174 (La. 2016): In this capital case, the Louisiana Supreme Court describes the basic rules of search and seizure, including the voluntariness of

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consent. The State has the burden of proof of the voluntariness of consent if it is properly challenged in a motion to suppress.

State v. Cooper, 830 So. 2d 440 (La. 2nd Cir. 2002): This is a primer on the gradations of searches and seizures and the standards required for each. Reasonable articulable suspicion does not mean that it is more likely than not that the subject was involved in criminal activity, or that the subject was armed. Intruding into the subject's pocket, however, was more than a frisk. It was a search not justified by the facts when the initial frisk did not reveal signs of a weapon. There is a great footnote on the meaning of the "high crime area" factor.

State v. Barnes, 203 So. 3d 1090 (La. 1st Cir. 2016): "The mere presence of two men walking on a street at night in a high-crime area, with nothing more is, of itself, insufficient to justify an investigatory stop. However, a location's characteristics and an individual's nervous, evasive behavior are articulable facts upon which a police officer may legitimately rely in determining whether the circumstances are sufficiently suspicious to warrant further investigation and are, therefore, relevant in the determination of reasonable suspicion. Moreover, drugs and guns and violence often go together, which might be a factor tending to support an officer's claim of reasonableness. Determining whether "reasonable, articulable suspicion" existed requires weighing all of the circumstances known to the police at the time the stop was made." *Internal citations omitted.*

La. R.S. 17:416.3: statute authorizing searches of desks, lockers, personal effects, etc. at schools.

La. Ch. C. art. 865: requires motions be in writing and filed within 15 days after the child has appeared to answer the petition.

La. C. Cr. P. art. 703: "[T]he state shall have the burden of proving the admissibility of a purported confession or statement by the defendant or of any evidence seized without a warrant."

North Carolina

N.C. Gen. Stat. § 7B-2408.5, Procedure for Motion to Suppress.

In the matter of V.C.R., 2013 N.C. App. LEXIS 484

Rule(s): *A search incident to arrest must accompany an actual arrest (i.e., supported by probable cause), and not a non-arrest seizure.*

In the Matter of T.A.S., 2011 N.C. App. LEXIS 1472

Rule(s):

- (1) *"Where the blanket search of [an] entire school lacked any individualized suspicion as to which students were responsible for [an] alleged infraction or*

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any particularized reason to believe the contraband sought present[s] an imminent threat to school safety, the search of [a juvenile's] bra [is] constitutionally unreasonable."

- (2) *A bra lift is a "quantum leap from outer clothes and backpacks." P.15 (citations/quotation marks omitted).*
- (3) *"[A]ny differences in the level of exposure from one strip search to another are not of kind, but degree." P.15. A bra lift is thus of the same nature as any strip search.*

In the matter of D.B., 2011 N.C. App. LEXIS 1745

Rule(s):

- (1) *"[A]n indictment for larceny must allege the owner or person in lawful possession of the stolen property. If the entity named in the indictment is not a person, it must be alleged that the victim was a legal entity capable of owning property." P.6 (citations omitted).*
- (2) *Searching a person for identification exceeds the scope of a Terry frisk, which may be used only to determine whether someone is armed.*
- (3) *Where the sole evidence of possession of stolen property is the result of an unlawful search or seizure, denying the juvenile's motion to dismiss is reversible error.*

In the matter of J.M., 2011 N.C. App. LEXIS 2064 (unpublished opinion)

Rule(s):

- (1) *Because interrupting the discharge of an official duty is an element of delaying or obstructing an officer (as prohibited by N.C.G.S. § 14-223), a petition for such "must . . . indicate the official duty being discharged . . . [T]he particular duty that the officer is performing while being resisted is of paramount importance and is very material to the preparation of the defendant's defense." P.6–7 (citations omitted).*
- (2) *Where an officer conducts a search incident to arrest and the arrest is unlawful, the search is also unlawful. Evidence from such a search is excluded.*

In the matter of D.L.D., 2010 N.C. App. LEXIS 683

Rule(s):

- (1) *"[R]he legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search." P.5 (citations omitted). This includes searches conducted by law enforcement officers.*
- (2) *Reasonableness is determined under a twofold inquiry: "[W]hether the . . . action was justified at its inception [and] whether the search as actually conducted was reasonably related in scope to the circumstances which justified the interference"*
- (3) *Where there is reasonable suspicion that the search would yield evidence of possession of controlled substances on school property, the search is justified at its inception. Reasonable suspicion that the search would yield evidence of possession of controlled substances on controlled property.*

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- (4) *The search is “permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.” Id. (citations omitted).*
- (5) *An officer’s pat-down upon detection of a strong odor of marijuana is not excessively intrusive and satisfies the second prong of the reasonableness standard (depending on the student’s age and gender).*

In the matter of S.M.D., 2010 N.C. App. LEXIS 2091 (**unpublished opinion**)

Rule(s):

- (1) *Under N.C.G.S. § 7B-1900 and § 7B-1501(27)(a) (2009), a juvenile may be taken into temporary custody if there are reasonable grounds to believe that the juvenile is between 6 and 16 years old and has run away from home for a period of more than 24 hours.*
- (2) *Where an officer sees a juvenile in the same location twice in two days and the area is known for drug-dealing and prostitution, this does not satisfy Terry standards, but satisfies the undisciplined-juvenile analysis. This gives rise to lawful detainment and bars the juvenile from forceful resistance.*

In the matter of M.B.M., 2007 N.C. App. LEXIS 2348 (**unpublished opinion**)

Rule(s): *Knowledge that a juvenile is in a gang, regularly carries a weapon, and has a record of assaultive behavior, the officer has a reasonable and articulable suspicion sufficient to justify a pat-down.*

In the matter of I.R.T., 184 N.C. App. 579, 647 S.E.2d 129 (2007), 2007 N.C. App. LEXIS 1624

Rule(s):

- (1) *“The question of defendant’s capacity is within the trial judge’s discretion and his determination thereof, if supported by the evidence, is conclusive on appeal.” P.4.*
- (2) *The age of a juvenile is a relevant factor in determining whether a reasonable person would feel free to leave upon being stopped by law enforcement.*
- (3) *A juvenile’s conduct and other circumstances may suffice to establish reasonable suspicion.*
- (4) *In considering a motion to dismiss for insufficient evidence, the trial court is to “determine whether, in the light most favorable to the State, there was substantial evidence supporting each element of the charged offense. ‘Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.’” P.13 (citations omitted).*

In the matter of J.L.B.M., 176 N.C. App. 613, 627 S.E.2d 239, 2006 N.C. App. LEXIS 590

Rule(s): *When there is a report of a suspicious person of a particular race and gender (without report of criminal activity) and an officer detains a juvenile who is wearing baggy clothing and walks away from the officer’s patrol car, the officer “ha[s] only a*

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generalized suspicion of criminal behavior,” P.1, rather than a reasonable and articulable suspicion.

In the matters of J.F.M. and T.J.B., 168 N.C. App. 143, 607 S.E.2d 304 (2005), 2005 N.C. App. LEXIS 166, review denied by, motion granted by In re J.F.M., 359 N.C. 411, 612 S.E.2d 320 (2005), 2005 N.C. App. LEXIS 424

Rule(s):

- (1) *The New Jersey v. T.L.O. reasonableness standard applies to searches conducted by officers working “in conjunction with school officials,” P.6, (citations/quotation marks omitted) and to detainment of students (i.e., not just searches).*
- (2) *Whether an officer is working “in conjunction with school officials” may be informed by how the officer learned about related incidents, whether the encounter took place on school property, whether the officer was on duty, how close in time the encounter was to the school day, and whether the officer intended to take the juvenile to see a school official.*
- (3) *Specifically, the standard allows an officer “to detain a student outside the presence of an administrator for the purpose of presenting them to an administrator. P.8.*
- (4) *Where a school official informs an officer that a juvenile was involved with an affray being investigated and the juvenile ignores the officer’s instructions to stop, the detainment will probably be lawful in its inception.*
- (5) *Where there is a “danger of allowing the matter to carry over into another school day,” P.12, a male officer grabbing a 13-year-old girl’s arm may be reasonable in scope.*

In the matter of S.W., 614 S.E.2d 424, 171 N.C. App. 335, 614 S.E.2d 424, 2005 N.C. App. LEXIS 1261

Rule(s): *An officer is working “in conjunction with school officials” she is assigned to a school permanently and full-time, assists school officials with disciplinary matters, teaches subjects related to law enforcement, and acting in her official capacity when she stops a juvenile.*

In the matter of D.D., 146 N.C. App. 309, 554 S.E.2d 346 (2001), 2001 N.C. App. LEXIS 942

Rule(s): *Where officers act “in conjunction with school officials,” P.13 (citations/quotation marks omitted), the New Jersey v. T.L.O. reasonableness standard applies even when the juvenile is not a student at the school at which she is searched.*

In the matter of P.J.M., 136 N.C. App. 648, 525 S.E.2d 496 (2000), 2000 N.C. App. LEXIS 113

Rule(s):

- (1) *Reasonableness is determined under a twofold inquiry: “[W]hether the . . . action was justified at its inception [and] whether the search as actually*

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conducted was reasonably related in scope to the circumstances which justified the interference”

- (2) *Where a school official attempts to take a backpack and the juvenile responds by “clamp[ing] down on it,” P.2, a search of the backpack conducted by a school resource officer is probably reasonable in scope.*

South Carolina

SC Constitution, Art. 1

SECTION 10. Searches and seizures; invasions of privacy.

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the person or thing to be seized, and the information to be obtained.

State v. Forrester, 541 S.E.2d 837 (S.C. 2001): finding that the police exceeded the scope of the consent to search when a police officer took the Defendant’s purse from her hand as she held it open for him to look. The Defendant had not consented for him to take possession of the purse and execute a more thorough search.

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Exceptions to the Warrant Requirement for Searches

“Thus, the most basic constitutional rule in this area is that searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment – subject only to a few specifically established and well-delineated exception. The exceptions are jealously and carefully drawn, and there must be a showing by those who seek exemption that the exigencies of the situation made that course imperative.” Coolidge v. New Hampshire, 403 U.S. 443, 454 (1971).

Search Incident to Valid Arrest

The arresting officer may search the person for weapons or objects which may be used to resist arrest or effect escape, or to prevent concealment or destruction of evidence; or to search the area “within his immediate control” which is “the area from within which he might gain possession of a weapon or destructible evidence.” Chimel v. California, 395 U.S. 752, 762-63 (1969).

When the person is arrested on probable cause, a full search (in contrast to a Terry frisk) of the person is reasonable under the Fourth Amendment and is an exception to the warrant requirement. United States v. Robinson, 414 U.S. 218, 236 (1973).

Inventory searches

- i. An impounded vehicle may be inventoried upon the arrest of the possessor. South Dakota v. Opperman, 428 U.S. 364 (1976).
- ii. Inventory searches may not become a purposeful and general means of discovering evidence of crime and must be governed by some standardized policy, though the policy may allow for discretion. Florida v. Wells, 495 U.S. 1, 4 (1990)

Valid Consent: *objective* as to the scope of the consent, partially *subjective* as to the voluntariness

Objective reasonableness standard: “what would a typical reasonable person have understood by the exchange between the officer and suspect?” Florida v. Jimeno, 500 U.S. 248, 251 (1991).

- a. A coerced consent is not valid, and coercion may be implied by police action. Amos v. United States, 255 U.S. 313, 317 (1921).

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- b. When deciding if consent is voluntary, consider the totality of the circumstances, including the subjective vulnerability of the person who consents. Schneckloth v. Bustamante, 412 U.S. 218, 226 (1973)
- c. Prosecutor has burden of proof by a preponderance of the evidence. United States v. Matlock, 415 U.S. 164, 177 n. 14 (1974).
- d. If one person in common possession of a property consents to search and the other objects, there is no valid consent as to the objector. Georgia v. Randolph, 547 U.S. 103, 109 (2006). How this applies to children when their parents consent has not been decided by the Supreme Court.

Plain View

A police officer may lawfully view whatever he can see from a place where he is lawfully present. Arizona v. Hicks, 480 U.S. 321, 326 (1987), but may not intrude further without additional justification.

Seizure of an object in plain view must be supported by probable cause to believe it is stolen or contraband. Id. at 327-28.

The discovery of evidence in plain view must be inadvertent. Coolidge v. New Hampshire, 403 U.S. 443, 469 (1971).

Exigent Circumstances: an emergency leaves authorities insufficient time to seek a warrant

- i. When there is a need to provide urgent aid to people inside private property.
- ii. When the police are in hot pursuit of a fleeing suspect
- iii. When there is the prospect of imminent destruction of evidence. See e.g. Kentucky v. King, 563 U.S. 452 (2011) (and cases cited therein).

If police action creates the exigency, examine the police action leading to the exigency for objective reasonableness. Id. at 462.

Automobile Exception

Police may search an automobile provided there is

- i. justification to stop the car
 - 1. probable cause of a traffic offense or
 - 2. reasonable articulable suspicion of other criminality; and

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- ii. probable cause to believe there are seizable objects in the car. Wyoming v. Houghton, 526 U.S. 295; Carroll v. United States, 267 U.S. 312 (1925).

“The word ‘automobile’ is not a talisman in whose presence the Fourth Amendment fades away and disappears.” Coolidge v. New Hampshire, 403 U.S. 443, 461 (1971). If there is no prospect of flight or if the role of the automobile in criminality was long known, warrantless search is not necessarily justified.