Case Law

4th Amendment - U. S. Constitution

"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 Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The 4th Amendment: Protecting An Individual's Privacy

The search and seizure provisions of the Fourth Amendment are all about privacy. To honor this freedom, the Fourth Amendment protects against "unreasonable" searches and seizures by state or federal law enforcement authorities.

The flip side is that the Fourth Amendment does permit searches and seizures that are considered reasonable. In practice, this means that the police may override your privacy concerns and conduct a search of you, your home, barn, car, boat, office, personal or business documents, bank account records, trash barrel, or whatever, if:

a. the police have probable cause to believe they can find evidence that you committed a crime, and a judge issues a search warrant, or
b. the particular circumstances justify the search without a warrant first being issued.

When the 4th Amendment Doesn't Protect The Individual

The Fourth Amendment applies to a search only if a person has a "legitimate expectation of privacy" in the place or thing searched. If not, the Fourth Amendment offers no protection because there are, by definition, no privacy issues.

Courts use a two-part test (fashioned by the U.S. Supreme Court) to determine whether, at the time of the search, a defendant had a legitimate expectation of privacy in the place or things searched:
Did the person actually expect some degree of privacy?
Is the person's expectation objectively reasonable -- that is, one that society is willing to recognize?

For example, a person who uses a public restroom expects not to be spied upon (the person has an expectation of privacy) and most people -- including judges and juries -- would consider that expectation to be reasonable (there is an objective expectation of privacy as well). Therefore, the installation of a hidden video camera by the police in a public restroom will be considered a "search" and would be subject to the Fourth Amendment's requirement of reasonableness.

On the other hand, when the police look for and find a weapon on the front seat of a car, it is not considered a search under the Fourth Amendment because it is very unlikely that the person would think that the front seat of the car is a private place (an expectation of privacy is unlikely), and even if the person did, society is not willing to extend the protections of privacy to that particular location (no objective expectation of privacy).

A good example of how this works comes from a U.S. Supreme Court case in which the court held that a bus passenger had a legitimate expectation of privacy in an opaque carry-on bag positioned in a luggage rack above the passenger's head, and that the physical probing by the police of the bag's exterior for evidence of contraband constituted a search subject to 4th Amendment limitations. (Bond v. U.S., 529 U.S. 334 (2000).)

Probable Cause

"The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime." **Johnson v. United States (1948)**

"In dealing with probable cause, . . . as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." **Brinegar v. United States, supra, at 338 U. S. 175.**

Probable cause exists where "the facts and circumstances within their [the arresting officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that" an offense has been or is being committed. **Carroll v. United States, 267 U. S. 132, 267 U. S. 162.**

Exceptions to the Fourth Amendment Warrant Requirement

The U.S. Supreme court throughout the course of this country's history has established (13) exceptions to the warrant requirement for conducting searches. The exceptions are as follows:

1. Exigent Circumstances
2. Stop and Frisk

3. Incident to Arrest
4. Custodial Searches
5. Plain View
6. Vehicle
7. Border Search
8. Open Fields
9. Abandoned Property
10. Consent
11. Administrative
12. Probation Search
13. Protective Sweep

Arrest/Detention

Arrest: is taking custody of another and thereby depriving him of his liberty by assertion of legal authority for the purpose of holding or detaining him to answer a criminal charge.

Arrest warrants are usually not required as long as the police officer has probable cause for the arrest. There are two situations where an arrest warrant is required:

1. A felony arrest made without exigent circumstances from a private home; and
2. A misdemeanor arrest made outside the presence of the officer or victim.

An illegal arrest does not, in and of itself, bar the prosecution of the defendant. An illegal arrest, however, could cause the exclusion of evidence or a confession that derives from the arrest.

Detention: The seizing of another and depriving him of his liberty based on "reasonable suspicion" of criminal activity for a limited period of time in order to dispel the suspicion or establish "probable cause" for arrest.

Advising Constitutional Rights or "Miranda"

Miranda v. Arizona, 384 U.S. 436 (1966), was a landmark 5–4 decision of the United States Supreme Court. The Court held that both inculpatory (proves guilt) and exculpatory (clears guilt) statements made in response to interrogation by a defendant in police custody will be admissible at trial only if the prosecution can show that the defendant was informed of the right to consult with an attorney before and during questioning and of the right against self-incrimination prior to questioning by police, and that the defendant not only understood these rights, but voluntarily waived them. This had a significant impact on law enforcement in the United States, by making what became known as the Miranda rights part of routine police procedure to ensure that suspects were informed of their rights.

The Miranda warning (often abbreviated to "Miranda") is the name of the formal warning that is required to be given by police in the United States to criminal suspects in police custody (or in a custodial situation) before they are interrogated, in accordance with the Miranda ruling. Its purpose is to ensure the accused is aware of, and reminded of, these rights under the U.S. Constitution, and that they know they can invoke them at any time during the interview.

Berghuis v. Thompkins, 560 U.S. ___ (2010) (docket 08-1470), is a decision by the United States Supreme Court in which the Court considered the position of a suspect who understands his or her right to remain silent under Miranda v. Arizona and is aware he or she has the right to remain silent, but does not explicitly invoke or waive the right. The Court held that unless and until the suspect actually stated that he was relying on that right, his subsequent voluntary statements could be used in court and police could continue to interact with (or question) him. The mere act of remaining silent was, on its own, insufficient to imply the suspect has invoked his or her rights. Furthermore, a voluntary reply even after lengthy silence could be construed as implying a waiver.

The Court was split 5-4. The dissent, authored by Justice Sonia Sotomayor, argued that Miranda and other previous cases had required a claimed waiver of a constitutional right to be shown more strongly, especially in light of a lengthy interrogation with a possible "compelling influence" during which the accused had remained almost entirely silent for almost 3 hours prior to the self-incriminating statement.

Stop and Frisk or "Terry Stop"

Terry v. Ohio, 392 US 1(1968) An officer can briefly detain a person, based upon reasonable suspicion of criminal activity, long enough to dispel the suspicion or to allow it to rise to the level of probable cause for an arrest. The officer is also permitted to do a limited "frisk" search of the person without a warrant. Before the officer can frisk search the subject, he must:

1. Have articulable facts that the person could be armed with a weapon.
2. Limit the search to pat searching the outer garments of the suspect to feel for objects that might be weapons.
3. Only reach inside the clothing after feeling such objects.

US v. Neff, 300 F.3d 1217 (10th Cir. 2002) A Terry stop does not become unreasonable just because police officers use handcuffs on a subject or place him on the ground. See Perdue, 8 F.3d at 1463. Further, the "use of guns in connection with a stop is permissible where the police reasonably believe the weapons are necessary for their protection." "Since police officers should not be required to take unnecessary risks in performing their duties, they are `authorized to take such steps as [are] reasonably necessary to protect their personal safety and to maintain the status quo during the course of [a Terry] stop.'" Id. (quoting United States v. Hensley, 469 U.S. 221, 235, 105 S.Ct. 675, 83 L.Ed.2d 604 (1985)).

Arizona V. Johnson, 000 US 07–1122 (2009) A vehicle was lawfully stopped on traffic for a violation. During the course of the traffic stop, one of the officers on the scene talked to the passenger, Johnson. The encounter was consensual and was not related to any criminal matter. The officer developed reasonable suspicion that Johnson may be armed and pat searched him. A gun was found and he was arrested. The Court determined 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. In a traffic-stop setting, the first Terry condition—a lawful investigatory stop—is met whenever it is lawful for police to detain an automobile and its occupants pending inquiry into a vehicular violation. The police need not have cause to believe any occupant of the vehicle is involved in criminal activity. To justify a pat down of the driver or a passenger during a traffic stop, however, just as in the case of a pedestrian reasonably suspected of criminal activity, the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous.

Plain View

United States v. Lee, 274 U.S. 559 (1927) Plain view is not affected by the use of spot lights and field glasses (binoculars).

Harris v. US, 390 U.S. 234 (1968) As long as a police officer has a lawful right to be in the position to have a particular view, any object that falls within that view may be subject to seizure and may be introduced into evidence.

Washington v. Chrisman, 455 U.S. 1(1982) A police officer can follow an arrested person into his residence without permission or "exigent circumstances". The officer can seize any contraband found in plain view upon entering the residence.

Texas v. Brown, 460 U.S. 730 (1983) This case addressed "plain view" issues with the following:

1. A police officer does not have to immediately "know" that an item found in plain view is contraband or evidence.
2. "The seizure of property in plain view involves no invasion of privacy and is presumptively reasonable, assuming that there is probable cause to associate the property with criminal activity." Payton v. New York, 445 U.S. 573, 587.
3. "Probable cause is a flexible, common-sense standard, merely requiring that the facts available to the officer would warrant a man of reasonable caution to believe that certain items may be contraband or stolen property or useful as evidence of a crime; it does not demand any showing that such a belief be correct or more likely true than false."
4. The use of a flashlight does not violate the "plain view" doctrine.
5. A police officer is allowed to contort or otherwise place himself in an unusual position as long as he is in a place where he has a right to be without violating the "plain view."

United States v. Johns, 469 U.S. 478 (1985) The warrantless search of the packages based on probable cause, developed in part by smelling the odor of marijuana, was not unreasonable merely because it occurred three days after the packages were unloaded from the trucks.

California v. Ciraolo, 476 U.S. 207(1986) The Fourth Amendment simply does not require police traveling in the public airways at 1000 feet in a fixed wing aircraft to obtain a warrant in order to observe what is visible to the naked eye.

Dow Chemical Co. v. United States, 476 U.S. 227(1986)- The use of vision enhancement equipment accessible to the public to examine open fields from a plane is permissible.

New York v. Class, 475 US 106 (1986) A person does not have a privacy interest in the V.I.N. (vehicle identification

number). Class was stopped on traffic for speeding and a cracked windshield. The officer wanted to inspect the V.I.N. located on the dash. The officer had to enter the vehicle and move items covering the V.I.N. When he entered the vehicle he found a gun. The court ruled that the steps to inspect the V.I.N. were reasonable and the gun was legitimately found in plain view.

Arizona v. Hicks, 480 U.S. 321(1987) On a warrantless entry into a residence, a police officer cannot, based on reasonable suspicion, move a stereo to find and check the serial number to see if the stereo is stolen. Moving the stereo made the action a search. Probable Cause is required to invoke the "plain view" doctrine.

United States v. Dunn, 480 U.S. 294(1987) The warrantless naked-eye observation of an area protected by the Fourth Amendment from an open field is not unconstitutional.

US v. Lovell, 849 F.2d 910 (5th Cir. 1988) Officers could not smell a marijuana odor coming from a suitcase. They squeezed some air from the case. They then were able to smell marijuana. The court did not think that a light press of the hands along the outside of a suitcase is sufficiently intrusive to require a different result. "Some investigative procedures designed to obtain incriminating evidence from the person are such minor intrusions upon privacy and integrity that they are not generally considered searches or seizures subject to the safeguards of the fourth amendment."

Florida v. Riley, 488 US 445 (1989) Viewing contraband located on private property from a helicopter flying at 400ft. falls within the "plain view" doctrine and is not a search. The helicopter must be operated at a level that the general public can operate.

Horton v. California, 496 U.S. 128 (1990) Before an officer can seize items found in plain view, a two-pronged test must be met.

1. The incriminating nature of the item in plain view must be immediately apparent.
2. The officer must be lawfully located in a position from which he or she can plainly see the item and have lawful access to it.

It is possible for an officer to be in a legal place to see the item, but not be able to seize it without a warrant. For example: The officer walks by an apartment and sees through a window, marijuana on the table inside. The officer will either have to get consent or a warrant to enter the residence to seize the marijuana.

Minnesota v. Dickerson, 508 U.S. 366 (1993) During a Terry frisk, an officer detects something that he immediately knows is not a weapon, but also immediately knows, based on training and experience, is contraband. It can be seized, provided the officer immediately knows it is contraband without any further manipulation or inspection.

Boatright v. State, 483 S.E.2nd 659 (Georgia)(1997) Officers stopped Boatright's car on traffic. During the stop, he was pat searched. The officer felt in his pocket "some type of plastic". Boatright lied and said that the item was keys. The officer removed the item and discovered that it was a bag of marijuana. Boatright was arrested. The evidence was excluded because the officer exceeded the scope of the plain-feel doctrine. The officer must know immediately that the item was contraband.

US v. Carter, 03a0017p.06 (6th Cir.)(2003) Officers were investigating drug violations at a motel. They knocked on the door and the occupant opened. The officers smelled the odor of burned marijuana and saw a "blunt" (hollowed out cigar filled with marijuana) in plain view. The officers had the exigent circumstance of the possible rapid destruction of evidence. They were justified in entering the motel without a warrant and seize the "blunt".

Traffic Stops / Vehicle Searches

Carroll v. U.S., 267 U.S. 132 (1925) Police may conduct a warrantless search of a vehicle stopped on traffic if there is probable cause to believe that the vehicle contains contraband or evidence. The search without a warrant is justified based on the exigent circumstance that a vehicle stopped on traffic could be quickly moved out of the city or jurisdiction of the investigating agency.

US v. Roe, 495 F.2d 600 (10th Cir. 1974) A suspect does not need to be in his vehicle at the time of arrest in order for the vehicle to be searched incident to arrest. The suspect merely has to have the vehicle in his possession at the scene of the arrest. The entire passenger area can be searched.

Texas v. White, 423 U.S. 67 (1975) The US Supreme Court reaffirmed the Chambers case. If an officer has prob-

able cause to search a vehicle after stopping it, the officer can move the vehicle to the station to conduct the search.

Pennsylvania v. Mimms, 434 US 106 (1977) The driver can be ordered out of a vehicle, without suspicion, on routine traffic stops. The officer's safety greatly outweighs the inconvenience to the driver.

Delaware v. Prouse, 440 US 648 (1979) Non-standardized random traffic stops conducted for the purpose of checking driver licenses violates the Fourth Amendment.

US v. Cortez, 449 US 411 (1981) A vehicle can be stopped based on reasonable suspicion that a crime has occurred, not just a traffic offense.

Michigan v. Thomas, 458 U.S. 259 (1982) If probable cause is developed indicating there is contraband or evidence in a vehicle during a custodial inventory for impound, a warrantless search of the vehicle can be conducted.

United States v. Ross, 456 US 798 (1982) Police officers who have legitimately stopped an automobile and who have probable cause to believe that contraband is concealed somewhere within it may conduct a warrantless search of the vehicle that is as thorough as a magistrate could authorize by warrant.

Florida v. Meyers, 466 U.S. 380 (1984) "The justification to conduct a warrantless search of a car that has been stopped on the road - based on probable cause to believe there is evidence of crime inside it - does not vanish once the car has been impounded and immobilized."

California v. Carney, 471 U.S. 386 (1985) A motor home is a vehicle and, therefore, is treated as such when it comes to search and seizure issues. Just because the vehicle is more like a home than most other vehicles, it is irrelevant to the issue. The court indicated that the motor home must be readily mobile. If the motor home is parked and set up as a residence, and steps have been taken to make the vehicle immobile, it will probably be considered a residence, not a vehicle.

United States v. Hensley, 469 U.S. 221, 235 (1985) Where police have been unable to locate a person suspected of committing a past crime, a traffic stop based on reasonable suspicion can be made in order to ask questions and check identification. The police can also make a traffic stop based on information from a "wanted flyer" if the flyer was based on articulable facts supporting a reasonable suspicion that a person committed an offense.

US v. Nielsen, 9 F.3d 1487 (10th Cir. 1993) The smell of marijuana coming from the vehicle is probable cause to search the passenger area, but not the trunk.

US v. Sorenson, 72 F.3d 1444 (10th Cir. 1995) The smell of marijuana and the finding of contraband on the defendant's person was probable cause to search the passenger area and trunk.

Whren v. U.S., 517 US 806 (1996) Through the late 1980's and into the 1990's courts were embracing the idea that an officer's subjective reasons for making a traffic stop should be considered when ruling on the validity of seizures. If the court finds that an officer's subjective reasons for making the stop was for anything other than the initial traffic offense, and that reason lacks probable cause or reasonable suspicion, the court would dismiss the charges. The U.S. Supreme Court finally addressed these types of rulings in the Whren case. The court ruled that the objective not subjective reasons for making traffic stops should be considered. An officer's intent or motivation to make a traffic stop is not relevant to the Fourth Amendment standard of "reasonableness".

US v. Hunnicutt, 97-5087 (10th Cir. 1997) Lengthening the detention for further questioning beyond that related to the initial stop is permissible in two circumstances:

1. The officer has an objectively reasonable and articulable suspicion illegal activity has occurred or is occurring.
2. Further questioning unrelated to the initial stop is permissible if the initial detention has become a consensual encounter.

A variety of factors may contribute to the formation of an objectively reasonable suspicion of illegal activity. Some of these factors include:

-No proof of ownership of the vehicle.
-Having no proof of authority to operate the vehicle.
-Purchasing vehicle from someone that is not the registered owner.
-Inconsistent statements about destination.
-Driving under suspension.
-Reluctance to stop.

Knowles v. Iowa, 525 U.S. 113 (1998) A police officer that stops someone's vehicle for a traffic offense and issues a summons cannot search the vehicle incident to the offense. This applies even if the person could have been arrested for the offense.

Wyoming v. Houghton, 526 U.S. 295 (1999) If there is probable cause to search a car, then police officers may inspect all areas capable of concealing the object of the search, including passengers' belongings.

United States v. Edwards, 242 F.3d 928, 937-38 (10th Cir. 2001) The suspect was arrested approx. 150ft. away from his vehicle. The suspect was not seen by police in or around his vehicle prior to arrest. The vehicle cannot be searched incident to arrest because it was not in his immediate control.

U.S. v. Mercado, 307 F.3d 1226 (10th Cir. 2002) The defendant's vehicle was towed to a repair shop. An officer was at the shop in plain clothes. The officer developed probable cause to search the vehicle. Because the vehicle was only temporarily immobile, he could search it without a warrant.

US v. Palmer, 03-5115 (10th Cir.)(2004) If an officer has specific articulable facts that rise to a reasonable fear for his safety during a traffic stop, the officer can search a locked glove box.

Brendlin v. California, 000 U.S. 06-8120 (2007) When police make a traffic stop, a passenger in the car, like the driver, is seized for Fourth Amendment purposes and so may challenge the stop's constitutionality.

Scott v. Harris, 000 US 05–1631 (2007) Deputy Timothy Scott, petitioner here, terminated a high-speed pursuit of respondent's car by applying his push bumper to the rear of the vehicle, causing it to leave the road and crash. Respondent was rendered quadriplegic. He filed suit under 42 U. S. C. §1983 alleging, inter alia the use of excessive force resulting in an unreasonable seizure under the Fourth Amendment.

Held: A police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death.

Points of the court's reasoning:

-The respondent placed himself and the public in danger by fleeing the police in a reckless and high speed manner in his vehicle.
-He ignored the lights and sirens of many police cars for over 10 miles.
-The police dash video showed the suspect placed numerous people in danger by the manner of his driving.
-Purely innocent citizens might have been hurt if the officer did not stop the suspect.
-The citizens would not be equally protected if the police quit chasing the suspect. The police need not have to take that chance and hope that the suspect would slow down and drive normally if they quit chasing.
-There was no way to convey to the suspect he was free to go after the officers ended the pursuit. The suspect may think the officers were just changing tactics and continue to drive in a reckless manner.
-The officer's actions to use a tactical maneuver would insure that the suspect would no longer threaten the safety of innocent citizens.
-The court refuses to create a rule that that puts within a suspect's grasp the means to escape the police just by fleeing in a reckless and dangerous manner. The Constitution assuredly does not impose this invitation to impunity-earned-by recklessness.

It should be noted that the dash video was very important in establishing the facts on behalf of Deputy Timothy Scott.

Arizona v. Gant, 000 U.S. 07-542 (2009) The Supreme Court re-addressed the decisions in New York v. Belton and Thornton v. US. The court limited the search incident to arrest on a vehicle. In the Gant case, police arrested Gant for driving under suspension. They then conducted a search incident to arrest of the vehicle with Gant restrained in a police car. The Court stated that Police may search the passenger compartment of a vehicle incident to a recent occupant's arrest only if it is reasonable to believe that the arrestee might access the vehicle at the time of the search or that the vehicle contains evidence of the offense of arrest. Access to the vehicle means a real likelihood that the arrestee can get in the vehicle. Basically, he must be in or by the vehicle and mobile. Once he is restrained in movement by officers' presence and/or other means of restraint, the search of the vehicle is not justified without further reason. The Court went on to say that officers may search a vehicle when genuine safety or evidentiary concerns encountered during the arrest of a vehicle's recent occupant justify a

search.

The case involved Rodney J. Gant, who was arrested by Tucson, Arizona police and charged with driving on a suspended driver's license. Police arrested Gant in a friend's yard after he had parked his vehicle and was walking away. Gant and all other suspects on the scene were then secured in police patrol cars. The officers then searched Gant's vehicle. After finding a weapon and a bag of cocaine, they also charged him with possession of a narcotic for sale and possession of drug paraphernalia.

In the case of Gant, the court determined that the search was not justified for officer's safety because Gant was restrained in a police car. The officers also did not have any reason to believe that there was evidence in the vehicle related to Driving Under Suspension. If an officer has probable cause to believe evidence or contraband is in the vehicle or another vehicle exception applies, he can still search it without a warrant.

What does all this mean to police? The Court decided that officers can no longer do an automatic search of the vehicle incident to arrest on every traffic stop regardless of the arrest circumstances. There are two parts to this decision. The first part deals with a search of the vehicle for weapons as an officer's safety issue. The second is a search for evidence or contraband.

Let's start with a search of the vehicle incident to arrest for officer safety. The Court on numerous occasions in the opinion stated that the arrestee or possibly the other occupants have to have a reasonable possibility to access a weapon in the vehicle. They have to be in or near the vehicle and have the ability to access a weapon. If there are enough officers on scene to prevent the arrestee or occupants from reaching a weapon in the vehicle, or these subjects are restrained in police vehicles, then a search for a weapon is not justified. If an officer is using proper officer safety techniques before conducting a search by making sure the subjects are properly watched or secure to prevent an ambush or escape, then I cannot foresee any circumstance where an officer can legally search for a weapon without further reason. Remember this is a search for weapons outside any articulable facts leading an officer to reasonably believe there is a weapon in the vehicle.

The second justification for a search incident to arrest is the search for evidence or contraband. The Court made it clear that officers can no longer do a search incident to arrest on a vehicle to look for evidence unless there reasonably may be evidence in the vehicle that is related to the crime that lead to the arrest. Examples of this would be looking for open beer cans or liquor bottles on a Driving Under the Influence arrest, or searching for drugs on a drug related arrest.

This all deals specifically with a search incident to arrest of a vehicle. This case does not affect all the other exceptions to a vehicle search: Vehicle inventory, search based on probable cause, exigent circumstances, plain view, abandoned property, stop and frisk, and consent.

Arizona V. Johnson, 000 US 07–1122 (2009) A vehicle was lawfully stopped on traffic for a violation. During the course of the traffic stop, one of the officers on the scene talked to the passenger, Johnson. The encounter was consensual and was not related to any criminal matter. The officer developed reasonable suspicion that Johnson may be armed and pat searched him. A gun was found and he was arrested. The Court determined 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. In a traffic-stop setting, the first Terry condition—a lawful investigatory stop—is met whenever it is lawful for police to detain an automobile and its occupants pending inquiry into a vehicular violation. The police need not have, in addition, cause to believe any occupant of the vehicle is involved in criminal activity. To justify a pat down of the driver or a passenger during a traffic stop, however, just as in the case of a pedestrian reasonably suspected of criminal activity, the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous.

US v. Pena Montes, 08-2169.No. (10th Cir. 2009) The officer stopped a vehicle on traffic for not displaying a tag. When he walked up to the vehicle, he discovered a dealer tag in the window. He continued to detain the occupants and questioned and ultimately arrested a passenger. The Court held that once the officer discovered that the vehicle did have a tag, any further detention of the vehicle and its occupants was an unlawful seizure. The arrest was vacated.

US v. Legge, 10-4091 (10th Cir. 2011) The separating of the driver from the passenger and questioning both about their travel plans is a permissible activity for a law enforcement officer to pursue during a traffic stop. This activity is not restrained by the decision in US v. Hunnicutt.

Sykes v. United States, 564 U. S. 09-11311 (2011) Armed Career Criminal Act (ACCA), 18 U. S. C. §924(e), The

Court ruled that a violation of Indiana's Felony Vehicle Flight law is considered a violent felony under the ACCA. The Court stated, "The attempt to elude capture is a direct challenge to an officer's authority. It is a provocative and dangerous act that dares, and in a typical case requires, the officer to give chase. The felon's conduct gives the officer reason to believe that the defendant has something more serious than a traffic violation to hide. In Sykes' case, officers pursued a man with two prior violent felony convictions and marijuana in his possession. In other cases officers may discover more about the violent potential of the fleeing suspect by running a check on the license plate or by recognizing the fugitive as a convicted felon. See, e.g., **Arizona v. Gant, 556 U. S. ___, ___ (2009) (slip op., at 2)**.

Because an accepted way to restrain a driver who poses dangers to others is through seizure, officers pursuing fleeing drivers may deem themselves duty bound to escalate their response to ensure the felon is apprehended. Scott v. Harris, 550 U. S. 372, 385 (2007), rejected the possibility that police could eliminate the danger from a vehicle flight by giving up the chase because the perpetrator 'might have been just as likely to respond by continuing to drive recklessly as by slowing down and wiping his brow.' And once the pursued vehicle is stopped, it is sometimes necessary for officers to approach with guns drawn to effect arrest. Confrontation with police is the expected result of vehicle flight. It places property and persons at serious risk of injury. Risk of violence is inherent to vehicle flight. Between the confrontations that initiate and terminate the incident, the intervening pursuit creates high risks of crashes. It presents more certain risk as a categorical matter than burglary. It is well known that when offenders use motor vehicles as their means of escape they create serious potential risks of physical injury to others. Flight from a law enforcement officer invites, even demands, pursuit. As that pursuit continues, the risk of an accident accumulates. And having chosen to flee, and thereby commit a crime, the perpetrator has all the more reason to seek to avoid capture.

Unlike burglaries, vehicle flights from an officer by definitional necessity occur when police are present, are flights in defiance of their instructions, and are effected with a vehicle that can be used in a way to cause serious potential risk of physical injury to another."

United States v. Trestyn, 2011 U.S. App. LEXIS 9605 (10th Cir. 2011) A Wyoming trooper stopped a vehicle for having only one (rear) California vehicle tag. California requires both a front and rear tag. Wyoming, however, requires only a rear tag. The trooper approached the vehicle and observed that the decals were current on the tag. The trooper detained the driver and ran a driver license check and other checks. He also questioned the driver and passenger. The Court ruled that the vehicle only had to comply with Wyoming law. The trooper discovered upon approaching the vehicle that the tag was in proper order. He had no reason to delay the driver and passenger any longer even to run routine checks.

Vehicle Inventory Search - Administrative

South Dakota v. Opperman, 428 U.S. 364 (1976) A vehicle impounded for parking violations can be unlocked, entered, and inventoried by the police as part of their "caretaking" function without violating the Fourth Amendment. Any drugs or other evidence or contraband can be lawfully seized.

Colorado v. Bertine, 479 U.S. 367 (1987) An officer can search the containers in a vehicle during the custodial inventory following an arrest. Department policy gave the officer discretion on whether to impound the vehicle, have someone pick it up, or leave it parked. The Fourth Amendment does not require the officer to choose a lesser intrusive alternative to the impound. The impound and inventory were Constitutionally permissible actions. The court imposed two criteria for a proper vehicle inventory:

1. The agency must establish standardized criteria on how an inventory will be conducted.
2. The officer does not act in bad faith or for the sole purpose of conducting a warrantless search.

US v. Petty, 03-3388 (8th Cir.)(2004) Petty was arrested in a known drug and prostitution area after he dropped a bag of cocaine. He had a rental car key on him. Petty's rent car was legally parked in the parking lot of a closed business nearby. The officer impounded Petty's vehicle. During the inventory, two stolen guns were found. Petty moved to suppress the handguns found during the inventory search of the rental car on the ground that the car was impounded in violation of the Fourth Amendment. The lower and Circuit Courts refused to suppress the guns.

-The decision to impound or inventory does not need to be made in a "totally Mechanical" fashion.

-An impound policy may allow some "latitude" and "exercise of judgment" by a police officer when those decisions are based on concerns related to the purposes of an impoundment.

-It is not feasible for a police department to develop a policy that provides clear-cut guidance in every potential impoundment situation, and the absence of such mechanistic rules does not necessarily make an impoundment unconstitutional.

In the case at hand, the Court determined that the police had a sufficient basis to conclude that the rental car should be impounded. The driver was arrested. The vehicle was in the parking lot of a closed business in a high crime area. The defendant was not connected with the closed business. The vehicle belonged to a rental company, not the defendant. The community caretaking function was warranted.

Exigent Circumstances

Ker v. California, 374 U.S. 23 (1963) Police can enter a residence without a warrant to prevent the imminent destruction of evidence.

Warden v. Hayden, 387 U.S. 294 (1967) "The exigencies of the situation," in which the officers were in pursuit of a suspected armed felon in the house which he had entered only minutes before they arrived, permitted their warrantless entry and search.

United States v. Santana, 427 U. S. 38 (1976) When in "hot pursuit", police can chase someone into their home without a warrant.

Michigan v. Tyler, 436 U.S. 499 (1978) A burning building clearly presents an exigency of sufficient proportions to render a warrantless entry "reasonable," and, once in the building to extinguish a blaze, and for a reasonable time thereafter, firefighters may seize evidence of arson that is in plain view and investigate the causes of the fire.

United States v. McConney, 728 F.2d 1195, 1199 (9th Cir.)(1984) Emergency conditions: "Those circumstances that would cause a reasonable person to believe that entry (or other relevant prompt action) was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts."

Welsh v. Wisconsin, 466 U.S. 740 (1984) The crime of driving under the influence is a minor criminal offense and does not justify the warrantless entry of a residence to arrest and preserve evidence of blood-alcohol level. Application of the exigent circumstances exception in the context of a home entry should rarely be sanctioned when there is probable cause to believe that only a minor offense, such as the kind at issue in this case, has been committed.

United States v. Grissett, 925 F.2d 776 (4th Cir. 1991) The odor of marijuana coming from a motel room provided exigent circumstances to justify a warrantless entry.

US v. Cephas, No. 004780P (4th Cir.)(2001) The odor of marijuana coming from a residence is probable cause that a crime was occurring. Warrantless entry is justified due to exigent circumstances.

US v. Carter, 03a0017p.06 (6th Cir.)(2003) Officers were investigating drug violations at a motel. They knocked on the door and the occupant opened. The officers smelled the odor of burned marijuana and saw a "blunt" (hollowed out cigar filled with marijuana) in plain view. The officers had the exigent circumstance of the possible rapid destruction of evidence. They were justified in entering the motel without a warrant and seize the "blunt".

United States v. Rhiger, 315 F.3d 1283(10th Cir.)(2003) The defendant was observed by federal drug agents driving two companions to locations where materials were bought. The materials were components used to manufacture methamphetamine. The agents observed the material being carried into a house. They observed the house for about an hour. They then detected the odor of cooking meth coming from the house. The agents entered the house without a warrant fearing that an active lab could explode. The agents rendered the lab safe, secured the residence, and obtained a search warrant. The entry to the residence was lawful because it was a public safety exception under exigent circumstances.

Brigham City v. Stuart, 547 U. S. 05-502(2006) Officers responded to a disturbance and found a party with under aged drinkers. The officers were outside and looked into the kitchen. They saw a juvenile punch an adult in the face. A struggle began. The officers entered the residence and announced themselves twice before the subjects in the struggle noticed them and settled down.

The officers reasonably believed both that the injured adult might need help and that the violence in the kitchen was just beginning. Nothing in the Fourth Amend-

ment required them to wait until another blow rendered someone "unconscious" or "semi-conscious" or worse before entering. The role of a peace officer includes preventing violence and restoring order, not simply rendering first aid to casualties; an officer is not like a boxing (or hockey) referee, poised to stop a bout only if it becomes too one-sided. The entry has to be objectively reasonable, which they were in this case. The officer's subjective motives are irrelevant.

Johnson v. the City of Memphis, 617 F.3d 864 (6th Cir. 2010) "We hold that the combination of a 911 hang call, an unanswered return call, and an open door with no response from within the residence is sufficient to satisfy the exigency requirement. The district court was correct in finding that the police were justified in entering the home to sweep for a person in need of immediate assistance under the emergency aid exception. The whole point of the 911 system is to provide people in need of emergency assistance an expeditious way to request it."

Michigan v. Fisher, 558 U. S.___ 09-91 (2010) Police responded to a disturbance and found the defendant had done considerable damage to his vehicle and outside property. They noticed blood drops on the vehicle and clothes in it. They observed him inside his residence in a rage throwing items. He had a cut on his hand. They officers were concerned for his safety and the safety of other possible victims inside. The defendant refused to let him in and demanded the officers get a search warrant. They entered anyway. The defendant pointed a long gun at one of the officers. The officer withdrew the defendant was later charged with assault with a deadly weapon.

Held: The officers do not need ironclad proof of "a likely serious, life-threatening" injury to invoke the emergency aid exception and make a warrantless entry into the house. It was reasonable to believe the defendant hurt himself and needed treatment and his rage made him unable to provide it, or that someone else may be hurt, or about to be hurt.

Kentucky v. King, 563 US No. 09–1272 (2011) The police were seeking a drug dealer that fled into an apartment complex. They did not know which apartment he went into. They, however, smelled burning marijuana coming from an apartment. They banged on the door loudly and announced their presence. They heard noises in the apartment that led them to believe drugs were being destroyed. The officers forced entry and found marijuana and cocaine. The Kentucky Supreme Court excluded the evidence. The Court had adopted the "police-created exigency" doctrine. This doctrine means that if an officer created the circumstances that led to the exigency when it was reasonably foreseeable that their investigative tactics would create the exigency, then the evidence is excluded. The Kentucky Court basically said that the officers should not have knocked on the door. They should have just got a warrant. By knocking on the door and announcing themselves, the police created the exigency by spooking the occupants into destroying the drugs. The US Supreme Court ruled that the Kentucky Court's reasoning was faulty and not in line with the 4th Amendment. The correct standard is whether the police created the exigency by engaging or threatening to engage in conduct that violates the Fourth Amendment. In this case the officers had a lawful right to knock on the door. And therefore, the forced entry of the residence was allowed.

Search Incident to Arrest

Sorrells v. U.S., 287 U.S. 435 (1932) "...the defense of entrapment can be maintained only where, as a result of inducement, the accused is placed in the attitude of having committed a crime which he did not intend to commit, or where, by reason of the consent implied in the inducement, no crime has in fact been committed."

Beck v. Ohio, 379 U.S. 89 (1964) A person's criminal record can be used as an element of probable cause for an arrest. It, however, cannot be the main reason for an arrest. In this case, the officer received unspecified information and reports of the defendant's criminal activity. The officer knew what the defendant looked like. He stopped the defendant on traffic and arrested him based on the unspecified information and his criminal record. Evidence was found during a subsequent search. The USSC ruled that the officer lacked probable cause to arrest the defendant.

Sibron v. New York, 392 U.S. 40 (1968) Absent any other information, the association with known drug addicts is not probable cause to search. The claim of search incident to arrest is also not justified because there was no probable cause before the search.

Davis v. Mississippi, 394 US 721 (1969) The Fourth Amendment rights apply to involuntary detentions during the investigatory stage as well as the accusatory stage. The compelling of a person to be confined in jail overnight,

questioned and fingerprinted in order to establish probable cause, rather than being based on it, violated the person's Fourth Amendment rights.

Whiteley v. Warden, 401 U.S. 560 (1971) An arrest or search made by officers relying on relayed police information, a teletype, a bulletin, a warrant, etc. is only valid if the issuing officer had probable cause to make the arrest or search. It is irrelevant that the officers reasonably assumed the issuing officer had probable cause.

US v. Robinson, 414 U.S. 218 (1973) A police officer can conduct a search incident to arrest that can go beyond just a pat frisk. The search is also not restricted by the nature of the offense. In this case, the defendant was arrested for driving with a revoked license. The officer searched a cigarette pack and found heroine.

U.S. v. Edwards, 415 U.S. 800 (1974) "Once an accused has been lawfully arrested and is in custody, the effects in his possession at the place of detention that were subject to search at the time and place of arrest may lawfully be searched and seized without a warrant even after a substantial time lapse between the arrest and later administrative processing, on the one hand, and the taking of the property for use as evidence, on the other."

US v. Santana, 427 U.S. 38 (1976) Police went to Santana's house to arrest her on probable cause. They observed her in the doorway of her residence. The "doorway" of her residence is considered a public place as far as the fourth amendment is concerned. Santana ran back into her residence. The officers gave chase and caught her inside the residence. The officers were "in hot pursuit" of Santana and, therefore, the arrest was lawful. Since the arrest was lawful, so was the subsequent search incident to arrest. This case established that the "hot pursuit" of a wanted felony suspect from a public place into his or her residence to make a warrantless arrest is justified.

US v. Watson, 423 U.S. 411 (1976) The court declined to require an arrest warrant to arrest a felony suspect on probable cause in a public place.

US v. Chadwick, 433 US 1 (1977) A double-locked footlocker seized by federal agents could not be searched incident to arrest after it had been removed to a federal building and the suspects were incarcerated elsewhere. Minus exigency, the agents were required to obtain a search warrant.

Dunaway v. New York, 442 US 200 (1979) The involuntary seizing of a person from his home without probable cause and compelled him to go to the station for interrogation violated the person's Fourth Amendment rights. The Miranda rights advisory does not overcome the taint of the illegal arrest. Factors that should be considered in determining whether a confession was obtained by exploiting an illegal arrest are:

1. temporal proximity of the arrest and the confession
2. presence of intervening circumstances
3. purpose and flagrancy of the official misconduct

Payton v. New York, 445 US 573 (1980) A warrant based on probable cause is required to arrest a felon inside a private home. The only exception is under exigent circumstances.

Steagald v. U.S. 451 US 204(1981) Absent a consent or exigent circumstances, a search warrant is needed to arrest someone from the home of a third party.

Illinois v. Lafayette, 462 U.S. 640 (1983) The inventory of the personal property of an arrested person is its own justification for the search. There is no need for a showing of probable cause. The court further stated in part, "...every consideration of orderly police administration - protection of a suspect's property, deterrence of false claims of theft against the police, security, and identification of the suspect - benefiting both the police and the public points toward the appropriateness of the examination..."

Hayes v. Florida, 470 US 811 (1985) Without probable cause, consent, or judicial authorization, the investigative detention of a person for the purpose of taking him from his home to the station for fingerprinting violated the Fourth Amendment. The court further added that the police can fingerprint a suspect (not arrestee) under the following circumstances:

1. The officer has reasonable suspicion that the suspect committed a crime
2. That there is a reasonable basis that the fingerprints would establish or negate the suspect's involvement in the crime, and
3. The fingerprinting is quickly conducted in the field

County of Riverside v. McLaughlin, 500 U.S. 44 (1991) The court established a requirement that there be a post-arrest hearing to determine if there was probable cause to arrest. As a general rule, the hearing must be held within

48 hours. This is the case that created the probable cause affidavit that police fill out on each arrest.

California v. Hodari, 499 US 621 (1991) Hodari saw the police approaching. He ran away. A police officer chased him. Prior to catching him, Hodari threw down crack cocaine. The court ruled that Hodari was not seized and his rights not violated when he threw the cocaine down. At the time, he was neither physically forced to submit nor voluntarily submitted to the police authority.

U.S. v. Anchondo, 156 F.3d. 1043 (10th Cir. 1998) A search incident to arrest can occur before the actual arrest takes place. The search and the arrest must be contemporaneous to each other.

US v. Gay (10th Cir. Court)(2001) A police officer only needs to reasonably believe that a person lives at a particular residence at the time of entry to arrest on a warrant. This reasonable belief is less than reasonable suspicion.

Lawrence v. Texas, 539 U.S. 558 (2003) This case struck down the sodomy laws across the country. Individual decisions concerning the intimacies of physical relationships, even when not intended to produce offspring, are a form of "liberty" protected by due process.

Maryland v. Pringle (000 U.S. 02-809) (2003) "In this case, Pringle was one of three men riding in a Nissan Maxima at 3:16 a.m. There was $763 of rolled-up cash in the glove compartment directly in front of Pringle. Five plastic glassine baggies of cocaine were behind the back-seat armrest and accessible to all three men. Upon questioning, the three men failed to offer any information with respect to the ownership of the cocaine or the money. 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." The subsequent questioning and confession from Pringle was admissible.

Small V. US (000 U.S. 03-750)(2005) Criminal convictions equivalent to a felony that occur in a foreign country cannot be considered when a person purchases a gun in this country.

US v. Finley, 477 F.3d 250 (5th Cir. 2007) Police can search the internal phone records and text messages on a cellular phone seized from a person during a lawful arrest as a search incident to arrest. No warrant is needed.

Shepard v. Budnick, 07-11307 (11 Cir. 2008) We reaffirm that the warrantless arrest of a person in his home, with neither consent nor exigent circumstances, violates the Fourth Amendment. We repeat what we held in Edmondson, that is, a person does not consent to a warrantless arrest in his home merely by opening the door in response to the demands of law enforcement officers. Construing the facts, as we must, in the light most favorable to Shepard, Officer Budnick violated Shepard's Fourth Amendment rights by entering his home without a warrant, pushing Shepard six feet further into his living room, and arresting him on his couch without a warrant. A reasonable officer would have had fair and clear notice that such actions were objectively unreasonable on August 5, 2002. For these reasons, we conclude that the district court erred in granting Officer Budnick's motion to dismiss based on qualified immunity from Shepard's § 1983 suit.

Deadly Force

Tennessee v. Garner, 471 U.S. 1 (1985), was a case in which the Supreme Court of the United States held that under the Fourth Amendment, when a law enforcement officer is pursuing a fleeing suspect, he or she may use deadly force only to prevent escape if the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.