Minnesota Handbook on

Motor Vehicles:

Stops,
Warrantless Searches,
Seizures

△ BASED ON MINNESOTA & FEDERAL CASE LAW △

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MINNESOTA
HANDBOOK ON
MOTOR VEHICLES:
Stops, Warrantless Searches, Seizures

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FIRST EDITION: AUGUST 2012
INTRODUCTORY NOTE

THIS HANDBOOK IS DESIGNED TO SERVE A DUAL PURPOSE:

1. To provide judges, attorneys and law enforcement officers with a comprehensive reference guide to the laws governing motor vehicle stops and the seven (7) exceptions to the Fourth Amendment warrant requirement under which warrantless searches of motor vehicles may be justified.

and

2. For use as the instructor’s manual in conjunction with the Judicial Training video entitled:

MOTOR VEHICLES:

   Stops,
   Warrantless Searches,
   Seizures
USE OF HANDBOOK ALONG WITH THE VIDEO DURING CRIMINAL JUSTICE TRAINING SESSIONS

INSTRUCTIONS

Training sessions utilizing this handbook and the video are estimated to last approximately four (4) to six (6) hours. The video is broken down into nine (9) Chapters which incorporate 13 stop and search hypotheticals (vignettes). These vignettes plot situations specifically designed to illustrate when and under what circumstances a vehicle can be searched without a warrant.

In each vignette, after a vehicle is stopped or approached by officers, various parts of the vehicle, including open, closed and locked containers of various size and shapes, are searched by officers without a warrant. At the commencement of the search of each item, the video freezes and a question materializes on the screen. All of the questions that appear in the video are numbered (e.g. 1.1, 1.2, 1.3, etc.).

The video itself does not provide the answer to any of the questions. The answers to all video questions are contained in this handbook. The handbook answers are numbered to correspond with the video questions (e.g. 1.1, 1.2, 1.3, etc.).

During the showing of the video, each question appears and remains on the screen for approximately six (6) to eight (8) seconds. If the question cannot be adequately answered within that timeframe, the video should be placed on “pause” to allow additional time to discuss the answer.

It is anticipated that in order to thoroughly discuss the answer to most questions, the video will have to be placed on “pause” after the question has been read orally.
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### CHAPTER 1
### MOTOR VEHICLE STOPS

#### 1.1 WHAT IS THE GENERAL RULE?

1. **General Rule - Reasonable Suspicion:** A peace officer can stop and temporarily detain a motor vehicle whenever he/she has specific and articulable facts which, when taken together with reasonable inferences from those facts, reasonably warrant the intrusion.\(^1\) In other words, to make an investigatory stop, an officer must have a reasonable suspicion that a crime has been or is being committed.\(^2\) The test for determining the legality of a stop of a motor vehicle is whether the peace officer had a particularized and objective basis for suspecting the driver or passenger(s) of criminal behavior, or that they were otherwise engaged in wrongdoing.\(^3\) While the standard is less demanding than probable cause or a preponderance of the evidence,\(^4\) it requires “at least a minimal level of objective justification,”\(^5\) and the stop must not be based upon “mere whim, caprice, or idle curiosity.”\(^6\) The threshold question in every motor vehicle stop is whether, under the circumstances, the officer acted reasonably.

2. **Application of Fourth Amendment:** Because stopping a motor vehicle or preventing a vehicle from moving constitutes a "seizure," the Fourth Amendment clearly applies to all motor vehicle investigative stops. In other words, the Fourth Amendment prohibition against unreasonable searches and seizures requires that an investigative stop be supported by reasonable suspicion of misconduct.\(^7\) Under the Fourth Amendment exclusionary rule, evidence obtained as a result of an unconstitutional (unreasonable) seizure is not admissible in a court of law.\(^8\) However, the Fourth Amendment and the exclusionary rule only apply when and if a person or motor vehicle is actually stopped (seized) by police.

3. **Definition of "Stop" (Seizure):** In defining what constitutes a "stop," courts have adopted an objective test. A person or motor vehicle is considered to be stopped (seized) within the meaning of the Fourth Amendment if, by means of "physical force" or a "show of authority," a reasonable person would believe that he was not free to leave.\(^9\) Under the Minnesota Constitution, a "seizure" occurs at the point a peace officer orders a person to stop (verbally or by actions),\(^10\) or does or says anything that would cause a reasonable person to believe he was not free to leave.\(^11\) Under the Minnesota rule, a seizure can occur even though the person does not immediately stop or otherwise submit to the officer's show of authority.\(^12\)

4. **Stop v. Contact:** Officers should remember that the mere act of approaching and asking questions to who is standing on a public street or sitting in a car that is parked does not require a "reasonable suspicion." Such inoffensive contact between a citizen and the police is not considered to be a "seizure." In other words, a peace officer can approach, seek the cooperation of and direct questions to anyone they want without having a reasonable suspicion, as long as they do not turn the contact into a "seizure" by ordering the person to stop or by doing or saying anything that would cause the person to believe that he was not free to leave.\(^13\)
1.2 WHAT CONSTITUTES A MOTOR VEHICLE?

Although the majority of motor vehicle stop cases involve the stop, detention and search of automobiles, the definition of motor vehicle is far more expansive. For example, Minnesota Statute §169.011, subd. 42 (2010) defines “motor vehicle” as:

"Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires. Motor vehicle does not include an electric personal assistive mobility device or a vehicle moved solely by human power."

The term “motor vehicle” is a generic one which, in its broadest sense, includes all self-propelled vehicles, including: automobiles, trucks, farm tractors, tractor-trailer rigs, trailers attached to cars, camper-type vans, self-contained mobile homes, snowmobiles, all-terrain vehicles, aircraft, and watercraft, etc.

1.3 WHAT CONSTITUTES REASONABLE SUSPICION?

1. What is Reasonable Suspicion?  “Reasonable suspicion” entails some minimal level of objective justification for making a stop. It is something more than instinct or unparticularized suspicion or “hunch,” but less than the level of suspicion required for probable cause.

2. Minimal Factual Basis Needed to Justify Stop: The threshold for an investigative stop is “very low.” Although any traffic violation will justify a motor vehicle stop, an actual traffic violation need not occur. The officer must be able to point to “specific and articulable facts that, along with rational inferences from those facts, reasonably warrant the intrusion of a stop.” The stop must not be the product of mere whim, caprice or idle curiosity. In other words, a peace officer cannot stop a motor vehicle without cause or reason, nor can an officer stop a vehicle based upon mere curiosity, suspicion, or assumption unsupported by facts.

3. The Totality of the Circumstances: In determining whether the stop was justified, the totality of the circumstances surrounding the stop must be taken into account. The process does not deal with “hard certainties” but rather with probabilities. Furthermore, the evidence must be viewed from the vantage point of those versed in the field of law enforcement. In other words, trained peace officers can make inferences and deductions that might elude untrained persons.

a) Objective Determination (Pretextual Stops): Ascertaining “specific and articulable facts” is an objective determination. In other words, it doesn't matter when or why a peace officer decides to stop a driver as long as sufficient objective facts justifying the stop exist at the time the stop occurs. A traffic stop will withstand a pretext challenge asserted in violation of the Fourth Amendment if it was objectively based on a reasonable and articulable suspicion of criminal activity. An officer’s subjective intentions are generally irrelevant to the analysis of whether there was an objectively reasonable basis for the seizure.

b) Consideration of Past Criminal Conduct: A motor vehicle occupant's past criminal behavior is a factor an officer may take into consideration in forming a reasonable suspicion justifying an investigative stop.

c) Reasonable Mistakes Made by Peace Officers: An officer’s articulable suspicion may turn out to be mistaken without invalidating the stop. The mistaken belief that the driver of a motor vehicle was a person whose driver’s license was suspended was sufficient to justify an investigative stop, even
though the driver turned out to be somebody else. An investigative stop was valid where peace officer acted reasonably in stopping a car that the officer believed was the one they had been following which had engaged in “questionable” driving activity. The fact that police actually stopped the wrong car did not invalidate the stop. However, a vehicle stop is invalid where the stop is based on an officer’s mistaken interpretation of the law, whether or not the stop was made in good faith.

d) Innocent Conduct: The fact that the suspicion-arousing behavior eventually proves to be completely innocent will not invalidate the stop. The relevant inquiry is not whether particular conduct is innocent or guilty, but the degree of suspicion that attaches to particular types of non-criminal acts.

e) Insufficient Reasons to Stop Motor Vehicle: The mere fact that a person is in a high-crime area, is a stranger in an area, or appears to be lost does not alone constitute a sufficient basis to justify an investigative stop.

The fact that a driver slows down at a yield sign at the end of a parking ramp does not constitute an “articulable ground” for an investigative stop. Although continuous or unusual weaving within the lane will often support a lawful stop, an investigative stop of an automobile after the vehicle swerved once in the road, but stayed in its lane, was held improper. On the other hand, valid stops can occur when the vehicle is seen at an unusual time in an area with a history of crimes or a potential for crimes, even when no crime is currently reported. In such cases it is important that the officer be able to articulate what about the vehicle and circumstances was suspicious.

Note - Use of Mobile Tracking Devices: In 2012 the United Supreme Court in United States v. Jones, 564 U.S. ___ (2012) held that the Government’s attachment of a GPS device (i.e. mobile tracking device) to a motor vehicle and its use of that device to monitor the vehicle’s movements constitute a search under the Fourth Amendment. Mobile tracking devices, usually hidden on the outside of the automobile, can track and record a vehicle’s movements in and off public highways with great accuracy for an extended period of time with minimal effort. In Jones, this tracker connected Jones to an alleged conspirator’s drug stash house. While warrantless visual tracking on public highways may be allowed, continuous surveillance from a device that transmits data requires both probable cause and a warrant.

1.4 WHAT ABOUT INFORMATION OBTAINED FROM INFORMANTS?

1. Anonymous Informants: If the tip comes from a purely anonymous source, the information will not justify an investigative stop of a suspect’s vehicle unless the officer is able to verify the reliability of the information. That is most often done through the officer locating the vehicle and then making personal observations consistent with the anonymous tip. The more facts the officer can independently verify, the more likely the anonymous tip will be found reliable, thereby providing the requisite reasonable suspicion to justify an investigative stop. However, if an anonymous informant provides information face-to-face with an officer, courts have upheld stops and seizures even when the officer does not observe corroborating driving conduct. Such direct contact enhances the informant’s credibility because he or she can be held accountable for any false information. In addition, when the circumstances make it appear that the anonymous informant is a private citizen not involved in criminal activity, the informant is presumed to be reliable.

2. Private Citizen Informants: Police may rely on an informant’s tip if the tip has sufficient “indicia of reliability.” When assessing reliability, courts examine the credibility of the informant and the basis of the informant’s knowledge under the totality of the circumstances. As a general rule, whenever a private citizen informant calls the police with specific information concerning an intoxicated person driving a motor vehicle or other criminal activity, as long as the informant is willing to identify himself/herself for police and
the circumstances of the tip suggest that the informant had a basis for the allegation of criminal activity, such as observations of impaired driving conduct or personal interaction, the information provided will constitute "reasonable suspicion" justifying an investigative stop even though the officer has made no personal observations of intoxicated driving or other criminal activity. Information obtained from a known informant carries a presumption of reliability because the police could hold the identified informant accountable if he or she knowingly provided false information. Any minor traffic violation observed and reported by an identified private citizen is sufficient to support a stop, and citizen need not conclude that driver was likely intoxicated.

Note: If the information received from the known informant is sketchy or otherwise of questionable reliability, it is recommended that officers verify the information through personal observations. However, if the information received from the known informant is clear, specific and of sufficient detail, there is no requirement that a peace officer delay the investigative stop in order to confirm, through personal observations, the reliability of the information.

3. Other Police Agencies: Under the "collective knowledge" approach, the factual basis for stopping a motor vehicle may arise from information supplied by other officers or law enforcement agencies. The "collective knowledge" principle imputes the entire knowledge of the police force to all officers and applies to the stops of motor vehicles. Thus, an officer may rely on information from another officer or known to the dispatcher. However, a motor vehicle stop will be deemed illegal if facts adding up to a reasonable suspicion were not in the hands of the officer or agency that made the request to stop the vehicle. In other words, an investigative stop can be based on a "police bulletin," a "wanted flyer," or other police information if the bulletin, wanted flyer, or other information was issued on the basis of articulable facts that add up to a reasonable suspicion.

1.5 CAN OFFICERS STOP A VEHICLE OUTSIDE THEIR JURISDICTION?

1. Investigative Stops: As a general rule, a police officer outside his jurisdiction does not have the right to make an investigative stop unless he is acting in the course and scope of his employment while outside his jurisdiction.

For example: While inside his jurisdiction, a peace officer observed a driver brake "suddenly or abruptly" before leaving a parking lot. The officer followed the car outside his jurisdiction and soon noticed that the car was weaving within its lane. Even though the trial court ruled that the "weaving" of the car and the resulting investigative stop occurred outside the officer's jurisdiction, the Minnesota Supreme Court upheld the investigative stop (and the resulting DWI arrest) as lawful because the officer was acting "in the course and scope of (his) employment" when he stopped the vehicle while outside his jurisdiction.

Note: Other than the above example, it is unclear how far Minnesota Appellate Courts will go in defining when and under what circumstances a peace officer is acting "in the course and scope of his employment while outside his jurisdiction." It is clear, however, that simply being "on duty" is not enough. If there is any question about the officer's status, arrangements should be made for an officer from the local law enforcement agency to make the investigative stop.

Subdivision 2: Out of Jurisdiction Arrests - In any case where a peace officer could arrest a person for a criminal offense committed within the officer's jurisdiction, and the person to be arrested escapes from or leaves the officer's jurisdiction, the officer may pursue and apprehend the person to be arrested anywhere in the state. (The above is a summary of the actual statutory provision.)

Subdivision 3: Authority for Out of Jurisdiction Arrests - When a peace officer, in obedience to a court order or in the course and scope of employment, or in fresh pursuit of a suspect, is outside his jurisdiction, the officer is considered to be serving in the regular line of duty as fully as though the service was within the officer's jurisdiction. (The above is a summary of the actual statutory provision and is the section most often relied upon to justify an out-of-jurisdiction investigative stop.)

3. Citizens Arrest: If a peace officer is outside his jurisdiction and is not acting in the course and scope of (his) employment, in obedience to a court order, in fresh pursuit of a suspect or is off-duty, he does not have the right to arrest a suspect in his capacity as a peace officer (except when confronted with circumstances that would permit the use of deadly force under Minn. Stat. §609.066). However, nothing in this section limits the officer's authority to arrest as a private person.

Note: Citizens arrest and investigative stops - Although the citizen arrest statute, Minn. Stat. §629.37, gives a private party the authority to arrest whenever a public offense is committed in their presence or for a felony offense based upon a standard of probable cause, the law does not confer on a private party the authority to make an investigative stop based on reasonable suspicion.

1.6 VEHICLE STOPS FOR COMPLETED CRIMES
Misdemeanor vs. Felony

1. Completed Crimes (felonies vs. misdemeanors): Investigative motor vehicle stops based on reasonable suspicion that the driver or passenger was involved in or is wanted in connection with, an ongoing or completed felony offense, are valid. However, a peace officer may not stop a motor vehicle for the sole purpose of investigating a completed misdemeanor offense. As a general rule, a “completed misdemeanor offense” is any misdemeanor crime that was committed prior to the day of the stop.

For example: An investigative stop resulting from an officer's suspicion that the driver, or at least the driver's car, had been involved in a misdemeanor “no pay” gas theft approximately two months earlier was illegal.

2. Ongoing Misdemeanor Crimes: If a peace officer has reasonable suspicion that a driver or occupant was involved in a misdemeanor crime which occurred in the very recent past (such as the same day of the stop or within the preceding 24 hours), then the crime will be considered an ongoing offense rather than a “completed misdemeanor offense” and the officer may stop the vehicle to investigate.

For example: A late night investigative stop of a motor vehicle based upon a private citizen's report that the occupants had just committed a misdemeanor theft (theft of some tires at a gas station that same night) was upheld by the Minnesota Court of Appeals.

3. Exceptions: The above limitation on investigative stops for completed misdemeanor crimes does not apply if the purpose for the stop is to place the driver or occupant of a motor vehicle under arrest for a misdemeanor offense that the officer has authority to arrest for, even though not committed in his presence (i.e. domestic assault; violation of order for protection or restraining order; violation of no contact order;
tresspass on school property;\textsuperscript{78} DWI and aggravated DWI;\textsuperscript{79} theft by swindle,\textsuperscript{80} or any of the following gross misdemeanor offenses: theft,\textsuperscript{81} criminal damage to property 3rd degree,\textsuperscript{82} check forgery,\textsuperscript{83} harassment or stalking,\textsuperscript{84} financial transaction card fraud\textsuperscript{85}).

### § 1.7 APPROACHING AN ALREADY STOPPED VEHICLE

1. **General Rule:** If a peace officer approaches an already stopped vehicle and speaks with the driver or looks through the car window to observe what is inside, the officer's actions do not constitute a "seizure" within the meaning of the Fourth Amendment (as long as the occupants are free to leave).\textsuperscript{86} In other words, a peace officer has as much right as anyone else to be in public places, and they may use as a basis for developing a "reasonable suspicion" plain view observations that are made upon an approach to a stopped motor vehicle.\textsuperscript{87}

2. **Asking Driver for Identification:** Approaching a vehicle in a public place and asking the driver for his name does not constitute a stop or "seizure" under the Fourth Amendment.\textsuperscript{88} However, an officer must have "specific and articulable facts which warrant the intrusion" (i.e. reasonable suspicion) before it is proper to ask the driver for identification (versus simply asking the driver for his name) or to step out of the vehicle.\textsuperscript{89} As a general rule, requesting identification from a person may constitute a seizure if, under the totality of circumstances, a reasonable person would have believed that he/she was not free to leave or otherwise decline the encounter.\textsuperscript{90}

3. **"Good Samaritan" Investigations:** Investigations to determine if the occupants of a stopped vehicle need assistance are generally held not to be seizures and, hence, are not prohibited by the Fourth Amendment. Thus, an automobile was not unconstitutionally seized when the officer walked up to a stopped vehicle to see if there was a problem and then observed that the driver was intoxicated.\textsuperscript{91} However, if a peace officer parks a squad car so as to prevent the driver from leaving, there may be a "seizure" under the Fourth Amendment. Preventing a motor vehicle or occupant from leaving would require a reasonable suspicion.\textsuperscript{92}

**Note:** The use of flashing squad lights (for safety reasons) when pulling in behind an already stopped vehicle is not, in the absence of other factors, such a strong show of authority that its use will turn an otherwise "Good Samaritan" approach into a Fourth Amendment seizure requiring reasonable suspicion of criminal activity.\textsuperscript{93}

### § 1.8 WHAT CAN AN OFFICER DO ONCE A VEHICLE IS STOPPED?

1. **Plain View Observations:** After a car is lawfully stopped, officers may approach and shine a flashlight through the windows to observe whatever is in plain sight.\textsuperscript{84} If the officers then see evidence in plain view through the door or window of the car, they may seize it. See Chapter 3 "Plain View Seizure of Evidence."

2. **Ordering Driver and Occupants of Motor Vehicle Out of Car:** Following a routine traffic stop or otherwise valid investigative stop of a motor vehicle it is proper for the peace officer, for his/her safety, to order the driver and passengers to get out of the vehicle while the investigation is being completed.\textsuperscript{95} The officer may also open the door of a stopped vehicle.\textsuperscript{96}

3. **Demand for Identification and Proof of Insurance:** A demand to see license, registration papers, proof
of insurance, and the vehicle identification number (VIN) is within the scope of police authority pursuant to a lawful motor vehicle stop. However, although Minn. Stat. §171.08 requires a driver to display his/her driver’s license upon demand of a peace officer, that provision only applies if the investigative stop is lawful (i.e. based on reasonable suspicion). And under that same provision the licensee shall also, upon request of any officer, write the licensee's name in the presence of the officer to determine the identity of the licensee.

4. Limited Search for Identification: Under Article 1, sec. 10 of the Minnesota Constitution, when a person who is lawfully detained by police based on reasonable suspicion, following a lawful demand for identification, refuses to provide his name or identity information, the police may conduct a limited search for identification. In addition, even if a limited search for identification was not permitted under the 4th Amendment, the search for identification could still be upheld as a search incident to lawful arrest pursuant to Minn. R. Crim. P. 6.01, subd 1(1)(a). For example, in cases where a lawfully detained driver, following a lawful demand for identification, refuses or fails to provide identification, there is a “substantial likelihood” that the driver would fail to respond to a citation. Under those circumstances, Rule 6.01, subd 1(1)(a) would allow the officer to arrest the driver rather than issue a citation. Once the driver was lawfully placed under arrest the officer could conduct a limited search for identification incident to arrest.

5. Limited Search to Inspect Vehicle Identification Number (VIN): Federal law requires that the VIN number be placed inside the passenger compartment in plain view of someone outside the automobile. Following a valid motor vehicle stop, in order to observe a vehicle identification number (VIN), a peace officer may reach into the passenger compartment of a vehicle to move papers obscuring the VIN number after the driver has exited the vehicle. If officers allow the driver to remain inside the car they would have the right to order the driver to move papers or anything else that may be obscuring the VIN number.

6. Investigative Questions and the Application of Miranda: Following a lawful investigative stop, an individual in a car may be detained for a reasonable period of time and may be asked questions for the purpose of investigating the suspicious or unlawful behavior giving rise to the stop. As a general rule, the Miranda warnings are not required in temporary investigative detentions. Even though a routine traffic stop is a “seizure” within the Fourth Amendment, because they are usually temporary, brief and public, they are not considered “custodial” and, therefore, Miranda warnings are not required. Brief questioning of a driver, even while in the patrol car, does not automatically convert an ordinary traffic stop into a de facto arrest so as to require the Miranda warnings. However, if a motorist detained pursuant to a traffic stop “is subjected to treatment that renders him ‘in custody’ for practical purposes, then he would be entitled to all the protections prescribed by Miranda.” In DWI cases, Miranda warnings are not required prior to field sobriety tests or the Implied Consent Advisory.

7. Expanding the Scope of the Initial Stop: The scope of a stop must be “strictly tied to and justified by the circumstances” that rendered the initial stop permissible. Expansion of the scope of the stop to include investigation of other suspected illegal activity is permissible under the Fourth Amendment “only if the officer has reasonable, articulable suspicion of such other illegal activity.” The reasonable suspicion standard requires at least a minimal level of objective justification.

Note: Narcotics-Detection Dog Sniff: The use of a Narcotics-Detection Drug Dog to sniff the outside of a lawfully stopped motor vehicle in an attempt to detect the presence of drugs is considered a search under the Minnesota Constitution, even though it was not a search for purposes of the United States Constitution. The Minnesota Supreme Court in adopting the “reasonable suspicion” standard held that the police “cannot conduct a narcotics-detection dog sniff around a motor vehicle stopped for a routine traffic violation [or parked in a public parking lot] without some level of suspicion of illegal activity.”
1.9 HOW LONG CAN THE VEHICLE AND OCCUPANTS BE DETAINED?

Although an investigative stop and detention of a motor vehicle must be temporary and last no longer than is necessary to effectuate the purpose of the stop, there is no hard-and-fast time limit for a permissible investigative stop. The United States Supreme Court has established the following standard for evaluating the length of detention:

"In assessing whether a detention is too long in duration to be justified as an investigative stop, we consider it appropriate to examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant." Any expansion of the scope or duration of a traffic stop must be justified by a reasonable articulable suspicion of other criminal activity. See Section 1.8 #7 above.

For example - Sixty-one minute detention upheld: The detention of a suspect for 61 minutes after a peace officer stopped the suspect's car was upheld by the Minnesota Supreme Court because it was the only car in the area in which a burglary had been reported; the area was serviced by a small police department; the officer who participated in the investigation had to be awakened at home and summoned to help; three suspects were involved; and it took time for one officer to test the shoes of the suspects against the shoe prints found around the store that had been robbed.

Note: The length of a lawful detention will depend upon the circumstances of the individual case. Generally, the reasonableness of the length of detention depends on the complexity of the investigation. As the introductory questioning proceeds, the suspect's answers may either allay or augment the officer's suspicions. Continuing suspicious behavior during detention may require additional investigation and soon may ripen into probable cause warranting a full custodial arrest.

1.10 CAN VEHICLES BE SEARCHED WITHOUT A WARRANT?

Under the Fourth Amendment, all warrantless searches are presumptively unreasonable unless the search falls within an established exception to the warrant requirement. There are seven (7) general exceptions under which a warrantless motor vehicle search may be justified.
### 1.11 SEVEN EXCEPTIONS TO THE WARRANT REQUIREMENT

1. **SEARCH INCIDENT TO ARREST** (Chapter 2)
2. **PLAIN VIEW SEIZURE OF EVIDENCE** (Chapter 3)
3. **PROBABLE CAUSE SEARCH FOR EVIDENCE** (Chapter 4)
4. **INVENTORY SEARCH** (Chapter 5)
5. **PROTECTIVE WEAPONS SEARCH** (Chapter 6)
6. **CONSENT SEARCH** (Chapter 7)
7. **MEDICAL EMERGENCY SEARCH** (Chapter 8)
MOTOR VEHICLE STOPS

ENDNOTES:


2. State v. Richardson, 622 N.W.2d 823, 825 (Minn. 2001); State v. Pike, 551 N.W.2d 919, 921 (Minn. 1996) (“a limited investigatory stop is lawful if the state can show the officer to have had a ‘particularized and objective basis for suspecting the particular person stopped of criminal activity.’”); U.S. v. Thompson, 906 F.2d 1292, 1295 (8th Cir. 1990); U.S. v. Cortez, 449 U.S. 411, 417–18, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981).


4. State v. Timberlake, 744 N.W.2d 390, 393 (Minn. 2008); State v. Waddell, 655 N.W.2d 803, 809 (Minn. 2003) (a brief investigatory stop requires only reasonable suspicion of criminal activity, a lesser quantum of proof than probable cause.).


7. Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); State v. Timberlake, 744 N.W.2d 390, 393 (Minn. 2008); State v. Askerooth, 681 N.W.2d 353, 364 (Minn. 2004) (ruling that the Minn. Const. art. I, § 10 “now explicitly adopt[s] the principles and framework of Terry for evaluating the reasonableness of seizures during traffic stops even when a minor law has been violated.”).


9. Brendlin v. California, 551 U.S. 249, 254, 127 S. Ct. 2400, 2405 (2007); Terry v. Ohio, 392 U.S. 1, 19 n. 16, 88 S.Ct. 1868, 1879 n.16 (1968) (a seizure occurs “when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen.”); State v. Cripps, 533 N.W.2d 388, 391 (Minn. 1995).

10. Matter of Welfare of E.D.J., 502 N.W.2d 779, 783 (Minn. 1993) (holding once a police officer ordered defendant to stop, “there clearly was a ‘seizure.’”).

11. State v. Cripps, 533 N.W.2d 388, 391 (Minn. 1995) (“For purposes of Article I, Section 10 of the Minnesota Constitution . . . a person has been seized if in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he or she was neither free to disregard the police questions nor free to terminate the encounter.”); Matter of Welfare of E.D.J., 502 N.W.2d 779, 783 (Minn. 1993) (“Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled. In the absence of some such evidence, otherwise inoffensive contact between a member of the public and the police cannot, as a matter of law, amount to a seizure of that person.”); See, e.g., Overgvig v. Comm’r of Pub. Safety, 730 N.W.2d 789 (Minn. Ct. App. 2007) (officer did not seize motorist by merely opening door of motorist's car, which was running in empty parking lot late at night, where officer did not park his vehicle in a position blocking motorist's car from moving in either direction and did not activate his emergency lights, and officer did not make any other showing of authority, such as displaying a weapon or using a tone of voice that would indicate that motorist could not terminate the encounter once the officer opened the door); State v. Johnson, 645 N.W.2d 505 (Minn. Ct. App. 2002) (defendant was “seized” when officers seized defendant's state identification card and ran a warrants check); State v. Bergerson, 659 N.W.2d 791, 795 (Minn. Ct. App. 2003) (holding a trailing squad car with flashing lights constitutes a seizure because “no reasonable driver would believe that he or she is free to disregard or terminate the encounter with police.”).

12. State v. Cripps, 533 N.W.2d 388, 391 (Minn. 1995); In re E.D.J., 502 N.W.2d 779 (Minn. 1993) (The Minnesota Supreme Court adopts the "Minnesota Rule" on when a "seizure" occurs and rejects the more liberal U.S. Supreme Court rule enacted in California v. Hodari, 499 U.S. 621, 626, 111 S. Ct. 1547 , 1551, 113 L. Ed. 2d 690 (1991) (a suspect must actually stop or otherwise submit to an officer's show of authority before a Fourth Amendment seizure occurs; "an arrest requires either physical force as described above or, where that is absent, submission to the assertion of authority.").

13. Matter of Welfare of E.D.J., 502 N.W.2d 779, 782 (Minn. 1993) (generally an officer approaching and asking questions of a person standing on a public street or sitting in a parked car is not a seizure.); see, e.g., State v. Colosimo, 669 N.W.2d 1, 4 (Minn. 2003) (holding that an officer walking up to and conversing with defendant while defendant’s boat rested on the trailer of a parked portage truck is not a seizure.); Crawford v. Comm’r of Pub. Safety, 441 N.W.2d 837, 839 (Minn. Ct. App. 1989) (officer’s approach of an already-stopped vehicle does not constitute a Fourth Amendment seizure); However, if the officer summons the person to come over and then requests identification and requires questions to be answered, a “seizure” has occurred. See State v. Day, 461 N.W.2d 404, 407 (Minn. Ct. App. 1990).


investigative stop is lawful "if the state can show the officer to have had a 'particularized and objective' basis to stop a car as 'minimal.'"

20 State v. Timberlake, 744 N.W.2d 390, 393 (Minn. 2008) (quoting Illinois v. Wardlow, 528 U.S. 119, 123, 120 S.Ct. 673 (2000)) (“While the standard is less demanding than probable cause or a preponderance of the evidence, it ‘requires at least a minimal level of objective justification for making the stop.’")

21 State v. Timberlake, 744 N.W.2d at 393 (we have recognized that the reasonable suspicion standard is “not high”); U.S. v. Sokolow, 490 U.S. 1, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989); State v. Britton, 604 N.W.2d 84, 87 (Minn. 2000); State v. Johnson, 444 N.W.2d 824, 825-26 (Minn. 1989).

22 State v. DeRose, 365 N.W.2d 284 (Minn. Ct. App. 1985). See also State v. Bourke, 718 N.W.2d 922, 927 (Minn. 2006) (the reasonable suspicion standard is "not high"); Frank v. Comm'r of Pub. Safety, 384 N.W.2d 574 (Minn. Ct. App. 1986) (factual basis to stop a car is "minimal.").


24 State v. Johnson, 622 N.W.2d 823, 825 (Minn. 2001). See also U.S. v. Cortez, 449 U.S. 411, 417–18, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981) (officers must have a "particularized and objective basis for suspecting the particular person stopped of criminal activity."); State v. Britton, 604 N.W.2d 84, 87 (Minn. 2000); State v. Pike, 551 N.W.2d 919, 921 (Minn. 1996) (investigative stop is lawful “if the state can show the officer to have had a ‘particularized and objective basis for suspecting the particular person stopped of criminal activity’”); State v. Wagner, 637 N.W.2d 330, 336 (Minn. Ct. App. 2001) (trooper had an objective and reasonable suspicion to stop vehicle when trooper observed defendant drive on the shoulder, cross the center line, then speed up and turn sharply.).

25 Delaware v. Prouse, 440 U.S. 648, 99 S. Ct. 1391, 1394 L.Ed. 2d, 660 (1979); State v. Britton, 604 N.W.2d 84, 89 (Minn. 2000) (fact that the vehicle defendant was driving had a broken window did not afford police a reasonable suspicion that the vehicle was stolen, so as to justify an investigatory stop.); State v. Pike, 551 N.W.2d 919, 922 (Minn. 1996) (stop upheld based upon trooper’s knowledge that owner of vehicle he observed being driven had a revoked license, and upon the fact that the trooper had no reason to believe that the vehicle’s owner was not driving the vehicle.); State v. Moffat, 450 N.W.2d 116 (Minn. 1990) (stop upheld – suspect’s car found in area of a burglary and was the only car in the area moments after burglary occurred.); State v. Johnson, 444 N.W.2d 824 (Minn. 1989) (stop upheld based upon driver’s deliberate attempt to evade a peace officer); State v. Gallagher, 275 N.W.2d 803 (Minn. 1979) (this decision contains an analysis of “furtive gestures” as a basis for automobile searches.); State v. Hodgman, 257 N.W.2d 313 (Minn. 1977) (stop upheld - youthful occupant staring out window, appeared to be in an alcohol or drug induced stupor.); State v. Barber, 241 N.W.2d 476 (Minn. 1976) (license plates wired rather than bolted to car - stop upheld); State v. McKinley, 232 N.W.2d 906 (Minn. 1975) (equipment violation-stop upheld); State v. Johnson, 713 N.W.2d 64, 67 (Minn. Ct. App. 2006) (a reasonable, articulable suspicion existed for a traffic stop where light configuration on driver’s motorcycle violated statute.); State v. Bergerson, 659 N.W.2d 791, 796 (Minn. Ct. App. 2003) (abuse any activity or information about Bergerson, merely purchasing two generic items from a hardware store (rubber tubing and acetone), which separately and together have numerous legitimate uses, does not create reasonable suspicion of criminal activity.); State v. Kittredge, 613 N.W.2d 771, 773 (Minn. Ct. App. 2000) (stop upheld where officers observed defendant’s vehicle violated the law by displaying an expired license plate on the front of the truck he was driving.); State v. Huataja, 611 N.W.2d 353 (Minn. Ct. App. 2000) (police officer had reasonable, articulable suspicion that defendant was driving while intoxicated based upon his observation of defendant driving unusually slow and impeding traffic in residential neighborhood at 1:30 a.m.); Johnson v. Morris, 445 N.W.2d 563 (Minn. Ct. App. 1989) (investigative stop upheld - reflectors on the vehicle were not clearly visible and officers were aware of grain thefts in the area); Parnell v. Comm’r of Pub. Safety, 410 N.W.2d 439 (Minn. Ct. App. 1987) (preventing movement away from the scene of a crime, "freezing the situation," may be necessary when police are unsure of perpetrator’s identity.); Applegate v. Comm’r of Pub. safety, 402 N.W.2d 106, 108 (Minn. Ct. App. 1987) (Court lists six factors to consider in determining the validity of stopping a motor vehicle in the vicinity of a recently committed offense); State v. Clark, 394 N.W.2d 570, 572 (Minn. Ct. App. 1986) (pointing out muffler noise as sufficient basis to uphold stop.); State v. Henderson, 382 N.W.2d 275 (Minn. Ct. App. 1986) (stop upheld - vehicle driving slowly through residential alley late at night in area victimized by recent burglaries); State v. Randle, 381 N.W.2d 88 (Minn. Ct. App. 1986)

31 State v. Britton, 604 N.W.2d 84, 87 (Minn. 2000) (“In deciding the propriety of investigative stops, we review the events surrounding the stop and consider the totality of the circumstances in determining whether the police had a reasonable basis justifying the stop.”); State v. Hollins, 789 N.W.2d 244, 248 (Minn. Ct. App. 2010), review denied (Dec. 22, 2010).


33 State v. Askeroth, 681 N.W.2d 353, 369 (Minn. 2004) (we allow that the special training of police officers may lead them to arrive at “inferences and deductions that might well elude an untrained person.”); O’Neill v. Comm’r of Pub. Safety, 361 N.W.2d 471 (Minn. Ct. App. 1985).

34 State v. Britton, 604 N.W.2d 84, 88 (Minn. 2000) (our task is not to decide whether the particular officer’s suspicion was genuine (and in fact we can easily accept that it was); rather, we examine whether the suspicion was objectively reasonable.); State v. DeSarr, 357 N.W.2d 416 (Minn. Ct. App. 1984).


36 Whren, 517 U.S. at 813, 116 S. Ct. at 1774; see also State v. Steinbach, No. A08-0409 (Minn. Ct. App. Apr. 28, 2009) (unpublished opinion) (there was a reasonable articulable suspicion for the stop where officer learned driver had a permit only, observed vehicle change lanes without signaling and swerve, and officer’s subjective intent that the vehicle was casing a business had no bearing on the reasonableness of the stop.); State v. Micius, No. A09-865, 2010 WL 2572116 (Minn. Ct. App. June 29, 2010) (unpublished opinion) (stop lawful despite alleged pretext where appellant committed a traffic violation.).

37 State v. LaMar, 382 N.W.2d 226 (Minn. Ct. App. 1986).

38 State v. Barber, 241 N.W.2d 476 (Minn. 1976) (a state trooper observed a car with license plates held on with baling wire. Believing the occupants might be switching plates from car to car, he stopped the car. It turned out the plates were not being switched from car to car, but the Supreme Court held that the inference drawn was rational and justified the stop which led to an arrest for driving after suspension.); State v. King No. A09-1214 (Minn. Ct. App. Apr. 13, 2010) (unpublished opinion.) (stop based on failure to turn on headlights where officer mistaken by 3 minutes about time of sunset is good faith mistake of fact); State v. Mendel, No. C4-02-91 (Minn. Ct. App. Sept. 17, 2002) (unpublished opinion) (officer’s belief that appellant had crossed center line was a reasonable mistake of fact even though later investigation revealed his perception had been faulty); Gerthen v. Comm’r of Pub. Safety, No. C0-96-319 (Minn. Ct. App. Sept. 3, 1996) (unpublished opinion.) (stop valid when officer mistakenly but reasonably believed that driver had high beams on); State v. Jackman, No. A06-1192 (Minn. Ct. App. Aug. 21, 2007) (unpublished opinion) (stop valid even though officer had wrong license plate number of vehicle identified from surveillance of drug activity.).


40 State v. Johnson, 392 N.W.2d 685 (Minn. Ct. App. 1986); See also State v. Sanders, 339 N.W.2d 557, 558 (Minn. 1983) (“Police had reasonable basis for suspecting that defendant was person for whom probable cause to arrest existed; therefore, stop of defendant to identify him was valid even though it turned out that police were mistaken in their suspicion.”).

41 State v. Anderson, 683 N.W.2d 818, 824 (Minn. 2004) (stop invalid where officer stopped vehicle based upon mistaken interpretation of statute, “whether [the stop was] made in good faith or not”); State v. Kelly, No. C9-02-295 (Minn. Ct. App. July 23, 2002) (unpublished opinion) (officer’s belief that road was closed was a mistake of law and so officer did not have objective basis for stop.); Timmerman v. Comm’r of Pub. Safety, No. CO-00-973 (Minn. Ct. App. Nov. 21, 2002) (unpublished opinion.) (stop invalid when officer mistakenly believed statute required driver to signal turn from private driveway); State v. Klimar, 741 N.W.2d 607 (Minn. Ct. App. 2007) (stop invalid because officer’s belief that running yellow semaphore was illegal was a mistake of law); State v. Smith, No. A07-2426 (Minn. Ct. App. Aug. 5, 2008) (unpublished opinion) (officer’s belief that tires passing the stop sign before coming to a stop was illegal was a mistake of law.).

42 State v. Combs, 398 N.W.2d 563 (Minn. 1987); State v. Timberlake, 744 N.W.2d 390 (Minn. 2008) (police had a reasonable, articulable suspicion that defendant was engaged in criminal activity based on the reliable informant’s report that he was carrying a gun in a motor vehicle; court rejects defendant’s argument that stop was unjustified because it is legal in Minnesota for a private citizen to carry a permitted gun in public.). But see State v. Bergerson, 659 N.W.2d 791, 796 (Minn. Ct. App. 2003) (absent any other activity or information about Bergerson, merely purchasing two generic items from a hardware store (rubber tubing and acetone), which separately and together have numerous legitimate uses, does not create reasonable suspicion of criminal activity.).

43 St. Paul v. Uber, 450 N.W.2d 623 (Minn. Ct. App. 1990); Doheny v. Comm’r of Pub. Safety, 368 N.W.2d 1 (Minn. Ct. App. 1985); Brown v. Texas, 443 U.S. 47, 52 (1979) (merely being in a high-crime area will not justify a stop.); See also State v. Diede, 795 N.W.2d 836, 844 (Minn. 2011) (“Mere proximity to, or association with, a person who may have previously engaged in criminal activity is not enough to support reasonable suspicion of possession of a controlled substance.”).


45 State v. Brechler, 412 N.W.2d 367 (Minn. Ct. App. 1987) (single, isolated “swerve” not enough to justify the stop); See also Warrick v. Comm’r of Pub. Safety, 374 N.W.2d 585 (Minn. Ct. App. 1985) (slight weaving during windy conditions and poor visibility was not enough to stop vehicle); On the other hand, stops can occur though officers do not observe any overtly “illegal” driving conduct. As long as the officer can point to some objective fact from which there is a rational inference of unlawful activity, the stop is arguably valid. Stops may be based on observations of driving conduct that reasonably lead an officer to believe the driver
may be impaired. For example, many DWI arrests are based on traffic stops of vehicles for continuous or unusual weaving within its lane of travel. *State v. Dalos*, 635 N.W.2d 94, 96 (Minn. Ct. App. 2001) (continuous weaving within lane); *State v. Kvam*, 336 N.W.2d 525 (Minn. 1983) (fast turn and weave within lane); *State v. Just*, No. A06-388 (Minn. Ct. App. Sept. 12, 2006) (unpublished opinion) (weaving within lane several times and below speed limit); *State v. Morris*, No. A08-0849 (Minn. Ct. App. Apr. 21, 2009) (unpublished opinion) (weaving within own lane valid basis for stop.).

46 *Cobb v. Comm'r of Pub Safety*, 410 N.W.2d 902 (Minn. Ct. App. 1987) (valid seizure when vehicle parked on street for ten minutes in area where burglaries had been reported at that time of day); *Olmstead Comm'r of Pub Safety*, 412 N.W.2d 41 (Minn. Ct. App. 1987) (upheld stop of vehicle seen on dead-end road near closed businesses in early morning hours where thefts have been a problem.).

47 In *Jones*, the Government obtained a search warrant permitting it to install a GPS mobile tracking device on a vehicle registered to respondent Jones's wife. The warrant authorized the installation of the device within 10 days but agents actually installed the device on the 11th day. The Government then tracked the vehicle's movements for 28 days. It subsequently secured an indictment against Jones and others on drug trafficking conspiracy charges. Jones was convicted. The D.C. Circuit reversed, concluding that admission of the evidence obtained by warrantless use of the GPS device violated the Fourth Amendment. Supreme Court upheld the D.C. Circuit's decision.

48 *U.S. v. Jones*, 564 U.S. ___ (2012), the placement of the tracking device on the owner's vehicle meant an encroachment on a protected area, The Jones Court also distinguished prior Fourth Amendment cases that involved beepers, radio transmitters that would indicate their proximity to a monitor through tones alone (instead of explicit and permanent data of coordinates); Since *Katz v. U.S.*, 389 U.S. 347, 360 (1967) which involved phone tapping, 4th Amendment violations may come from electronic sources if it violates the person's "reasonable expectation of privacy"; *U.S. v. Jones*, 565 U.S. ___ (2012) While such expectations may not be of a suspect's position on a public highway (since his position is visible to the public), it may be on the vehicle itself, which is identified as property. GPS monitoring is more than a visual inspection of a vehicle. The Jones Court makes a strong connection between Fourth Amendment protections and property. "The text of the Fourth Amendment reflects its close connection to property, since otherwise it would have referred simply to the 'right of the people to be secure against unreasonable searches and seizures,' the phrase 'in their persons, houses, papers, and effects' would have been superfluous"; *U.S. v. Knotts*, 460 U.S. 276 (1983) discussed the reasonable-expectation-of-privacy, rather than a common-law trespassing issue. The beeper in *Knotts* was placed into a chemical tank by the consent of its prior owner before it was transported for the manufacture of drugs; *U.S. v. Karo*, 468 U.S. 705, 709-712 (1984) involved a similar fact pattern, but the consent came from a government informant who did not own the tank. Since the beeper did not transmit data that infringed Defendant's privacy interest, and the container was not in the possession of the Defendant, its placement did not constitute a search.

49 In the *Jones* case, the Government argued in the alternative that even if the attachment and use of the device was a search, it was reasonable—and thus lawful—under the Fourth Amendment because "officers had reasonable suspicion, and indeed probable cause, to believe that [Jones] was a leader in a large-scale cocaine distribution conspiracy." Because the Government did not raise that argument before the D.C. Circuit the Supreme Court considered that argument waived and refused to consider it. Therefore, based on the Jones decision it would appear that both probable cause and a warrant is required before law enforcement may use a mobile tracking device; See also M.S. 626A.35-391 which sets out the current statutory procedure for obtaining a pen register, trap and trace device, and a mobile tracking device.

50 *Alabama v. White*, 496 U.S. 325, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990) (anonymous telephone tip that defendant would be leaving a particular apartment, at a particular time, in a particular vehicle, that she would be going to a particular motel and that she would be in possession of cocaine, was corroborated by independent police work and thus provided reasonable suspicion to make an investigative stop.); *State v. Richardson*, 622 N.W.2d 823 (Minn. 2001) (anonymous tip, followed by independent observation of erratic driving is sufficient to justify a stop.); *Olson v. Comm'r of Pub. Safety*, 371 N.W.2d 552 (Minn. 1985); *State v. Pealer*, 488 N.W.2d 3 (Minn. Ct. App. 1992); *State v. Teigen*, 381 N.W.2d 529 (Minn. Ct. App. 1986) (uncorroborated anonymous tip insufficient to justify an investigative stop for a possible drunk driving violation.).

51 See *State v. Davis*, 393 N.W.2d 179 (Minn. 1986) (stop valid when anonymous citizen pointed to suspect vehicle and yelled to officer that driver just ran red light.).

52 In *Re Welfare of G.M.*, 560 N.W.2d 687, 691 (Minn. 1997) (citing *Davis*, 393 N.W.2d at 181. See also *State v. Ballenger*, 667 N.W.2d 133 (Minn. Ct. App. 2003) (uncorroborated anonymous tip that person is armed and has committed a criminal offense was sufficiently reliable to justify investigating stop when tip was provided by private citizen to police face-to-face.).


54 *State v. Timberlake*, 744 N.W.2d 390, 393-94 (Minn. 2008) (the reasonable suspicion standard can also be met based on information provided by a reliable informant, but it "must bear indicia of reliability that make the alleged criminal conduct sufficiently likely to justify an investigatory stop by police."). In *re Welfare of G.M.*, 560 N.W.2d 687 (Minn. 1997).

55 *State v. Musson*, 594 N.W.2d 128, 136 (Minn.1999); *Matter of Welfare of G.M.*, 560 N.W.2d 687, 691 (Minn. 1997) ("We look both at the informant and the informant's source of the information and judge them against "all of the circumstances"); *State v. McCloskey*, 453 N.W.2d 700 (Minn. 1990); *State v. Cook*, 610 N.W.2d 664, 667 (Minn. Ct. App. 2000) (although informant was credible, information was not reliable where informant never claimed that he had purchased drugs from defendant or that he had seen defendant selling drugs, details provided by informant did not predict any future behavior on defendant's part, and informant's details were simply report of defendant's appearance and present location, which anyone could have provided.); See *Illinois v. Gates*, 462 U.S. 213 (1983); *Jobe v. Comm'r of Pub. Safety*, 609 N.W.2d 919, 920 (Minn. Ct. App. 2000) (generally Minnesota appellate courts have focused on two factors: (1) identifying information given by the citizen complainant; and (2) the facts that support the citizen complainant's assertion that a specific person is engaged in criminal activity.); See *Jobe*, at 609 N.W.2d at 921 (these two factors generally reflect the "veracity" of the informant and the "basis of knowledge" for the information which once comprised the two-pronged *Spinelli-Aguilar* test for probable cause; See *Gates*, 462 U.S. at 228 (the strict two-pronged *Spinelli-Aguilar* test was rejected in favor of the totality of the circumstances test now employed by courts.); *State v. Wiley*, 366 N.W.2d 265, 268 (Minn. 1985) (while not dispositive, these two factors, the veracity of the information and the factual basis for believing the person is engaged in criminal activity, are still "highly relevant" to the determination.); See *Alabama v. White*, 496 U.S. 325, 328 (1990).
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56 State v. Davis, 732 N.W.2d 173, 182-83 (Minn. 2007) (“We presume that tips from private citizen informants are reliable. This is particularly the case when informants give information about their identity so that the police can locate them if necessary.”); See also State v. Timmerlake, 744 N.W.2d 390, 394 (Minn. 2008) (report from a reliable informant that defendant was engaged in criminal activity, so as to justify an investigatory stop, even though officers did not know whether defendant had a permit to carry the gun.); State v. Schinzing, 342 N.W.2d 105 (Minn. 1983) (the central factor to consider in determining whether an employee is acting within the course and scope of his employment is whether the conduct is, to some degree, in furtherance of the interests of the employer.);


58 See Youraway v. Comm'r of Pub. Safety, 669 N.W.2d 622, 626 (Minn. Ct. App. 2003) (informant's report of erratic driving provided police officer with reasonable, articulable suspicion to make a traffic stop, though informant did not link the erratic driving to possible alcohol-impaired driving, where informant identified himself, informant saw vehicle passing in no-passing zones and almost forcing informant's car off the road, and informant described make, model, and color of vehicle, approximate age and gender of driver and gender of passenger, location of the vehicle, and direction in which and specific streets on which the vehicle was traveling.); State v. Pealer, 488 N.W.2d 3 (Minn. Ct. App. 1992).

59 State v. Loving, 775 N.W.2d 872, 881 (Minn. 2009); State v. Conaway, 319 N.W.2d 35, 41 (Minn. 1982) (search upheld where defendant was in possession of a “loaner” car from dealership, which car had never been stolen but which had been mistakenly listed on police department and state records as stolen by dealership employee, there was no information held by police department that the car was not stolen, and officers' observations of defendant together with officers' knowledge of defendant's long criminal record provided corroborative information to establish probable cause.); State v. Tilleskjor, 703 N.W.2d 557, 559-60 (Minn. Ct. App. 2005).


61 U.S. v. Hensley, 469 U.S. 221, 105 S.Ct. 675, 83 L.Ed.2d 604 (1985) (motor vehicle stop based on "wanted flyer" upheld); State v. Conaway, 319 N.W.2d 35 (Minn. 1982); State v. Conaway, 319 N.W.2d 35, 41 (Minn. 1982); Knapp v. Comm'r of Pub. Safety, 594 N.W.2d 239, 242 (Minn. Ct. App. 1999) (PBT invalid where, even though officer relied in good faith on information from deputy that there was "reason to believe" defendant was driving under the influence, there were no other facts that provided a basis for inferring that the deputy had a specific and articulable suspicion.); State v. Tottonham, 368 N.W.2d 367 (Minn. Ct. App. 1985) (stop upheld - even though deputy saw no erratic driving, a different officer reported that driver was intoxicated and one-half hour later, the deputy saw driver leave a parking lot by two bars.).


63 See State v. Tilleskjor, 491 N.W.2d 893 (Minn. 1992); State v. Meyer, 641 N.W.2d 324, 326-27 (Minn. Ct. App. 2002) (stop valid where officer was outside his jurisdiction when he observed defendant speeding, stopped and arrested defendant, because the purpose of trip outside of jurisdiction was to obtain driver and owner registration records which were not available within jurisdiction, and it was officer's customary practice to attach such records to citations issued within jurisdiction.; Lorenzen v. Comm'r of Pub. Safety, 594 N.W.2d 552 (Minn. Ct. App. 1999) (officer was acting within the course and scope of his employment for purposes of conferring jurisdiction when officer's suspicion was first aroused within city limits, but she did not observe conduct justifying a stop until outside city limits.).

64 State v. Meyer, 641 N.W.2d 324, 327 (Minn. Ct. App. 2002), citing Hentges v.Thomford, 569 N.W.2d 424, 428 (Minn. Ct. App. 1997) (Court held that the central factor to consider in determining whether an employee is acting within the course and scope of his employment is whether the conduct is, to some degree, in furtherance of the interests of the employer.);

65 Id.; State v. Schinzing, 342 N.W.2d 105 (Minn. 1983); Comm'r of Pub. Safety v. Jancewski, 308 N.W.2d 316 (Minn. 1981); State v. Filipi, 297 N.W.2d 275 (Minn. 1980); State v. Meyer, 641 N.W.2d 324, 326-27 (Minn. Ct. App. 2002); State v. Halvorson, 356 N.W.2d 376 (Minn. Ct. App. 1984); but see State v. Smith, 367 N.W.2d 497 (Minn. 1985) (suppression is not required for technical statutory violations.).

66 Minn. Stat. § 629.40, subd. 4; Tilleskjor, 491 N.W.2d at 893.

67 Minn. Stat. § 629.40, subd. 4; see also Minn. Stat. § 629.37 ("When a private person may make arrest.").

68 State v. Tilleskjor, 488 N.W.2d 327 (Minn. Ct. App. 1992) (although the Court of Appeal’s ultimate ruling was reversed on appeal, see 491 N.W.2d 893 (Minn. 1992), the court’s discussion on the scope of a private citizen’s authority to arrest vs. authority to make an investigative stop, is still valid law.); see also Piotrowski v. Comm'r of Pub. Safety, 453 N.W.2d 689, 690 (Minn. 1990); State v. Schinzing, 342 N.W.2d 105, 108-09 (Minn. 1983).

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71  Supra note 70 (“Courts should be hesitant to declare criminal conduct which occurred in the very recent past (such as the same day of the stop) to be ‘completed’”); see also Dobinski, 2007 WL 736888, at *3 (stop valid; misdemeanor offense occurring minutes before investigatory stop was not “completed.”); Pitt, 2004 WL 2382156, at *5 (investigatory stop was invalid when based upon misdemeanor offense completed more than two months earlier.).

72  Blaisdell, 375 N.W.2d at 882 n.2.

73  Id; State v. Holmes, 569 N.W.2d 181, 185 (Minn. 1997) (suppressing pistol found in investigatory stop where officer merely suspected defendant of seven outstanding parking tickets, because “the [United States] Supreme Court has indicated that ‘[t]he Terry rule should be expressly limited to investigation of serious offenses.’”) (quoting 4 Wayne R. LaFave, Search and Seizure § 9.2(c), at 32 (3d ed.1996)); State v. Sitch, 399 N.W.2d 198, 199 (Minn. Ct. App. 1987) (“No precedent holds that it is unlawful to make an immediate pursuit and stop of a person who has committed a misdemeanor in the very recent past.”); Dobinski, 2007 WL 736888, at *3; Pitt, 2004 WL 2382156, at *5.

74  State v. Hiler, 376 N.W.2d 760 (Minn. Ct. App. 1985); see also State v. Angeski, A05-105, 2005 WL 3289447, at *4 (Minn. Ct. App. Dec. 6, 2005) (stop upheld because 911 call claiming defendant harassed her and investigatory stop with field sobriety tests concluding defendant was driving under the influence all occurred within an hour.).

75  Minn. Stat. § 629.341, subd. 1 (2010).

76  Minn. Stat. §§ 629.34, subd. 1(c)(6); 518B.01, subd. 14 (Domestic Abuse Order for Protection); 609.748, subd. 6 (Harassment Restraining Order) (2010).

77  Minn. Stat. § 629.34, subd. 1(c)(6) (2010); MINN. R. CRIM. P. 6.03, subd. 2 (1994).

78  Minn. Stat. § 609.605, subd. 4(f) (2010).

79  Minn. Stat. §§ 169A.40, subd. 1 (DWI); 169A.40, subd. 3 (Aggravated DWI); 360.0752, subd. 4 (Aircraft DWI); 84.91 (Snowmobile and all terrain vehicle DWI) (2010).

80  Minn. Stat. §§ 609.52, subd. 2(4); 629.364(b) (2010).

81  Minn. Stat. §§ 609.52, subd. 2(1) to (17); 629.34, subd. 1(c)(5) (2010).

82  Minn. Stat. §§ 609.595, subd. 2 (1992); 629.34, subd. 1(c)(5) (2010).

83  Minn. Stat. §§ 609.631, subd. 4(4); 629.34, subd. 1(c)(5) (2010).

84  Minn. Stat. §§ 609.749; 629.34, subd. 1(c)(5) (2010).

85  Minn. Stat. §§ 609.821, subd. 3; 629.34, subd. 1(c)(5) (2010).

86  State v. Hanson, 504 N.W.2d 219, 219-20 (Minn. 1993) (no seizure where officer saw vehicle stopped on shoulder of highway at night, activated emergency lights to warn oncoming drivers, and parked behind the vehicle to see if driver needed any assistance. Under the circumstances, the officer’s actions “would not have communicated to a reasonable person that the officer was attempting to seize the person. A reasonable person would have assumed that the officer was not doing anything other than checking to see what was going on and to offer help if needed.” But, Court also noted that under many circumstances, an officer’s use of emergency lights “would signal to a reasonable person that the officer is attempting to seize the person.”); State v. Lopez, 698 N.W.2d 18, 22 (Minn. Ct. App. 2005) (defendant was seized where officer received call about unconscious person in parked car, activated squad car lights, pulled into parking lot, partially blocked forward movement of defendant’s vehicle, ponerd on driver’s window, and opened driver’s door.); Paulson v. Comm’r of Pub. Safety, 384 N.W.2d 244 (Minn. Ct. App. 1986); State v. McCalip, A09-169, 2009 WL 3818371, at *2-3 (Minn. Ct. App. Nov. 17, 2009) (no seizure where officer pulled up behind driver’s already-stopped car and then activated his emergency lights, because the driver was far from any town and there was no evidence that the driver pulled over in response to anything the officer did.).

87  State v. Riley, 667 N.W.2d 153, 156 (Minn. Ct. App. 2003) (“It is well settled that a police officer, while standing in a place in which he has a right to be, next to an automobile which he has not stopped, may properly shine his flashlight through the car window into the passenger compartment and observe anything in plain view.”); State v. Reese, 388 N.W.2d 421, 422 (Minn. Ct. App. 1986) (“In the cases involving already-stopped vehicles, it is not necessary that an officer suspect criminal activity but he may arrest a driver and seize contraband if he views it in plain sight in the vehicle.”); State v. Volknewska, 292 N.W.2d 756, 757 (Minn. 1980) (officer did not seize defendant and “had a right to be where he was when he looked through the window” and saw marijuana when defendant had already stopped his car, officers approached for a legitimate reason and defendant did not try to leave.).

88  Florida v. Royer, 460 U.S. 491, 497, 103 S.Ct. 1319, 1324, 75 L.Ed.2d 229 (1983); State v. Harris, 590 N.W.2d 90, 98 (Minn. 1999) (a person generally is not seized merely because a police officer approaches him in a public place or in a parked car and begins to ask questions.); In re Welfare of E.D.J., 502 N.W.2d 779, 782 (Minn. 1993); U.S. v. Volkneuska, 292 N.W.2d 756, 757 (Minn. 1980); Overvig v. Comm’r of Pub. Safety, 730 N.W.2d 789, 792 (Minn. Ct. App. 2007); State v. Lopez, 698 N.W.2d 18, 22 (Minn. Ct. App. 2005); State v. Krech, 381 N.W.2d 898, 899 (Minn. Ct. App. 1986) (“A seizure under the Fourth Amendment does not occur when an officer simply walks up and talks to a driver sitting in an already-stopped car.”).
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89 State v. Davis, 732 N.W.2d 173, 182 (Minn. 2007) (to make a legal investigatory stop or seizure, the police must be able to show a reasonable suspicion based on "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion."); LaBeau v. Comm'r of Pub. Safety, 412 N.W.2d 777 (Minn. Ct. App. 1987); Cobb v. Comm'r of Pub. Safety, 410 N.W.2d 902 (Minn. Ct. App. 1987); State v. Day, 461 N.W.2d 404, 407 (Minn. Ct. App. 1990) ("Unless an officer has a reasonable suspicion that a driver is unlicensed or that he is otherwise subject to seizure for violations of the law, a seizure for the purpose of checking identification is unreasonable under the Fourth Amendment.") Thus, defendant seized when uniformed and armed police officer summoned defendant to approach squad car and required defendant to provide identification and answer questions.; State v. Lipinski, 419 N.W.2d 651 (Minn. Ct. App. 1988); State v. Hickman, 491 N.W.2d 673 (Minn. Ct. App. 1992) (although Minn. Stat. § 171.08 requires a driver to display his/her drivers license upon demand of a peace officer, that provision only applies if the investigative stop is based upon "reasonable suspicion."). But see State v. Hjarnanstein, 525 N.W.2d 587, 588 (Minn. Ct. App. 1994) ("Not every request for identification rises to the level of intrusiveness" required to constitute a seizure.).

90 State v. Cripps, 533 N.W.2d 388, 391 (Minn. 1995) (seizure when Cripps had to stand in line and watch officer request I.D. from all bar patrons to determine if they were of legal drinking age); State v. Baril, No. A05-2433 (Minn. Ct. App. Dec. 26, 2006) (unpublished opinion) (seizure when officer asked motorist sitting in truck for identification and to exit); State v. Perry, No. A07-429 (Minn. Ct. App. Apr. 22, 2008) (unpublished opinion) (unlawful seizure where officer stopped and made contact with vehicle occupants who gave explanation for behavior before police requested identification.).

91 U.S. v. Angell, 11 F.3d 806, 809 (8th Cir. 1993), cert. denied 114 S.Ct. 2747, 512 U.S. 1239 (1994) (no seizure where officer initially questioned defendants concerning who they were and where they were going and then told defendants "stay there" or "hold it right there," officer did not turn on his patrol car lights, did not block pathway of defendant's car, did not draw weapon, and did not physically touch defendants.; State v. Lopez, 698 N.W.2d 18, 23 (Minn. Ct. App. 2005) (generally an officer responding to a call to investigate someone unconscious or sleeping in a vehicle is justified in investigating the welfare of that individual.; Blank v. Comm'r of Pub. Safety, 358 N.W.2d 441 (Minn. Ct. App. 1984); Paulson, 384 N.W.2d at 244; Kozak v. Comm'r of Pub. Safety, 359 N.W.2d 625 (Minn. Ct. App. 1984).)

92 Overvig v. Comm'r of Pub. Safety, 730 N.W.2d 789, 793 (Minn. Ct. App. 2007) (officer did not seize motorist by merely opening door of motorist's car, which was running in empty parking lot late at night, where officer did not park his vehicle in a position blocking motorist's car from moving in either direction and did not activate his emergency lights and officer did not make any other showing of authority, such as displaying a weapon or using a tone of voice that would indicate that motorist could not terminate the encounter once the officer opened the door.; State v. Lopez, 698 N.W.2d 18, 22 (Minn. Ct. App. 2005) (Defendant was seized when officer received call about unconscious person in parked car, activated squad car lights, pulled into parking lot, partially blocked forward movement of defendant's vehicle, pounded on driver's window, and opened driver's door.; Klotz v. Comm'r of Pub. Safety, 437 N.W.2d 663 (Minn. Ct. App. 1989); State v. Sanger, 420 N.W.2d 241 (Minn. Ct. App. 1988) (peace officer who observed a parked vehicle at night with people in the front and back seats, effected an investigative stop (seizure) when he positioned his squad car in such a position that the parked car could not leave.; but see Erickson v. Comm'r of Pub. Safety, 415 N.W.2d 698 (Minn. Ct. App. 1987) (unintentional blocking of car did not constitute a seizure.).

93 State v. Hanson, 504 N.W.2d 219 (Minn. 1993).

94 State v. Vohnaoka, 292 N.W.2d 756, 756 (Minn. 1980) (police officer, while standing in a place in which he had a right to be, next to automobile which had not been stopped by officer or temporarily seized, did not shine his light or pass his lighted flashlight through window into passenger compartment, and marijuana which he saw in open view justified subsequent search of vehicle pursuant to motor-vehicle exception to the warrant requirement.; State v. Landon, 256 N.W.2d 89 (Minn. 1977) (Court upheld the practice of police officers routinely shining flashlights through the windows of cars lawfully stopped for speeding against a Fourth Amendment challenge.; State v. Riley, 667 N.W.2d 153, 156-57 (Minn. Ct. App. 2003) (officers' use of flashlight to look in car and observe an uncased rifle was lawful where the stop was valid.; State v. Krech, 381 N.W.2d 898, 899 (Minn. Ct. App. 1986) (police officers' use of flashlights to illuminate defendant's already-parked car "was permissible because the officers' visual check was made from a lawful viewpoint.").

95 Pennsylvania v. Minns, 434 U.S. 106, 111, 98 S.Ct. 330, 333, 54 L.Ed.2d 331 (1977) (once a motor vehicle has been lawfully detained for a traffic violation, the police officer may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures; 

"[w]hat is at most a mere inconvenience cannot prevail when balanced against legitimate concerns for the officer's safety."); Maryland v. Wilson, 519 U.S. 408, 412 (1997) (officer may also order the passengers out of the vehicle.; State v. Willo, 320 N.W.2d 726 (Minn. 1982)); State v. Gilchrist, 299 N.W.2d 913 (Minn. 1980); State v. Ferrise, 269 N.W.2d 888 (Minn. 1978) (held that officer opening of passenger's door was permissible under a Minns analysis, due to concern for officers' safety.; State v. Krenik, 774 N.W.2d 178, 183 (Minn. Ct. App. 2009) (officer did not need individualized justification for directing the front seat passenger of legally stopped vehicle to get out of the vehicle; ordering a passenger out of a vehicle during a valid traffic stop was reasonable.; Overvig v. Comm'r of Pub. Safety, 730 N.W.2d 789, 792-93 (Minn. Ct. App. 2007) (officer's act of opening driver's unlocked door after driver was unresponsive to officer's knocking was proper; "it is not reasonable in situations such as this to require officers to communicate with unresponsive or unconscious drivers through closed car windows when the driver refuses or is unable to lower the window."); State v. Keith, C9-00-1359, 2001 WL 139008 (Minn. Ct. App. Feb. 20, 2001) (held that police officer's act of opening passenger door without knocking, after approaching based upon informant's tip, was proper.; LaBeau v. Comm'r of Pub. Safety, 412 N.W.2d 777 (Minn. Ct. App. 1987).)


97 New York v. Class, 443 U.S. 130, 143, 99 S.Ct. 2719, 2734, 61 L.Ed.2d 560 (1979) (police officer had probable cause to arrest for traffic violation, but was not justified in making an investigatory stop in the absence of a warrant.). But see State v. Blank, 519 N.W.2d 441, 448 (Minn. Ct. App. 1994) (police officer's request for time to write out ticket to man who refused to pull over was reasonable.).

98 State v. Hickman, 491 N.W.2d 673 (Minn. Ct. App. 1992) (officer stopped driver with expired plates and then sees a valid temporary permit may not ask to see a license.; Frazier v. Comm'r of Pub. Safety, No. A07-0997, 2008 WL 2574108, at *4 (Minn. Ct. App. July 1, 2008) (request to see license was valid
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where officer stopped driver for snow obscuring view of license plate and tabs, approached vehicle and asked for driver’s license, observed signs of intoxication, conducted field sobriety tests and arrested the driver; Court distinguished case from Hickman because officer presumably could have cited driver for violating statute and would be justified in asking for license in that occasion.; State v. Matson, No. A06-483, 2006 WL 2474237, at *3 (Minn. Ct. App. Aug. 29, 2006) (Officer’s request to see driver’s license was invalid because the State failed to establish officer had reasonable suspicion for her belief that driver’s license was not valid.); Minn. Stat.§ 171.08 (the licensee shall also, upon request of any officer, write the licensee's name in the presence of the officer to determine the identity of the licensee.)

99 State v. Bauman, 586 N.W.2d 416 [Minn. Ct. App. 1998] (if a driver does not produce identification and the officer has a probable cause to believe the driver is providing a false name, a search of the vehicle for identification is then lawful.); Minn. Const. art. I, see 10; State v. Hollins, 789 N.W.2d 244, 246-49 [Minn. Ct. App. 2010] (when a person is detained based on reasonable suspicion of possessing a handgun in public, police may conduct a limited search for identification following a lawful demand for identification where the person detained has refused to provide his name or identity information. Search of defendant's pockets and wallet was upheld.); State v. Fox, 168 N.W.2d 260, 262 [Minn. 1969] (persons found under suspicious circumstances are not clothed with a right of privacy which prevents law-enforcement officers from inquiring as to their identity and actions. The essential need of public safety permit police officers to use their faculties of observation and to act thereon within proper limits. It is not only the right but the duty of police officers to investigate suspicious behavior, both to prevent crime and to apprehend offenders.).

100 Minn. R. Crim. Pro. 6.01, subd 1(1)(a) [2006] (amended 2010); Law enforcement officers acting without a warrant, who have decided to proceed with prosecution, shall issue citations to persons subject to lawful arrest for misdemeanors, unless it reasonably appears to the officer that arrest or detention is necessary to prevent bodily harm to the accused or another or further criminal conduct, or that there is a substantial likelihood that the accused will fail to respond to a citation (emphasis added). The citation may be issued in lieu of an arrest, or if an arrest has been made, in lieu of continued detention. If the defendant is detained, the officer shall report to the court the reasons for the detention. Ordinarily, for misdemeanors not punishable by incarceration, a citation shall be issued; See State v. Brown, 345 N.W.2d 233, 237 [Minn. 1984] (arrest lawful where officer had previously cited defendant and was aware defendant did not respond to those citations); See State v. Hollins, 789 N.W.2d 244, 249-250 [Minn. Ct. App. 2010].


103 New York v. Class, 475 U.S. 106, 106 S.Ct. 960, 89 L.Ed.2d 81 (1986) (following lawful investigative stop, while driver was outside car, officers lawfully reached into vehicle to remove papers that were covering the VIN and observed a gun protruding from underneath the driver’s seat. Seizure of gun upheld under Plain View Doctrine. The Court also held that the visual observation of an identification number appearing on the vehicle’s interior “does not constitute a Fourth Amendment search.”); State v. Jacox, No. A09-668, 2010 WL 2035618, at *5 (Minn. Ct. App. May 25, 2010), review denied (Aug. 10, 2010) (Court held opening car door to compare federal ID sticker to VIN in a lawfully stopped vehicle was not a search because defendant did not have expectation of privacy on the door frame or dashboard of car where VIN is located.); State v. Hanson, No. C5-01-686, 2002 WL 109373, at *4-5 (Minn. Ct. App. Jan. 29, 2002) (officer’s inspection of VIN number on Bobcat parked in backyard of home was not a search in and of itself because no evidence that officer moved or handled Bobcat to locate VIN, and mere inspection of exposed VIN is not a search because there is no reasonable expectation of privacy with respect to the car’s VIN.).

104 State v. Askerooth, 681 N.W.2d 353, 374 (Minn. 2004) (the placement of a lawfully stopped motorist in a police car for a short period of time does not automatically take the situation beyond the realm of the ordinary traffic stop); State v. Pleas, 329 N.W.2d 329 (Minn. 1983); State v. Gallagher, 275 N.W.2d 803 (Minn. 1979); Kirsch v. Comm'r of Pub. Safety, 440 N.W.2d 147 (Minn. Ct. App. 1989); State v. Schinzing, 342 N.W.2d 105 (Minn. 1983) (requesting stopped driver to show his license is standard procedure in stop cases).


106 Vivier v. Comm’n of Pub. Safety, 406 N.W.2d 587 (Minn. Ct. App. 1987); State v. Van Wagner, 504 N.W.2d 746, 749 (Minn. 1993) (placing an intoxicated driver into the rear of the squad car did not create a custodial setting thus requiring Miranda warnings because “the defendant who was placed in the back seat of a squad car had to be put somewhere” and could not, in his drunken state, be left in his own car.); See also State v. Herem, 384 N.W.2d 880, 883 (Minn. 1986) (the back seat of a squad car, though locked to prevent the suspect’s exit, is not by itself a custodial setting.); State v. Urban, No. A08-1316, 2009 WL 2151130, at 4 (Minn. Ct. App. July 21, 2009) (because the officer had a particularized and objective reason to stop appellant and question him on the scene to investigate the situation, there was no custodial interrogation implicating appellant’s Miranda rights, even though questioning was conducted in patrol car.); State v. Williams, No. A03-929, 2004 WL 1661219, at 2 (Minn. Ct. App. July 27, 2004) (Court held that statements made without a Miranda warning were admissible because a reasonable person in defendant’s position would not have believed that he was in police custody to the degree associated with formal arrest, where defendant was approached by an officer who told him he matched the description of a man who had recently committed a theft in the area, officer then asked defendant to wait in the squad car with him and his partner until victim arrived; neither officer drew his gun, defendant was not handcuffed, and detention was only for 10 to 15 minutes.); State v. Voigt, 486 N.W.2d 793, 795 (Minn. Ct. App. 1992) (the mere placement of a defendant in the back seat of a squad car might not, by itself, make it a full custodial detention thus requiring Miranda warnings before questioning can begin.).

107 Berkemer, 468 U.S. at 420, 104 S.Ct. at 3138, 82 L.Ed.2d at 317; Brader, 109 S.Ct. at 205; State v. Vanderharr, 733 N.W.2d 847, 855 (Minn. Ct. App. 2007) (Court held that a Miranda warning was not required because defendant was not subjected to “treatment which can fairly be characterized as the functional equivalent of formal arrest,” where trooper only asked defendant general questions about his alcohol consumption on the scene and requested a PBT, which did not rise to the level of a custodial interrogation, even though trooper repeated the question.); State v. Voigt, 486 N.W.2d 793 (Minn. Ct. App. 1992) (officer’s questioning of defendant at the subsequent ordinary traffic stop became custodial interrogation when officer conditioned defendant’s release on his providing
written statement; thus Miranda warning was required); State v. Seekon, 392 N.W.2d 624, 626 (Minn. Ct. App. 1986) (statements made during probable cause felony stop executed in response to radio report of threats were inadmissible without Miranda warning); State v. Proechel, No. C1-93-1142, 1993 WL 536118, at *2-3 (Minn. Ct. App. Dec. 28, 1993) (following valid vehicle stop, officer asked driver for his license and driver admitted to driving without a license. Officer stopped talking to driver from the roadside and immediately directed the driver into the back seat of his squad car. It was not until defendant was safely detained there that the officer began the questioning which led to defendant's further admission that the vehicle was uninsured. Because there was no reason to place defendant in the squad car other than to detain him, the sudden change from roadside questioning to a custodial setting required a Miranda warning before further questioning. Defendant's squad car admission which suppressed. If the officer had left defendant in his car and continued the roadside questioning there would have been no need for a Miranda warning.).

110 Nyflot v. Comm'r of Pub. Safety, 369 N.W.2d 512 (Minn. 1985), overruled by Friedman v. Comm'r of Pub. Safety, 473 N.W.2d 828, 836-37 (Minn. 1991); State v. Mellent, 642 N.W.2d 779, 788 (Minn. Ct. App. 2002) (Court held that since there is no evidence that appellant was in custody, her refusal to perform field sobriety tests was not the product of custodial interrogation; thus Miranda warnings were not necessary for refusal statement to be admissible into evidence.); Butler v. Comm'r of Pub. Safety, 348 N.W.2d 827 (Minn. Ct. App. 1984).

110 State v. Askerooth, 681 N.W.2d 353, 364 (Minn. 2004); State v. Wiegand, 645 N.W.2d 125, 135 (Minn. 2002); State v. Ortega, 749 N.W.2d 851, 853 (Minn. Ct. App. 2008), aff'd on other grounds, 770 N.W.2d 145 (Minn. 2009); State v. Syhavong, 661 N.W.2d 278, 281 (Minn. Ct. App. 2003) (officer lacked reasonable, articulable suspicion to expand the scope of initial stop by asking defendant whether he had anything illegal in the car.).

110 State v. Smith, ___ N.W.2d ___, 2012 WL 2012860 (Minn. June 6, 2012) (an officer’s expansion of the scope of a lawful traffic stop was supported by a reasonable, articulable suspicion of illegal activity, when the totality of the circumstances include a defendant shaking "very violently" and he offered an evasive explanation for the shaking. This decision départ from a line of cases generally holding that a defendant’s nervousness doesn’t give rise to reasonable suspicion.); See also State v. Diede, 795 N.W.2d 836, 845 (Minn. 2011) (detective’s request to search cigarette package was an improper expansion of the scope of the stop, where the initial investigation and stop were based upon mismatched license plates, because "even if mismatched plates supported a reasonable suspicion that the truck was stolen or that the owner was attempting to evade automobile registration fees, a search for drugs was not reasonably related to those justifications."); State v. Askerooth, 681 N.W.2d 353, 365, 367 (Minn. 2004) ("In essence, Article I, Section 10 of the Minnesota Constitution requires that each incremental intrusion during a traffic stop be tied to and justified by one of the following: (1) the original legitimate purpose of the stop, (2) independent probable cause, or (3) reasonableness, as defined in Terry. Furthermore, the basis for the intrusion must be individualized to the person toward whom the intrusion is directed."). With regard to traffic stops, a police officer may order a driver out of a lawfully stopped vehicle without additional reasonable suspicion to support the expansion which led to defendant's further admission that the vehicle was uninsured.  Because there was no reason to place defendant in the back of a squad car. Court held that "the lack of a driver's license, by itself, is not a reasonable basis for confining a driver in a squad car's locked back seat when the driver is stopped for a minor traffic offense."; State v. Fort, 660 N.W.2d 415, 419 (Minn. 2003) (investigative questioning, request for consent to search, and subsequent search of passenger for narcotics in vehicle stopped for routine traffic violations went beyond scope of traffic stop and was unsupported by any reasonable articulable suspicion, where officer testified that location of stop was in high drug area, and that he intended to offer defendant a ride home and conducted pat down search for purposes of officer safety, but officer never said he suspected any crime other than traffic violations); State v. Cox, 807 N.W.2d 447, 452 (Minn. Ct. App. 2011) ("If a stop is initially justified on one basis, an officer cannot expand the scope of the investigation without additional reasonable suspicion to support the expansion; where officer lawfully stopped defendant for suspicion of stolen tabs and upon approaching defendant to inquire as to the tabs officer immediately observed signs of defendant's intoxication, officer lawfully developed additional reasonable suspicion that supported the expanded scope of the initial stop.").

111 Illinois v. Caballes, 543 U.S. 405, 409-10, 125 S. Ct. 834 (2005) (A dog sniff conducted during a concededly lawful traffic stop that reveals no information other than the location of a substance that no individual has any right to possess does not violate the Fourth Amendment. In Caballes, after an Illinois state trooper stopped respondent for speeding and radioed in, a second trooper, overhearing the transmission, drove to the scene with his narcotics-detection dog and walked the dog around respondent's car while the first trooper wrote respondent a warning ticket. When the dog alerted at respondent's trunk, the officers searched the trunk, found marijuana, and arrested respondent. "Accordingly, the use of a well-trained narcotics-detection dog—one that "does not expose non-contraband items that otherwise would remain hidden from public view."); U.S. v. Place, 462 U.S. 696, 707 (1983) (a lawful traffic stop generally does not implicate legitimate privacy interests. In this case, the dog sniff was performed on the exterior of respondent's car while he was lawfully seized for a traffic violation. Any intrusion on respondent's privacy expectations does not rise to the level of a constitutionally cognizable infringement. This conclusion is entirely consistent with the Supreme Court’s decision that the use of a thermal-imaging device to detect the growth of marijuana in a home constituted an unlawful search.); Kyllo v. U.S. 533 U.S. 27 (2001). Critical to that decision was the fact that the device was capable of detecting lawful activity—in that case, intimate details in a home, such as "at what hour each night the lady of the house takes her daily sauna and bath." Id. at 38. The legitimate expectation that information about perfectly lawful activity will remain private is categorically distinguishable from respondent's hopes or expectations concerning the non-detection of contraband in the trunk of his car. A dog sniff conducted during a concededly lawful traffic stop that reveals no information other than the location of a substance that no individual has any right to possess does not violate the Fourth Amendment; See also U.S. v. Place, 462 U.S. 696, 707, 103 S. Ct. 2637 (1983) (a dog sniff does not expose non-contraband items that otherwise would remain hidden from public view, but discloses only the presence or absence of narcotics. Seizure of luggage at the airport subjected to a dog sniff).)

112 State v. Wiegand, 645 N.W.2d 125, 133-35 (Minn. 2002) (police walked a narcotics-detection dog around the exterior of a motor vehicle that had been stopped because of a burned-out headlight. Because there is "some expectation of privacy in an automobile" and a dog sniff intrudes upon this privacy interest "to some degree," we hold that the police "cannot conduct a narcotics-detection dog sniff around a motor vehicle stopped for a routine equipment violation without some level of suspicion of illegal activity" (reasonable suspicion). However, "[A] dog sniff around the exterior of a legitimately stopped motor vehicle is not a search requiring probable cause on the basis of either the Fourth Amendment or the Minnesota Constitution."); State v. Allbee, 2009 WL1513632 (Minn. Ct. App.) (unpublished opinion) (dog sniff of the exterior of a vehicle belonging to theft suspect found parked in the Grand Casino Hinckley RV park upheld because officers had a reasonable suspicion that the vehicle contained illegal drugs based upon observations made by officers looking through the windows. Officers could see "a clear plastic baggy protruding from a black case" and an "orange, slightly larger than chewing gum pack of rolling papers inside the clear plastic bag." According to the officer, the baggy "was the same type [he had] observed numerous times as those containing illicit narcotics." reasonable suspicion found and search upheld.); State v. Carter, 697 N.W.2d 199, 210-11 (Minn. 2005) (the Court held that use of a narcotics-detection dog outside a private storage unit located within a fenced self-storage facility is a search for purposes of the Minnesota Constitution even though it was not a search for purposes of the United States Constitution. The court reached that conclusion because it found that the "expectation of privacy at issue was greater under the
Minneapolis Constitution than it has been determined to be under the Fourth Amendment" citing to *Illinois v. Caballes*, 543 U.S. 405, 409-10, 125 S. Ct. 834, (2005) (the Court further held that the “reasonable, articulable suspicion standard struck the appropriate “middle ground” between the individual’s privacy interest and the government’s interest in using effective law enforcement tools.”); *State v. Davis*, 732 N.W.2d 173 (Minn. 2007) (using results of a dog sniff in the common hallway outside the defendants apartment to support the issuance of a search warrant upheld. “The police needed only reasonable, articulable suspicion that defendant was engaged in illegal drug activity, rather than probable cause to conduct the dog sniff in the common hallway outside Davis’s apartment door.”); *But see, State v. Miller*, 659 N.W.2d 275, 280 (Minn. Ct. App. 2003) (dog sniff impermissible expansion of initial traffic stop for broken windshield, where officer did not have a reasonable, articulable suspicion that either defendant or other occupant was involved in drug-related or any criminal activity.).

*State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002) (even if the officer does have a “reasonable, articulable suspicion” to properly stop a vehicle, “an investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop.”); *State v. Munson*, 594 N.W.2d 128, 137 (Minn. 1999) (“[A]s long as the reasonable suspicion for the detention remains, the police may continue the detention provided they act diligently and reasonably.”); *State v. Blacksten*, 507 N.W.2d 842, 846 (Minn. 1993); *State v. Moffatt*, 450 N.W.2d 116, 119 (Minn. 1990) (the police may continue to detain a person only “[a]s long as the reasonable suspicion for the detention remains.”).

*U.S. v. Sharpe*, 470 U.S. 675, 105 S.Ct. 1568, 84 L.Ed.2d 605 (1985) (Court upheld a 20-minute detention of a "suspected drug trafficking" pickup truck and camper.); *See also State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004); *State v. Blacksten*, 507 N.W.2d 842, 846 (Minn. 1993) (reiterating and applying the general rule in *Sharpe*).

*State v. Smith*, A10-0916, June 6, 2012 (Minn. 2012) (an officer’s expansion of the scope of a lawful traffic stop was supported by a reasonable, articulable suspicion of illegal activity, when the totality of the circumstances include a defendant shaking “very violently” and he offered an evasive explanation for the shaking. This decision departs from a line of cases generally holding that a defendant’s nervousness does not give rise to reasonable suspicion.); *See also, State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002); *State v. Ortega*, 749 N.W.2d 851, 853 (Minn. Ct. App. 2008), *aff’d on other grounds*, 770 N.W.2d 145 (Minn. 2009). *See also State v. Diede*, 795 N.W.2d 836, 845 (Minn. 2011) (detective’s request to search cigarette package was an improper expansion of the scope of the stop, where the initial investigation and stop were based upon mismatched license plates, because “even if mismatched plates supported a reasonable suspicion that the truck was stolen or that the owner was attempting to evade automobile registration fees, a search for drugs was not reasonably related to those justifications.”); *See additional cases cited in footnote 110.

*State v. Moffatt*, 450 N.W.2d 116 (Minn. 1990) (sixty-one minute detention upheld.); *See also, State v. Gallagher*, 275 N.W.2d 803 (Minn. 1979) (two-hour detention upheld.); *U.S. v. Place*, 462 U.S. 696, 103 S.Ct. 2637, 77 L.Ed.2d 110 (1983) (ninety-minute detention held improper.).

*Moffatt*, 450 N.W.2d at 116.

CHAPTER 2
SEARCH INCIDENT TO ARREST

2.1 WHAT IS THE GENERAL RULE?

1. NEW “ARIZONA v. GANT” GENERAL RULE (2009): In 2009 the United States Supreme Court in Arizona v. Gant, 556 U.S. 332 (2009) in a dramatic decision established a new rule governing the search incident to arrest exception. Under this new rule (see underlined section below), when a peace officer has made a lawful custodial arrest of an occupant of a motor vehicle, the officer may contemporaneously search the person and the passenger compartment area of the vehicle, including the contents of any containers (open or closed) found within the passenger compartment, if: (1) “the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search,” (i.e. Possibility of Access Search) or (2) it is “reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle” (Offense Related Evidence Search). When these justifications are absent, a search of an arrestee's vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies.2

HISTORICAL POINT OF INTEREST - OLD BELTON BRIGHT LINE RULE (Prior to 2009): Under the old Belton search incident to arrest exception, when a peace officer made a lawful custodial arrest of an occupant of a motor vehicle, the officer could contemporaneously search the person and the passenger compartment area of the vehicle, including the contents of any containers (open or closed) found within the passenger compartment. In New York v. Belton, 453 U.S. 454 (1981), the United States Supreme Court created a "Bright Line" rule which designated the entire interior of the passenger compartment area (as well as containers found therein) as within the proper scope of a contemporaneous search incident to arrest. Under this old Belton Bright Line rule, the only prerequisite to the search incident to arrest was that the motor vehicle stop was lawful (i.e. based on reasonable suspicion) and the occupant’s arrest was lawful (i.e. supported by probable cause). It is important to note that Belton was not overruled and replaced by Gant; rather, Gant has been tacked onto Belton.3

GENERAL RULE AS TO ARRESTED PERSON: In most cases, a search warrant is required to perform a lawful search. A long-recognized exception to this requirement is searches incident to a lawful arrest.4 This rule permits an officer to perform a warrantless search during or immediately after a lawful arrest. This search is limited to only the person arrested and the area immediately surrounding the person in which the person may gain possession of a weapon, in some way effect an escape, or destroy or hide evidence.5 As noted above, in the case of Arizona v. Gant the Supreme Court clarified application of this exception to cases involving motor vehicles.

Note: It makes no difference whether the person arrested is the driver or passenger, as long as the arrested person was an occupant or recent occupant of the vehicle shortly before the arrest occurs. For a more detailed discussion on who is and is not a “motor vehicle occupant,” see § 2.28.

Note: In a “Possibility Of Access” search, the United States Supreme Court admitted that because “officers have many means of ensuring the safe arrest of vehicle occupants, it will be the rare case in which an officer is unable to fully effectuate an arrest so that a real possibility of access to the arrestee's vehicle remains.”6

Note: In an “Offense-Related Evidence” search, the Supreme Court in the Gant decision did not specify
whether the rule’s evidentiary standard -- “reasonable to believe” -- is equal to or less than probable cause. Most courts, however, assert that it must require something less than probable cause, and is most likely similar to the Terry “reasonable suspicion” standard.7

Note: In an “Offense-Related Evidence” search, the evidence reasonably believed to be in the vehicle must be relevant to the offense of arrest. Thus, in order for a search to be justified, the offense of arrest must be an offense for which police could “expect to find evidence in the passenger compartment” of the vehicle.8

2. Legal Justification: For a “Possibility of Access” search, when a police officer places an individual under arrest, there is an obvious danger that the arrestee may violently attempt to resist and use any weapon within reach. Recognizing this, as well as the risk that evidence within the arrestee's control may be destroyed by the arrestee, courts long ago carved out an exception to the warrant requirement which permits a search of the person and the area immediately surrounding the subject of an arrest (defined as the area from which he could obtain a weapon or destroy evidence).9 On the other hand, for an “Offense-Related-Evidence” search, when a police officer places an occupant of a motor vehicle under arrest it is the circumstances unique to the vehicle context that justifies a search when it is “reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.”10 The “Offense-Related Evidence” search prong of the Gant test does not necessitate the presence of either the safety or loss of evidence concerns involved in a “Possibility of Access” search.

3. Scope of Vehicle Search: Under the search incident to arrest exception, the entire interior of the passenger compartment area (as well as containers found therein) is within the proper scope of a contemporaneous search incident to arrest.11 However, in an “offense-related evidence” search it would seem reasonable that only those areas of the passenger compartment area capable of concealing evidence of the offense may be searched and containers within the vehicle could be opened and their contents examined only if an object the size and weight of the [offense-related evidence] could be concealed therein. Because those are the limits that apply when there is probable cause to search the vehicle, then one might think that certainly no lesser restriction should apply when the search is authorized via Gant and thus is permissible on mere reasonable suspicion. Unfortunately, given such a dramatic change in the law, the Gant decision inexplicitly failed to provide any meaningful explanation or definition as to application or scope of the new rule.12 A search incident to arrest does not include the trunk space or engine compartment.

Note: There is currently little guidance as to how and when Minnesota courts will apply the Gant “Offense-Related Evidence” search.13 Until the scope of this new rule is more fully defined by future appellate decisions, I would suggest a conservative interpretation adopting a commonsense approach to the scope of this new rule. For example, after a driver has been arrested for DWI involving suspected alcohol intoxication, if the officer has reason to believe the vehicle contains evidence of alcohol, any part of the passenger compartment area capable of concealing a can of beer or bottle of alcohol could be searched under this exception. On the other hand, if the DWI arrest involves suspected controlled substance intoxication, any part of the passenger compartment area capable of concealing a controlled substance could be searched.

2.2 VIGNETTE #1: D.W.I. ARREST

FACTS

1. A police officer observes a motor vehicle drive through a stop sign. The vehicle is occupied by a driver and one passenger. The officer initiates a motor vehicle stop.
2. Following the stop, the officer speaks with the male driver and observes signs of intoxication.
3. After failing field sobriety tests and a PBT (preliminary breath test), driver is arrested for DWI.
4. The female passenger is ordered out of the vehicle.
5. The officer then enters the vehicle for the purpose of conducting a warrantless search.

2.3 CAN THE VEHICLE BE SEARCHED WITHOUT A WARRANT?

ANSWER: Undecided In Minnesota But Likely YES

As long as the motor vehicle stop is lawful (i.e. based on reasonable suspicion) and the occupant's arrest is lawful (i.e. supported by probable cause), then under the search incident to arrest exception, a peace officer may conduct a warrantless search of the entire passenger compartment area, including the contents of any containers (open or closed) found within the passenger compartment, if (1) the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search (possibility of access search), or (2) it is reasonable to believe the vehicle contains evidence of the offense of arrest (offense-related evidence search).

POSSIBILITY OF ACCESS SEARCH: In the above example, the officer cannot conduct a search incident to arrest under the Possibility of Access search prong of Gant because at the time of the search the arrestee was handcuffed and secured in the back of the squad car.

Note: If the facts were changed so that the driver is not handcuffed, not held in the squad car or restrained by any other officer, and is either sitting inside the car, or is outside but close enough to reach one of the vehicle doors, then the officer can conduct the search incident to arrest.

Note: Distance To Vehicle: If the arrestee is unsecured, the distance between the arrestee and the vehicle appears to be significant in determining when the arrestee is within reach of the passenger compartment. Additionally, if the vehicle doors are locked and the officer has the key, a “possibility of access” search would not be upheld.

Note: Multiple Passengers: The presence of multiple non-arrested passengers may create safety concerns justifying a “possibility of access” search. If the non-arrested passengers outnumber law enforcement and are within reach of the passenger compartment, a search of the passenger compartment may be reasonable in the interests of officer safety or preventing destruction of evidence.

OFFENSE-RELATED EVIDENCE SEARCH: As in this scenario, a DWI arrest which involves observations of intoxication coupled with a strong odor of alcohol will likely permit the officer to conduct a search of the entire passenger compartment area incident to arrest on the basis it is “reasonable to believe” that evidence relevant to defendant’s intoxication (i.e. the means of intoxication such as bottles containing alcohol) might be found in the vehicle.

* The following questions will be answered assuming the officer is allowed to search the vehicle under the “Offense-Related Evidence” search prong of Arizona v. Gant.
2.4 CAN THE PASSENGER COMPARTMENT AREA BE SEARCHED?

**ANSWER:** Yes

**Definition of Passenger Compartment Area:** Passenger compartment area includes all space reachable without exiting the vehicle, without regard to the likelihood, in any particular case, that such a reaching was possible.\(^{21}\) For example: a search of the rear cargo area of an SUV was permissible;\(^ {22}\) a hatchback reachable without exiting the vehicle ranks was part of the interior or passenger compartment area;\(^ {23}\) all of a motor home could be searched because it is constructed so that direct access to all of it is possible;\(^ {24}\) it was permissible for police to open a tailgate to search within a van, as the area searched was "within the reach of the defendants without their alighting from the vehicle"\(^ {25}\) and it was permissible for police to search through a trap door located behind the arm-rest in middle of back seat, which allows long items in the trunk to be passed partly into back seat.\(^ {26}\)

**Note:** The reasoning behind confining a search for offense-based evidence to the “passenger compartment area” is not clear, particularly because the offense-based search is not based upon the rationales of officer safety or preservation of evidence. The only justification given in the Gant decision was that “the circumstances unique to the vehicle context that justifies a search when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.”\(^ {27}\) Therefore, one should expect Courts to begin developing this rule and its scope further.\(^ {28}\)

**Note:** A search of any part of the passenger compartment area too small to reasonably conceal a bottle of alcohol (i.e. above the visor, under the floor mat, etc.) would likely exceed the scope of a lawful search.

**Note:** The above definition should not be construed as giving peace officers authority to conduct a search into areas that would require some dismantling of the vehicle (i.e. interior door panels, etc.). This restriction should not be construed to limit access by peace officers to areas where it is apparent to the searching officer that the vehicle has been modified in some fashion to allow access to areas that would normally require some actual dismantling of the vehicle (i.e. an air vent where the cover is easily removed by hand, the area under a center console that is no longer bolted to the chassis, the area concealed by an unsecured kick panel, behind an audio component laying loose in the dashboard, etc.).

2.5 CAN A PURSE BE SEARCHED?

**ANSWER:** Yes

Under the “Offense-Related Evidence” search prong of Gant, once there is a reasonable basis to believe that evidence of the crime of arrest might be found in the vehicle, as long as the container to be searched (i.e. a purse) is found inside the passenger compartment area and is capable of concealing the object of the search (i.e. container of alcohol) officers may search it without a warrant.\(^ {29}\) However, only those parts of the purse large enough to conceal a bottle of alcohol can be searched. A search of any section of the purse too small to reasonably conceal a bottle of alcohol would exceed the scope of the search.

**Note - Soft Containers:** If the purse (or any other container to be searched) is soft enough that an officer could tell by feeling the outside whether or not it might contain the object of the search, then the officer
should first feel the outside before opening it up. If, after feeling the outside, it is clear that the object of the search is not or could not be concealed inside, then a search of the contents of that container would exceed the scope of a lawful search under this exception.

### 2.6 WHAT IF THE PURSE BELONGS TO A NON-ARRESTED OCCUPANT?

**ANSWER: Undecided in Minnesota**

Minnesota has not yet ruled on this question. Decisions from other jurisdictions have been split: Jurisdictions that have upheld the search of a purse (or any other open or closed container), regardless of who owns it, recognize the reality that evidence can reside in passenger property just as easily as they can in arrestee belongings. However, other jurisdictions have held that the search incident to arrest exception cannot be extended to divest a third-party of his or her legitimate expectation of privacy (thus a search of a purse possessed by passenger when she exited car was illegal), and some jurisdictions have held that under their state constitution, a non-arrestee’s containers may not be searched where the non-arrestee “is not independently suspected of criminal activity and where there is no reason to believe contraband is concealed within the personal effect immediately prior to the search.”

**What if the Purse is Removed From Vehicle By Non-Arrested Occupant?** Again, this is undecided in Minnesota. However, in some jurisdictions, once a non-arrested occupant removes a purse or other personal belonging from the car, the item is no longer considered part of the passenger compartment area, and thus is not subject to search. Accordingly, many law enforcement officers have been trained, whenever they order a person out of a vehicle, to direct that person to leave all carry-on personal belongings inside the car (i.e. purses, caps, containers, jackets, etc. - depending on the weather and what is reasonable under the circumstances). This tactic, however, has had the opposite effect in some jurisdictions. Jurisdictions allowing non-arrested passengers’ effects to be searched “often take the view that the container may only be searched if it was voluntarily left in the vehicle by the alighting occupant as compared to when it is left because of a police order”.

**Note:** If the search was being conducted under the “Possibility of Access” search prong of *Arizona v. Gant*, Minnesota case law suggests that a passenger’s expectation of privacy in a container in a motor vehicle would not outweigh the police officer’s safety.

### 2.7 CAN THE GLOVE BOX, PHONE AND ASHTRAY BE SEARCHED?

**ANSWER: Glove Box – Yes; Phone and Ashtray – No.**

**Glove Box** - because a glove box is large enough to be capable of concealing a bottle of alcohol, it is subject to being searched without a warrant. In addition, the warrantless search may also extend to any container found inside the glove box if that container itself is large enough to conceal the object of the search (i.e.
bottle of alcohol).

**Phone and Ashtray** – because they are both generally too small to be capable of concealing an item as large as a bottle of alcohol, a search of that area would exceed the scope of a lawful search under this exception.\(^{33}\)

### § 2.8 CAN MISCELLANEOUS CLOTHING BE SEARCHED?

**ANSWER:** Yes

Because miscellaneous clothing (i.e. jackets, pants, shirts, etc.) are capable of concealing a bottle of alcohol, they are subject to being searched without a warrant. However, only those sections of clothing large enough to conceal a bottle of alcohol can be searched. Miscellaneous clothing including all pockets and compartments (open or closed) may be searched as long as the clothing is found inside the passenger compartment area.\(^{34}\)

**Note:** If, once the officer picks up the clothing, it becomes clear (either through the officer's sense of touch or sight) that the object of the search is not or could not be concealed inside, then continuing to search the clothing would exceed the scope of a lawful search under this exception.

### § 2.9 CAN SMALL CONTAINERS BE SEARCHED?

**ANSWER:** No

Because most small containers (i.e. small jewelry box, Band-Aid container, eye cream bottle, etc.) are too small to be capable of concealing a bottle of alcohol, searching them would exceed the scope of a lawful search under this exception.\(^{35}\)

**Definition of Container:** A "container" is any object capable of holding another object (i.e. glove compartment, console, luggage, clothing, bags, etc.).\(^{36}\)

**Note:** If the container is locked, see § 2.11.

### § 2.10 CAN LARGE CONTAINERS BE SEARCHED?

**ANSWER:** Yes

As long as the container in question is large enough to be capable of concealing a bottle of alcohol, a warrantless search of that container would be permissible under this exception. In addition, officers may also search any container found inside the large container as long as that container is also large enough to be capable of concealing a bottle of alcohol.\(^{37}\)
### 2.11 CAN LOCKED CONTAINERS BE SEARCHED?

**ANSWER:** Undecided In Minnesota But Likely Yes

The U.S. Supreme Court\(^{38}\) has held that under the search incident to arrest exception, any open or closed containers found inside a vehicle passenger compartment area may be searched without a warrant. The Court, however, did not distinguish between closed containers and locked containers. Does the phrase “closed containers” include containers that are locked? Most states have answered yes.\(^{39}\) The Minnesota Appellate Courts have not yet decided this issue.\(^{40}\) However, current case law suggests the answer to that question will likely be yes. In *State v. Varnado*,\(^{41}\) the Court of Appeals stated “unlike a protective weapons search, a search incident to arrest is very broad in scope; it may include pockets, containers, and even the passenger compartment of automobiles.” It is also important to note that *New York v. Belton* was not overruled and replaced by *Gant*; rather, *Gant* has been tacked onto *Belton*. *Belton*’s bright-line understanding will doubtless still be influential in many ways in those cases where the prerequisite ‘possibility of access’ is present.\(^{42}\) But until the Minnesota appellate courts decide this issue, assuming the officer is allowed to search the vehicle under the “Offense-Related Evidence” search prong of *Arizona v. Gant*, the decision whether to open or force open a locked container should be made by officers on a case by case basis based upon what appears to be reasonable under the circumstances.

**Note:** In order to maintain consistency within their jurisdiction peace officers should consult with their local county attorney on how to handle ‘locked containers’ during motor vehicle searches incident to arrest.

### 2.12 CAN BOOKS AND PAPERS BE SEARCHED?

**ANSWER:** No

Because books and papers (i.e. magazines, calendars, envelopes, etc.) are not reasonably capable of concealing the object of the search (i.e. bottle of alcohol), they are not subject to search under this exception.

### 2.13 CAN THE TRUNK AREA BE SEARCHED?

**ANSWER:** No

The trunk area cannot be searched because it is not considered part of the passenger compartment area.\(^{43}\)

**Note:** If the vehicle's back seat is designed to be pulled down for easy access into the trunk area, an argument can be made that the trunk area is, under those limited circumstances, part of the passenger compartment area, and thus subject to search.\(^{44}\)

**Note:** If the driver or occupant is arrested while standing at the rear of the car next to an open trunk (within arm’s length), officers may search the open trunk incident to arrest under the “Possibility of Access” search prong of *Arizona v. Gant*, because under those circumstances the trunk is readily accessible and the suspect could easily reach into the open trunk for a weapon.\(^{45}\)
2.14 CAN THE ENGINE AREA BE SEARCHED?

**ANSWER:** No

A vehicle's engine area cannot be searched incident to arrest because it is not considered part of the passenger compartment area.\(^{46}\)

**Note:** If the driver or occupant is arrested while standing in front of the car next to an open car hood (within arm's length), officers may search the open engine area incident to arrest under the “Possibility of Access” search prong of *Arizona v. Gant*, because under those circumstances, the engine area is readily accessible and the suspect could easily reach into the engine area for a weapon.\(^{47}\)

2.15 VIGNETTE #2: ARREST WARRANT

**FACTS**

1. A vehicle is stopped by an officer for speeding. The vehicle is occupied by a driver and one passenger.
2. As the officer is talking to the female driver, he recognizes the male passenger as someone with an outstanding bench warrant for his arrest.
3. Pursuant to the warrant, the male passenger is placed under arrest.
4. The female driver is ordered out of the car.
5. The officer then enters the vehicle for the purpose of conducting a warrantless search.

2.16 CAN THE VEHICLE BE SEARCHED WITHOUT A WARRANT?

**ANSWER:** No - But Answer Could Change If Additional Facts Present:

Although the motor vehicle stop is lawful (i.e. based on reasonable suspicion), and the occupant's arrest is lawful (i.e. supported by probable cause), in order to conduct a search incident to arrest, *Arizona v. Gant* requires that the arrestee be unsecured and within reach of the passenger compartment, or that the officer have reason to believe evidence related to the crime of arrest is in the vehicle.\(^{48}\)

**POSSIBILITY OF ACCESS SEARCH:** In the above example, the officer *cannot* conduct a “Possibility of Access” search incident to arrest because at the time of the search the arrestee was handcuffed and secured in the back of the squad car.

**Note:** In order to justify a “Possibility of Access” search, the following additional facts need to be present:

1. The arrested male is standing close to the vehicle, which is unlocked, and he is neither handcuffed, nor physically restrained by an officer, nor surrounded and carefully watched by officers;\(^{49}\) or
2. Although the arrestee is secured there are multiple unsecured passengers at the scene that outnumber
officers under circumstances that reasonably raise safety concerns for the officers.  

**OFFENSE-RELATED EVIDENCE SEARCH:** A search for “offense-related evidence” under the second prong of *Arizona v. Gant* would not be permissible. In order for an “offense-related evidence” search to be conducted, the offense of arrest must be one for which it would be “reasonable to believe” evidence of that offense would be located in the passenger compartment. Here, it is highly unlikely that the basis for arrest (a body-only bench warrant) would provide a reason to believe evidence relevant to the crime of arrest might be found in the vehicle.  

**Note:** However, the mere fact that the basis of the arrest is pursuant to a bench warrant does not necessarily preclude an “offense-related evidence” search. On the one hand, if the bench warrant was issued for failing to appear in court on, suppose, a charge of Driving After Suspension, it would not be “reasonable to believe” that evidence of the failure to appear in court or the Driving After Suspension offense might be found in the vehicle. However, if the bench warrant was issued for failure to comply with conditions of release, such as no possession or use of alcohol or drugs, it may be more reasonable to believe that evidence of the defendant’s violation of the conditions (evidence of drugs or alcohol) might be found in the vehicle.  

**Note:** Even if the search incident to arrest exception does not apply, other exceptions to the Fourth Amendment warrant requirement may apply (i.e. Probable Cause Exception, Chapter 4; Inventory Search Exception, Chapter 5; Protective Weapons Search Exception, Chapter 6).  

### 2.17 CAN THE PASSENGER COMPARTMENT AREA BE SEARCHED?  

**ANSWER:** Under The Old *Belton* Bright Line Rule – Yes  
Under The New *Arizona v. Gant* Rule – No  

**OLD BELTON BRIGHT LINE RULE (Prior to 2009):** Under the old *Belton* search incident to arrest exception, when a peace officer made a lawful custodial arrest of an occupant of a motor vehicle, the officer could contemporaneously search the person and the passenger compartment area of the vehicle, including the contents of any containers (open or closed) found within the passenger compartment. In *New York v. Belton*, 453 U.S. 454 (1981), the U.S. Supreme Court created a "Bright Line" rule which designated the entire interior of the passenger compartment area (as well as containers found therein) as within the proper scope of a contemporaneous search incident to arrest. Under this old *Belton* Bright Line rule, the only prerequisite to the search incident to arrest was that the motor vehicle stop was lawful (i.e. based on reasonable suspicion) and the occupant’s arrest is lawful (i.e. supported by probable cause). It is important to note that *Belton* was not overruled and replaced by *Gant*; rather, *Gant* has been tacked onto *Belton*.  

**NEW ARIZONA v. GANT RULE (2009):** In 2009, the United State Supreme Court in *Arizona v. Gant*, 556 U.S. 332 (2009), in a dramatic decision, established a new rule governing the search incident to arrest exception. Under this new rule, when a peace officer has made a lawful custodial arrest of an occupant of a motor vehicle, the officer may contemporaneously search the person and the passenger compartment area of the vehicle, including the contents of any containers (open or closed) found within the passenger compartment, if: (1) “the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search,” or (2) it is “reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle”. When these justifications are absent, a search of an arrestee's vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies.
Definition of Passenger Compartment Area: Passenger compartment area includes all space reachable without exiting the vehicle, without regard to the likelihood, in any particular case, that such a reaching was possible. For example: a hatchback reachable without exiting the vehicle ranks as part of the interior or passenger compartment area; all of a motor home could be searched because it is constructed so that direct access to all of it is possible; and it was permissible for police to open a tail gate to search within a van, as the area searched was “within the reach of the defendants without their alighting from the vehicle.”

2.18 CAN A PURSE BE SEARCHED?

ANSWER: Under The Old Belton Bright Line Rule – Yes
Under The New Arizona V. Gant Rule – No

It is highly unlikely that the basis for arrest (a body-only bench warrant) would provide a reason to believe evidence relevant to the crime of arrest might be found in the vehicle.

2.19 CAN THE GLOVE BOX, PHONE AND ASHTRAY BE SEARCHED?

ANSWER: Under The Old Belton Bright Line Rule – Yes
Under The New Arizona V. Gant Rule – No

It is highly unlikely that the basis for arrest (a body-only bench warrant) would provide a reason to believe evidence relevant to the crime of arrest might be found in the vehicle.

2.20 CAN MISCELLANEOUS CLOTHING BE SEARCHED?

ANSWER: Under The Old Belton Bright Line Rule – Yes
Under The New Arizona V. Gant Rule – No

Same rationale as stated above in 2.19.

2.21 CAN SMALL CONTAINERS BE SEARCHED?

ANSWER: Under The Old Belton Bright Line Rule – Yes
Under The New Arizona V. Gant Rule – No

It is highly unlikely that the basis for arrest (a body-only bench warrant) would provide a reason to believe
evidence relevant to the crime of arrest might be found in the vehicle.

**Definition of Container:** A "container" is any object capable of holding another object (i.e. glove compartment, console, luggage, clothing, bags, etc.).

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### 2.22 CAN LARGE CONTAINERS BE SEARCHED?

**ANSWER:**
- Under The Old *Belton* Bright Line Rule – Yes
- Under The New *Arizona V. Gant* Rule – No

It is highly unlikely that the basis for arrest (a body-only bench warrant) would provide a reason to believe evidence relevant to the crime of arrest might be found in the vehicle.

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### 2.23 CAN LOCKED CONTAINERS BE SEARCHED?

**ANSWER:**
- Under The Old *Belton* Bright Line Rule – Probably
- Under The New *Arizona V. Gant* Rule – No

It is highly unlikely that the basis for arrest (a body-only bench warrant) would provide a reason to believe evidence relevant to the crime of arrest might be found in the vehicle.

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### 2.24 CAN BOOKS AND PAPERS BE SEARCHED?

**ANSWER:**
- Under The Old *Belton* Bright Line Rule – Yes
- Under The New *Arizona V. Gant* Rule – No

It is highly unlikely that the basis for arrest (a body-only bench warrant) would provide a reason to believe evidence relevant to the crime of arrest might be found in the vehicle.

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### 2.25 CAN THE TRUNK AREA BE SEARCHED?

**ANSWER:** No

A vehicle's trunk area cannot be searched incident to arrest because it is not considered part of the passenger compartment area.59

**Note:** If the driver or occupant is arrested while standing at the rear of the car next to an open trunk (within arm’s length), officers may search the open trunk incident to arrest under the Possibility of Access search...
prong of *Gant* because under those circumstances the trunk is readily accessible and the suspect could easily reach into the open trunk for a weapon. 60

### 2.26 CAN THE ENGINE AREA BE SEARCHED?

**ANSWER:** No

A vehicle's engine area cannot be searched incident to arrest because it is not considered part of the passenger compartment area. 61

**Note:** If the driver or occupant is arrested while standing in front of the car next to an open car hood (within arm’s length), officers may search the open engine area incident to arrest under the Possibility of Access search prong of *Gant* because under those circumstances, the engine area is readily accessible and the suspect could easily reach into the engine area for a weapon. 62

### 2.27 IN A SEARCH INCIDENT TO ARREST:

**DOES IT MATTER WHAT THE ARREST IS FOR?**

**ANSWER:** For a “Possibility of Access” search - No  
For an “Offense-Related Evidence” search - Yes

**POSSIBILITY OF ACCESS SEARCH:** Any lawful, custodial arrest for any misdemeanor, gross misdemeanor, or felony offense will qualify for the “Possibility of Access” search prong of *Gant*: (search when the arrestee is unsecured and within reach of the passenger compartment). 63 Because custodial arrests are generally prohibited when dealing with petty misdemeanors, 64 as a general rule, the search incident to arrest exception does not apply in cases involving minor traffic-related, non-custodial arrests (i.e. routine traffic stops where the officer would simply issue a citation and allow the driver to proceed). 65

**OFFENSE-RELATED EVIDENCE SEARCH:** In order to conduct *Gant’s* second type of search, the search for “Offense-Related Evidence,” the offense of arrest must be one that “will supply a basis for the officer to reasonably believe the vehicle contains evidence of that offense.” 66

**Misdemeanor Arrests:** Under the Minnesota Rules of Criminal Procedure, officers are required to issue citations to persons subject to lawful arrest for misdemeanors, unless it reasonably appears that: (i) arrest or detention is necessary to prevent bodily harm to the accused or another; or (ii) to prevent further criminal conduct; or (iii) there is a substantial likelihood that the accused will fail to respond to a citation. 67

**Note:** Although the reasonableness of a search is generally determined “without regard to the underlying intent or motivation of the officers involved,” peace officers should avoid making custodial arrests which they otherwise would not make as a cover for a search which the Fourth Amendment otherwise prohibits. 68
2.28 IN A SEARCH INCIDENT TO ARREST:
DOES IT MATTER WHEN OR WHERE THE ARREST OCCURS?

ANSWER: Yes

1. **Time of Arrest:** A search incident to arrest is valid, even if conducted before the actual arrest, if: (i) the arrest and search are substantially contemporaneous, and (ii) probable cause to arrest existed prior to the search.\(^69\) In other words, the fact that the search of a motor vehicle immediately precedes the arrest is of no consequence if grounds (probable cause) for a valid arrest existed at the time the search occurred.\(^70\) Under the objective test of probable cause, the issue is not when the suspect was arrested, but rather, whether there was objective probable cause to support a custodial arrest prior to the search.\(^71\)

2. **Place of Arrest:** It doesn't matter whether the arrest occurs (inside or outside the vehicle), as long as the arrestee was either an occupant or a recent occupant of the vehicle “shortly before the arrest” occurs.\(^72\) What exactly “shortly before the arrest” means is unclear. In some states, if a driver leaves his car and is in the process of walking away before officers can approach and apprehend him, he is no longer considered to be an occupant or recent occupant of the vehicle.\(^73\) In Minnesota, however, a suspect was considered a recent occupant of a vehicle, even though he had already parked his car and was in the process of walking away when officers stopped and arrested him for a traffic-related offense.\(^74\) Although it is difficult to tell how far Minnesota will go in defining when and under what circumstances a person is a “recent occupant,” it is clear that whenever a suspect has a chance to leave his car before officers are able to approach and apprehend him, there is a risk the suspect will no longer be considered a “recent occupant.” If that is the case, the vehicle passenger compartment area would not be subject to search incident to arrest under either prong of *Gant v. Arizona*. That determination depends, of course, on how far from the vehicle the suspect gets and how much time lapses before his arrest.

3. **What if the Person Arrested is Not a “Motor Vehicle Occupant”??** If the person arrested does not fall within the definition of an occupant or recent occupant of the vehicle, then the passenger compartment area is not subject to search incident to the arrest under the “Offense-Related Evidence” search prong of *Gant*. However, the vehicle (or at least parts of the vehicle) may still be searched incident to arrest under the “Possibility of Access” prong of *Gant* if, at the time of defendant's arrest or following the arrest, the vehicle is in the “immediate surrounding area” or in the “immediate control” of the arrested person. It is not enough that defendant be near the vehicle; rather, the question is whether he is arrested in such a manner and location that he could get at the part of the vehicle to be searched.\(^75\) If that is the case, whatever part of the vehicle is within the arrested person's reach could be subject to search incident to arrest. For example: Searching the interior of a vehicle incident to arrest is more likely to be permissible if the non-occupant defendant is arrested while standing by an open car door;\(^76\) or, if a non-occupant arrestee, after obtaining police permission to secure his vehicle, comes into close proximity to the car or gets into the car, a search of that part of the vehicle would be permissible as a “Possibility of Access” search incident to arrest.\(^77\)
### 2.29 IN A SEARCH INCIDENT TO ARREST:
**DOES IT MATTER WHEN OR WHERE THE SEARCH OCCURS?**

**ANSWER:** Yes

Under the search incident to arrest exception, a vehicle search must be conducted “contemporaneously” with the arrest and the place of arrest:

1. **Time of Search (“Possibility of Access” Search):** The most important characteristic of *Gant’s* “possibility of access” rule is that it is to be applied “at the time of the search,” rather than at the time of arrest. In other words, in determining whether an officer can search the passenger compartment of the vehicle, one looks at whether “at the time of the search” the arrestee is unsecure and within reaching distance of the passenger compartment. “The fact that the access must be judged ‘at the time of the search’ rather than at some earlier point is highly significant, for in the ordinary course of events the circumstances may have changed significantly by that time,” because the prevailing practice of law enforcement in making an arrest is to handcuff the arrestee and remove him or her to a secure place as soon as possible.

2. **Time of Search (“Offense-Related Evidence” Search):** The search must take place as soon after the arrest as is reasonably possible – it must not be “impermissibly remote in time” from the arrest. In the absence of extenuating circumstances, a strong argument can be made that an at-the-scene vehicle search is not “contemporaneous” if a significant period of time, say 30 or 45 minutes, has elapsed since the arrest.

3. **Place of Search:** In the absence of extreme circumstances, the search must be conducted before the vehicle or defendant is removed from the scene of arrest. Once the vehicle or defendant is removed from the scene of arrest, there are no special circumstances unique to the vehicle that would justify a warrantless vehicle search under either prong of *Arizona v. Gant*.

**Note - Search of Arrested Person:** "Once the accused is 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 his arrest may lawfully be searched and seized without a warrant even though a substantial period of time has elapsed between the arrest and subsequent administrative processing, on the one hand, and the taking of the property for use as evidence on the other.”
Search incident to arrest

Endnotes:


2 Arizona v. Gant, 556 U.S. 332, 351, 129 S. Ct. 1710, 1723-24, 173 L.Ed.2d 485 (2009); But see Davis v. U.S., 131 S. Ct. 2419, 2434, 180 L. Ed. 2d 285 (2011) (holding that where police conducted a search before the U.S. Supreme Court decided Arizona v. Gant, and in objectively reasonable reliance on binding appellate precedent at that time, the exclusionary rule did not apply.); Briscoe v. State, 422 Md. 384, 409-10 (2011) (good-faith rule applied and suppression is correctly denied where officer acted in objectively reasonable reliance on existing pre-Gant authority when he conducted a search of a vehicle that now violates the search incident to arrest rule in Gant.).

3 See 3 LaFave, Search and Seizure, § 7.1(c) at 133 (4th ed. 2004 & Supp. 2011-2012) (“Belton was not overruled and replaced by Gant; rather, Gant has been tackled onto Belton. This indicates that Gant does not simply require a return to the pre-Belton status of Chimel, just as if Belton never existed. Belton’s bright-line understanding will doubtless still be influential in many ways in those cases where the prerequisite ‘possibility of access’ is present, though it may be that the intrusion of this one case-by-case ingredient into the formula will put into doubt at least some other aspects of Belton’s bright-line rule.”).

4 State v. Varnado, 582 N.W.2d 886 (Minn. 1998) “[It] is reasonable for [an] arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or * * * escape” and “to search for and seize any evidence on the arrestee’s person in order to prevent its concealment or destruction.” Citing to Chimel v. California, 395 U.S. 752, 763, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969).

5 Id.

6 Arizona v. Gant, 556 U.S. 332, 343 n.4, 129 S.Ct. 1710, 1719 n.4, 173 L. Ed. 2d 485 (2009) (citing 3 LaFave, Search and Seizure § 7.1(c), 525 (4th ed. 2004)) (emphasis added). But see U.S. v. Shakir, 616 F.3d 315, 321 (3d Cir. 2010), cert. denied, 131 S. Ct. 841, 178 L. Ed. 2d 571 (U.S. 2010) (search of gym bag was permissible where, “although the arrestee was handcuffed and guarded by two policemen, the bag at his feet was accessible if he had dropped to the floor, and the arrestee was subject to an arrest warrant for armed bank robbery, and the arrest occurred in a public area near 20 innocent bystanders.”).

7 U.S. v. Vinton, 594 F.3d 14, 25 (D.C. Cir. 2010) cert. denied, 131 S.Ct. 93, 178 L. Ed. 2d 58 (U.S. 2010) (“Presumably, the ‘reasonable to believe’ standard requires less than probable cause, because otherwise Gant’s evidentiary rationale would merely duplicate the ‘automobile exception,’ which the Court specifically identified as a distinct exception to the warrant requirement. Rather, the ‘reasonable to believe’ standard probably is akin to the ‘reasonable suspicion’ standard required to justify a Terry search.”). See also, State v. Imun, No. A09-792, 2010 WL 1963441, at *3 (Minn. Ct. App. May 18, 2010) (although the Minnesota Court of Appeals does not examine whether “probable cause” or “reasonable suspicion” is to be used, the Court held defendant’s vehicle was properly searched for evidence on the reported assault offenses “so long as the St. Cloud officers had probable cause to believe appellant had committed the assaults and appellant was arrested contemporaneously with the search.”).

8 Gant, 556 U.S. at 344, 129 S.Ct. at 1719, 173 L. Ed. 2d 485. See U.S. v. Vinton, 594 F.3d 14, 25-26 (D.C. Cir. 2010) (“Had Vinton been arrested merely for speeding or driving with excessively tinted windows, Gant’s evidentiary rationale obviously would not have authorized a subsequent search because under the circumstances, it would have been very unlikely that evidence relevant to the traffic offenses would be found inside his car. . . . But instead, Vinton was arrested for the unlawful possession of a weapon, an offense that resembles narcotics-possession offenses far more closely that it resembles a traffic violation.”); U.S. v. Barnum, 564 F.3d 964, 970 (8th Cir. 2009) (search of vehicle valid where, after lawfully stopping defendant and conducting to a consensual search of his person, which revealed a crack pipe and $305 in cash, officer placed defendant under arrest and “properly searched [defendant’s] rental vehicle, without his consent, for further evidence relevant to the drug offense for which [defendant] had been arrested.”); U.S. v. Allison, 637 F.Supp.2d 657, 666 (S.D. Iowa 2009) aff’d, No. 10-3141, 2011 WL 6098885 (8th Cir. Dec. 7, 2011) (defendant was not under arrest at time of search, but even if he was, arrest was pursuant to outstanding warrant for probation violation, thus “the law enforcement officers could not have reasonably ‘believe[d] evidence relevant to the crime of arrest might be found in the vehicle,’ and therefore the search incident to arrest exception would not apply”); State v. Schlangen, A09-121, 2009 WL 5088758, at *8 (Minn. Ct. App. Dec. 29, 2009) (where officers had probable cause to arrest defendant for controlled-substance crime and had reason to believe that appellant could have hidden controlled substances in the vehicle because his hands were out of sight once he entered the vehicle; search was permissible under second prong of Gant.).

9 U.S. v. Robinson, 414 U.S. 218, 230-234, 94 S. Ct. 467, 38 L.Ed.2d 427 (1973); Chimel v. California, 395 U.S. 752, 763, 89 S.Ct. 2034, 2040, 23 L.Ed.2d 685 (1969); State v. Robb, 605 N.W.2d 96, 100 (Minn. 2000); Arizona v. Gant, 556 U.S. 332, 344-45, 129 S.Ct. 1710, 1719, 173 L. Ed. 2d 485 (2009) (“[n]either the possibility of access nor the likelihood of discovering offense-related evidence authorized the search” where the arrestees were handcuffed and locked in the back seat of squad cars and the defendant was arrested for driving with a suspended license, which is “an offense for which police could not expect to find evidence in the passenger compartment” of the vehicle.).

10 Arizona v. Gant, 556 U.S. 332, 343, 129 S. Ct. 1710, 1719, 173 L. Ed. 2d 485 (2009) (the Court justified the “possibility of access” prong of its test on the safety and evidentiary rationales provided in Chimel v. California, and then distinguished its approach to the second prong: “[a]lthough it does not follow from Chimel, we also conclude that circumstances unique to the vehicle context justify a search incident to a lawful
arrest when it is "reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle") (quoting Thornton v. United States, 541 U.S. 615, 632, 124 S. Ct. 2127 (2004)). Chimel v. California, 395 U.S. 752, 763, 89 S. Ct. 2034, 2040, 23 L.Ed.2d 685 (1969). See also State v. Lussier, 770 N.W.2d 581, 590 (Minn. Ct. App. 2009) (applying Gant rule to a SARS exam of a person: "Because of the very intrusive nature of a SARS examination, and because respondent was restrained and under police observation and therefore not capable of destroying evidence, officers were required to obtain a warrant before conducting a SARS examination. We hold that respondent's warrantless SARS examination was not justified as a search incident to a lawful arrest, and thus, the district court did not err in ordering the suppression of the evidence collected pursuant to the examination.").


12 3 LaFave, supra, § 7.1(d) at 142-43 (4th ed. 2004 & Supp. 2011-2012) ("the search could be conducted only into those areas of the vehicle where an object of that size might be concealed, and containers within the vehicle could be opened and their contents examined only if an object the size and weight of the [offense-related evidence] could be concealed therein. If those are the limits that apply when there is probable cause to search the vehicle, then one might think that certainly no lesser restriction should obtain when the search is authorized via Gant and thus is permissible on mere reasonable suspicion or perhaps even less than that. But here again it is doubted that Gant will be so limited.").

13 Gant, 556 U.S. at 343-44, 129 S. Ct. at 1719, 173 L.Ed.2d 485 ("In many cases, as when a recent occupant is arrested for a traffic violation, there will be no reasonable basis to believe the vehicle contains relevant evidence. But in others, including Belton and Thornton, the offense of arrest will supply a basis for searching the passenger compartment of an arrestee's vehicle and any containers therein."). (internal citations omitted); 3 LaFave, supra § 7.1(d) at 143 ("The Gant search for evidence rule will likely be construed to permit the kind of search allowed by Belton – no more, and no less – provided the offense of arrest is other than a no-evidence-type of crime such as the typical traffic violation."). See 3 LaFave, supra § 7.1(c) at 133 ("Belton was not overruled and replaced by Gant; rather, Gant has been tacked onto Belton. This indicates that Gant does not simply require a return to the pre-Belton status of Chimel, just as if Belton never existed. Belton's bright-line understanding will doubtless still be influential in many ways in those cases where the prerequisite 'possibility of access' is present, though it may be that the intrusion of this one case-by-case ingredient into the formula will put into doubt at least some other aspects of Belton's bright-line rule."). See also United States v. Shakir, 616 F.3d 315, 320 (3d Cir. 2010), cert. denied, 131 S. Ct. 841, 178 L. Ed. 2d 571 (U.S. 2010) (an interpretation of Gant to require the arrestee to be both unsecured and within reaching distance of a passenger is too aggressive and "unpersuasive . . . because it is inconsistent with the remainder of the Gant opinion, with other Supreme Court precedents, and with the valid concern for the safety of police and the public.").


15 See, e.g., Johnson v. Phillips, 664 F.3d 232, 238 (8th Cir. 2011) (search unlawful where defendant was “safely in the back of the squad car” when the officer searched her vehicle); State v. Iman, No. A09-792, 2010 WL 1963441, at *2 (Minn. Ct. App. May 18, 2010), review denied (Aug. 10, 2010) (holding first prong of Gant does not apply where defendant and his acquaintances, like the defendant Gant, were removed from their vehicle, handcuffed, and under the control of officers when their vehicle was searched); People v. Bridgewater, 235 Ill. 2d 85, 95, 918 N.E.2d 553, 558 (2009) (search invalid where “defendant was handcuffed and inside [the] squad car when the vehicle search took place. This is not the "safe case" where an officer could not prevent the arrestee's access by handcuffing and securing him away from the vehicle.").

16 See, e.g., Merchant v. State, 926 N.E.2d 1058, 1065 (Ind. Ct. App. 2010) (search valid because defendant was unsecured and within reaching distance where during the search, defendant was standing with officer about five feet from the passenger compartment, and although officer had either patted defendant down or was in the process, defendant had not been placed in handcuffs at that time.). But see Canino v. State, A11A2202, 2012 WL 718479 (Ga. Ct. App. Mar. 7, 2012) (search impermissible even though defendant may or may not have been handcuffed at the time of the search and was sitting in the back of his own car, because the officers were present on the scene and the defendant was fully compliant with the officers' commands.").

17 U.S. v. McCrane, No. 11-3573, 2012 WL 934020 (6th Cir. Mar. 21, 2012) (defendants were not “within reaching distance” of passenger compartment when they were not handcuffed or secured in back of patrol car, but were standing 2-3 feet behind the car as instructed with three officers standing around and watching them closely while the search was conducted. It did not matter that the defendants were not formally arrested.); U.S. v. Davis, 341 F. App'x 139, 141 n.2 (6th Cir. 2009) (although the issue was not properly before the Court, the Court in dicta stated: "Davis was being restrained by an officer other than the arresting officer, in the back of a squad car" and that the defendant could "reasonably have believed...[that Davis could have been]...accessed his car at the time of the search.").

18 See, e.g., Dawkins v. U.S. 987 A.2d 470, 476 (D.C. 2010) (although search ultimately held valid under "offense-related evidence" prong of Gant, the Court held that the search would not have passed the "possibility of access" prong where the car was locked and defendant was handcuffed when he was arrested, and therefore he did not pose a risk to the safety of the officers or the integrity of any evidence); U.S. v. Robinson, 1:08-CR-74-7S, 2009 WL 2106147 at *9-10 (N.D. Ind. July 13, 2009) aff'd, 615 F.3d 804 (7th Cir. 2010) (search permissible where defendant was restrained, stood closely behind vehicle, and vehicle door was open.).
that a single officer was confronted with four unsecured arrestees, whereas in Gant five officers had handcuffed and secured three arrestees in different patrol cars; U.S. v. Salamasina, 615 F.3d 925 (8th Cir. 2010) (police officer's warrantless search of car incident to defendant's arrest for cocaine possession and distribution complied with Fourth Amendment, under Gant's officer-safety consideration, where defendant's fiancée repeatedly entered and exited vehicle to tend to her children after defendant's arrest, spoke to defendant in foreign language despite officers' directions not to communicate with him, and attempted to close garage door after officers instructed her to keep door open); U.S. v. Walker, 615 F.3d 728, 734 (6th Cir. 2010), cert. denied, 131 S. Ct. 677, 178 L. Ed. 2d 503 (2010) (held search valid, distinguishing it from Gant because the two officers “by no means had the scene under control or their safety secure,” as the two officers “did not outnumber” the two defendants, “who were unrestrained and not yet in custody,” and one defendants “was standing just three feet from the bag at the time of the search.”).

20 See, e.g., Davis v. U.S., 131 S. Ct. 2419, 2428, 180 L. Ed. 2d 285 (2011) (although the Court ultimately held that the evidence seized from the search was admissible under the good-faith rule, it acknowledged that the search of defendant’s car after he was arrested for a DWI, handcuffed, and secured in the back of a squad car was “unconstitutional under Gant.”) The conclusion that the search would have been unconstitutional under Gant implies that neither the “possibility of access” prong, nor the “offense-related evidence” prong of Gant would apply.). But see United States v. Tinsley, 365 F. App 709, 711 (8th Cir. 2010) (search lawful because “the officers' observations of Tinsley's behavior coupled with the strong odor of alcohol gave them a reasonable basis to believe that evidence relevant to Tinsley's intoxication (i.e. the means of intoxication such as bottles containing alcohol) might be found in the vehicle.”).


24 U.S. v. Wiga, 662 F.2d 1325 (9th Cir. 1981).


26 U.S. v. Poggeviller, 375 F.3d 686, 688 (8th Cir. 2004) (where behind arrest in middle of back seat there is a trap door to allow long items in the trunk to be passed partly into back seat, and when officer opened trap door he saw baggie of marijuana and pulled it and then other objects out, search “permissibly extended to the trap door compartment, since it was accessible to [defendant] and therefore within Belton's rule that all areas 'within reach' of an occupant of the passenger compartment are subject to search.”).

27 Arizona v. Gant, 556 U.S. 332, 343, 129 S. Ct. 1710, 1719, 173 L.Ed.2d 485 (2009) (the Court justified the “possibility of access” prong of its test on the safety and evidentiary rationales provided in Chimel v. California, and then distinguished its approach to the second prong: “[a]lthough it does not follow from Chimel, we also conclude that circumstances unique to the vehicle context justify a search incident to a lawful arrest when it is 'reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.'”) (quoting Thornton v. United States, 541 U.S. 615, 632, 124 S. Ct. 2127 (2004)).

28 3 LaFave, supra, § 7.1(d) at 143 (A “scope question is raised by the dissenters in Gant: ‘Nor is it easy to see why an evidence-gathering search incident to arrest should be restricted to the passenger compartment. The Belton rule was limited in this way because the passenger compartment was considered to be the area that vehicle occupants can generally reach, but since the second part of the new rule is not based on officer safety or the preservation of evidence, the ground for this limitation is obscure.’ While the point is well taken, and thus might be thought to call for upholding searches even into a vehicle’s locked trunk under this branch of Gant, it is to be doubted (and hoped) that such an extension of car search authority will or should be recognized”) (quoting Arizona v. Gant, 556 U.S. at 364, 129 S. Ct. at 1731, 173 L.Ed.2d 485 (Alito, J., dissenting.)).


30 Commonwealth v. Shiflet, 543 Pa. 164, 670 A.2d 128 (1995) (Belton has “not been extended to divest a third-party of his or her legitimate expectation of privacy,” and thus a search of purse possessed by passenger when she exited car was illegal) and State v. Parker, 139 Wash.2d 486, 987 P.2d 73 (1999) (under state constitution, a non-arrestee’s containers may not be searched where the non-arrestee “is not independently suspected of criminal activity and where there is no reason to believe contraband is concealed within the personal effect immediately prior to the search.”); State v. Tagnotti, 663 N.W.2d 642 (N.D. 2003) (search of occupant’s purse unlawful.).

31 3 LaFave, supra, § 7.1(b) at 124 (citing State v. Watts, 142 Idaho 230, 127 P.3d 133 (2005); State v. Boyd, 275 Kan. 271, 64 P.3d 419 (2003); State v. Tagnotti, 663 N.W.2d 642 (N.D. 2003); State v. Seitz, 86 Wash. App. 865, 941 P.2d 5 (1997). But see State v. Steele, 613 N.W.2d 825 (S.D. 2000). 3 LaFave, supra, § 7.1(b) at 124, n.89-90 (“It has sometimes but not always been held that the Belton rule applies even if the police know that the searched container within the vehicle belongs to a non-arrested passenger, though jurisdictions in the former category often take the view that the container may only be searched if it was voluntarily left in the vehicle by an alighting occupant as compared to when it is left because of a police order.”). Compare State v. Grosshong, 281 Kan. 1050, 135 P.3d 1186 (2006) (citing cases in accord, court holds that “search of the passenger’s purse is valid if the passenger voluntarily leaves the purse in the car upon exiting but attempts to remove the purse before it can be searched along with the other contents of the vehicle.”).
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32 See State v. Ortega, 770 N.W.2d 145, 152 (Minn. 2009) (due to officer safety concerns, the officer was reasonable in having a passenger exit the vehicle and stand away from the passenger compartment while it was being searched); State v. Krenik, 774 N.W.2d 178, 184-85 (Minn. Ct. App. 2009) (police officer did not need an individualized justification for directing the front seat passenger of a legally stopped vehicle to get out of the vehicle and frisk him.).


34 New York v. Belton, 453 U.S. at 460 n.4, 101 S. Ct. at 2864 n.4, 69 L.Ed.2d at 768 (clothing is included in the definition of “container.”).

35 Id. (includes any “closed or open” containers.).

36 Id. (defining “container” as “any object capable of holding another object. It thus includes closed or open glove compartments, consoles, or other receptacles located anywhere within the passenger compartment, as well as luggage, bags, clothing, and the like.”).

37 Belton, 453 U.S. at 460 n.4, 101 S. Ct. at 2864 n.4, 69 L.Ed.2d at 768.

38 Arizona v. Gant; New York v. Belton, 453 U.S. 454, 101 S. Ct. 2860, 69 L.Ed.2d 768 (1981); see also United States v. McCrady, 774 F.2d 868 (8th Cir. 1985) (search of locked glove box incident to arrest upheld.).

39 See, e.g., U.S. v. Nichols, 512 F.3d 789 (6th Cir. 2008) (Belton allows search “of a locked glove box”); U.S. v. Woody, 55 F.3d 1257 (7th Cir.1995) (Belton search lawfully extended to “the locked glove compartment.”); U.S. v. Thomas, 11 F.3d 620 (6th Cir.1993) (Belton covers search of locked firebox by use of key on key ring in ignition); U.S. v. Valiant, 873 F.2d 205 (8th Cir. Mo. 1989), cert. denied, 493 U.S. 837, 107 L.Ed.2d 78, 110 S. Ct. 117 (1989) (locked briefcase could be searched.); United States v. McCrady, 774 F.2d 868 (8th Cir.1985) (court holds “that the search of the car including the locked glove compartment was incident to an arrest,” but the glove compartment had been unlocked and opened after the stop, as the driver obtained his registration papers from therein); State v. Box, 28 Kan. App. 2d 401, 17 P.3d 386 (2000) (locked glove compartment.); Lewis v. U.S., 632 A.2d 383 (D.C.App.1993) (dictum that a Belton search “could lawfully include the glove compartment, locked or unlocked.”); Sutien v. U.S., 562 A.2d 90 (D.C.App.1989) (upholding search of locked glove compartment.).

40 State v. Miller, No. C6-02-1016, 2002 WL 31748916, at *1 (Minn. Ct. App. Dec. 10, 2002) (“warrantless search of the locked organizer, which was fully controlled by police, was not justified” by search incident to arrest exception. Note, however, that this scenario, where the defendant “had no ability to either destroy evidence in the bag or to threaten officer safety with the contents of the bag,” would not permit a search incident to arrest under the new Gant rule; thus this Court’s holding may be moot. In addition, the court’s ruling had nothing to do with the fact the organizer was locked v. unlocked, nor was that issue even discussed.).

41 State v. Varnado, 582 N.W.2d 886, 893 (Minn. 1998).

42 New York v. Belton, 453 U.S. 454, 101 S. Ct. 2860, 69 L.Ed.2d 768 (1981); See 3 LaFave, Search and Seizure, § 7.1(c) at 133 (4th ed. 2004 & Supp. 2011-2012) (“Belton was not overruled and replaced by Gant; rather, Gant has been tacked onto Belton. This indicates that Gant does not simply require a return to the pre-Belton status of Chimel, just as if Belton never existed. Belton’s bright-line understanding will doubtless still be influential in many ways in those cases where the prerequisite ‘possibility of access’ is present, though it may be that the intrusion of this one case-by-case ingredient into the formula will put into doubt at least some other aspects of Belton’s bright-line rule.”).

43 Belton, 453 U.S. at 460, n.4, 101 S. Ct. at 2864 n.4, 69 L.Ed.2d at 775; Johnson v. Phillips, 664 F.3d 232, 238 (8th Cir. 2011) (“The search of the trunk violated clearly established law. There was no arguable authority to search a trunk of a vehicle incident to arrest.”).

44 See U.S. v. Poggenmiller, 375 F.3d 686, 688 (8th Cir. 2004) (officer’s plain view of marijuana in trunk after opening a back seat trap door which led into the trunk area was valid because it was accessible to [defendant] and therefore within Belton's rule that all areas ‘within reach’ of an occupant of the passenger compartment are subject to search.”); State v. Nelson, No. C8-01-1394, 2002 WL 172697, at *2 (Minn. Ct. App. Feb. 5, 2002) (a valid search of the “passenger area” included search of the rear cargo area of defendant’s Ford Bronco.).

45 State v. Johnson, 277 N.W.2d 346 (Minn. 1979) (deputy’s seizure of brown paper bag from trunk of defendant’s car was lawful as search incident to arrest because the trunk was open, and the evidence was within defendant’s immediate control and was of destructible nature.).

46 See Belton, 453 U.S. at 460 n.4, 101 S. Ct. at 2864 n.4, 69 L.Ed.2d at 768.


49 See supra notes 15-17.
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50 See supra note 19.

51 Arizona v. Gant, 556 U.S. 332, 343, 129 S. Ct. 1710, 1719 (2009) (“We also conclude that circumstances unique to the vehicle context justify a search incident to a lawful arrest when it is ‘reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.’”) (quoting Thornton v. U.S. 541 U.S. 615, 632, 124 S. Ct. 2127, 2137 (2004)).

52 See, e.g., Robbins v. Commonwealth, 336 S.W.3d 60, 63 (Ky. 2011) (search valid under second prong of Gant: although “officers initially approached Robbins to execute the outstanding bench warrant for failure to appear, he was actually arrested on new charges of trafficking in a controlled substance and tampering with physical evidence,” for which officers gained probable cause to arrest defendant at the scene and then search the vehicle for evidence of drug trafficking. Although not explicitly stated, the Court’s reasoning implies that if the officers did not have probable cause to arrest the defendant on new charges of drug trafficking and tampering with evidence, but instead had been arrested on the basis of the bench warrant, the second prong of Gant would be inapplicable.); United States v. Matthews, No. 09-612, 2010 WL 2671388, at *5, 7 (E.D. Pa. July 1, 2010) (where defendant was arrested on the basis of two bench warrants, the search of a backpack was not permissible as a search incident to arrest. In its discussion of the validity of a search incident to arrest, the Court only examined Gant’s first prong, not the second, “offense-related evidence” prong.).

53 Michigan v. Long, 463 U.S. 1032, 1049, 103 S. Ct. 3469, 3469, 77 L.Ed.2d 1201 (1983) (“Protective weapons search” – permits an officer to search a vehicle’s passenger compartment when he has reasonable suspicion that an individual, whether or not the arrestee, is “dangerous” and might access the vehicle to “gain immediate control of weapons.”) (citing Terry v. Ohio, 392 U.S. 1, 21, 88 S. Ct. 1868, 20 L.Ed.2d 889 (1968)); State v. Wadell, 655 N.W.2d 803, 809–10 (Minn. 2003) (an officer may conduct a “protective search of the passenger compartment of the vehicle, limited to those areas in which a weapon may be placed or hidden,” if the officer has a “particularized and objective basis for suspecting the particular person stopped of criminal activity” and the officer “possesses a reasonable belief, based on specific and articulable facts, that the suspect is dangerous and may gain immediate control of a weapon.”); U.S. v. Ross, 456 U.S. 798, 820–821, 102 S. Ct. 2157, 72 L.Ed.2d 572 (1982) (“Automobile exception” – if there is probable cause to believe a vehicle contains evidence of criminal activity, police are authorized to search any area of the vehicle in which the evidence might be found,); State v. Barbach, 706 N.W.2d 484, 488 (Minn. 2005) (“Automobile exception” – due to the exigent circumstances presented by automobiles, there is a “well-established exception to the search warrant requirement for cases involving transportation of contraband goods in motor vehicles.”); Illinois v. Lafayette, 462 U.S. 640, 648, 103 S. Ct. 2605, 2611, 77 L. Ed. 2d 65 (1983) (“Inventory exception” – it is not “unreasonable” for police, as part of the routine procedure incident to incarcerating an arrested person, to search any container or article in his possession, in accordance with established inventory procedures.); State v. Ture, 632 N.W.2d 621, 628 (Minn. 2001) (“Inventory exception” – permits the police to search a vehicle provided they (1) follow standard procedures in carrying out the search and (2) perform the search, at least in part, for the purpose of obtaining an inventory and not for the sole purpose of investigation.”).

54 See 3 LaFave, supra, § 7.1(c) at 133 (“Belton was not overruled and replaced by Gant; rather, Gant has been tacked onto Belton. This indicates that Gant does not simply require a return to the pre-Belton status of Chimel, just as if Belton never existed. Belton’s bright-line understanding will doubtless still be influential in many ways in those cases where the prerequisite ‘possibility of access’ is present, though it may be that the intrusion of this one case-by-case ingredient into the formula will put into doubt at least some other aspects of Belton’s bright-line rule.”).

55 3 LaFave, supra note 7, § 7.1(b) at 17 (2d ed. 1987).

56 State v. Nelson, C8-01-1394, 2002 WL 172697 (Minn. Ct. App. Feb. 5, 2002) (rear cargo area of defendant’s Ford Bronco was included in the “passenger area” of the vehicle capable to be searched in searches incident to arrest.); see also U.S. v. Russel, 670 F.2d 323 (D.C. Cir. 1982).

57 United States v. Wiga, 662 F.2d 1325 (9th Cir. 1981); see also State v. Lepley, 343 N.W.2d 41, 42 (Minn. 1984) (holding motor homes, camper vans and similar vehicles used as motor vehicles are covered by the Motor Vehicle Exception to the search warrant requirement.).


59 Belton, 453 U.S. at 460 n.4, 101 S. Ct. at 2864 n.4, 69 L.Ed.2d at 775 n.4.

60 State v. Johnson, 277 N.W.2d 346 (Minn. 1979).


62 See Johnson, 277 N.W.2d at 346.


64 Minn. R. Crim. P. 6.01, subd. 1(1)(a) (2011) (prior to 1990, the Rules of Criminal Procedure permitted officers to take petty misdemeanants into custody if they refused to sign a citation. The 1990 amendments removed that provision and replaced it with the following: “ordinarily, for misdemeanors not punishable by incarceration a citation shall be issued.”); see also State v. Askeroth, 681 N.W.2d 353, 363 n.6 (Minn. 2004); State, City of Minneapolis v. Cook, 498 N.W.2d 17, 20 (Minn. 1993) (articulating standard for suppressing evidence based upon a violation of Minn. R. Crim. P. 6.01 as only “serious violations which subvert the purpose of established procedures will justify suppression.”); State v. Martin, 253 N.W.2d 404 (Minn. 1977) (a search incident to an arrest for a petty misdemeanor is unlawful.); Minn. R. Crim. P. 3.01 (2011) provides in part: “ [a] summons
must issue in lieu of a warrant if the offense is punishable by fine only in misdemeanor cases.” But see Atwater v. City of Lago Vista, 532 U.S. 318, 121 S. Ct. 1536 (2001) (under the Fourth Amendment, custodial arrest may be authorized even for minor traffic offenses.).

65 Cook, 498 N.W.2d at 20; Martin, 253 N.W.2d at 406; see also U.S. v. Robinson, 414 U.S. 218, 94 S. Ct. 467, 38 L.Ed.2d 472 (1973); State v. Hanson, 364 N.W.2d 786 (Minn. 1985) (possession of a single marijuana cigarette is a petty misdemeanor which ordinarily does not justify a custodial arrest.).

66 Gant, 556 U.S. at 333-34, 129 S. Ct. at 1719 (“In many cases, as when a recent occupant is arrested for a traffic violation, there will be no reasonable basis to believe the vehicle contains relevant evidence.”) (citing Atwater v. Lago Vista, 532 U.S. 318, 324, 121 S.Ct. 1536, 149 L.Ed.2d 549 (2001); Knowles v. Iowa, 525 U.S. 113, 118, 119 S. Ct. 484, 142 L.Ed.2d 492 (1998).

67 Minn. R. Crim. P. 6.01, subd. 1(1)(a) (2011).

68 Minn. R. Crim. P. 6.01 subd. 5 (2011) (“Lawful Searches. The issuance of a citation does not affect a law enforcement officer's authority to conduct an otherwise lawful search.”); Rule 6.01, subd. 5 arguably extends the “search incident to arrest” rule to situations where the police have authority to subject a defendant to a custodial arrest but, exercising their discretion, issue a citation instead. Whether the officer in such a situation can issue a citation and still conduct a search incident to arrest has never been decided by the Minnesota Supreme Court, see City of Minneapolis v. Cook, 498 N.W.2d 17, 20 (Minn. 1993); State v. Martin, 253 N.W.2d 404, 406 (Minn. 1977).

69 State v. White, 489 N.W.2d 792, 794 (Minn. 1992) (where novice officer had objective probable cause to arrest driver of car but did not do so until after he searched the car and then arrested defendant for a different offense based on evidence discovered during the search - search of vehicle incident to arrest upheld;); see Rawlings v. Kentucky, 448 U.S. 98 (1980).

70 State v. White, 489 N.W.2d 792, 794 (Minn. 1992); Florida v. Royer, 460 U.S. 491, 103 S. Ct. 1319, 75 L.Ed.2d 229 (1983) (the fact that a police officer testified at a suppression hearing that he did not believe there was probable cause to arrest and the fact that he proceeded on a Terry stop rationale did not foreclose the State from justifying the defendant's custody by proving the existence of probable cause to arrest even though defendant was never formally placed under arrest.). See also State v. Inman, No. A90-792, 2010 WL 1963441, at *3 (Minn. Ct. App. May 18, 2010) (“We have found no authority associating contemporaneity with the mere passing of time, when a period of time begins with detention, followed by a search, and continues in a routine policing action through the moment of a formal arrest. Because appellant was detained at the time the search was being conducted and remained under this detention as he was transported to the Waite Park station and formally arrested, the search and arrest were conducted contemporaneously.”).

71 State v. White, 489 N.W.2d at 794; Royer, 460 U.S. 491, 103 S. Ct. 1319.


73 3 LaFave, supra, § 7.1(c) at 130-31; U.S. v. Strahan, 984 F.2d 155 (6th Cir. 1993) (where defendant was “approximately 30 feet from his vehicle when arrested”, search incident to arrest theory ”inapplicable”); United States v. Fafowora, 865 F.2d 360 (D.C. Cir. 1989) (though Federal Agents were earlier pursuing the car defendants were driving, search incident to arrest theory not applicable to search of car "that they had parked, and from which they were walking approximately one car length away at the time of their arrest."); Commonwealth v. Santiago, 575 N.E.2d 350 (Mass. 1991) (search incident to arrest theory not applicable where "the defendant already had left his automobile by the time the officers approached and apprehended him.").

74 See State v. White, 489 N.W.2d 792 (Minn. 1992); See also, U.S. v. Arango, 879 F.2d 1501 (7th Cir. 1989), cert. denied, 110 S. Ct. 1111 (1990) (A warrantless search of a motor vehicle was upheld as a search incident to arrest after the suspect abandoned it, fled on foot, and was apprehended one block from the vehicle. After his arrest, defendant was brought back to the vehicle and the car was searched at that point. In ruling that the search was lawful as incident to the arrest, the court noted that there was nothing in the record to indicate that the defendant had been brought back to the car in order to justify searching it; rather, the arresting officer returned to the scene to assist an injured comrade.).

75 3 LaFave, supra, § 7.1(b) at 5-6 (2d ed. 1987); State v. Johnson, 277 N.W.2d 346 (Minn. 1979); Chimel v. California, 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969).

76 3 LaFave, supra, § 7.1(b) at 119-20.

77 Id. at 123.

78 Gant, 556 U.S. at 343, 351, 129 S. Ct. at 1719, 1723; See also 3 LaFave, supra, § 1.7(c) at 133.

79 3 LaFave, supra, § 7.1(c) at 133-34 (quoting Gant, 556 U.S. at 343, 351, 129 S. Ct. at 1719, 1723).

80 3 LaFave, supra note 9, § 7.1(d) at 143 (“Just as this new search-for-evidence rule has the capacity to outrun Belton's scope limitation barring the search of locked trunks, so too, it has been cogently noted, the ‘two temporal constraints’ of Belton - that the ‘arrestee must have been present inside the vehicle recently’ and that the search not be ‘impermissibly remote in time’ from the arrest - might also fall by the wayside. This is a legitimate
cause for concern, although here again I believe the likely response of the courts will be to deem the new evidence-search rule to permit no more and no less than Belton allows.”) (internal citations omitted).

81 Id. at 123, 130-31; State v. Varnado, 582 N.W.2d 886, 892 (Minn. 1998); State v. Holnes, 140 N.W.2d 610 (Minn. 1966); Preston v. United States, 376 U.S. 364, 84 S. Ct. 881, 11 L.Ed.2d 777 (1964).

82 3 LaFave, supra, §7.1(a) at 118; Chambers v. Maroney, 399 U.S. 42 (1970) (search of auto that produced incriminating evidence, made at police station sometime after arrest of occupants, could not be justified as search incident to arrest.).

83 State v. Ture, 632 N.W.2d 621, 628-29 (Minn. 2001); State v. Rodewald, 376 N.W.2d 416 (Minn. 1985) (quoting United States v. Edwards, 415 U.S. 800, 807-08, 94 S. Ct. 1234, 1239, 39 L.Ed.2d 771 (1974)).
CHAPTER 3
PLAIN VIEW SEIZURE OF EVIDENCE

3.1 WHAT IS THE GENERAL RULE?

1. General Rule: Incriminating items in plain sight of a police officer who has a lawful right to be in the position to have that view are subject to seizure without a warrant and are admissible in evidence.\(^1\) It is not a search to see something in plain sight,\(^2\) and it makes no difference whether the object seen is in a dwelling,\(^3\) in a motor vehicle,\(^4\) or on a person.\(^5\) The plain-view rule applies only if: (a) the initial intrusion that affords the plain view is lawful; (b) the officer has a lawful right of access to the object; and (c) the incriminating nature of the evidence is immediately apparent (i.e. probable cause to believe item is subject to seizure as contraband or evidence of a crime).\(^6\)

2. Legal Justification: The plain-view doctrine is grounded on the proposition that once police are lawfully in a position to observe an item firsthand, the owner's privacy interest in that item is lost. Because the seizure of property in plain view involves no invasion of privacy, it is presumptively reasonable, assuming that there is probable cause to associate the property with criminal activity.\(^7\)

3. Lawful Presence Requirement: In order for the plain-view doctrine to apply officers must have a lawful right to be where they are when the item is seen (i.e. peace officers must be engaged in lawful activity). If their presence is unlawful, the article in plain view will be inadmissible.\(^8\) In other words, as long as a motor vehicle stop is lawful (i.e. supported by reasonable suspicion) any incriminating item observed by officers while lawfully standing outside the vehicle looking in, may be seized. However, if the motor vehicle stop is unlawful (i.e. not supported by reasonable suspicion), then the officer's presence outside the vehicle is also unlawful and seizure of any object in plain view would be suppressed as the "fruits" of an unlawful search.

4. Lawful Right of Access Requirement: Even if officers lawfully observe an incriminating object in plain view, they cannot seize that object without a warrant unless they also have a lawful right of access to the object. Because of the lesser expectation of privacy afforded to motor vehicles, whenever contraband or other evidence of a crime is observed inside a motor vehicle, officers may enter the vehicle without a warrant in order to seize the object. (See Chapter 4 "Probable Cause Search For Evidence"). However, the same does not hold true for private residences. The plain view exception cannot be used to justify a warrantless entry into a residence in the absence of consent or exigent circumstances. The plain view doctrine is triggered only after officers have otherwise lawfully entered the premises; it does not provide justification for the entry into the residence.\(^9\)

5. Immediately Apparent Requirement: Under the plain-view doctrine, in order for an object to be seized, it must be "immediately apparent" to the observing officer that the item is seizable.\(^10\) Thus, a seizure under the plain-view doctrine requires that the view of the officer provide probable cause to believe the item is subject to seizure as contraband or evidence of a crime.\(^11\) The police may consider such things as any background information they have that casts light on the nature of the property and whether items are unusual in number or are strangely stored or located.\(^12\) A peace officer may also rely on trained intuition and observations drawn from his experience that may escape the untrained person.\(^13\)

6. Inadvertent Discovery Requirement Discarded: An earlier requirement that the officer come upon the evidence "inadvertently" has been discarded. In other words, as long as the officer is engaged in lawful...
Fourth Amendment conduct at the time he comes across the evidence in plain view, the legality of the seizure will not be affected by whether or not the officer hoped or expected to find it.¹⁴

7. "Plain Feel" Exception: See Chapter 6 "Protective Weapons Search" § 6.1 #8. There may also be exceptions relating to other senses such as smell and hearing.¹⁵

3.2 VIGNETTE #3:
FIREARM AND CONTROLLED SUBSTANCE OFFENSE

FACTS

1. Officers stop a vehicle for a minor traffic offense (i.e. no license plates on front or rear of car).

2. While standing outside the driver’s door, the officer shines a flashlight into the car's interior and observes, in plain view, an uncased handgun on the back seat floor.

3. The driver is ordered out of the vehicle, is handcuffed, frisked, and placed in the rear of the squad car.

4. The officer then enters the vehicle for the purpose of seizing the handgun. While bending over to pick up the gun, the officer observes a plastic baggie containing what appears to be cocaine stuffed between the front passenger car seat. Both the gun and cocaine are seized.

3.3 IS SEIZURE OF THE GUN AND COCAINE LAWFULL?

ANSWER: Yes.

1. Seizure of Handgun: Seizure of the handgun is lawful because: (a) the motor vehicle stop was lawful (i.e. supported by reasonable suspicion) thus satisfying the "lawful presence" and "lawful right of access" requirements; and (b) the officer's plain view observation of the uncased handgun created probable cause to believe the gun was subject to seizure (i.e. contraband or evidence of a crime) thus satisfying the "immediately apparent" requirement.¹⁶

Note: During a lawful motor vehicle stop, officers may shine a flashlight into the car's interior. Any incriminating items that appear in plain view with the aid of the extra light may be seized.¹⁷

2. Seizure of Cocaine: Seizure of the cocaine is lawful because: (a) the officer had the lawful right to be where he was when he viewed and seized the cocaine, thus satisfying the "lawful presence" and "lawful right of access" requirements; and (b) the officer's observation of the cocaine created probable cause to believe the small bag was seizable (i.e. contraband or evidence of a crime) thus satisfying the "immediately apparent" requirement.
### 3.4 CAN THE REST OF THE VEHICLE BE SEARCHED?

**ANSWER:** Yes

1. **Search Incident to Arrest:** Because seizure of the uncased handgun and cocaine create probable cause to arrest the driver, under the "Search Incident to Arrest" exception, the officer could then search the entire passenger compartment area of the vehicle and all containers (open or closed) capable of concealing evidence of the crime for which Defendant was just arrested. See Chapter 2, "Search Incident to Arrest".

2. **Probable Cause Search for Evidence:** Because seizure of the uncased handgun and cocaine create probable cause to believe the vehicle contains additional evidence of a crime (i.e. more weapons or drugs), under the "Probable Cause Search for Evidence" exception, every part of the vehicle, including the trunk and other containers capable of hiding the object of the search (i.e. weapons or drugs) can be searched without a warrant. See Chapter 4 "Probable Cause Search for Evidence."
ENDNOTES:


2 State v. Johnson, 403 N.W.2d 319 (Minn. Ct. App. 1987) (upheld seizure of a gun observed in plain sight.).

3 State v. Larson, 346 N.W.2d 199 (Minn. Ct. App. 1984) (finding officers entitled to seize stolen property in plain view when voluntarily admitted by defendant into his home); however, the plain view exception cannot be used to justify a warrantless entry into a residence in the absence of consent or exigent circumstances; see Payton v. New York, 445 U.S. 573 (1980); Welsh v. Wisconsin, 466 U.S. 740 (1984); Minnesota v. Olson, 495 U.S. 91 (1990).

4 State v. Pierce, 347 N.W.2d 829 (Minn. Ct. App. 1984) (upholding plain view discovery of a gun in a glove compartment when the search of the glove compartment was supported by probable cause); State v. Studdard, 352 N.W.2d 413 (Minn. 1984) (allowing seizure of a bag of drugs when searching for the source of spilled beer under the seat based on probable cause for DWI). See Fisnack, Christian A., VEHICLE SEARCH LAW DESKBOOK §6:3 at 127 (2010-2011 Ed., 2010) (citing U.S. v. Jimenez, 864 F.2d 686 (10th Cir. 1989) in finding plain view applicable in witnessing a gun through a trunk gap while officers were searching for gasoline leakage.).

5 State v. Kotsa, 152 N.W.2d 445 (Minn. 1967) (finding no seizure occurring when a gun defendant during consensual search, especially since defendant handed the gun over).

6 In re Welfare of J.W.L., 732 N.W.2d 332 (Minn. Ct. App. 2007) (suppressing photographs seized by officers who were supposed to respond to an emergency, not seize evidence of a crime not yet committed); State v. Licari, 659 N.W.2d 243 (2003) (finding plain view inapplicable if the intrusion is unlawful); State v. Zanter, 535 N.W.2d 624 (Minn. 1995) (finding seizure of photographs valid if sufficient evidence to form reasonable belief that photos were incriminating); State v. Sherwood, 352 N.W.2d 831 (Minn. Ct. App. 1984); State v. Smith, 386 N.W.2d 403 (Minn. Ct. App. 1986); State v. Collard, 414 N.W.2d 733 (Minn. Ct. App. 1987); State v. Metz, 422 N.W.2d 754 (Minn. Ct. App. 1988); State v. Olson, 436 N.W.2d 817 (Minn. Ct. App. 1989); Texas v. Brown, 460 U.S. 730 (1983) (finding officer entitled to seize otherwise open gun party balcony from defendant during license check because officer had probable cause to associate balloon with criminal activity even though it was not immediately apparent that it contained narcotics.); See also, State v. Severtson, 232 N.W.2d 95 (Minn. 1975) (seizure of personal papers found in close proximity to drugs.). But see State v. Bauman, 586 N.W.2d 416 (Minn. Ct. App. 1998) (license needed to be visible from outside the car to support a finding that it was in plain view; however, searching for it could be substantiated under probable cause by Defendant's prior false statements.).

7 In re Welfare of G.M., 560 N.W.2d 687, 692-93 (Minn. 1997); State v. Zimmer, 642 N.W.2d 753, 755-56 (Minn. Ct. App. 2002); Soldal v. Cook County, Ill., 506 U.S. 56 (1992); Horton v. California, 498 U.S. 128 (1990); Texas v. Brown, 460 U.S. 730 (1983); Illinois v. Andreas, 463 U.S. 765, 771 (1983); See LaFave R., SEARCH & SEIZURE § 7.9(a) at 671-72 (4th ed. 2004) (citing Coolidge v. New Hampshire, 403 U.S. 443 "the rationale for the 'plain view' exception is evident if we keep in mind the two distinct constitutional protections served by the warrant requirement. First, the magistrate's scrutiny is intended to eliminate altogether searches not based on probable cause. The second distinct objective is that those searches deemed necessary should be as limited as possible... the initial intrusion which brings the police within plain view of such an article.")


9 See Minnesota v. Olson, 495 U.S. 91 (1990); Welsh v. Wisconsin, 466 U.S. 740 (1984); Payton v. New York, 445 U.S. 573 (1980) (the plain view exception cannot be used to justify a warrantless entry into a residence in the absence of consent or exigent circumstances.); But see State v. Crea, 233 N.W.2d 736 (Minn. 1975) (finding areas near a home generally open to the public and allowing a search there); see supra note 3.

10 Matter of Welfare of G.M., 560 N.W.2d 687 (Minn. 1997) (Court of appeals erred in concluding "that because the pouch was in plain view, and because the police officer had probable cause to believe the pouch contained contraband, that this case fit under" the plain view doctrine. "Under the plain-view exception to the warrant requirement, a police officer can seize an object in plain view without a warrant only if the object's incriminating character is immediately apparent. In this case, the object in plain view was the pouch, not the contraband. Consequently, the plain-view exception will apply only if the pouch's incriminating nature was immediately apparent.").

11 Coolidge v. New Hampshire, 403 U.S. 443, 91 S. Ct. 2202 (1971); Arizona v. Hicks, 480 U.S. 321, 107 S. Ct. 1149 (1987); State v. White, No. A09-1095, 2010 WL 3543338 (Minn. Ct. App. Sept. 14, 2010) (unpublished opinion) (officer may search vehicle after viewing marijuana (even if non-criminal amount) in plain sight.). Soldal v. Cook County, Ill., 506 U.S. 56 (1992); Texas v. Brown, 460 U.S. 730 (1983); U.S. v. Rutkowski, 877 F.2d 139, 142 (1st Cir. 1989); State v. Ellanson, 198 N.W.2d 136 (Minn. 1972); U.S. v. Poalos, 895 F.2d 1113 (6th Cir. 1990) (silencer components were immediately apparent due to strong association with crime); United States v. Barnes, 909 F.2d 1059 (7th Cir. 1990) (during search for cocaine, it was immediately apparent that notebook notations with weight calculations in grams and ounces and notations such as "Paid" and "Owe" were incriminating.); U.S. v. Talbot, 902 F.2d 1129 (4th Cir. 1990) (plain view doctrine applies to seizure of evidence of crime not merely to contraband so long as probable cause standard is met.); State v. DeWald, 463 N.W.2d 741, 747 (Minn. 1990); see also supra note 6; but see In re Welfare of J.W.L., 732 N.W.2d 332 (Minn. Ct. App. 2007). Photographs are generally inadmissible under this exception if the facts available to the officer would not warrant a person of reasonable caution to believe that item may be contraband, stolen property, or useful as evidence of a crime.

12 State v. Compton, 293 N.W.2d 372 (Minn. 1980) (holding officer who observed property in open view in back of pickup truck properly concluded from surrounding circumstances that he had probable cause to believe property was stolen.); State v. Carr, 361 N.W.2d 397 (Minn. 1985) (search upheld, officers observed and seized numerous television sets); State v. Buschkopf, 373 N.W.2d 756 (Minn. 1985) (finding evidence seized from crime scene is admissible if items could be made to assist officers in linking suspects to the scene of a crime.); But see, Arizona v. Hicks, 480 U.S. 321 (1987) (finding lifting a stereo to read the serial number beyond the scope of the plain view doctrine since no probable cause to connect the stereo to a crime.).
13 State v. Lembke, 509 N.W.2d 182 (Minn. Ct. App. 1993) (finding probable cause for officer who saw partially concealed "baggie" that might contain incriminating evidence in the jacket pocket of a driver who was speeding.).


15 See VEHICLE SEARCH LAW DESKBOOK 2010-2011 ed. § 6:4 at 129 (plain smell citing U.S. v. Ryles, 988 F.2d 13 (5th Cir. 1993) (upholding opening of vehicle door was appropriate based on driver’s intoxication and subsequent smell of marijuana was sufficient to justify a search.); plain hearing citing U.S. v. King, 990 F.2d 1552 (10th Cir. 1993) (upholding a plain view of a pistol hidden under defendant’s thigh after defendant had honked repeatedly, drawing officer’s attention); and plain touch citing Minnesota v. Dickerson, 508 U.S. 366 (1993) (upholding the right for an officer to search for dangerous weapons if criminal activity may be afoot and that the persons may be armed and presently dangerous, as long as the officer does not manipulate the pocket’s contents to identify the object.).

16 State v. Vohnoutka, 292 N.W.2d 756, 757 (Minn. 1980) (finding a police offer may shine his flashlight towards the passenger compartment of a car and observe anything in plain view.); State v. Landon, 256 N.W.2d 89 (Minn. 1977) (finding search proper when flashlight use discovered a gun in plain sight.); State v. McKenzie, 392 N.W.2d 345 (Minn. Ct. App. 1986); State v. Landon, 256 N.W.2d 89 (Minn. 1977); State v. Shevchuk, 191 N.W.2d 557 (Minn. 1971).

17 Supra note 16.
CHAPTER 4
PROBABLE CAUSE SEARCH FOR EVIDENCE

4.1 WHAT IS THE GENERAL RULE?

1. General Rule: A peace officer who has lawfully stopped (or located) a motor vehicle that is mobile or readily capable of being made so, and who has probable cause to believe that contraband or other evidence of a crime is concealed somewhere within it, may conduct a warrantless search of every part of the vehicle and its contents, including all containers and packages, that may conceal the object of the search. In other words, if officers have enough information (probable cause) to where they could get a search warrant then, under the “vehicle exception” they don't need a search warrant.

2. Legal Justification: The probable cause search for evidence exception, first recognized in *Carroll v. United States*, is often referred to as the “Carroll doctrine,” the “automobile exception,” or the “vehicle exception.” The vehicle exception was originally based, in part, upon exigent circumstances (i.e. vehicle could be moved away while search warrant is being obtained). That requirement, however, has been discarded by both the United States and the Minnesota Court of Appeals. The ‘automobile exception’ continues to be based on the Court's conclusion that the expectation of privacy with respect to one's vehicle is lower than that regarding one's home or office. This is due, in part, to the inherent mobility of vehicles, their periodic inspection and licensing requirements, and the public nature of vehicle travel where both its occupants and contents are in plain view. In addition, the mere ability of a vehicle to become mobile was originally held to be sufficient to satisfy the old exigency requirement. Courts have applied the vehicle exception to uphold warrantless searches of an assortment of vehicles, including a motor home, a houseboat, and a roomette on a train.

3. Definition of Probable Cause: The test for probable cause is whether objective facts are such that, under the same circumstances, a person of ordinary care and prudence would entertain an honest and strong suspicion that a crime has been committed. The inquiry is objective, rather than subjective, and the standard is a flexible, commonsense one. In determining probable cause, an officer may rely on his training and experience to draw inferences and make deductions that might well elude untrained persons. Probable cause for an automobile search will be found if “the totality of the circumstances creates a fair probability the vehicle . . . contains contraband.” Mere suspicion, however, does not equal probable cause.

Note - Police Collective Knowledge: In determining whether probable cause exists to search a vehicle, a reviewing court will evaluate the "collective information” of all officers involved rather than solely on the officer who actually performed the search.

4. Scope of Search: The scope of a warrantless search under the vehicle exception is the same as the scope of a search authorized by a warrant. The scope of the search is not defined by the nature of the container in which the contraband is hidden, rather it is defined “by the object of the search and the places where there is probable cause to believe that it may be found.” In other words, probable cause to believe that contraband is concealed somewhere within a motor vehicle will support a warrantless search of the entire vehicle, including all containers and packages that may conceal the object of the search. A search under this exception could, depending on the circumstances, also include items of identification to prove constructive possession of contraband found during the search. For example, search of a cell phone for confirmation of defendant’s ownership of a seized gun to prove constructive possession was reasonable because “police had probable cause to believe that the cell phone contained evidence of a crime and therefore could be reasonably searched as a container in an automobile under the automobile exception to the warrant requirement.”

5. Search of Containers: Police officers having probable cause to believe that contraband is concealed somewhere within a motor vehicle may conduct a warrantless search of every part of the vehicle and its contents,
including all containers and packages (even if locked or sealed), that may conceal the object of the search. The nature of the container (i.e. glove box, briefcase, luggage, purse, etc.) is immaterial. As long as there is probable cause to believe that contraband is concealed somewhere within a motor vehicle, every container and package found within the vehicle that is capable of concealing the object of the search may be opened and searched. For example, probable cause to believe a van is transporting stolen televisions would not justify a search of the glove compartment or a briefcase as those areas are not capable of concealing the object of the search. However, if the search uncovers stolen televisions officers may expand the scope of the warrantless search to include other areas or containers that officers have probable cause to believe contain additional evidence of the crime, such as items of identification to prove constructive possession of the stolen property. On the other hand, probable cause to believe a vehicle is carrying narcotics subjects it (and all containers in it) to a probing examination.

**Note - What if the Vehicle is Locked?** Because a motor vehicle can be considered one big container itself, the right to conduct a warrantless search of the vehicle under the “vehicle exception” includes the right to open and enter the vehicle regardless of whether it is locked. However, because the responsible law enforcement agency may, under some circumstances, be held responsible for property damage caused as a result of forcing open a locked vehicle, great care should be taken to minimize damage to the vehicle while gaining access to conduct a warrantless search.

6. **Probable Cause to Search Entire Vehicle Versus Particular Container:** If the officer's probable cause is limited to a particular container inside the vehicle and does not extend to the entire vehicle then, although the particular container may be searched without a warrant, the rest of the vehicle may not be searched in the absence of additional probable cause or a different exception. However, evidence discovered during a search of the container can be a factor in developing probable cause that evidence is also located in other areas of the vehicle.

For example: in *California v. Acevedo,* defendant was seen leaving an apartment, where a shipment of marijuana had recently been delivered, carrying a brown paper bag the same size as the marijuana packages previously delivered to the apartment. The defendant put the bag in the trunk of his car and was pulled over after he drove off. The police opened the trunk and found marijuana in the bag. Although police had probable cause to believe the brown paper bag contained marijuana, they did not have probable cause to believe that other contraband or evidence was located anywhere else inside the vehicle. The Supreme Court held that because police had probable cause to believe the brown paper bag contained contraband, police could search the bag without a warrant. However, because police did not have probable cause to believe that contraband was hidden in any other part of the vehicle, a search of the entire vehicle would have been unreasonable under the probable cause vehicle exception.

7. **Instrumentality of the Crime Exception:** If police have probable cause to believe an automobile was used as an "instrumentality of a crime" and *might* (does not require probable cause) contain evidence of the crime, they are justified in searching the vehicle without a warrant. There is also a requirement that the search be closely related to the reason for defendant's arrest or the reason for the vehicle's seizure. Although it is unclear what this requirement means, it would appear to indicate there must be a reason to believe the "fruits" or other evidence of the crime (i.e. items of identification, etc.) are in the vehicle. Although the scope of an "instrumentality" search has never been clearly defined, it would appear to be the same as a search conducted under the "vehicle exception." A motor vehicle is an "instrumentality of the crime if it was an integral part of the defendant's apparatus for the commission of the crime and was an instrumentality in achieving the defendant's unlawful objectives." Because a warrant is not required when police have probable cause to believe a car contains evidence of a crime, there is little sense in requiring a warrant before seizing and searching a car when police have probable cause to believe that the car itself is evidence of a crime or is an instrument of a crime. The most important difference between the "instrumentality of a crime" search and "vehicle exception" search is that the "instrumentality" search applies to all vehicles, without regard to their mobility.
4.2 VIGNETTE #4:
POSSESSION OF MARIJUANA

FACTS

1. Officers on routine patrol observe a parked vehicle in a public park surrounded by four (4) persons (two boys, two girls, all four clearly under 21 years of age) smoking and passing back and forth what appears to be a marijuana cigarette.

2. When the four youths observe the approaching squad, they all rush into the parked vehicle and quickly roll up the windows. When the driver rolls down the window to speak with the officer, the officer immediately detects a strong odor of burning marijuana.

3. All four occupants are ordered out of the vehicle and told to stand by the squad where a second officer starts identifying them.

4. The first officer then enters the vehicle for the purpose of conducting a warrantless search.

5. During the ensuing search (i.e. including the passenger compartment area, numerous containers, the engine and the trunk) the only items found were rolling papers, the butt of a marijuana cigarette, numerous empty baggies, and $1,000 in cash. Nothing was found during the search for which the occupants could be arrested.

6. After completing the vehicle search, the officer approaches all four occupants and tells them that he knows they were smoking marijuana inside the car. He then orders all four occupants to hand over their jackets and purses and to empty their pockets onto the hood of the squad.

4.3 CAN THE VEHICLE BE SEARCHED WITHOUT A WARRANT?

ANSWER: Yes

Under the “vehicle exception,” a peace officer who has lawfully stopped (or lawfully approached) a motor vehicle and who has probable cause to believe that contraband is concealed somewhere inside the vehicle, may conduct a warrantless search of every part of the vehicle and its contents, including all containers and packages, that may conceal the object of the search.

In the above example, the officer’s initial approach to the parked vehicle was lawful and his observations, coupled with the odor of marijuana emanating from inside the vehicle, gave him probable cause to believe that illegal contraband (i.e. marijuana) was located somewhere inside the vehicle, thus justifying a warrantless search of the vehicle.33

Note: As a general rule, the detection of odors alone, which trained police officers can identify as being illicit, constitutes probable cause to search an automobile for further evidence of a crime.34
4.4 CAN A PURSE BE SEARCHED?

**ANSWER:** Yes

Under the "vehicle exception", once there is probable cause to believe that contraband is concealed somewhere inside the vehicle, as long as the container to be searched (i.e. a purse) is found inside the vehicle and is capable of concealing the object of the search (i.e. marijuana), officers may search it without a warrant.

4.5 CAN THE PASSENGER COMPARTMENT AREA BE SEARCHED?

**ANSWER:** Yes

As long as there is probable cause to believe that contraband is concealed somewhere inside the vehicle, officers can search (without a warrant) anywhere in the passenger compartment area where the contraband (i.e. marijuana) might be found.

4.6 CAN THE GLOVE BOX, PHONE AND ASHTRAY BE SEARCHED?

**ANSWER:** Yes

Because a glove box, phone and ashtray are capable of concealing the object of the search (i.e. marijuana), they are all subject to search without a warrant.

4.7 CAN MISCELLANEOUS CLOTHING BE SEARCHED?

**ANSWER:** Yes

Because miscellaneous clothing (i.e. jackets, shirts, pants, etc.) are capable of concealing the object of the search (i.e. marijuana), the clothing and any pockets or attached compartments are all subject to search without a warrant.
**4.8 CAN SMALL CONTAINERS BE SEARCHED?**

ANSWER: Yes

As long as the small containers in question (i.e. small jewelry box, band aid container, eye cream bottle, etc.) are capable of concealing the object of the search (i.e. marijuana), they are subject to search without a warrant.

**4.9 CAN LARGE CONTAINERS BE SEARCHED?**

ANSWER: Yes

As long as the large containers in question (i.e. cardboard boxes, knapsacks, dufflebags, paper bags, etc.) are capable of concealing the object of the search (i.e. marijuana), they are all subject to search without a warrant. The right to search without a warrant would also extend to any container found inside a larger container as long as the container to be searched is capable of concealing the object of the search.

**4.10 CAN LOCKED CONTAINERS BE SEARCHED?**

ANSWER: Yes

The scope of the warrantless search is the same as the scope of a search authorized by a warrant. “The scope is not defined by the nature of the container in which the contraband is hidden, rather, it is defined by the object of the search and the places where there is probable cause to believe that it may be found.”

Probable cause to believe that contraband is concealed somewhere within a motor vehicle will support a warrantless search of that vehicle, including all containers and packages that may conceal the object of the search, regardless of whether the container is locked or not.

**Note:** Because the responsible law enforcement agency may, under some circumstances, be held responsible for property damage caused as a result of forcing open a locked container, great care should be taken to minimize damage to locked areas while gaining access to conduct a warrantless search under the “vehicle exception.”
### 4.11 CAN THE CHECKBOOK BOX BE SEARCHED?

**ANSWER:** Yes

Because a checkbook box is capable of concealing the object of the search (i.e. marijuana) it is subject to search without a warrant. The fact that the checkbook box was found inside a locked briefcase has no bearing on the officer's right to search it. As long as the container in question is capable of concealing the object of the search, it is subject to search without a warrant regardless of where inside the vehicle the container is found.\(^{37}\)

### 4.12 CAN BOOKS AND PAPERS BE SEARCHED?

**ANSWER:** Yes

Because almost any type of book or papers (i.e. magazines, calendars, envelopes, etc.) are capable of concealing the object of the search (i.e. marijuana), they are all subject to being searched (and read within reason) without a warrant.

### 4.13 CAN THE ENGINE AREA BE SEARCHED?

**ANSWER:** Yes

Under the "vehicle exception," probable cause to believe that contraband is concealed somewhere inside the vehicle, not only justifies a search of the entire passenger compartment area, but it also justifies a search of every part of the vehicle and its contents that may conceal the object of the search (i.e. marijuana).\(^{38}\) In the above example, because the engine compartment is part of the vehicle and is capable of concealing the object of the search (i.e. marijuana), it is subject to search without a warrant.\(^{39}\)

### 4.14 CAN THE TRUNK AREA BE SEARCHED?

**ANSWER:** Yes

If police have probable cause to search a motor vehicle for drugs or other contraband, they may search every part of the vehicle and its contents which may conceal the object of the search, including the trunk space.\(^{40}\)
### 4.15 CAN THE OCCUPANTS AND THEIR BELONGINGS BE SEARCHED?

**ANSWER:** Yes

**Caution:** Probable cause to search a vehicle does not, without more, convey a right to search people who happen to be located in the vehicle when the search is initiated. Under the "mere presence" rule, a person cannot be arrested and/or searched merely because he is present in a vehicle in which drugs are found. Of course, when there is probable cause to search a vehicle, there may also be probable cause to arrest a person in the vehicle which would then give rise to a search incident to a lawful arrest.

**Odor of Burnt Marijuana:** The Minnesota Court of Appeals in *State v. Wicklund* held that the odor of burned marijuana inside a stopped motor vehicle provides probable cause for the search of the vehicle's occupants and the vehicle. In *Wicklund*, the officer believed that one of the occupants in a car was in violation of curfew law. The officer stopped the car, and when the driver rolled down his window the officer smelled the odor of burned marijuana coming from inside the car. The Supreme Court held that the odor of marijuana gave the officer probable cause to search the vehicle and the vehicle occupants.

The Model Code of Pre-Arraignment Procedure also provides persuasive authority for upholding a warrantless search of the occupants of a motor vehicle under the “vehicle exception” if:

1. following a valid vehicle stop, officers develop probable cause to believe that contraband is being concealed somewhere inside the vehicle;
2. the officer does not find the contraband during his search of the vehicle;
3. the contraband is of such a size and nature that it could be concealed on the occupant's person; and
4. the officer has probable cause to believe that one or more of the occupants may have the contraband concealed on or about their person.

**Note:** Once officers have probable cause to believe that one or more vehicle occupants are concealing contraband on their person, refusing to permit a warrantless search of occupants would seem absurd (i.e. "occupants could take narcotics out of the glove compartment and stuff them in their pockets, and then drive happily away after the vehicle has been fruitlessly searched"). It is possible to have probable cause to believe evidence would be found on the person of the occupant of a vehicle but not probable cause to arrest. The other options would be (1) try to obtain consent to search; or (2) detain the occupants while officers apply for a warrant.

**Note:** In order to preserve the right to search, whenever a peace officer orders a person out of a vehicle, that person should be directed to leave all carry-on personal belongings capable of concealing the object of the search inside the vehicle (i.e. purses, caps, containers, jackets, etc.).
4.16 VIGNETTE #5: OPEN BOTTLE

FACTS

1. Officers on routine patrol observe a parked vehicle in a public park surrounded by three (3) persons (two girls and one boy, all three clearly under 21 years of age) drinking from what appears to be beer cans.
2. When the three youths observe the approaching squad, they all rush into the parked vehicle and quickly roll up the windows.
3. When the driver rolls down the window to speak with the officer, the officer immediately detects a strong odor of beer emanating from inside the vehicle.
4. All three occupants are ordered out of the vehicle and told to stand by the squad where a second officer starts identifying them.
5. The first officer then enters the vehicle for the purpose of conducting a warrantless search.
6. During a search of the passenger compartment, the officer finds an open twelve pack of Pigseye beer and numerous empty Pigseye beer cans; the officer searches numerous items including a purse, clothing, miscellaneous containers and a locked briefcase containing a checkbox.
7. The officer then extends his warrantless search to the trunk. When the officer looks inside the trunk he finds a large zipper bag containing several baggies of cocaine and numerous handguns.

4.17 CAN THE VEHICLE BE SEARCHED WITHOUT A WARRANT?

ANSWER: Yes

Under the "vehicle exception," a peace officer who has lawfully stopped (or lawfully approached) a motor vehicle and who has probable cause to believe that contraband is concealed somewhere inside the vehicle may conduct a warrantless search of every part of the vehicle and its contents, including all containers and packages, that may conceal the object of the search.

In the above example, the officer's initial approach to the parked vehicle was lawful and his observations, coupled with the odor of alcohol (i.e. beer) emanating from inside the vehicle, gave him probable cause to believe the driver and occupants were in violation of Minnesota's "Underage Drinking" statute, and that illegal contraband (i.e. alcohol/beer) was located somewhere inside the vehicle, thus, justifying a warrantless search of the vehicle.

Note - Open Bottle v. Underage Drinking: In the above example, because the vehicle was parked in a public park (rather than on a public highway) the presence of an open bottle of beer inside the vehicle would not constitute a violation of Minnesota's "Open Bottle" statute. Minnesota's "Open Bottle" statute only applies to vehicles that are "upon a street or highway." Minnesota does, however, prohibit anyone under the age of 21 from consuming or possessing an alcoholic beverage (with intent to consume) outside the family home. Therefore, in the above example, because the driver and occupants were all under the age of 21, probable cause to believe they were consuming beer and that evidence of that crime (i.e. alcohol/beer) was concealed somewhere inside the vehicle would justify officer's warrantless search of the vehicle under the "vehicle exception."

Note - Occupants Over 21 Years of Age: If the driver and occupants in the above example had been over 21 years of age, they would not be in violation of either the "Open Bottle" or the "Underage Drinking" statute. Accordingly, unless the occupants were in violation of a local city ordinance (i.e. prohibiting alcoholic beverages in a public park, etc.), officers would have no right to conduct a warrantless vehicle search.
### 4.18 CAN THE PASSENGER COMPARTMENT AREA BE SEARCHED?

**ANSWER:** Yes

Because officers have probable cause to believe that illegal contraband (i.e. alcohol) is concealed somewhere inside the vehicle, officers may conduct a warrantless search of every part of the passenger compartment area capable of concealing a can of beer or comparable evidence of alcohol. However, a search of any part of the passenger compartment area too small to reasonably conceal a can of beer or comparable evidence of alcohol (i.e. above the visor, under the floor mat, etc.) would exceed the scope of a lawful search under the "vehicle exception." 

**Note:** If one or more of the occupants is placed under lawful arrest then an additional search of the arrested person and immediate surrounding area may be conducted under the “search incident to arrest” exception.

### 4.19 CAN A PURSE BE SEARCHED?

**ANSWER:** Yes

As long as the purse in question is large enough to be capable of concealing a can of beer or evidence of alcohol, it is subject to being searched. However, only those parts of the purse large enough to conceal a can of beer or comparable evidence of alcohol can be searched. A search of side compartments or other sections of the purse too small to reasonably conceal a can of beer or evidence of alcohol would exceed the scope of the search.

**Note - Soft Containers:** If the purse (or any other container to be searched) is soft enough that an officer could tell by feeling the outside whether or not it might contain the object of the search, then the officer should first feel the outside before opening it up. If, after feeling the outside, it is clear that the object of the search is not or could not be concealed inside, then a search of the contents of that container would exceed the scope of a lawful search under the “vehicle exception.”

### 4.20 CAN THE GLOVE BOX AND ASHTRAY BE SEARCHED?

**ANSWER:** GLOVE BOX - Yes  
ASHTRAY – No

**Glove Box** - Because a glove box is large enough to be capable of concealing a can of beer or comparable evidence of alcohol, it is subject to being searched without a warrant. In addition, the warrantless search may also extend to any container found inside the glove box if that container itself is large enough to conceal a can of beer or comparable evidence of alcohol.

**Ashtray** - Because an ashtray is generally too small to be capable of concealing an item as large as a can of beer or comparable evidence of alcohol, a search of that area would exceed the scope of a lawful search under the “vehicle exception.”
4.21 CAN MISCELLANEOUS CLOTHING BE SEARCHED?

**ANSWER: Yes**

Because miscellaneous clothing (i.e. jackets, pants, shirts, etc.) are capable of concealing a can of beer or comparable evidence of alcohol, they are subject to being searched without a warrant. However, only those sections of clothing large enough to conceal a can of beer or comparable evidence of alcohol can be searched.

**Note:** If, once the officer picks up the clothing, it becomes clear (either through the officer's sense of touch or sight) that the object of the search is not or could not be concealed inside, then continuing to search the clothing would exceed the scope of a lawful "vehicle exception" search.

4.22 CAN SMALL CONTAINERS BE SEARCHED?

**ANSWER: No**

Because most small containers (i.e. small jewelry box, band-aid container, eyecream bottle, etc.) are too small to be capable of concealing a can of beer or comparable evidence of alcohol, searching them would exceed the scope of a lawful "vehicle exception" search. 56

4.23 CAN LARGE CONTAINERS BE SEARCHED?

**ANSWER: Yes**

As long as the container in question (i.e. a cooler, etc.) is large enough to be capable of concealing a can of beer or comparable evidence of alcohol, a warrantless search of that container would be permissible under the "vehicle exception." 57 In addition, officers may also search any container found inside the large container as long as that container is also large enough to be capable of concealing a can of beer or comparable evidence of alcohol.
4.24 Can locked containers be searched?

**Answer:** Yes

As long as the locked container in question (i.e. briefcase, etc.) is large enough to be capable of concealing a can of beer or comparable evidence of alcohol, it is subject to search under the "vehicle exception" regardless of whether it is locked.\(^{58}\)

**Note:** Because the responsible law enforcement agency may, under some circumstances, be held responsible for property damage caused as a result of forcing open a locked container, great care should be taken to minimize damage to locked areas while gaining access to conduct a warrantless search under the "vehicle exception."

4.25 Can the checkbook box be searched?

**Answer:** No

Although opening the locked briefcase and discovering the checkbook box was lawful, because a checkbook box is not reasonably capable of concealing the object of the search (i.e. a can of beer or comparable evidence of alcohol), a search of the checkbook box would exceed the scope of a lawful "vehicle exception" search.\(^{59}\)

4.26 Can books and papers be searched?

**Answer:** No

Because books and papers (i.e. magazines, calendars, envelopes, etc.) are not reasonably capable of concealing the object of the search (i.e. a can of beer or comparable evidence of alcohol), they are not subject to being searched under the "vehicle exception."

4.27 Can the engine area be searched?

**Answer:** Underage Drinking – Yes; Open Bottle - No

1. **Underage Drinking:** If a peace officer has probable cause to believe that an underage occupant of a motor vehicle has violated Minnesota's "Underage Drinking" statute and that evidence of that crime (i.e. alcoholic beverages) is located somewhere inside the vehicle, then officers can search any part of the vehicle, including the trunk and engine area, capable of concealing the object of the search (i.e. alcoholic beverages).\(^{60}\)

**Note:** The real question is whether a can of beer or comparable evidence of alcohol found inside an engine compartment constitutes evidence of a crime (i.e. underage drinking). Whether it does or not depends on the circumstances of the case. In most instances, finding a can or bottle of beer in the engine compartment would have
very little evidentiary value. However, if underage kids are drinking by a car that has the engine hood up and the hood is shut just as officers arrive, finding an open can of beer or comparable evidence of alcohol inside the engine compartment, under those circumstances, would clearly constitute evidence of a crime (i.e. underage drinking).

2. **Open Bottle:** Because Minnesota's "Open Bottle" statute only prohibits possessing open bottles of intoxicating liquor in the passenger compartment area of a motor vehicle (i.e. does not apply to trunks or engine compartments), the presence of a can or bottle of beer in the engine compartment area would not (assuming the occupants are all over the age of 21) constitute evidence of a crime. Thus, under those circumstances, a warrantless search of the engine compartment area would exceed the proper scope of a "vehicle exception" search.

### 4.28 CAN THE TRUNK AREA BE SEARCHED?

**ANSWER:** UNDERAGE DRINKING – Yes; OPEN BOTTLE - No.

1. **Underage Drinking:** If a peace officer has probable cause to believe that an underage occupant of a motor vehicle has violated Minnesota's "Underage Drinking" statute and that evidence of that crime (i.e. alcoholic beverages) is located somewhere inside the vehicle, then officers can search any part of the vehicle, including the trunk, capable of concealing the object of the search (i.e. alcoholic beverages).

2. **Open Bottle:** Because Minnesota's "Open Bottle" statute only prohibits possessing open bottles of intoxicating liquor in the passenger compartment area of a motor vehicle (i.e. does not apply to the trunk), the presence of a can or bottle of beer in the trunk would not (assuming the occupants are all over the age of 21) constitute evidence of a crime. Thus, under those circumstances, a warrantless search of the trunk would exceed the proper scope of a "vehicle exception" search.

### 4.29 WOULD THE GUNS AND COCAINE BE ADMISSIBLE AT TRIAL?

**ANSWER:** UNDERAGE DRINKING – Yes; OPEN BOTTLE - No.

1. **Underage Drinking:** A large zipper bag located inside the trunk is clearly capable of concealing the object of the search (i.e. alcoholic beverages). Because the consumption of alcohol or possession of alcohol by persons under 21 with intent to consume is a violation of Minnesota's "Underage Drinking" statute, the presence of beer or other alcoholic beverages inside the trunk would constitute evidence of a crime, thus subjecting the trunk and large zipper bag to a warrantless search. In the above example, because the guns and cocaine were discovered during the course of a lawful "vehicle exception" search, they would be admissible at trial.

2. **Open Bottle:** Because Minnesota's "Open Bottle" statute only prohibits possessing "open bottles of intoxicating liquor" in the passenger compartment area of a motor vehicle (i.e. does not apply to the trunk), the presence of intoxicating liquor inside the trunk would not violate the "Open Bottle" statute nor would it constitute evidence of a crime. Thus, in the above example, if the driver and occupants were over 21 years of age, a warrantless search of the trunk would exceed the proper scope of a "vehicle exception" search and any evidence obtained as a result of that search (i.e. the cocaine and handguns) would not be admissible at trial.
4.30 VIGNETTE #6: POSSESSION OF STOLEN PROPERTY

FACTS

1. Officers locate a vehicle parked in a residential area with its rear license plate missing.

2. The officers approach the vehicle and observe in plain view, on the backseat, six sealed General Electric VCR boxes stacked one on top of another.

3. The officers contact central communications/county dispatch and receive information that within the past 24 hours, the local K-Mart was burglarized and six General Electric VCR boxes, among other items, were stolen. Central communications provided the officers with the serial numbers for all six stolen VCR boxes.

4. One officer then enters the back seat of the vehicle, cuts open one of the sealed VCR boxes and, after checking the serial number, confirms that it is one of the six stolen VCR.

5. The officer then enters the front seat area of the vehicle for the purpose of conducting a warrantless search of the rest of the vehicle.

4.31 CAN THE VCR BOXES BE SEARCHED WITHOUT A WARRANT?

ANSWER: Yes

Because there is probable cause to believe the six VCR boxes contain evidence of a crime, and they are located inside a motor vehicle, under the "vehicle exception," the officer can enter the vehicle and search the boxes without a warrant. However, because the officer's probable cause is limited to the VCR boxes, the rest of the vehicle may not be searched in the absence of additional probable cause.

Note: Evidence discovered during a search of the six VCR boxes could be a factor in developing probable cause to believe that additional evidence is located in other areas of the vehicle.

Note - What if the Vehicle is Locked? Because a motor vehicle can be considered one large container itself, the right to conduct a warrantless search of the vehicle under the "vehicle exception," includes the right to open and enter the vehicle regardless of whether it is locked. However, because the responsible law enforcement agency may, under some circumstances, be held responsible for property damage caused as a result of forcing open a locked vehicle, great care should be taken to minimize damage to the vehicle while gaining access to conduct a warrantless search.
4.32 CAN THE VEHICLE BE SEARCHED WITHOUT A WARRANT?

**ANSWER:** Yes

1. **Vehicle Exception:** In the above example, the fact that the stolen VCRs were located inside the vehicle, coupled with the K-Mart burglary information, gave officers probable cause to believe that additional stolen property or other evidence of the K-Mart burglary was located somewhere inside the vehicle. Based on that probable cause, the officer can conduct a warrantless search of every part of the vehicle capable of concealing evidence of the crime (i.e. items of identification, burglary and/or possession of stolen property).\(^2\)

2. **Instrumentality of the Crime Exception:** Because there is probable cause to believe the vehicle is being used as an instrumentality of a crime (i.e. to store and/or transport stolen property) and evidence of the crime (i.e. items of identification, burglary and/or possession of stolen property) might be concealed somewhere inside the vehicle, officers may seize, impound, and conduct a warrantless search of the entire vehicle. The only limitation on the scope of the search is that it be closely related to the reasons for defendant's arrest or the vehicle's seizure.

**Note:** If the vehicle is impounded, a subsequent warrantless search of the vehicle could also be justified under the "inventory search" exception, if the inventory search is conducted pursuant to a standard inventory policy. See Chapter 5, "Inventory Search."

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4.33 CAN THE PASSENGER COMPARTMENT AREA BE SEARCHED?

**ANSWER:** Yes

Under the "vehicle exception," because officers have probable cause to believe that additional evidence of the crime (i.e. items of identification, burglary tools, or other stolen property) is concealed somewhere inside the vehicle, officers may conduct a warrantless search of every part of the passenger compartment area capable of concealing evidence of the crime(s). However, a search of any part of the vehicle too small to reasonably conceal evidence of the crime(s) would exceed the scope of a lawful search under the vehicle exception.

**Note:** A search of the passenger compartment area could also be justified under either:
1) The "**Instrumentality Of The Crime**" exception; or
2) The "**Inventory Search**" exception, if the inventory search is conducted pursuant to a standard inventory policy that authorizes a search of the passenger compartment area. See Chapter 5, "Inventory Search."

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4.34 CAN A PURSE BE SEARCHED?

**ANSWER:** Yes

Because a purse is capable of concealing additional evidence of the crime (i.e. items of identification, burglary tools, or other items of stolen property, etc.), it would be subject to a warrantless search.
### 4.35 CAN THE GLOVE BOX AND ASHTRAY BE SEARCHED?

**Answer:** Yes

Because the glove box and ashtray (to a lesser degree) are both capable of concealing additional evidence of the crime (i.e. items of identification, burglary tools, or other items of stolen property, etc.), they are both subject to being searched without a warrant under the "vehicle exception.

**Note:** A search of the glove box and ashtray could also be justified under either:
1) The "**Instrumentality Of The Crime**" exception; or
2) The "**Inventory Search**" exception, if the inventory search is conducted pursuant to a standard inventory policy that authorizes a search of the passenger compartment area. See Chapter 5, "Inventory Search."

### 4.36 CAN MISCELLANEOUS CLOTHING BE SEARCHED?

**Answer:** Yes

Because miscellaneous clothing (i.e. jackets, pants, shirts, etc.) are capable of concealing additional evidence of the crime (i.e. items of identification, burglary tools, or other items of stolen property, etc.), the clothing and any pockets or attached compartments are all subject to search without a warrant.

**Note:** A search of miscellaneous clothing could also be justified under either:
1) The "**Instrumentality Of The Crime**" exception; or
2) The "**Inventory Search**" exception, if the inventory search is conducted pursuant to a standard inventory policy that authorizes a search of the passenger compartment area. See Chapter 5, "Inventory Search."

### 4.37 CAN SMALL CONTAINERS BE SEARCHED?

**Answer:** Yes and No

As long as the small containers in question (i.e. dental floss and a hand-held dictaphone case, etc.) are capable of concealing the object of the search (i.e. items of identification, burglary tools, or other items of stolen property, etc.), they are subject to search without a warrant. In the above example, the hand-held dictaphone case is subject to search because it could contain additional evidence of the crime (or could be stolen property itself). However, the evidentiary value of the contents of a small dental floss container is, at best, questionable.

**Note:** A search of the hand-held dictaphone case (and possibly the dental floss container) could also be justified under either:
1) The "**Instrumentality Of The Crime**" exception; or
2) The "**Inventory Search**" exception, if the inventory search is conducted pursuant to a standard inventory policy that authorizes the search of all closed containers. See Chapter 5, "Inventory Search."
4.38 CAN BOOKS AND PAPERS BE SEARCHED?

ANSWER: Yes

Because almost any type of book or papers (i.e. magazines, calendars, envelopes, etc.) are capable of concealing the object of the search (i.e. items of identification), they are all subject to being searched (and read within reason) without a warrant.

Note: A search of books and papers could also be justified under either:
1) The "Instrumentality Of The Crime" exception; or
2) The "Inventory Search" exception, if the inventory search is conducted pursuant to a standard inventory policy. See Chapter 5, "Inventory Search."

4.39 CAN THE ENGINE AREA BE SEARCHED?

ANSWER: Yes

Under the "vehicle exception," probable cause to believe that evidence of a crime is concealed somewhere inside the vehicle not only justifies a search of the entire passenger compartment area, but also justifies a search of every part of the vehicle and its contents that may conceal the object of the search (i.e. items of identification, burglary tools, other items of stolen property, etc.). In the above example, because the engine compartment is part of the vehicle and is capable of concealing the object of the search, it is subject to search without a warrant.

Note: A search of the engine compartment could also be justified under either:
1) The "Instrumentality Of The Crime" exception; or
2) The "Inventory Search" exception, if the inventory search is conducted pursuant to a standard inventory policy. See Chapter 5, "Inventory Search."

4.40 CAN THE TRUNK AREA BE SEARCHED?

ANSWER: Yes

If police have probable cause to search a motor vehicle for evidence of a crime, they may search every part of the vehicle and its contents which may conceal the object of the search (i.e. items of identification, burglary tools, other items of stolen property, etc.) including the trunk space.

Note: A search of the trunk could also be justified under either:
1) The "Instrumentality Of The Crime" exception; or
2) The "Inventory Search" exception, if the inventory search is conducted pursuant to a standard inventory policy which specifically authorizes the search of a trunk. See Chapter 5, "Inventory Search."
4.41 CAN LOCKED CONTAINERS BE SEARCHED?

**Answer:** Yes

Because the locked container in question (i.e. locked suitcase found inside the trunk) is large enough to be capable of concealing the object of the search (i.e. items of identification, burglary tools, other items of stolen property, etc.), it is subject to search under the "vehicle exception" regardless of whether it is locked.

**Note:** A search of the locked suitcase could also be justified under either:
1) The "Instrumentality Of The Crime" exception; or
2) The "Inventory Search" exception, if the inventory search is conducted pursuant to a standard inventory policy which specifically authorizes the search of locked containers. See Chapter 5, "Inventory Search."

4.42 UNDER THE PROBABLE CAUSE SEARCH EXCEPTION: WHAT ABOUT VEHICLES FOUND ON PRIVATE PROPERTY?

1. **General Rule:** To justify a warrantless search or seizure of a motor vehicle found on private property, not only must the officer be lawfully located in a place from where the vehicle can be plainly seen, but the officer must also have the lawful right to enter onto the private property in order to reach the vehicle. Because the Fourth Amendment protection against warrantless search and seizure extends to both the home and to the curtilage immediately surrounding the home, if the vehicle in question is located within the curtilage then, as a general rule, officers may not cross the threshold into the curtilage to reach the vehicle without a warrant or in the absence of exigent circumstances. The term “curtilage” has been defined to mean: "The area to which extends the intimate activity associated with the sanctity of a man's home and the privacies of life." For most homes, the boundaries of the curtilage will be clearly marked. The question is whether an individual may reasonably expect that an area immediately adjacent to the home will remain private.

2. **Driveways and Walkways:** Courts have held that police with legitimate business may enter the areas of the curtilage which are impliedly open to use by the public. Thus, police may walk on the driveway, sidewalk, and onto the porch of a house and knock on the door if they are conducting an investigation and want to question the owner, and in such a situation the police are free to keep their eyes open and use their other senses. In other words, police do not need a warrant or even probable cause to approach a dwelling in order to conduct an investigation if they "restrict their movements to places visitors could be expected to go (e.g. walkways, driveways, porches, and under some circumstances even garages, etc.). Therefore, as a general rule, if the motor vehicle in question is located in plain view on a driveway, then officers have a lawful right of access to that vehicle. If the vehicle is mobile or capable of being made so and officers have probable cause to believe that contraband or other evidence of a crime is being concealed somewhere inside, then officers may seize and search the vehicle without a warrant under the “vehicle exception.” However, if the officer is lawfully on the driveway, etc., and the vehicle in question is observed in plain view elsewhere within the curtilage, the officer may not cross the constitutionally protected threshold into the curtilage without a warrant or in the absence of exigent circumstances. When dealing with vehicles or other incriminating objects observed in plain view but located inside the curtilage, it is important for officers to remember the "simple lesson long since mastered by old hands at the burlesque house, you can't touch everything you see," or put another way "wherever the eye may go, the body of a policeman may not necessarily follow."

3. **To Get a Warrant or Not to Get a Warrant:** Officers, when deciding whether to obtain a warrant or cross the threshold into the curtilage area without a warrant, should remember that the test is not "whether it would have been
reasonable for police to obtain a warrant, but (rather) whether the police acted reasonably in proceeding without one.” In assessing "reasonableness," courts will consider the totality of the circumstances including the following:

(a) whether the item to be searched or seized is in plain view of officers lawfully present on the street, driveway or walkway;

(b) the strength of the officer’s probable cause;

(c) how difficult it would have been for officers to delay and obtain a search warrant (i.e. time of day, location, etc.);

(d) the presence of exigent circumstances (i.e. the risk or danger that the property might be moved or evidence destroyed before officers could return with a warrant); and

(e) the purpose for crossing the threshold into the curtilage and how intrusive the resulting police conduct is (i.e. looking at trailer to determine if it is stolen or looking through the window of a vehicle or basement are considered minimal intrusions).

Because this area has not been well defined by the courts and because of the risk of evidence being suppressed, officers should, if at all possible, obtain a search warrant before crossing over into constitutionally-protected areas (i.e. the home and surrounding curtilage).

4. Open Fields Doctrine: Law enforcement officers may lawfully enter "open fields" that are outside the curtilage without probable cause because the owner of land has no reasonable expectation of privacy in such areas. As such, an officer's intrusion upon an open field is not considered a "search" under the Fourth Amendment. “Because open fields are accessible to the public and the police in ways that a home, office, or commercial structure would not be, and because fences or 'no trespassing' signs do not effectively bar the public from viewing open fields, the asserted expectation of privacy in open fields is not one that society recognizes as reasonable.” The term "open fields" includes any unoccupied or undeveloped area outside the curtilage. An open field need be neither "open" nor a "field" as those terms are used in common speech (e.g. vast expansive ranches, undeveloped wooded areas, etc.). In addition, steps taken to protect privacy, such as erecting fences and "no trespassing" signs around the property does not turn an "open field" into a constitutionally protected area under the Fourth Amendment.

### 4.43 UNDER THE PROBABLE CAUSE SEARCH EXCEPTION: WHAT ABOUT VEHICLES THAT ARE IMMOBILE?

1. **General Rule:** As a general rule, in order for the vehicle exception to apply, the motor vehicle in question, at the time it is stopped or located, must be mobile or readily capable of being made mobile and probable cause must exist to believe it contains contraband. However, the United States Supreme Court and the Minnesota Court of Appeals has clarified that the phrase “mobile or readily capable of being made mobile” should not be interpreted as equivalent to exigent circumstances above and beyond a showing of probable cause. The “vehicle exception” to the Fourth Amendment "does not have a separate exigency requirement"
Note: Because there is no separate exigency requirement, it is not necessary to assess the actual likelihood or risk in each particular case that the car would actually be driven away, or that its contents would have been tampered with during the time police were obtaining a warrant. The mere fact that a vehicle is mobile or is readily capable of being made mobile is sufficient.

2. Temporarily Disabled Motor Vehicles: Even vehicles that are found on the public roadway but are temporarily disabled (i.e. flat tire, out of gas, stuck in snow or mud, etc.) may be considered "mobile or readily capable of being made mobile," if the car could be put into operation without too much difficulty. For example, a vehicle stuck in snow or a gravel pit can be towed free. A flat tire can be changed; a dead battery can be jump-started, and a disconnected coil wire can be reconnected or replaced. In other words, "even in cases where an automobile is not immediately mobile, the lesser expectation of privacy resulting from its use as a readily mobile vehicle justifies application of the vehicular exception."

3. Immobility of Motor Vehicle Not Readily Apparent: The Fourth Amendment does not require that officers ascertain the actual functional capacity of a vehicle in order to determine if the vehicle is "mobile or readily capable of being made mobile. The test is reasonableness under all the circumstances. In other words, if the alleged immobility is not visibly apparent and if, under the circumstances, it would be reasonable for officers to assume the vehicle was readily mobile, then the vehicle exception still applies.

4. Immobility of Motor Vehicle Readily Apparent - No Recent Roadway Use: On the other hand, if police come upon a vehicle that is not on the public roadway, is obviously inoperable and has been in that disabled condition for such a long time that there is no sufficient likelihood of anyone using the car on the highways in the immediate future, then the vehicle exception would not apply and officers would need to obtain a warrant to search the car. In such a case, the vehicle exception would not be applicable because the car is neither "readily mobile" nor is there a "reduced expectation of privacy" because the vehicle is no longer being used as a means of public transportation subject to inspecting and licensing requirements.

5. Immobility of Motor Vehicle Readily Apparent - Recent Roadway Use: By contrast, if it appears that the car has only recently and suddenly become disabled (perhaps as a result of an accident), then a strong argument can be made that the vehicle exception should still apply because, although the vehicle is not "readily mobile," its recent use as transportation on the highway establishes the reduced expectation of privacy requirement which has now become the dominant judicial consideration. However, although the judicial trend appears to be moving away from the requirement that the vehicle be "mobile or readily capable of being made so," it is difficult to tell what Minnesota's Appellate Courts would do with a case involving a totally disabled vehicle found on a public roadway. Even though there is reason to believe the "vehicle exception" could still be used to justify a warrantless search, until this area is further clarified by the United States or Minnesota Supreme Court, it is recommended that officers err on the side of safety and obtain a warrant before the vehicle is searched, unless a warrantless search can be justified under a different exception (i.e. consent; search incident to arrest; medical emergency; inventory search, etc.).


### 4.44 UNDER THE PROBABLE CAUSE SEARCH EXCEPTION: DOES IT MATTER WHEN OR WHERE THE SEARCH OCCURS?

1. **Delayed Vehicle and Container Searches:** Under the "vehicle exception," law enforcement officers may conduct either an immediate or a delayed warrantless search of a vehicle (and all containers within the vehicle capable of concealing the object of the search), even after the vehicle has been impounded and is in police custody. In other words, if the police can lawfully search a vehicle (and containers) at the scene where the vehicle is stopped without first obtaining a warrant, then they can constitutionally do so later at the station house or impound lot, etc., without first obtaining a warrant. Unlike in a search incident to arrest, a search under the "vehicle exception" need not occur contemporaneously with seizure of the vehicle. In addition, as long as the vehicle is lawfully in police custody, there is no limitation as to the number of times an officer can go back and forth to the car for the purpose of completing the search. And although there are no specific restrictions on how long officers can delay before commencing or completing the search, the police may not "indefinitely retain possession of a vehicle and its contents before they complete a vehicle search." Without stating how long is too long, the United States Supreme Court has acknowledged that in some circumstances the delay might make the search "unreasonable because it adversely affected a privacy or possessory interest." 

### 4.45 UNDER THE PROBABLE CAUSE SEARCH EXCEPTION: WHAT ABOUT EXTERIOR VEHICLE SEARCHES?

1. **Visual Examination of Exterior (i.e. Looking and/or Taking Photographs):** When a vehicle is parked on the street or in a lot or at some other location where it is readily subject to observation by members of the public, officers may freely look at the exterior of the vehicle or take photographs of the vehicle. Because a defendant does not have a reasonable expectation of privacy in the visible exterior portion of an automobile that is parked in a public place, the act of looking and/or photographing a vehicle's exterior does not constitute a search under the Fourth Amendment. Therefore, the visual examination of the exterior portion of a vehicle parked in a public place is permissible even in the absence of probable cause.

2. **Physical Examination of Exterior With Probable Cause:** The United States and Minnesota Supreme Courts have clearly held that a defendant has no reasonable expectation of privacy in the visible exterior portions of an automobile that is parked on the street or in a lot or at some other public location where it is readily subject to observation by a member of the public. Therefore, if a vehicle is parked in a public place and if probable cause exists, officers may physically examine the exterior of the vehicle and remove whatever they observe to be evidence of a crime (i.e. paint scrapings, tires, vegetation and soil, etc.).

3. **What if Officers Do Not Have Probable Cause?** Because a defendant lacks a reasonable expectation of privacy in the exterior of a vehicle parked in a public place, he cannot object to introduction of evidence seized or otherwise obtained from the visible exterior parts of the vehicle. In other words, an examination of the exterior of an automobile parked in a public place "does not constitute a search." Therefore, although there are no Minnesota Appellate Court decisions directly on point, it appears that as long as officers act reasonably they have the right, even in the absence of probable cause, to physically examine the exterior of the vehicle if it is parked in a public place and remove from the vehicle whatever evidence of a crime they observe (i.e. foreign substances, taking wheel or frame measurements, etc.). However, in the absence of probable cause, officers should not physically disassemble any part of the vehicle (i.e. tires, hubcaps, headlight covers, etc.) or do anything that would affect the integrity of the vehicle (i.e. removing paint scrapings, etc.). In the absence of probable cause, a search that involves partially disassembling or damaging a vehicle would most likely be considered unreasonable.
4. Narcotics-Detection Dog Sniff: The use of a Narcotics-Detection Drug Dog to sniff the outside of a lawfully-stopped motor vehicle in an attempt to detect the presence of drugs is considered a search under the Minnesota Constitution, even though it was not a search for purposes of the United States Constitution. The Minnesota Supreme Court, in adopting the “reasonable suspicion” standard, held that the police “cannot conduct a narcotics-detection dog sniff around a motor vehicle stopped for a routine traffic violation without some level of suspicion of illegal activity (i.e. reasonable suspicion).” That same rationale has been extended to motor vehicles parked in a parking lot.
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PROBABLE CAUSE SEARCH FOR EVIDENCE

ENDNOTES:

1. U.S. v. Ross, 456 U.S. 798, 800, 102 S.Ct. 2157, 2160, 72 L.Ed.2d 572 (1982) (“In this case, we consider the extent to which 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 probing search of compartments and containers within the vehicle whose contents are not in plain view. We hold that they may conduct a search of the vehicle that is as thorough as a magistrate could authorize in a warrant ‘particularly describing the place to be searched.’”); Chambers v. Maroney, 399 U.S. 42, 90 S.Ct. 1975, 26 L.Ed.2d 419 (1970); Coolidge v. New Hampshire, 403 U.S. 443, 91 S.Ct. 2022 (1971); Carroll v. U.S. 267 U.S. 136, 156, 45 S.Ct. 280, 286, 69 L.Ed. 543 (1925) (a warrantless search of an automobile stopped by police officers who had probable cause to believe the vehicle contained contraband was not unreasonable within the meaning of the Fourth Amendment); State v. Bigelow, 451 N.W.2d 311 (Minn. 1990) (holding that, if the police have probable cause to search a motor vehicle for drugs or other contraband, they may search every part of the vehicle and its contents which may conceal the object of the search,); State v. Hanson, 364 N.W.2d 786 (Minn. 1985) (“...the police may conduct a warrantless search of the vehicle if there is probable cause to believe the vehicle contains evidence of a crime and if the police face the exigency that the vehicle may disappear by the time a warrant is obtained.”); State v. Robinson, 458 N.W.2d 421 (Minn. Ct. App. 1990) (Purple velvet bag known to be sold with liquor in plain view inside of car gave probable cause); Helwig v. Olson, 376 N.W.2d 763 (Minn. Ct. App. 1985); See also State v. Berg, 193 N.W.2d 603 (Minn. 1971) (the Minnesota Supreme Court applied the probable cause test in a situation where the police discovered an abandoned damaged car parked at an odd angle. The keys were in the ignition and the footsteps in the snow led away from the car. Through the windows the police saw a portable T.V. and some letters addressed to a Blaisdell address. A police radio check revealed that a portable T.V. was among items stolen from the same address. The vehicle was searched without a warrant and the validity of the search was sustained under Chambers v. Maroney, since the police had probable cause to believe that the car contained the fruits of a crime.).


3. See, e.g., State v. Maisson, 594 N.W.2d 128, 135 (Minn. 1999) (“The United States Supreme Court has recognized that ‘[g]iven the nature of an automobile in transit, . . . an immediate intrusion is necessary if police officers are to secure the illicit substance.’”) (quoting U.S. v. Ross, 456 U.S. 798, 806-07, 102 S. Ct. 2157, 72 L.Ed.2d 572 (1982)).

4. There is no separate exigency requirement for the automobile exception. The United State Supreme Court in Maryland v. Dyson, 527 U.S. 465, 466-467 (1999) held that “under our established precedent, the ‘automobile exception’ has no separate exigency requirement. . . . In a case with virtually identical facts to this one (even down to the bag of cocaine in the trunk of the car), Pennsylvania v. Labron, 518 U.S. 938, 116 S. Ct. 2485, 135 L.Ed.2d 1031 (1996) (per curiam), we repeated that the automobile exception does not have a separate exigency requirement.” “If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment . . . permits police to search the vehicle without more.” Id., at 940, 116 S. Ct. 2485; The Minnesota Court of Appeals in State v. Pederson-Maxwell, 619 N.W.2d 777, 782 (Minn. Ct. App. 2000) held that “the automobile exception to the Fourth Amendment's warrant requirement does not have a separate exigency requirement.”


6. See Pennsylvania v. Labron, 518 U.S. 938, 940, 116 S.Ct. 2485, 2487 (1996); Cardwell v. Lewis, 417 U.S. 583 (1974); State v. Barbuch, 706 N.W.2d 484, 488 (Minn. 2005); State v. Johnson, 277 N.W.2d 346, 349 (Minn. 1979) (“The original justification for allowing a warrantless search of an automobile on probable cause is that the inherent mobility of vehicles creates exigencies which make it impractical to obtain a warrant before the search is conducted”).


8. See, e.g., California v. Carney, 471 U.S. 386 (1985); United States v. Markham, 844 F.2d 366 (6th Cir. 1988); State v. Lepley, 343 N.W.2d 41 (Minn. 1984) (trial court was in error when it suppressed evidence (handgun) obtained in a warrantless search of a motor home after motor home was lawfully stopped).


11. State v. Williams, 794 N.W.2d 867, 871 (Minn. 2011); State v. Koppi, 798 N.W.2d 358, 363 (Minn. 2011) (the test for probable cause is “whether the totality of the facts and circumstances known would lead a reasonable officer ‘to entertain an honest and strong suspicion’ that the suspect has committed a crime.”) (quoting State v. Harris, 589 N.W.2d 782, 791 (Minn. 1999)); State v. Ortega, 770 N.W.2d 145, 150 (Minn. 2009); State v. Riles, 568 N.W.2d 518, 523 (Minn. 1997) (“To establish probable cause, the police must show that they ‘reasonably could have believed that a crime has been committed by the person to be arrested.’ Whether the actions of the police were reasonable is an objective, not subjective, inquiry.”) (internal citations omitted); State v. Speak, 339 N.W.2d 741, 745 (Minn. 1983) (holding that relevant inquiry for a probable cause analysis is “whether there was objective probable cause, not whether the officers subjectively felt that they had probable cause.”); State v. Johnson, 314 N.W.2d 229, 230 (Minn. 1982); State v. Carlson, 267 N.W.2d 170, 173 (Minn. 1978); State v. Skoog, 351 N.W.2d 380, 381 (Minn. 1984).

12. Devenpeck v. Alfford, 543 U.S. 146, 153, 125 S. Ct. 588, 593-94, 160 L. Ed. 2d 537 (2004) (quoting Whren v. U.S. 517 U.S. 806, 812-814, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996)) (“Our cases make clear that an arresting officer's state of mind (except for the facts that he knows) is irrelevant to the existence of probable cause. That is to say, his subjective reason for making the arrest need not be the criminal offense as to which the known facts provide probable cause. As we have repeatedly explained, ‘the fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action.’”) (The Fourth Amendment's concern with 'reasonableness' allows certain actions to be taken in certain circumstances, whatever the subjective intent.”); State v. Williams, 794 N.W.2d 867, 871 (Minn. 2011); State v. Koppi, 798 N.W.2d 358, 362-63 (Minn. 2011)” (“Because an officer's training and experience is the lens through
which the fact-finder must evaluate the reasonableness of an officer’s determination of probable cause, probable cause incorporates the individual characteristics and intuitions of the officer to some extent. . . . Nonetheless, ‘[t]he reasonableness of the officer’s actions is an objective inquiry,’ even if reasonableness is evaluated in light of an officer’s training and experience. The actual, subjective beliefs of the officer are not the focus in evaluating reasonableness. Rather, the probable cause standard asks whether the totality of the facts and circumstances known would lead a reasonable officer ‘to entertain an honest and strong suspicion’ that the suspect has committed a crime. Answering that question is ‘an objective, not subjective, inquiry.’” (internal citations omitted); State v. Hardy, 577 N.W.2d 212, 216 (Minn. 1998); State v. Speak, 339 N.W.2d 741, 745 (Minn. 1983).


14 State v. Koppi, 798 N.W.2d 358 (Minn. 2011) (in examinations of whether law enforcement had probable cause to search, the Court has “recognized that the police may interpret circumstances in a way that differs from ordinary citizens.”) (citing Appelgate v. Comm'r of Pub. Safety, 402 N.W.2d 106, 108 (Minn. 1987)); State v. Olson, 436 N.W.2d 92, 94 (Minn. 1989) (stating that “the whole of police experience” is relevant in determining whether there was probable cause.).

15 State v. Munoz, 385 N.W.2d 373, 376 (Minn. Ct. App. 1986); State v. Huber, No. A06-1408, 2007 WL 48884, at *2 (Minn. Ct. App. Jan. 9, 2007) (no probable cause to believe that the vehicle contained evidence of a crime or contraband where officer stopped defendant after defendant failed to signal a turn, officer observed the vehicle’s taillight emitting a white light, and a warrant was out for respondent’s arrest.); Matter of Welfare of T. A. W., No. CS-92-1189, 1992 WL 379061, at *1 (Minn. Ct. App. Dec. 22, 1992) (“Probable cause for an automobile search will be found if ‘the totality of the circumstances created a fair probability the vehicle . . . contained contraband.’” (quoting Munoz, 385 N.W.2d at 376). See also, U.S. v. Alvarez, 235 F.3d 1086, (9th Cir. 2000) (probable cause existed to search spare tire in trunk of vehicle. A trooper came across a car with an expired license plate at a rest stop. The defendant claimed to have gotten a flat tire the night before and he and his passenger spent the night in the rest stop and was waiting for passenger to return with tire sealant to repair tire. While repairing tire, defendant consented to trooper searching the vehicle. During search, troopers found a fully-inflated spare tire that appeared to match those on the car. Troopers unbolted the tire and shook it. After hearing several thudding noises, the troopers cut the tire and found seven pounds of methamphetamine. “[T]he thudding sound produced by the tire as it was being inspected indicated that it was being used as a container. Because the troopers had probable cause to believe that contraband was secreted in the vehicle, in particular in the spare tire, they could lawfully complete a full and thorough search of the tire, including dismantling or damaging it.”).

16 State v. Flowers, 734 N.W.2d 239, 249 (Minn. 2009) (police officers, who had initiated stop based on absence of license plate light on vehicle, did not have probable cause to believe that vehicle contained contraband and, thus, were not justified in searching vehicle under automobile exception to warrant requirement. Nothing indicated that officers, at time of search, had any knowledge of defendant's criminal record, that they were acting on a tip, that they had perceived evidence of any contraband in vehicle, or that they had other additional facts that were sufficient to support a finding of probable cause.); State v. Munoz, 385 N.W.2d 373, 376 (Minn. Ct. App. 1986) (a police officer lacked probable cause in seizing a snowblower from the trunk of the defendant's car where the officer stopped defendant's car after observing several traffic violations and subsequently noticed the snowblower which was not tied down, protruding from the trunk of the car. Officer had no reports of any snowblower theft.); State v. Charley, 278 N.W.2d 517 (Minn. 1979) (in the Charley case, police officer observed an apparent exchange between a teenager and the driver of a vehicle in an area where the use and exchange of liquor and drugs by teenagers was well known to the officer. After observing the exchange, the officer followed the automobile and observed erratic weaving. After stopping the automobile, the officer saw defendant make a furtive movement, as if putting something under the seat. The officer searched underneath the seat and discovered a handgun. Under the totality of the circumstances, the Court determined that probable cause was established and the search and seizure were valid.); State v. Lothenbach, 296 N.W.2d 854 (Minn. 1980) (an anonymous tip that persons were selling drugs from an automobile similar in description to that of defendant did not justify warrantless search of defendant's vehicle where preliminary questions and investigation of the defendant and a passenger revealed no unusual circumstances or violations.).

17 State v. Riley, 568 N.W.2d 518, 523 (Minn. 1997) (quoting State v. Conaway, 319 N.W.2d 35, 40 (Minn.1982)) (“When more than one officer is involved in an investigation, Minnesota uses the ‘collective knowledge’ approach to determine whether probable cause existed. Under this approach, the ‘entire knowledge of the police force is pooled and imputed to the officer for the purpose of determining if sufficient probable cause existed for an arrest.’”); State v. Radil, 288 Minn. 279, 283, 179 N.W.2d 602, 605 (1970) (citing Smith v. U.S. 358 F.2d 833, 835 (D.C. Cir. 1966) (in adopting the collective knowledge approach, the Court explained: “In a metropolitan environment, with many police and fast-moving criminal activities, it is unrealistic to demand that each officer in the department personally know all the facts necessary to justify an arrest. The right to act must be judged by the total knowledge of the police department. As then-Judge Warren Burger noted . . . there is this logic to support our holding: More than one officer could go before a magistrate to obtain a warrant on the basis of the sum of their information, and once the warrant was issued none of them would need to participate in the actual arrest. To hold that only an officer with firsthand knowledge of the facts substantiating arrest can limit an accused's freedom would be to defeat the effect of modern police communication.”); U.S. v. Celio, 945 F.2d 180 (7th Cir. 1991); see also U.S. v. Cooper, 949 F.2d 737 (5th Cir. 1991) (the court found that state police officers did not violate the Fourth Amendment by searching a trunk at the request of DEA agents who had probable cause to believe the vehicle contained drugs. The state officers did not have to disclose the underlying justification for the search because the “collective knowledge” of the DEA agents involved was sufficient to establish probable cause.); State v. Ingram, No. A07-1594, 2008 WL 5135539, at *2 (Minn. Ct. App. Dec. 9, 2008) (Court held that police had probable cause to enter defendant’s apartment because based on the combined knowledge of the officers, the arresting officer had probable cause to believe that an occupant of the apartment had robbed and assaulted a pizza delivery man, including: the K-9 unit tracking the fresh footprints to the apartment window, the imprint of the pizza box left in the snow where a suspect appeared to have fallen, the officer observing the window slowly opening and then quickly closing in response to the officer’s voice, the smell of the fresh pizza in the apartment, and the fact that the individual who opened the apartment door matched the description of the suspects provided by the victim.).


19 U.S. v. Ross, 456 U.S. 798, 102 S. Ct. 2157, 72 L.Ed.2d 572 (1982); State v. Gauster, 752 N.W.2d 496, 508 (Minn. 2008); State v. Manson, 594 N.W.2d 128, 138 (Minn. 1999) (Court held scope of search was reasonable where officers, having probable cause to believe cocaine was in defendant’s car, first found marijuana in the glove compartment, and because they had already found some drugs and their tip indicated that there was also cocaine hidden in the vehicle, police permissibly continued the search by removing the loose spare tire cover and investigating the bag found therein, finding cocaine.); State v. Hanson, 364 N.W.2d 786 (Minn. 1985); State v. Studlard, 352 N.W.2d 413 (Minn. 1984) (officer with probable cause to believe open bottle law was violated could search anywhere in the passenger compartment where an open bottle might be found.); State v. Schuette, 423 N.W.2d 104 (Minn. Ct. App. 1988) (after vehicle had been lawfully stopped
and driver failed field sobriety test, and officer observed in open view an empty bottle on floor of vehicle and six-pack containing one empty and one full beer bottle between the two front seats, officer had probable cause to search the car, including rolled up grocery bag next to the front seats, for additional open bottles, even though officer had already obtained open bottles necessary to charge driver with open bottle violation.); State v. Nace, 404 N.W.2d 357 (Minn. Ct. App. 1987) (quoting U.S. v. Ross, 456 U.S. 798, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982)); State v. DePoe, 357 N.W.2d 353 (Minn. Ct. App. 1984).

20 State v. Munson, 594 N.W.2d 128, 138 (Minn. 1999) (where officers had probable cause to believe cocaine was in the vehicle, officers were reasonable in searching the glove compartment and removing the loose spare tire cover and investigating the bag found therein.); State v. Bigelow, 451 N.W.2d 311 (Minn. 1990) (if police have probable cause to search a motor vehicle for drugs or other contraband, they may search every part of the vehicle and its contents which may conceal the object of the search.); State v. Craig, 807 N.W.2d 453, 465-66 (Minn. Ct. App. 2011) (Search of backpack in vehicle was reasonable where officers had probable cause that the defendant possessed a gun inside the vehicle.); State v. Darnall, 498 N.W.2d 295 (Minn. Ct. App. 1993) (holding small amount of marijuana found in consensual search of passenger compartment gave probable cause to search trunk and passenger's knapsack in trunk.); State v. Allinder, No. A08-0068, 2009 WL 304879, at *3 (Minn. Ct. App. Feb. 10, 2009) (Court held warrantless search of defendant's backpack inside his vehicle was reasonable where (1) the deputy discovered a marijuana pipe on appellant's person; (2) appellant admitted that he had smoked marijuana while driving his vehicle; (3) the deputy observed a continuing smell of unburned, fresh marijuana in the vehicle; and (4) the backpack was within the driver's reach and was emitting a strong odor of unburned, fresh marijuana.). But see State v. Schinzinger, 342 N.W.2d 105, 109 (Minn. 1983) (Officer had probable cause to search the passenger compartment of the vehicle for open bottles or cans of alcohol after smelling alcohol emanating from the vehicle, but officer "could not search the trunk for open bottles or cans because it is unlawful to keep open bottles or cans in the trunk.").

21 See, e.g., State v. Novicky, No. A07-0170, 2008 WL 1747805, at *6 (Minn. Ct. App. Apr. 15, 2008) (Cell phone – search of cell phone for confirmation of Novicky's ownership of the gun to prove constructive possession was reasonable because "police had probable cause to believe that the cell phone contained evidence of a crime and therefore could be reasonably searched as a container in an automobile under the automobile exception to the warrant requirement.").

22 U.S. v. Ross, 456 U.S. 798, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982); State v. Munson, 594 N.W.2d 128, 138 (Minn. 1999) (glove compartment and loose spare tire cover); State v. Veigel, 304 N.W.2d 900 (Minn. 1981) (locked glove box); State v. Craig, 807 N.W.2d 453, 465-66 (Minn. Ct. App. 2011) (backpack); State v. Schinzinger, 342 N.W.2d 105 (Minn. 1983) (officer's detection of the odor of alcohol coming from the car, along with occupants admission to having consumed alcohol, gave him probable cause to believe that a search of the passenger compartment would reveal open bottles or cans of alcohol. Pursuant to the motor vehicle exception to the warrant requirement, Officer Zappa was justified in searching anywhere in the passenger compartment where those open bottles or cans might be found citing State v. Veigel, 304 N.W.2d 900 (Minn.1981) however, officer could not search the trunk for open bottles or cans because it is not unlawful to keep open bottles or cans in the trunk.);

23 See, e.g., State v. Novicky, No. A07-0170, 2008 WL 1747805, at *6 (Minn. Ct. App. Apr. 15, 2008) (Cell phone – search of cell phone for confirmation of Novicky's ownership of the gun to prove constructive possession was reasonable because "police had probable cause to believe that the cell phone contained evidence of a crime and therefore could be reasonably searched as a container in an automobile under the automobile exception to the warrant requirement.").

24 U.S. v. Ross, 456 U.S. 798, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982) (The "scope of a warrantless search of an automobile is not defined by the nature of the container in which the contraband is secreted, but rather, it is defined by the object of the search and places in which there is probable cause to believe that it may be found.").

25 Supra note 23.

26 State v. Veigel, 304 N.W.2d 900 (Minn. 1981) (warrantless search of locked glove compartment of motor vehicle was valid under motor vehicle exception to warrant requirement where officer conducting search had probable cause to believe there were controlled substances in vehicle.); U.S. v. Strickland, 902 F.2d 937, 942 (11th Cir. 1990) (vehicle "search may include some injury to the vehicle or the items within the vehicle, if the damage is reasonably necessary to gain access to a specific location where the officers have probable cause to believe that the object of their search is located.").


28 California v. Acevedo, 500 U.S. 565, 111 S. Ct. 1982, 114 L.Ed.2d 619 (1991); U.S. v. Ross, 456 U.S. 798, 824, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982) (probable cause to believe that a container placed in the trunk of a taxi contains contraband or evidence does not justify a search of the entire cab.). U.S. v. Brooks, 833 F.Supp. 58, 62-63 (W.D.N.Y. 1993) (police had probable cause to recover the cocaine package from the front seat of the car, where undercover cop had previously inspected the package to contain cocaine; just before the signal was given to the police by the undercover cop, the defendant put the package onto the front seat through an open window, and the police limited the search of the car to only the package of cocaine.).

29 See also, State v. Search, 472 N.W.2d 850 (Minn. 1991) (in Search the police had probable cause to believe that a red duffle bag being carried by defendant contained evidence of a robbery. When officers approached the defendant, he got into the passenger seat of a small Honda driven by a woman and was pulled over after the woman drove off. The police located the red duffle bag lying on the floor of the car on the passenger side. Officers opened the bag without a warrant and found evidence of a recent robbery (i.e. stolen VCR and camcorder.). The Minnesota Supreme Court held that because peace officers had probable cause to believe the duffle bag contained evidence of a crime and it was located inside the motor vehicle, officers could search the bag without a warrant. The court held that under the facts and circumstances of this case, Acevedo is controlling. If the police had probable cause to believe the duffle bag in respondent's automobile contained evidence of the robbery, they could search the bag without a warrant. Under Acevedo then, the warrantless search of the duffel bag in respondent's automobile, where the police had probable cause to believe the bag contained evidence of the robbery, was a valid search under the Fourth Amendment. Evidence obtained as a result of the duffel bag search was admissible. However, even though the court adopted the ruling in Acevedo (which would have limited the search to only the duffle bag) they also curiously upheld the search of the trunk but provided no explanation for that part of their ruling.).

30 State v. DeWald, 463 N.W.2d 741 (Minn. 1990); State v. Thiel, 217 N.W.2d 499 (Minn. 1974); State v. Roy, 265 N.W.2d 663, 664 (Minn. 1978); State v. Kyles, 257 N.W.2d 378 (Minn. 1977); State v. Serna, 290 N.W.2d 446 (Minn. 1980) (warrantless seizure and impounding of defendant's auto by police without conducting
a search was proper, police displayed auto to victim of sexual attack, photographed its exterior, and did not search interior of car; auto was instrumentality of crime.; State v. Griffin, No. A10-980, 2011 WL 1983175, *3 (Minn. Ct. App. May 23, 2011) (Warrantless search of defendant’s vehicle was permissible where police had probable cause to believe that defendant was the shooter in a shooting outside a gas station, and police had probable cause that the defendant drove his vehicle to and from the gas station. "Thus, the warrantless search was justified by the probable cause to believe that the Alero was an instrumentality of the crime."). See also, U.S. v. Dickey-Bey, 393 F.3d 449 (4th Cir.2004) (In upholding search of vehicle, court says defendant had arrived to pick up mailed package of drugs in vehicle 'that he used and intended to use in furtherance of the conspiracy,' and thus "the officers had probable cause to believe that the automobile was an instrumentality of the crime.").

31 See State v. Russell, 164 N.W.2d 65 (Minn. 1969) (Court upheld as reasonable the warrantless search of the defendant's automobile and trailer because the evidence established that the trailer was used to conceal stolen coins, to transport them to a place where they could be exchanged and to serve as a repository in the meantime.; State v. Kyles, 257 N.W.2d 378 (Minn. 1977) (vehicle used in the commission of a burglary was an instrumentality of the crime.; State v. Thompson, 173 N.W.2d 459 (Minn. 1970) (a getaway vehicle used in furtherance of an armed robbery was an instrumentality of the crime); Minn. Stat. §609.531, subd. 4 (2011) (“Property may be seized without process if…”) the appropriate agency has probable cause to believe that the delay occasioned by the necessity to obtain process would result in the removal or destruction of the property and that: (i) the property was used or is intended to be used in commission of a felony . . . . If property is seized without process under item (i), the county attorney must institute a forfeiture action under section 609.5313 as soon as is reasonably possible.").

32 U.S. v. Patterson, 150 F.3d 382, 386 (4th Cir. 1998) (No exigent circumstances were required for a warrantless search of the vehicle. “[A] vehicle which has been used in a robbery may be seized without a warrant as evidence or as an instrumentality of a crime, particularly when it is parked on a public street.”); U.S. v. Cooper, 949 F.2d 737 (5th Cir. 1991). U.S. v. Belt, 854 F.2d 1054 (7th Cir. 1988) (car seized as evidence because it was an instrumentality used in aggravated assault; continuing impoundment and inventory was lawful.; 3 LaFave, Search and Seizure § 7.3(a) (4th ed. 2004, 2011 Supplement).

33 State v. Hodgman, 257 N.W.2d 313 (Minn. 1977) (following a traffic stop the officer detected the odor of burnt marijuana emanating from inside the vehicle. Once he smelled the marijuana, the officer had probable cause to arrest defendant and conduct a full search of both defendant and the car, citing to State v. Wickland, 295 Minn. 403, 205 N.W.2d 509 (1973); State v. Schultz, 271 N.W.2d 836 (Minn. 1978) (holding that officer, who smelled marijuana emanating from lawfully stopped vehicle, had a right to search passenger compartment for marijuana pursuant to motor vehicle exception.); State v. Hanson, 364 N.W.2d 786 (Minn. 1985) (discovery of a single marijuana cigarette justified the further search of the vehicle even after driver was given a petty misdemeanor citation.; State v. Schinzing, 342 N.W.2d 105 (Minn. 1983) (discovery of “stone” and marijuana cigarette butt in car justified probable cause warrantless search of car, including trunk, for more marijuana pursuant to motor vehicle exception to warrant requirement.)); State v. Doren, 654 N.W.2d 137, 142 (Minn. Ct. App. 2002) (odor of marijuana burning from the inside of the vehicle and driver’s nervousness provided additional reasonable suspicion, permitessing extending the duration of the stop. Court’s holding was based upon the general principle that the “odor of burned marijuana inside a stopped motor vehicle provides probable cause for the search of the vehicle’s occupants.”); U.S. v. Caves, 980 F2d 87 (Minn. 1989) (state trooper had probable cause to conduct warrantless roadside search of automobile for unburned marijuana, based on detection of odor of burnt marijuana on driver’s person.).


36 State v. Veigel, 304 N.W.2d 900 (Minn. 1981) (warrantless search of locked glove compartment of motor vehicle was valid under motor vehicle exception to warrant requirement where officer conducting search had probable cause to believe there were controlled substances in vehicle.; See also U.S. v. Strickland, 902 F.2d 937, 942 (11th Cir. 1990) (vehicle "search may include some injury to the vehicle or the items within the vehicle, if the damage is reasonably necessary to gain access to a specific location where the officers have probable cause to believe that the object of their search is located.").

37 U.S. v. Ross, 456 U.S. 798, 102 S. Ct. 2157, 72 L.Ed.2d 572 (1982) (the “scope of warrantless search of automobile is not defined by nature of container in which the contraband is secreted, but rather, it is defined by the object of the search and places in which there is probable cause to believe that it may be found.”); State v. Gauster, 752 N.W.2d 496, 508 (Minn. 2008); State v. Munson, 594 N.W.2d 128, 138 (Minn. 1999).

38 State v. Bigelow, 451 N.W.2d 311 (Minn. 1990); State v. Gauster, 752 N.W.2d 496, 508 (Minn. 2008); State v. Munson, 594 N.W.2d 128, 138 (Minn. 1999).

39 In re T.A.W., Minn. Ct. App. C8-92-1189, Finance and Commerce, page B30 (unpublished opinion) (Based upon information obtained from a confidential informant, officers stopped and searched the passenger compartment of a jeep, finding a small plastic bag containing marijuana. After a further search, the officers found a baggie of crack cocaine in the engine compartment near the windshield washer fluid receptacle. Search upheld under the "vehicle exception" citing State v. Bigelow, 451 N.W.2d 311, 312-13 (Minn. 1990) and U.S. v. Ross, 456 U.S. 798, 825, 102 S.Ct. 2157, 2173 (1982) (probable cause permits search of every part of the vehicle that may conceal object of search.); U.S. v. Marchena-Borjas 209 F.3d 698, 700 (8th Cir. 2000) (Search of engine compartment based upon probable cause to search for methamphetamine.); State v. Torres, 625 A.2d 239 (Conn. App. 1993) (following a lawful motor vehicle stop, made during a narcotics investigation, a drug-sniffing dog alerted police to the trunk. Although a search of the trunk turned up no evidence of narcotics, officers also searched the engine compartment where they did recover narcotics - the court upheld the search stating that, under the totality of the circumstances, the search of the engine compartment was supported by probable cause.).

40 State v. Hanson, 364 N.W.2d 786 (Minn. 1985) (following a lawful motor vehicle stop, discovery of a marijuana cigarette inside the passenger compartment
area justified further search of car including the trunk; State v. Schinzing, 342 N.W.2d 105 (Minn. 1983) (following a lawful motor vehicle stop, discovery of "stone" for smoking marijuana and marijuana cigarette butt provided officer with objective probable cause justifying the additional search of the trunk for additional marijuana); State v. Stumbo, No. A06-88, 2006 WL 2348548, at *4 (Minn. Ct. App. Aug. 15, 2006) (search of trunk was justified because officers had probable cause to believe drugs were somewhere in the vehicle); State v. Neumann, No. A03-1941, 2004 WL 2521179, at *5 (Minn. Ct. App. Nov. 9, 2004) (search of trunk reasonable because trooper had probable cause after lawfully discovering marijuana in the passenger compartment). Compare this section (4.14) with section 4.28 (infra).

41 U.S. v. DiRe, 332 U.S. 581, 68 S. Ct. 222, 92 L.Ed. 210 (1948) (draws an analogy with search warrants for residences, i.e. although the occupant of a home could be used to conceal the object of the search (contraband) as easily as could an occupant of a car, an officer armed with a search warrant for a residence only clearly has no right to search all persons found inside.). But see Maryland v. Pringle, 540 U.S. 366, 372-74, 124 S.Ct. 795 (2003) ("We think it is 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. . . . Here we think it was reasonable for the officer to infer a common enterprise among the three men. The quantity of drugs and cash in the car indicated the likelihood of drug dealing, an enterprise to which a dealer would be unlikely to admit an innocent person with the potential to furnish evidence against him. . . . [In United States v. DiRe, the Court] said '[a]ny inference that everyone on the scene of a crime is a party to it must disappear if the Government informer singles out the guilty person.' . . . No such singling out occurred in this case; none of the three men provided information with respect to the ownership of the cocaine or money.").

42 State v. Bigelow, 451 N.W.2d 311, 312 (Minn. 1990) (mere presence rule); State v. Albino, 384 N.W.2d 525, 527-28 (Minn. Ct. App. 1986) (Under "mere presence rule," passenger's presence in truck in which drugs were found was not sufficient to justify her arrest, where passenger did not flee the scene and was not observed making anyfurtive movements or trying to hide camera case in which drugs were found; drugs were in a closed case, and passenger did not claim any ownership or control over the truck;); However, the odor of burned marijuana inside a stopped motor vehicle provides probable cause for the search of the vehicle's occupants. State v. Wicklund, 295 Minn. 403, 405, 205 N.W.2d 509, 511 (1973). In Wicklund, the officer believed that one of the occupants in a car was in violation of curfew law. The officer stopped the car, and when the driver rolled down his window the officer smelled the odor of burned marijuana coming from inside the car. The Supreme Court held that the odor gave the officer probable cause to search the car's occupants.

43 State v. Wicklund, 295 Minn. 403, 405, 205 N.W.2d 509, 511 (1973); See also, State v. Hodgesan, 257 N.W.2d 313 (Minn. 1977) (following a traffic stop the officer detected the odor of burnt marijuana emanating from inside the vehicle. Once he smelled the marijuana, the officer had probable cause to arrest defendant and conduct a full search of both defendant and the car, citing to State v. Wicklund, 295 Minn. 403, 205 N.W.2d 509 (1973)).

44 Model Code of Pre-Arraignment Procedure § SS260.3(2) (1975).

45 See Model Code of Pre-Arraignment Procedure § SS260.3(2) (1975) (under the Model Code - the standard for officers is "reason to suspect" that the occupants are concealing the contraband on their person, rather than probable cause); State v. Cornell, 491 N.W.2d 668 (Minn. Ct. App. 1992) (during a valid pat-down search, officer felt a soft bulge below the suspect's beltline but did not initially remove it. However, during the course of the investigative stop, the officer developed probable cause to believe the soft bulge was contraband, and a second search seizing the soft bulge (baggie of marijuana) was upheld as a probable cause search for contraband. Probable cause supporting the contraband search was based on suspect's glassy eyes, the erratic driving, speeding, suspect's furtive movements in pushing the marijuana baggie further down his pants, his "incredible explanation" for the bulge (he claimed it was his penis.), and his admission that he had smoked marijuana earlier that evening.); State v. Giannaway, 191 N.W.2d 555 (Minn. 1971) (following a valid pat-down search, officer felt and removed a hard object from suspect's pocket which turned out to be a corncob pipe. The officer then pulled everything out of suspect's pocket, including a soft baggie of marijuana. Although seizure of the corncob pipe was valid under the protective weapons search exception, the remainder of the search exceeded the scope of a weapons search because no weapon was felt and because the officer did not have probable cause to expand the weapons search to a search for contraband.); see also State v. Ludtie, 306 N.W.2d 111 (Minn. 1981) (during a protective weapons search, although the plastic bag of powder was soft and presumably did not feel like a weapon, removal of it was proper as the officer had already lawfully determined that another such bag (observed in plain view sticking out of suspect's pocket) contained marijuana and, therefore, the officer had probable cause to believe that the second packet, which he had felt during the protective weapons search, also contained drugs.); State v. Hurt, 412 N.W.2d 797 (Minn. Ct. App. 1987) (during a protective weapons search, officers felt a long object which could have been a knife. Once removed it was identified as a clear tube containing a drug residue. Based upon that finding, the officer had probable cause to search the other pockets for possible contraband.); Dickerson v. Minnesota, 113 S.Ct. 53, 121 L.Ed.2d 22 (1993) (establishes the "plain feel" exception.); See also Maryland v. Pringle, 540 U.S. 366, 372-74, 124 S.Ct. 795 (2003) ("We think it is 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. . . . Here we think it was reasonable for the officer to infer a common enterprise among the three men. The quantity of drugs and cash in the car indicated the likelihood of drug dealing, an enterprise to which a dealer would be unlikely to admit an innocent person with the potential to furnish evidence against him. . . . [In United States v. DiRe, the Court] said '[a]ny inference that everyone on the scene of a crime is a party to it must disappear if the Government informer singles out the guilty person.' . . . No such singling out occurred in this case; none of the three men provided information with respect to the ownership of the cocaine or money.").

46 3 LaFave, Search and Seizure § 7.2(e) (4th ed. 2004, 2011 Supplement); Paul R. Joseph, Warrantless Search Deskbook Ch. 19 at 19.1, Ch. 20, at 20-14 (1993) ("If probable cause exists to believe evidence would be found on the person of the occupant of a vehicle, but probable cause to arrest did not exist, the general exigency exception to the warrant requirement would likely provide the necessary predicate for a warrantless search of the person"..."When a warrant would normally be required for a given search or seizure and when probable cause to obtain a warrant exists, but where, due to exigent circumstances (an emergency situation), it is not possible to obtain a warrant, the search or seizure may be made without one.").

47 Id.

48 Vehicle Exception v. Search Incident to Arrest: because the scope of a warrantless search under the vehicle exception is the same as the scope of a search authorized by a warrant which allows officers to search all containers inside the vehicle capable of concealing the object of the search, it would seem absurd if occupants were allowed to remove those same containers from the vehicle effectively placing them outside the scope of the vehicle exception search. However, when the search is being conducted under the search incident to arrest exception, this tactic has had the opposite effect in some jurisdictions. Jurisdictions
allowing non-arrested passengers’ efforts to be searched “often take the view that the container may only be searched if it was voluntarily left in the vehicle by the alighting occupant as compared to when it is left because of a police order.” 3 LaFave, supra § 7.1(b) at 124, n.91 (citing State v. Watts, 142 Idaho 230, 127 P.3d 133 (2005); State v. Boyd, 275 Kan. 271, 64 P.3d 419 (2003); State v. Torgoff, 663 N.W.2d 642 (N.D. 2003); State v. Seitz, 86 Wash. App. 865, 941 P.2d 5 (1997).  But see State v. Steele, 613 N.W.2d 825 (S.D. 2000); 3 LaFave, supra § 7.1(b) at 124, n.89-90 (“It has sometimes but not always been held that the Belton rule applies even if the police know that the searched container within the vehicle belongs to a non-arrested passenger, though jurisdictions in the former category often take the view that the container may only be searched if it was voluntarily left in the vehicle by an alighting occupant as compared to when it is left because of a police order.”); State v. Groshong, 281 Kan. 1050, 135 P.3d 1186 (2006) (Citing cases in accord, court holds that “search of the passenger's purse is valid if the passenger voluntarily leaves the purse in the car upon exiting but attempts to remove the purse before it can be searched along with the other contents of the vehicle.”).

50 State v. Stimpert, 370 N.W.2d 473 (Minn. Ct. App. 1985) (officer, upon observing an open bottle and smelling alcohol in the car, had probable cause to search the car because of the need to preserve evidence); State v. Studdard, 352 N.W.2d 413 (Minn. 1984) (probable cause search for evidence of an open bottle violation upheld under the motor vehicle exception when officer saw foamy liquid which smelled of beer running from between driver's door and door sill.); State v. Veigel, 304 N.W.2d 900 (Minn. 1981) (following lawful stop, officer smelled alcohol and observed, in plain view, open bottle of beer in car - probable cause search for evidence upheld.); State v. Schinzig, 342 N.W.2d 105 (Minn. 1983) (Officer's detection of the odor of alcohol coming from the car, along with occupants admission to having consumed alcohol, gave him probable cause to believe that a search of the passenger compartment would reveal open bottles or cans of alcohol. Pursuant to the motor vehicle exception to the warrant requirement, Officer Zappa was justified in searching anywhere in the passenger compartment where those open bottles or cans might be found citing State v. Veigel, 304 N.W.2d 900 (Minn.1981) however, officer could not search the trunk for open bottles or cans because it is not unlawful to keep open bottles or cans in the trunk.); State v. Collard, 414 N.W.2d 733 (Minn. Ct. App. 1987); State v. Bigelow, 447 N.W.2d 899 (Minn. 1990) (observation of drug paraphernalia, “a bong,” justified a warrantless search of the vehicle); State v. Phelps, No. C5-97-1718, 1998 WL 252347 (Minn. Ct. App. May 19, 1998) (probable cause to search vehicle and containers within vehicle where officer noticed occupants looked under 21 years of age, smelled odor of alcohol emanating from passenger compartment of truck, and observed a wet area on floor of truck’s passenger side.); State v. Schuette, 423 N.W.2d 104 (Minn. Ct. App. 1988) (after vehicle had been lawfully stopped and driver failed field sobriety test, and officer observed in open view an empty bottle on floor of vehicle and six-pack containing one empty and one full beer bottle between the two front seats, officer had probable cause to search the car, including rolled up grocery bag next to the six-pack, for additional open bottles, even though officer had already obtained open bottles necessary to charge driver with open bottle violation.);

51 Minn. Stat. § 169A.35 (“Open Bottle Law”).

52 Id. at subd. 3; State v. Tungland, 281 N.W.2d 646 (Minn. 1979) (not a violation of the open bottle law for defendant to have left an open bottle in the passenger compartment of a car parked in a private lot, since the open bottle law only prohibits keeping open bottles in motor vehicles "when such vehicle is upon the public highway" (citing earlier version of statute.)); see also, State v. Studdard, 352 N.W.2d 413, 415 (Minn. 1984) (violation of open bottle law where officer observed defendant driving erratically on a public street before defendant independently decided to turn into a shopping center parking lot and park before officer made any signal to defendant or approached the vehicle. Court held that “the open bottle violation was committed in the officer’s presence” while the vehicle was on the road.).

53 Minn. Stat. § 340A.503, subd. 1 (consumption) and subd. 3 (possession) (2011) ("It is unlawful for a person under the age of 21 years to possess any alcoholic beverage with the intent to consume it at a place other than the household of the person's parent or guardian. Possession at a place other than the household of the parent or guardian creates a rebuttable presumption of intent to consume it at a place other than the household of the parent or guardian. This presumption may be rebutted by a preponderance of the evidence.").

54 State v. Phelps, No. C5-97-1718, 1998 WL 252347, at *3 (Minn. Ct. App. May 19, 1998) (search of baby food jar and film canister permissible where subsequent probable cause arose. Here, officer initially only had probable cause to search for beer containers. “When Fox [the officer] opened the cooler to look for more beer, he saw a clear baby food jar with a film canister inside. Fox testified that certain types of drugs are commonly transported in film canisters and on ice to keep them from deteriorating. Fox's observation of the film canister in the baby food jar on top of ice in the cooler, considered in light of his experience and training, was sufficient to provide him with probable cause to search the film canister and the baby food jar.”), review denied (Minn. July 16, 1998), cert. denied, Phelps v. Minnesota, 525 U.S. 1145, 119 S.Ct. 1040, 143 L.Ed.2d 47 (U.S. Feb 22, 1999); See also, State v. Schuette, 423 N.W.2d 104 (Minn. Ct. App. 1988) (search of rolled up grocery bag for open bottle upheld); State v. Cameron, 1997 WL 206811, 2 (Minn.App.,1997) (search of 48-ounce margarine container was not permissible where officer had probable cause to search for alcohol containers. “Once Officer Simon held the margarine container and determined it was lighter than 48 ounces and did not detect the presence of alcohol or bottles containing alcohol, the permissible inference to search the container vanished.”).

55 State v. Pierce, 347 N.W.2d 829 (Minn. Ct. App. 1984) (officer smelled beer in lawfully-stopped car and saw open case with cans missing and a metal tab on the floor. Probable cause existed to search for evidence of an open bottle violation under the vehicle exception and officer was entitled to look inside glove compartment as part of the search.); State v. Elanson, 293 Minn. 490, 198 N.W.2d 136 (1972) (upholding search of glove compartment for evidence of open-bottle violation); see also Michigan v. Thomas, 458 U.S. 259 (1982).

56 Supra note 54.

57 Id.

58 State v. Veigel, 304 N.W.2d 900 (Minn. 1981) (warrantless search of locked glove compartment of motor vehicle was valid under motor vehicle exception to warrant requirement where officer conducting search had probable cause to believe there were controlled substances in vehicle.); See also U.S. v. Strickland, 902 F.2d 937, 942 (11th Cir. 1990) (vehicle "search may include some injury to the vehicle or the items within the vehicle, if the damage is reasonably necessary to gain access to a specific location where the officers have probable cause to believe that the object of their search is located.").
Because we conclude that respondents had no legitimate expectation of privacy in the apartment, we need not decide whether the public would approach the premises by walking into the back yard area, notwithstanding the partial fence delimiting it; State v. Crea, 233 N.W.2d 736, 739 (Minn. 1975) (the Supreme Court found that the curtilage of the home includes the garage); Tracht v.

See State v. Berg, 193 N.W.2d 603 (Minn. 1971) (The Minnesota Supreme Court applied a probable cause test in a situation where the police discovered an abandoned, damaged car parked at an odd angle. The keys were in the ignition and footprints in the snow led away from the car. Through the windows, the police saw a portable T.V. and some letters addressed to a Blaisdell address. A police radio check revealed that a portable T.V. was among items stolen from the same address. The auto was searched without a warrant and the validity of the search was sustained under Chambers v. Maroney, 399 U.S. 42 (1970), since the police had probable cause to believe that the car contained the fruits of a crime.); State v. Ferraro, 290 N.W.2d 177 (Minn. 1980) (several racquetball racquets observed in plain view through windows of van - police had information that several racquets had been stolen from a local sporting store four days earlier - search of vehicle upheld); State v. Hiler, 376 N.W.2d 760, 762-63 (Minn. Ct. App. 1985) (Search of vehicle was permissible and based on probable cause where officer had received informant's tip that occupants of particular truck had just committed theft at filling station and had left town on particular highway, and officer intercepted vehicle matching informant's description and observed automotive parts in back of truck); State v. Senna, No. A05-1242, 2006 WL 1738012, at *1 (Minn. Ct. App. June 27, 2006) (Search of vehicle permissible because police had probable cause that the vehicle would contain evidence of the crime of attempted burglary.); State v. Compton, 293 N.W.2d 372 (Minn. 1980) (police located stalled pickup in dilapidated condition on side of road and observed many items in original store packaging thrown haphazardly in the box of the truck. This coupled with the fact it was 4:15 a.m., the driver's nervousness, and the condition of the pickup, gave police probable cause to seize the items and search the cab of the truck for other evidence of theft or burglary.).

See e.g., State v. Novicky, No. A07-0170, 2008 WL 1747805, at *6 (Minn. Ct. App. Apr. 15, 2008) (search of cell phone for confirmation of Novicky's ownership of the gun to prove constructive possession was reasonable because "police had probable cause to believe that the cell phone contained evidence of a crime and therefore could be reasonably searched as a container in an automobile under the automobile exception to the warrant requirement.").

Horton v. California, 496 U.S. 128, 110 S.Ct. 2301, 110 L.Ed.2d 112 (1990); Illinois v. Andreas, 463 U.S. 765, 103 S.Ct. 3319, 77 L.Ed.2d 1003 (1983); State v. Dickerson, 481 N.W.2d 840, 844-45 (Minn. 1992) (the police may seize contraband in plain view if "(1) police are legitimately in the position from which they view the object; (2) they have a lawful right of access to the object; and (3) the object's incriminating nature is immediately apparent."); State v. Sorenson, 430 N.W.2d 231, 234 (Minn. Ct. App. 1988); see also, Garza v. State, 632 N.W.2d 633, 639 (Minn.2001) ("A dwelling's curtilage is generally the area so immediately and intimately connected to the home that within it, a resident's reasonable expectation of privacy should be respected."); State v. Krech, 403 N.W.2d 634 (Minn. 1987); State v. Arwater, No.C1-02-999, 2003 WL 21499868, at *5 (Minn. Ct. App. July 1, 2003) ("Four factors are considered in determining whether an area is within a curtilage: the proximity of the area claimed to be curtilage to the home, whether the area is included within an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by."); supra note 39 (engine compartment searches); supra note 40 (trunk searches).

63 See, e.g., State v. Carter, 569 N.W.2d 325 (Minn.1990) (officer “did not need a warrant or probable cause to walk up to defendant's door, knock on the door and say the things he said.”); See, e.g., U.S. v. Thomas, 430 F.3d 274 (6th Cir. 2005) (encounter with defendant at back door proper for “the rear deck was adjacent to the driveway and served as the primary entrance to Hopper’s home.”); U.S. v. Reyes, 283 F.3d 446 (2d Cir. 2002) (“We have found no Fourth Amendment violation based on a law enforcement officer's presence on an individual's driveway where,” as here, “that officer was in pursuit of legitimate law enforcement business.”); U.S. v. Raines, 243 F.3d 419 (8th Cir. 2001) (where no one answered front door, but several cars parked on driveway during a summer evening, it proper for officer to walk through 10 foot opening in fence to backyard.); U.S. v. Ventling, 678 F.2d 63 (8th Cir. 1982) (officer lawfully on driveway and yard adjacent to front door); but see, U.S. v. Strackman, 603 F.3d 731 (9th Cir.2010) (defendant's "backyard—a small, enclosed yard adjacent to a home in a residential neighborhood—is unquestionably” part of curtilage, and thus police entry without exigent circumstances unreasonable.); See also, State v. Carter, 569 N.W.2d 169, 178 (Minn.1997) ("Even if we concluded that the area just outside the apartment window was a common area, the fact that Thien left the sidewalk, walked across the grass, climbed over the bushes, placed his face within 12 to 18 inches of the window and peered through a small gap between the blinds makes it clear that he took extraordinary measures to enable himself to view the inside of a private dwelling," and therefore it constituted a Fourth Amendment search.); reversed by Minnesota v. Carter, 525 U.S. 83, 91, 119 S. Ct. 469, 474 (U.S.,1998) ("Because we conclude that respondents had no legitimate expectation of privacy in the apartment, we need not decide whether the police officer's observation constituted a "search.""); State v. Crea, 233 N.W.2d 736, 739 (Minn. 1975) (the Supreme Court found that the curtilage of the home includes the garage); Tracht v.
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Comm'r of Pub. Safety, 592 N.W.2d 863, 865 (Minn. App. Ct. 1999) (the court held that police could lawfully enter an opened garage in order to access and knock on a service door opening into the home. The police were not looking for evidence in the opened garage. There is a legal significance if the garage door is shut and closed off to public view); See also, Haase v. Comm'r of Pub. Safety, 679 N.W.2d 743 (Minn. App. 2004) (in Haase, the homeowner and driver opened the overhead garage door to gain entry to the garage, and was in the process of closing the garage door when a police officer, investigating a potential DWI, interrupted the closure of the door by sticking his leg in front of the motion sensor. The court held the garage was not impededly open to the public because the resident was attempting to shut the door and the officer was looking for evidence (i.e. a breath test from the resident)); State v. Lott, 2007 WL5832222 (Minn. App. Ct. 2007) (court found officer’s entry into the front part of a garage with his squad car was lawful when homeowner made no attempt to close the garage door after he entered the garage and parked his car.).

69 State v. Coy, 200 N.W.2d 40 (Minn. 1972) (police went to defendant's residence to make a warrantless, probable cause arrest. In the driveway, the officers observed a truck and saw a sheath on the seat. The officers knew that during the assault the defendant was armed with what likely was a knife. After arresting the defendant, the police searched the truck and found a knife under the front seat. The court upheld the search under the "vehicle exception" stating that the seizure occurred at 4:00 a.m., no magistrate was immediately available, the truck was readily movable, and defendant's wife was nearby and had the potential ability to move the truck or remove the knife.); Note: There is no separate exigency requirement for the automobile exception. The United State Supreme Court in Maryland v. Dyson, 527 U.S. 465, 466-467 (1999) held that "under our established precedent, the 'automobile exception' has no separate exigency requirement. . . . In a case with virtually identical facts to this one (even down to the bag of cocaine in the trunk of the car), Pennsylvania v. Labron, 518 U.S. 938, 116 S. Ct. 2485, 135 L.Ed.2d 1031 (1996) (per curiam), we repeated that the automobile exception does not have a separate exigency requirement." "If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment permits police to search the vehicle without more." Id., at 940, 116 S. Ct. 2485; and the Minnesota Court of Appeals in State v. Pederson-Maxwell, 619 N.W.2d 777, 782 (Minn. Ct. App. 2000) held that "the automobile exception to the Fourth Amendment's warrant requirement does not have a separate exigency requirement." See Coolidge v. New Hampshire, 403 U.S. 443, 458, 91 S. Ct. 2022, 2033, 29 L.Ed.2d 564 (1971) (automobile parked in defendant's driveway more than a month after the murder. When police had developed probable cause to search the car, defendant was arrested inside his house and taken away. His family was driven away by the police, and guards were posted around the car. The car was subsequently towed to the police station and searched several times over a one year period of time. The court drew a significant constitutional difference between stopping, seizing and searching a car on the open highway, and entering private property to seize and search an unoccupied, parked vehicle not then being used for any illegal purpose. The court concluded that probable cause existed to search defendant's car, but no exigent circumstances justified the police in proceeding without a warrant.);

70 1 LaFave, Search and Seizure § 2.2(a) (4th ed. 2004, 2011 supplement).

71 State v. Crea, 233 N.W.2d 736, 740 (Minn. 1975).

72 Matter of Welfare of G.M., 560 N.W.2d 687 (Minn. 1997) (Court of Appeals erred in concluding “that because the pouch was in plain view, and because the police officer had probable cause to believe the pouch contained contraband, that this case fit under” the plain-view doctrine. “Under the plain-view exception to the warrant requirement, a police officer may seize an object in plain view without a warrant only if the object's incriminating character is immediately apparent. In this case, the object in plain view was the pouch, not the contraband. Consequently, the plain-view exception will apply only if the pouch's incriminating nature was immediately apparent.”); State v. Hoaff, 243 N.W.2d 129, 133 (Minn. 1976) (Warrantless flashlight search was reasonable because it was justified by probable cause and involved minimal intrusion.); State v. Crea, 233 N.W.2d 736 (Minn. 1975) (officers lawfully on driveway observed two trailers, one on the left in front of an unattached garage, another on the right behind the house. Having viewed both trailers in plain sight, officers had a right to examine them to determine whether they were stolen. Officers also looked into the walk-in basement window without a warrant. Search upheld: officers had very strong probable cause, it was 4:20 a.m. and officers might have had difficulty obtaining a search warrant at that hour and the intrusion onto the property was minimal); State v. Etom, No. A08-0422, 2009 WL 234136, at *3-4 (Minn. Ct. App. Feb. 3, 2009) (although officer had probable cause to search through the backyard at midnight with a flashlight and look through the garage window with the flashlight, Court held there were “no exigent circumstances to justify the intrusion into the curtilage without a warrant,” because the officers were investigating a minor automobile accident that included no reported injuries and only minor damage to the vehicles involved, and the officers were not in hot pursuit or concerned about destruction of evidence.); State v. Srusky, No. C5-01-381, 2001 WL 1262987, at *1 (Minn. Ct. App. Oct. 23, 2001) (Concluding that “officer safety is an appropriate factor for this court to consider in our determination of whether the deputy acted reasonably,” and because the deputy walking around the side of the house to peer in through a window was in the interests of officer safety and “the visual intrusion upon appellant's privacy was only minimal, we conclude the police acted reasonably.”).

73 See Taylor v. U.S. 286 U.S. 1, 52 S. Ct. 466, 76 L.Ed. 951 (1932) (though police, standing where they had a right to be, saw contraband in open view in a garage by looking through a small opening, their warrantless entry to seize the contraband was unconstitutional.); State v. Fisher, 283 Kan. 272, 154 P.3d 455 (2007) (“Absence of a justifiable intrusion onto Fisher's curtilage, the mere observation of the bag from the highway does not itself allow the bag's seizure.”); Strange v. State, 530 So.2d 1336 (Miss. 1988) (“plain smell” of marijuana within premises does not, absent exigent circumstances, justify warrantless entry to seize the marijuana); State v. Rickard, 420 So.2d 303 (Fla. 1982) (that marijuana plants could be seen in defendant's backyard from neighbor's property did not permit warrantless entry onto defendant's land); State v. Hook, 587 P.2d 1224 (Haw. 1978) (That police could see marijuana plants in shed did not itself authorize entry to seize them, as “visibility of contraband within constitutionally protected premises is not enough to justify entry and seizure without a warrant”); People v. Pakula, 411 N.E.2d 1385 (Ill. Ct. App. 1980) (that marijuana plants seen in defendant’s backyard did not alone justify entry into yard and seizure of plants, as “the warrantless intrusion into the defendant's privacy is not justifiable merely by a pre-intrusion plain view observation.”).

74 Oliver v. U.S. 466 U.S. 170, 171 (1984) (two narcotics agents walked around a locked gate marked with a “no trespassing” sign and saw, in plain view, marijuana growing on Oliver's land. They seized the marijuana and arrested Oliver upon probable cause. Because the area was outside the curtilage, the “open field” was not entitled to Fourth Amendment protection.); State v. Nolan, 356 N.W.2d 670 (Minn. 1984) (flyover of cornfields comes within Oliver rule.); State v. Gattinger, No. C1-97-601, 1998 WL 113956, at *2 (Minn. Ct. App. May 20, 1998) (defendant had no Fourth Amendment expectation of privacy in area where chase occurred because it was an open field. Chase occurred along a path through the woods, in an area of heavy vegetation some distance from the mobile home Gattinger's mother owned and the area of struggle itself, where the officers would have recovered the evidence, was down a steep ravine, at the bottom of which was standing water.);

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76 Oliver, 466 U.S. at 181 n.11, 104 S. Ct. at 1742, n.11 (“It is clear, however, that the term “open fields” may include any unoccupied or undeveloped area outside of the curtilage. An open field need be neither “open” nor a “field” as those terms are used in common speech. For example... a thickly wooded area nonetheless may be an open field as that term is used in construing the Fourth Amendment.”).

77 Id. at 182, 104 S. Ct. at 1743.


79 Pennsylvania v. Labron, 518 U.S. 938, 940, 116 S. Ct. 2485, 2487 (1996) (“Our first cases establishing the automobile exception to the Fourth Amendment’s warrant requirement were based on the automobile’s “ready mobility” an exigency sufficient to excuse failure to obtain a search warrant once probable cause to conduct the search is clear. More recent cases provide a further justification: the individual’s reduced expectation of privacy in an automobile, owing to its pervasive regulation. The court validated the automobile search based on probable cause, without a separate exigency requirement.”); See also, State v. Pederson-Maxwell, 619 N.W.2d 777 (Minn Ct. App. 2000) (citing to Pennsylvania v. Labron, held that police officer had probable cause to conduct warrantless search of defendant’s impounded automobile despite the absence of any exigent circumstances.).

80 Id.

81 Michigan v. Thomas, 458 U.S. 259 (1982); Florida v. Meyers, 466 U.S. 380 (1984) (confirmed that actual exigency was not necessary and upheld a search eight hours after impoundment of a vehicle lawfully stopped when probable cause existed to search the vehicle at the time it was initially stopped and impounded.).


84 State v. Johnson, 277 N.W.2d 346 (Minn. 1979).


88 California v. Carney, 105 S. Ct. 2066, 2069 (1985) (even if the car is not ‘readily mobile, its recent use as transportation establishes the “reduced expectation of privacy” which is the dominant consideration citing Cady v. Dombrowski, 413 U.S. 433, 93 S. Ct. 2523, 37 L.Ed.2d 706 (1973) (warrantless search of disabled vehicle not unconstitutional for officers had custody of the vehicle for safety reasons and search was “standard procedure.”). Under the vehicle exception, it is not necessary for officers to post a guard to watch the vehicle while officers obtain a warrant in lieu of application of the vehicle exception.). State v. Johnson, 277 N.W.2d 346 (Minn. 1979); see also, U.S. v. Mercado, 307 F.3d 1226 (10th Cir. 2002) (“mere temporary immobility due to a readily repairable problem while at an open public repair shop does not remove the vehicle from the category of ‘readily mobile.’”); State v. Kelley, 934 So.2d 51 (La. 2006) (Though “the vehicle had two flat tires, it could still be driven away,” and thus warrantless search on probable cause lawful); Vassar v. State, 99 P.3d 987 (Wyo. 2004) (Automobile exception applied, even though defendant “was hospitalized and his vehicle was damaged and allegedly immobile.”); State v. Middleton, 995 S.W.2d 443 (Mo. 1999) (“Fact that this vehicle was stuck in the mud, and it’s “apparent someone was mobile in the process of trying to remove the vehicle from the mud, does not render the [automobile] exception inapplicable.”); Bohanan v. State, 324 Ark. 158, 919 S.W.2d 198 (1996) (Car parked on street, “even with a flat tire, was a readily movable vehicle,” and “the rule does not require additional exigent circumstances.”).

89 U.S. v. Hatley, 15 F.3d 856, 859 (9th Cir. 1994) (“Though the Corvair was not actually mobile, it was apparently mobile. There was nothing apparent to the officers to suggest the car was immobile. It was not up on blocks, and there is no information in the record to indicate the tires were flat or that wheels of the car were missing.”), superseding U.S. v. Hatley, 999 F.2d 392 (9th Cir. 1993); United States v. Hogan, 38 F.3d 1148 (10th Cir. 1994) (Warrantless seizure of camper parked in defendant’s yard upheld; no specific consideration of facts camper “was parked inside the fence and was inoperable.”); U.S. v. Hepperle, 810 F.2d 836, 840 (8th Cir. 1987) (it was reasonable to assume that the vehicle was readily mobile where “the vehicle's alleged immobility was not visibly apparent. The Fourth Amendment does not require that officers ascertain the actual functional capacity of a vehicle in order to satisfy the exigency requirement. The test is reasonableness under all the circumstances.”).

90 3 LaFave, Search and Seizure § 7.2(b) (4th ed. 2004, 2011 supplement).

91 Id.

92 Id. supra note 88; State v. Romero, 730 P.2d 1157 (Mont. 1986) (Upholding search of track disabled in median strip and in need of a wrecker to be towed out.).


94 State v. DeWald, 463 N.W.2d 741 (Minn. 1990); State v. Johnson, 324 N.W.2d 199 (Minn. 1982); State v. Roy, 265 N.W.2d 663 (Minn. 1978); State v. Jankowski, 281 N.W.2d 717 (Minn. 1979); State v. Veigel, 304 N.W.2d 900 (Minn. 1981); State v. Ludtke, 306 N.W.2d 111 (Minn. 1981); State v. Hollins, No.
A07-0350, 2008 WL 2102616, at *3 (Minn. Ct. App. May 20, 2008) (second warrantless search of vehicle after it had already been impounded was reasonable based upon the original probable cause and subsequent additional facts from the victim as to where contraband was to be found in the vehicle.); State v. Bramble, No. C6-94-1471, 1995 WL 46295, at *2 (Minn. Ct. App. Feb. 7, 1995) (Second warrantless search of vehicle, after it was seized and brought to the jail along with the defendant, was reasonable.).

95 U.S. v. Johns, 469 U.S. 478 (1985) (three-day delay from time packages were seized from vehicle in lawful custody and the search of the packages was not dispositive, even though the packages were held in a warehouse during the three-day interval.); Florida v. Meyers, 466 U.S. 380, 382, 104 S. Ct. 1852 (1984) (warrantless search of automobile which was impounded and in police custody, conducted approximately eight hours after concededly valid initial search conducted at time of defendant's arrest, was proper; justification of the initial warrantless search did not vanish once the car had been immobilized.).


97 Id.

98 Katz v. U.S. 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967) ("What a person knowingly exposes to the public, is not a subject of Fourth Amendment protection"); State v. Serna, 290 N.W.2d 446 (Minn. 1980) (warrantless seizure and impoundment of defendant's car in which criminal sexual conduct allegedly took place did not violate defendant's Fourth Amendment rights where police only seized and towed the car, displayed vehicle to complainant and others, and photographed its exterior; defendant had no reasonable expectation of privacy in the exterior of the car, since he had left it parked on a public street.); See also, U.S. v. Hensel, 699 F.2d 18 (1st Cir. 1983) (viewing license on car parked in driveway not a search); Doris v. State, 656 P.2d 578 (Alaska App. 1982) (examination of tires – not a search.); State v. Harding, 670 P.2d 383 (Aziz. 1983) (noting plate number on car being driven and calling in for license check - no search); People v. Petersen, 442 N.E.2d 941 (Ill. Ct. App. 1982) (no search to check damage to body of car parked on owner's property but parallel to railroad tracks); Commonwealth v. Mangini, 386 A.2d 482 (Pa. 1978) (examination of tread and groove patterns on tires of car parked on public high school parking lot not a search); U.S. v. Gonzalez-Acosta, 989 F.2d 384 (10th Cir. 1993) (no search for officer to squat down and with mirror and flashlight see shiny bolts on gas tank support straps under vehicle.); Commonwealth v. A Juvenile (No. 2), 580 N.E.2d 1014 (Mass. 1991) (no search to view exterior damage to car parked in driveway either from the road or from the driveway itself where it was "the normal route by which to approach the front door of the residence."); Fisher v. State, 291 N.E.2d 76 (Ind. 1973) (pictures taken "of a vehicle sitting in open view in a vacant lot" not a search); Hudson v. State, 588 S.W.2d 348 (Tex. Crim. App. 1979) (pictures taken of car parked on street not a search); State v. Weisstein, 501 P.2d 1084 (Utah 1972) (photographs taken from alley of vehicle parked at apartment building parking lot not a search.); State v. Serna, 290 N.W.2d 446 (Minn. 1980) (Exterior of defendant's vehicle was photographed - defendant had no reasonable expectation of privacy in the exterior of the car, since he had left it parked on a public street); People v. Davila, 27 Misc.3d 921, 901 N.Y.S.2d 787 (2010) (cameras mounted on top of patrol cars automatically photograph license plates at the rate of hundreds per minute. The images are converted into letters and numbers and sent to a computer located in the trunk of the police vehicle. The computer compares the information to a database containing a list of license plates corresponding to cars that have been reported stolen, where registration or insurance coverage has lapsed, or other similar violations of law.).

99 Cardwell v. Lewis, 417 U.S. 583, 94 S. Ct. 2464, 41 L.Ed.2d 325 (1974) (where probable cause existed, warrantless examination of exterior of automobile was reasonable under Fourth and Fourteenth Amendments; no expectation of privacy was violated by examination of tire on operative wheel or of taking of exterior paint samples from a vehicle which had been parked in a public place.); State v. Pratt, 16 Sd. 3d 1163 (La. 2009) (officer's "discovery of the magnetic key boxes attached to the underside frame of the car [parked at gas station] did not constitute a search.").


101 Cardwell v. Lewis, 417 U.S. 583 (1974); United States v. George, 971 F.2d 1113 (4th Cir. 1992) (defendant's truck was impounded and tires seized therefrom; admission into evidence of the tires upheld on ground defendant "does not have an objectively reasonable expectation of privacy in tires on a truck that he drives and parks in public places.").

102 State v. Skelton, 795 P.2d 349 (Kan. 1990) (no Fourth Amendment violation occurred in the seizure of the vegetation and soil from the exterior of the car under Cardwell v. Lewis because an individual has no reasonable expectation of privacy in the exterior of a car parked in a public lot.).


104 Supra note 103; See also 3 LaFave, Search and Seizure § 2.5(b), at 91 (2d ed. 1993 Supplement); New York v. Class, 475 U.S. 106, 114, 106 S. Ct. 960, 966, 89 L.Ed.2d 81 (1986) (the 5-member majority in Class expressly endorsed the Cardwell pluralities' conclusion that an examination of the exterior of an automobile "does not constitute a Fourth Amendment search" because the vehicle is "thrust into the public eye.").

105 Illinois v. Caballes, 543 U.S. 405, 409-10, 125 S. Ct. 834, (2005) (a dog sniff conducted during a concededly lawful traffic stop that reveals no information other than the location of a substance that any individual has any right to possess does not violate the Fourth Amendment. In Caballes, after an Illinois state trooper stopped respondent for speeding, a second trooper, overhearing the transmission, drove to the scene with his narcotics-detection dog and walked the dog around respondent's car while the first trooper wrote respondent a warning ticket. When the dog alerted at respondent's trunk, the officers searched the trunk, found marijuana, and arrested respondent. Accordingly, the use of a well-trained narcotics-detection dog - one that "does not expose non-contraband items that otherwise would remain hidden from public view"; U.S. v. Place, 462 U. S., at 707 (a lawful traffic stop generally does not implicate legitimate privacy interests. In this case, the dog sniff was performed on the exterior of respondent's car while he was lawfully seized for a traffic violation. Any intrusion on respondent's privacy expectations does not rise to the level of a constitutionally cognizable infringement. This conclusion is entirely consistent with our recent decision that the use of a thermal-imaging device to detect the growth of marijuana in a home constituted an unlawful search, citing to Kyllo v. U.S. 533 U. S. 27 (2001) (critical to that decision was the fact that the device was capable of detecting lawful activity—in that case, intimate details in a home, such as "at what hour each night the lady of the house takes her daily sauna and bath." A dog sniff conducted during a concededly lawful traffic stop that reveals no information other than the location of a substance that no individual has any right to possess does not violate the Fourth Amendment.).

106 State v. Wiegand, 645 N.W.2d 125, 133-35 (Minn. 2002) (police walked a narcotics-detection dog around the exterior of a motor vehicle that had been
stopped because of a burned-out headlight. Because there is “some expectation of privacy in an automobile,” a dog sniff intrudes upon this privacy interest. The Supreme Court held that “the police cannot conduct a narcotics-detection dog sniff around a motor vehicle stopped for a routine equipment violation without some level of suspicion of illegal activity” (reasonable suspicion). However, “dog sniff around the exterior of a legitimately stopped motor vehicle is not a search requiring probable cause on the basis of either the Fourth Amendment or the Minnesota Constitution.”; State v. Carter, 697 N.W.2d 199, 210-11 (Minn. 2005) (The Court held that use of a narcotics-detection dog outside a private storage unit located within a fenced self-storage facility is a search for purposes of the Minnesota Constitution even though it was not a search for purposes of the United States Constitution. The court reached that conclusion because they found that the “expectation of privacy at issue was greater under the Minnesota Constitution than it has been determined to be under the Fourth Amendment” citing to Illinois v. Caballes, 543 U.S. 405, 409-10, 125 S. Ct. 834 (2005), the Court further held that the “reasonable, articulable suspicion standard struck the appropriate middle ground between the individual’s privacy interest and the government’s interest in using effective law enforcement tools” State v Carter at 210; State v Davis, 732 N.W.2d 173 (Minn. 2007) (using results of a dog sniff in the common hallway outside the defendant’s apartment to support the issuance of a search warrant upheld. “The police needed only reasonable, articulable suspicion that defendant was engaged in illegal drug activity, rather than probable cause to conduct the dog sniff in the common hallway outside defendant’s apartment door.”); But see, State v. Miller, 659 N.W.2d 275, 280 (Minn. Ct. App. 2003) (held dog sniff impermissible expansion of initial traffic stop for broken windshield, where officer did not have a reasonable, articulable suspicion that either defendant or other occupant was involved in drug-related or any criminal activity.).

107 State v. Allbee, WL1515362 *1 (June 2, 2009, Minn. Ct. App.) (unpublished opinion) (dog sniff of the exterior of a vehicle belonging to theft suspect found parked in the Grand Casino Hinckley RV park upheld because officers had a reasonable suspicion that the vehicle contained illegal drugs based upon observations made by officers looking through the windows. Officers could see “a clear plastic baggy protruding from a black case” and an “orange, slightly larger than chewing gum pack of rolling paper” inside the plastic bag. According to the officer, the baggy “was the same type [he had] observed numerous times as those containing illicit narcotics.”).
# CHAPTER 5
INVENTORY SEARCH

## 5.1 WHAT IS THE GENERAL RULE?

1. **General Rule:** When a motor vehicle is lawfully impounded by law enforcement, a search of the vehicle is permissible if conducted for reasons other than to find evidence of crime and if conducted under a standard departmental policy making such inventories a part of routine procedure in such cases.\(^{1}\) Inventories search require neither a warrant nor probable cause.\(^{2}\) Moreover, once a vehicle is lawfully impounded, police need not have reasonable, articulable suspicion of criminal activity in order to conduct a dog sniff of the exterior of the vehicle.\(^{3}\)

2. **Legal Justification:** Inventory searches are recognized as an exception to the general warrant requirement because of their administrative, rather than investigative purpose.\(^{4}\) The purpose of an inventory search is not to uncover evidence of a crime. Rather, it is a non-criminal procedure designed to safeguard the community by: (a) Protecting the owner's property while it is in police custody\(^ {5}\); (b) Insuring against claims of lost, stolen, or vandalized property; and (c) Protecting law enforcement personnel from potentially dangerous items.\(^ {6}\) To be valid, the initial impoundment of the car must be legal\(^ {7}\) and the departmental inventory policy must be structured so that officers do not have unbridled discretion as to when, where, what or how to conduct an inventory search.\(^ {8}\) Once an inventory policy is established, officers will be expected and required to follow the policy in every case involving an inventory search.\(^ {9}\) In other words, all impounded vehicles must be inventoried in accordance with the inventory policy. However, an inventory search is still constitutionally permissible even where the officer has discretion in deciding whether to impound a vehicle in the first place.\(^ {10}\)

3. **Scope of Inventory Search:** A standard inventory policy (written or unwritten) is required to determine when a peace officer may conduct an inventory search.\(^ {11}\) The scope of an inventory search is controlled by whatever the standard departmental policy is. While an “all or nothing” inventory policy is permissible, one that allows officers unbridled discretion to determine whether a particular container should be opened is impermissible. However, the exercise of police discretion as to which, if any, containers are to be opened is not prohibited so long as that discretion is exercised according to standard criteria.\(^ {12}\) Standard inventory policies typically extend to the open areas of the vehicle, such as areas under seats, and other places where property is ordinarily kept including glove compartments and trunks, and may include opening closed and locked containers if such procedure is allowed under the standard policy.\(^ {13}\) It does not, however, permit a search of hidden places or examination of documents or audio tapes\(^ {14}\), and certainly not the removal of car parts\(^ {15}\) in an effort to locate contraband or other property.

4. **Policy on Closed and Locked Containers:** Law enforcement officials may consider the following options in designing an inventory policy for closed or locked containers appropriate for their needs:\(^ {16}\)

   (a) **Conservative Policy:** Disallow the opening of all closed and locked containers (including the trunk and glove box). Under this policy, officers would simply record the existence of all closed and locked containers without ever actually opening them.

   (b) **Liberal Policy:** Require that all closed and locked containers (including the trunk and glove box) be opened even if it requires breaking open the lock (i.e. under this policy, because the responsible law enforcement agency will most likely be held responsible for any resulting property damage; great care should be taken to minimize damage to the locked areas to be inventoried).
(c) **Moderate Policy**: Require that all closed and locked containers (including the trunk and glove box) be opened and inventoried only if the area is accessible to officers (i.e. officers have a key or can otherwise gain access without causing property damage).

**Note**: If your standard policy does not specifically provide for the opening of closed or locked containers including the trunk and glove box, such items may not be opened during an inventory search.

5. **Bad Faith Searches**: A pre-existing suspicion that evidence will be uncovered during a lawful inventory will not invalidate the search as long as it was initiated pursuant to a standard inventory policy, unless there is a showing that police acted in bad faith or searched the car for the sole purpose of investigation.\(^\text{17}\) In other words, an inventory search must not be a pretext for an improper investigative motive and an otherwise unlawful warrantless search.

6. **Location and Time of Inventory Search**: The standard inventory policy should provide officers with discretion to conduct the inventory search at the scene (as long as the vehicle is taken into police custody) or within a reasonable period of time at the impoundment lot or other location. A "reasonable period of time" means as soon after impoundment occurs as would be safe, practical, and satisfactory in light of the inventory objectives.\(^\text{18}\)

**Note** – **Canine Drug-Sniff**: The Mn Court of Appeals held that officers lawfully conducted a canine drug-sniff on a vehicle that had been properly impounded for 24 hours without any reasonable articulable suspicion of drug activity since there was no longer an expectation of privacy in the vehicle.\(^\text{19}\)

7. **Alternative Less Intrusive Means**: The inventory policy may provide officers with discretion not to impound a vehicle when there is a reasonable alternative. However, the policy may also provide that the "existence of alternative less intrusive means" does not preclude an officer's authority to impound.\(^\text{20}\) For example, the fact that an arrestee asked an officer to lock his vehicle and leave it in a public parking lot rather than impound it would not preclude the officer from impounding the vehicle.\(^\text{21}\) However, unless the vehicle is an instrumentality of a crime or is itself evidence of a crime, impounding a vehicle would not be reasonable in most circumstances if a properly licensed third party is present at the scene and is willing to take possession of the vehicle with the owner's permission.\(^\text{22}\)

8. **Written v. Unwritten Policy**: Although there is no requirement that the standard inventory policy be in writing, having a written policy is clearly the better practice.\(^\text{23}\) Written documentation is always advisable and is usually necessary to establish a standardized procedure intended to protect the owner's property.

### 5.2 VIGNETTE #7: ILLEGALLY PARKED VEHICLE

**FACTS**

1. Officers locate a vehicle (missing its rear license plate) illegally parked in a residential area next to a fire hydrant.
2. Because officers are unable to locate the owner, the vehicle is impounded.
3. While waiting for the tow truck to arrive, one of the officers enters the vehicle for the purpose of conducting a warrantless inventory search pursuant to a standard departmental inventory policy.
5.3 CAN THE VEHICLE BE SEARCHED WITHOUT A WARRANT?

**ANSWER:** Yes

Whenever a motor vehicle is lawfully impounded by law enforcement, a warrantless inventory search of the vehicle is permissible if conducted for reasons other than to find evidence of a crime and if conducted under a standard departmental policy that makes such inventories a part of routine procedure in such cases.

5.4 WHAT ABOUT THE PASSENGER COMPARTMENT AREA?

**ANSWER:** Yes

As long as the search is conducted pursuant to a standard departmental policy, the entire passenger compartment area may be searched including areas such as under seats and other places where property is ordinarily kept. However, it does not permit a search of hidden places, certainly not the removal of car parts in an effort to locate contraband or other property.

5.5 WHAT ABOUT A PURSE?

**ANSWER:** Yes

As long as the standard inventory policy specifically provides for the opening of closed containers, a search of an object such as a purse would be permissible.\(^{24}\)

5.6 WHAT ABOUT A GLOVE BOX?

**ANSWER:** Yes

As long as the standard inventory policy specifically provides for the opening of closed containers, a search of a glove box would be permissible.

**Note:** If the glove box is locked, see § 5.12.
### 5.7 WHAT ABOUT MISCELLANEOUS CLOTHING?

**ANSWER:** Yes

As long as the search is conducted pursuant to a standard inventory policy, a search of miscellaneous clothing including closed pockets or other attached compartments would be permissible.\(^{25}\)

### 5.8 WHAT ABOUT SMALL CONTAINERS?

**ANSWER:** Yes

As long as the standard inventory policy specifically provides for the opening of closed containers, a search of all closed containers, regardless of their size or shape would be permissible.

**Note:** If the nature of the small container is such that it would otherwise be an unlikely place for anything of value to be stored (i.e. dental floss, aspirin bottle, etc.), the container should be opened and scrutinized only to the degree needed to complete the inventory process.\(^{26}\)

**Note:** If the small container is locked, see § 5.12.

### 5.9 WHAT ABOUT SEALED CONTAINERS?

**ANSWER:** Yes

As long as the standard inventory policy specifically provides for the opening of locked or sealed containers, a search of an object such as a sealed cardboard box would be permissible.

**Note:** In the absence of a method of gaining access without causing damage, a locked or sealed container should not be cut or forced open unless specifically authorized under the standard inventory policy.

### 5.10 WHAT ABOUT BOOKS AND PAPERS?

**ANSWER:** Yes

As long as the search is conducted pursuant to a standard inventory policy, the initial inspection of books and papers, including the act of thumbing through pages, is necessary and proper to insure that there is nothing of value hidden between the pages. However, reading what is written on the pages would normally exceed the scope of a lawful inventory search unless the reason for examining the documents is for the limited purpose of identifying them for inventory listing purposes. Books and papers should be scrutinized only to the degree needed to complete the inventory process.\(^{27}\)
### 5.11 WHAT ABOUT THE TRUNK?

**ANSWER:** Yes

As long as the standard inventory policy specifically provides for the opening of a locked trunk, such a search would be permissible.\(^{28}\)

**Note:** In the absence of a key or other method of gaining access without causing damage, a locked trunk should not be forced open unless specifically authorized under the standard inventory policy.

### 5.12 WHAT ABOUT LOCKED CONTAINERS?

**ANSWER:** Yes

As long as the standard inventory policy specifically provides for the opening of locked containers, a search of a locked container, such as a suitcase found inside a trunk, would be permissible.

**Note:** In the absence of a key or other method of gaining access without causing damage, a locked container should not be forced open unless specifically authorized under the standard inventory policy.
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ENDNOTES:

1 State v. Volkman, 675 N.W.2d 337 (Minn. 2004) (allowing the findings of an inventory search if it was conducted under standard policy, even if the arrest came from an illegal search, because the items would have been found under a lawful inventory search.); U.S. v. May, 440 F.Supp.2d 1016 (D. Minn. 2006); South Dakota v. Opperman, 428 U.S. 364 (1976) (upholding search of impounded vehicle due to plain view finding and standard procedures.); City of St. Paul v. Myles, 218 N.W.2d 697 (Minn. 1974) (upholding search because inventory was conducted to determine contents of impounded vehicle, not discover evidence of other crimes); State v. Alipour, 413 N.W.2d 140 (Minn. Ct. App. 1987) (allowing good faith and standard policy inventory search of unlocked briefcase.); State v. Marshall, 411 N.W.2d 276 (Minn. Ct. App. 1987).


3 State v. Darnell, A10-923, (Minn. Ct. App. Feb. 8, 2011) (unpublished opinion) (search warrant was obtained based on a narcotic-detection dog sniff of a lawfully impounded vehicle in the impound lot. Defendant’s arguments challenge the validity of the dog sniff and search warrant. “[A] dog sniff around the exterior of a legitimately stopped motor vehicle is not a search requiring probable cause on the basis of either the Fourth Amendment or the Minnesota Constitution.” State v. Wiegand, 645 N.W.2d 125, 133 (Minn. 2002) (footnote omitted). Moreover, “once a vehicle is lawfully impounded, police need not have reasonable, articulable suspicion of criminal activity in order to conduct a dog sniff of the exterior of the vehicle.” State v. Kolb, 674 N.W.2d 238, 242 (Minn. App. 2004), review denied (Minn. Apr. 20, 2004).

4 See U.S. v. May, 440 F.Supp.2d 1016 (D. Minn. 2006) (allowing evidence to be conducted because a variety of circumstances, from suspect having contraband, to testimony gained in interrogations, and suspension of suspect’s license, allowed the vehicle to be inventoried under standard procedure.); U.S. v. Sims, 424 F.3d 691 (8th Cir. 2005) (finding an inventory search appropriate because probable cause of the vehicle’s involvement of a crime was established, allowing seizure under the “automobile exception” of the warrant requirement.); U.S. v. Petty, 367 F.3d 1009 (8th Cir. 2004) (allowing inventory of a nearby, legally parked rental car belonging to suspect who dropped off drugs, due to abandonment, even without a standardized police policy); U.S. v. Garner, 181 F.3d 988 (8th Cir. 1999) (finding no improper motive for an inventory search even when no inventory list was produced due to St. Paul’s policy of only recording valuable objects); State v. Holmes, 569 N.W.2d 181 (Minn. 1997) (suppressing evidence of a pistol in a locked glove compartment since there was no reasonable suspicion to search suspect and the inventory of the car was only for investigative purposes.).

5 U.S. v. Beal, 430 F.3d 950 (8th Cir. 2005) (upholding an inventory search because it was conducted under standard procedure, even when the owner was present, since the police could not be sure it was safe for the owner to take possession of the car when ingredients to methamphetamine were found.); U.S. v. Marshall, 986 F.2d 1171 (8th Cir. 1993) (suppressing the finding of a gun during an inventory search even if it protected the impound lot and the owners from vandalism since the vehicle was expected to remain for a long time because of a lack of standardized procedures and the presence of an investigatory purpose.).

6 U.S. v. May, 440 F.Supp.2d 1016 (D. Minn. 2006); State v. Ture, 632 N.W.2d 621 (2001); U.S. v. Wallace, 102 F.3d 346 (8th Cir. 1996) (finding an inventory search of a vehicle involved in a high speed chase permissible because it was evidence of reckless driving and it presented a hazard to the public.); South Dakota v. Opperman, 428 U.S. 364, 369 (1976); City of St. Paul v. Myles, 218 N.W.2d 697 (Minn. 1974); Cady v. Dombrowski, 413 U.S. 433 (1973) (Public Safety Search Exception.).

7 The threshold question is whether there is a lawful basis for the impoundment. See State v. Goodrich, 256 N.W.2d 506, 510 (Minn. 1977); This inquiry often leads to an application of the towing statute although there are other bases for justifying the impoundment of the vehicle. See e.g., State v. Johnson, No. C2-01-2265 (Minn. Ct. App. Sept. 24, 2002) (unpublished opinion) (impoundment proper where vehicle was uninsured and could not be driven on roads by anybody and was parked in such a way that it was a hazard and could be towed under Minn. Stat. § 168B.04, subd. 2 (2000)).

8 State v. Gauster, 752 N.W.2d 496 (Minn. 2008) (invalid search because impoundment was improper since only justifiable under protection of property; there was no safety hazard, no arrest, and no abandonment of the vehicle. However, the automobile exception rule was not argued in district court and probable cause was not yet established.); State v. Robb, 605 N.W.2d 96 (Minn. 2000) (rejecting the legality of a search because a hypothetical inventory search could have found weapons, since there was no standardized policy available for this instance and impoundment of the vehicle would be unreasonable.); State v. Holmes, 569 N.W.2d 181 (1997); Florida v. Wells, 495 U.S. 1, 3-4 (1990); U.S. v. Frank, 864 F.2d 992, 1003 (3d Cir. 1988); 3 LaFave, Search and Seizure § 7.4(a), at 76 (2d ed. 1987) (vehicles may be impounded as evidence of crime; if subject to forfeiture; for safe keeping; if illegally parked or if the vehicle is unsafe and poses a danger to the public.); Ideally, the occasions when a car may be impounded will be listed in the standard departmental inventory policy. The following list includes most of the occasions when an impoundment will be reasonable: (1) Vehicles that are illegally stopped, parked or abandoned; (2) Vehicles that have been disabled in an accident and must be removed to insure the uninterrupted flow of traffic; (3) Stolen vehicles which officers recover; (4) When a vehicle belonging to the arrestee or in his/her possession has been used to commit a felony or gross misdemeanor; (5) When a vehicle belonging to the arrestee or in his/her possession at the scene of the arrest cannot be properly safeguarded or there is no responsible person available to protect the vehicle.

9 Florida v. Wells, 495 U.S. 1, 5 (1990) (Our view that standardized criteria or established routine must regulate the opening of containers found during inventory searches is based on the principle that an inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence.); U.S. v. Taylor, 636 F.3d 461 (8th Cir. 2011) (finding an investigatory purpose by a haphazard inventory search that listed drug paraphernalia as “misc. tools” because it failed to follow the standardized policy.).


11 Id, State v. Ture, 632 N.W.2d 621 (2001);

12 Florida v. Wells, 495 U.S. 1, 4 (1990) (“For example, a policy that gives officers discretion not to open a container if the contents could be ascertained from examining the container’s exterior, would be permissible.”).
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13 Florida v. Wells, 495 U.S. 1, 4 (1990); U.S. v. Davis, 882 F.2d 1334, 1339 (8th Cir. 1989) (an inventory search is not constitutionally reasonable, however, merely because it serves important governmental interests. To pass constitutional muster, the search also must be conducted pursuant to standard police procedures.); Colorado v. Bertine, 479 U.S. 367 (1987).

14 3 Wayne R. LaFave, Search and Seizure § 7.4(a) (at 657 (4th ed. 2004) (citing South Dakota v. Opperman, 428 U.S. 364 (1976)) (“the case quite conclusively indicates that a majority of the Court would not approve of (examination) as part of the routine vehicle inventory process . . . the four dissenters agreed that ‘the police would not be justified in sifting through papers secured under the procedure employed here.’”); 3 Wayne R. LaFave, Search and Seizure § 7.5(a), at 677 (4th ed. 2004) (citing U.S. v. Hunt, 366 F. Supp. 172 (N.D. Tex. 1973)) (finding an audio tape’s contents not to be in plain view and not essential to the inventory process, therefore finding their playing of the tape to be invalid.).

15 State v. Huber, 2007 WL 48884 (Minn. Ct. App. 2007) (upholding suppression of evidence found behind a loose speaker because it was not included in standard police procedure, and the reason behind the traffic stop was not contraband-related.); U.S. v. Kennedy, 427 F.3d 1136 (8th Cir. 2005) (upholding suppression of evidence found behind a speaker because it would not have come up under a regular inventory search and information was too stale to support probable cause.); U.S. v. Best, 135 F.3d 1223 (8th Cir. 1998) (upholding suppression of contraband (assuming defendant had standing) found within door panels since inventory policy excluded door panels and shining flashlight did not serve purpose of protection of the vehicle or its contents, therefore search exceeded scope; see Michigan v. Thomas, 458 U.S. 259 (1982) (finding a discovery of contraband within the glove compartment could give probable cause to search the vehicle’s air vents under the dashboard.).

16 See Florida v. Wells, 495 U.S. 1, 1635 (1990); South Dakota v. Opperman, 428 U.S. 364, 369-71 (1976) (These caretaking procedures have almost uniformly been upheld by the state courts, which by virtue of the localized nature of traffic regulation have had considerable occasion to deal with the issue. Applying the Fourth Amendment standard of “reasonableness,” the state courts have overwhelmingly concluded that, even if an inventory is characterized as a “search,” the intrusion is constitutionally permissible.”); FBI, LEGAL HANDBOOK FOR SPECIAL AGENTS §§-6.4 (2003) (items of personal property removed from a person who has been arrested and is to be incarcerated should be carefully inventoried by Agents prior to being stored for safekeeping. A receipt for such property should be prepared and given to the arrestee. This inventory should include the contents of containers . . . whether or not such containers are locked or sealed. In the event such containers are locked or sealed great care must be taken to minimize damage to the container or its contents while gaining access. This caretaking function must not be construed as an alternative to a search warrant whenever there is probable cause to believe that evidence or contraband is inside a container. Under those circumstances the container should be secured until a search warrant can be obtained.).

17 U.S. v. Hall, 497 F.3d 846, 853-854 (8th Cir. 2007) (upholding search in trunk of car following standard procedures, even when police informed of potential contraband in the vehicle beforehand: provided that the search is conducted according to standard procedures, officers “may keep their eyes open for potentially incriminating items that they might discover in the course of an inventory search, as long as their sole purpose is not to investigate crime.”); Horton v. California, 496 U.S. 128 (1990); Colorado v. Bertine, 479 U.S. 367 (1987); U.S. v. Arango-Correa, 851 F.2d 54, 59 (2d Cir. 1988); State v. Rodewald, 376 N.W.2d 416 (Minn. 1985) (“A search must be upheld, at least as a matter of federal constitutional law, if there was a valid ground for the search, even if the officers conducting the search based the search on the wrong ground or had an improper motive.”).

18 State v. Hollins, 2008 WL 2102616 (Minn. Ct. App. 2008) (upholding a second inventory search that produced a handgun due to probable cause, distress from the victim, and specific information from that victim.); 3 LaFave, Search and Seizure § 7.4, at 27 (2d ed. 1993); Cooper v. California, 386 U.S. 58 (1967) (upholding inventory search occurring one week after vehicle seized for forfeiture.).


20 Illinois v. Lafayette, 462 U.S. 640, 647 (1983) (upholding search of shoulder bag as part of inventory search even when less intrusive means were available.).

21 Id.; See also City of St. Paul v. Myles, 218 N.W.2d 697, 699 (Minn. 1974); State v. Goodrich, 256 N.W.2d 506, 511 (Minn. 1977).

22 State v. Bredemus, 2010 WL 4286207 (Minn. Ct. App. 2010) (upholding inventory search conducted under police policy that allowed discretion and where no arrangements were made by the owners to secure the vehicle through alternative means); State v. Goodrich, 256 N.W.2d at 511 (Minn. 1977); (the defendant had made arrangements which reasonably assured the safety of his vehicle and property (i.e. brother and sister were going to drive vehicle home.). Because the impoundment of the vehicle was unnecessary to protect the contents of the car, the impoundment was unreasonable and the later inventory search violated the owner's Fourth Amendment rights.); State v. Robb, 605 N.W.2d 96, 104 (Minn. 2000) (The Minnesota Supreme Court cited to State v. Goodrich, which held that an inventory search was not permissible when the driver had made alternative arrangements for the disposition of his vehicle which was parked on private property.).

23 U.S. v. Betterton, 417 F.3d 826 (8th Cir. 2005) (allowing inventory search without written policy based on public safety: “the absence of a written policy controlling the decision to impound a vehicle does not automatically render an inventory search unconstitutional. While a written policy may be preferable, testimony can be sufficient to establish police impoundment procedures.”); Florida v. Wells, 495 U.S. 1 (1990); 3 LaFave, Search and Seizure § 7.4(a), at 645-46 (4th ed. 2004) (“Bertine has not been read as requiring these procedures to be in writing, though that is to be sure the better practice.”); State v. Ture, 632 N.W.2d 621 (Minn. 2001) (upholding an unwritten policy and inventory search, even when it excluded some items, because the “existence of standard inventory procedures, as well as compliance with those procedures, may be established through testimony and does not require admission of the policy itself into evidence”); U.S. v. Petty, 367 F.3d 1009, 1012 (8th Cir. 2004) (an impoundment policy may allow some latitude and exercise of judgment by a police officer when those decisions are based on “legitimate concerns related to the purposes of an impoundment.”); See also, State v. Bredemus, No. A09-1662, 2010 WL 4286207 (Minn. Ct. App. Nov. 2, 2010) (unpublished opinion) (warrantless search of a vehicle pursuant to inventory search exception lawful despite not producing written policy where officer testifies as to existence of policies and compliance therewith.).

24 U.S. v. Kimhong Thi Le, 474 F.3d 511 (8th Cir. 2007) (upholding a search of duffle bags in an overturned and abandoned rental SUV as part of a standard procedure.).

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25 *U.S. v. Ford*, 872 F.2d 1231 (6th Cir. 1989) (upholding a search of a jacket’s pockets that was located in the back seat.).

26 3 LaFave, Search and Seizure § 7.4(a), at 116 (2d ed. 1987).

27 *United States v. Pace*, 898 F.2d 1218 (7th Cir. 1990) (upholding search of record books and receipts since criminal nature readily apparent and search was initially done to check for items stuck within its pages); *United States v. Khoury*, 901 F.2d 948 (11th Cir. 1990) (upholding inspection of spiral notebook within briefcase); *Illinois v. Lafayette*, 462 U.S. 640 (1983); *State v. Rodewald*, 376 N.W.2d 416 (Minn. 1985) (holding an over intrusive search of a wallet did not mean a finding of contraband, which would have been found under a nonintrusive search, could be suppressed); *South Dakota v. Opperman*, 428 U.S. 364, 380 n.7 (1976).

28 3 LaFave, Search and Seizure § 7.4(a), at 112 (2d ed. 1987) at 31 n.73 (2d ed. 1994 supplement); *See U.S. v. Pappas*, 452 F.3d 767 (8th Cir. 2006) (upholding the search of an engine compartment since a bullet was found on the defendant’s person, allowing police to search any compartments that could hold a gun under standard procedures, even when the proper form was destroyed before trial.).
## CHAPTER 6
### PROTECTIVE WEAPONS SEARCH

### 6.1 WHAT IS THE GENERAL RULE?

1. **General Rule For Persons:** Following a lawful investigative stop, if a peace officer has a reasonable suspicion that the suspect is armed and dangerous, the officer may conduct a carefully limited pat-down search of the suspect's outer clothing in an attempt to discover weapons which might be used to assault the officer or others nearby.\(^1\) The purpose for the limited search is not to discover evidence of a crime, but to allow the officer to pursue his investigation without fear of violence. The right to frisk a person also includes the area within the person's immediate control (i.e. the area from which the person might gain possession of a weapon).\(^2\)

2. **General Rule For Motor Vehicles:** Following a lawful investigative stop of a motor vehicle, if a peace officer has a reasonable suspicion that the vehicle contains weapons that may be dangerous to the officer, the officer may conduct a warrantless search of the passenger compartment area, including those areas from which the driver or occupant could seize a weapon and harm the officer after re-entering the vehicle.\(^3\)

3. **Burden of Proof - Objective Standard:** The standard for applying the protective weapons search exception is reasonable suspicion, not probable cause. The facts surrounding the reasonableness of a protective weapons search are reviewed against an objective standard: would a person of reasonable caution, having the facts available to the officer at the time of the search, believe that the action taken was appropriate? The inquiry, therefore, is whether a reasonably prudent person under the same circumstances would believe that his or her safety was in danger.\(^4\) Whether the officer has acted reasonably depends on the "specific reasonable inferences" which the officer can draw from the facts in light of his or her experiences.\(^5\) Because the test is an objective, rather than a subjective one, there is no requirement that the officer actually be in fear\(^6\). In addition, even if the officers conducting the search base the search on the wrong ground or have an improper motive, the search will be upheld as long as there is a valid objective basis for the search. However, the police, by their own conduct, must demonstrate a concern for their own safety.\(^7\)

**Note – Permit to Carry Pistol:** Minn. Stat. § 624.714 Subd 1a, provides that anyone having a firearm in a public place, including a motor vehicle, may be prosecuted for a gross misdemeanor if he has no permit to carry the firearm.\(^8\) A permit holder must have in his or her possession the permit to carry at all times when carrying a pistol and must display the permit card and identification documents upon lawful demand of a peace officer.\(^9\) The existence of a permit is not an element of the crime, rather it is an affirmative defense.\(^10\) Therefore, peace officers are NOT required to determine proactively whether the detainee has a permit to carry a pistol before conducting a protective weapons search.\(^11\) However, if the detainee provides proof that he has a permit to carry, the burden would shift back to the state to establish a reasonable suspicion based on other or additional factors that would justify a protective weapons search.

4. **Non-Exhaustive Factors to Consider in Justifying the Search:** Factors which may be considered in determining whether reasonable grounds exist to justify a protective weapons search include, but are not limited to:
   a) suspect's appearance and actions;
   b) officer's prior knowledge of the suspect;
   c) the location of the stop and the time of day;
   d) the officer's purpose in making the stop;
e) whether the officer reasonably suspects he is in danger of physical injury by virtue of the defendant being armed.\textsuperscript{12}

f) whether or not the suspect has companions, etc.

\textbf{Note:} As a general rule, courts have been inclined to view the right to pat-down as automatic whenever a suspect has been stopped for types of crimes for which the offender would likely be armed, including robbery, burglary, rape, assault with weapons, homicide, and dealing large quantities of narcotics.\textsuperscript{13}

\section*{5. Scope of Pat-down Search (frisk) of a Person:} Since the sole justification for the protective weapons search is the protection of the peace officer and others nearby, it must be confined in scope to an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments that could be used to assault the officer.\textsuperscript{14} The pat-down search (frisk) must be limited to a careful exploration of the outer areas of the suspect's clothing, unless the officer feels an object thought to be a weapon and then reaches into the suspect's clothing to recover that object. If the object felt is hard, then the question is whether its "size or density" is such that it might be a weapon. As a general rule, most courts allow leeway whenever officers feel a hard object of substantial size when its precise shape or nature is not discernible through clothing.\textsuperscript{15} For example, many jurisdictions have upheld as proper, searches that turned up certain objects other than guns or knives, such as: a corn cob pipe;\textsuperscript{16} a prescription bottle;\textsuperscript{17} a 6-inch long test tube;\textsuperscript{18} a pocket tape recorder;\textsuperscript{19} a pair of pliers;\textsuperscript{20} a cigarette lighter;\textsuperscript{21} and several keys taped together.\textsuperscript{22} However, searches have been held illegal when involving loose keys on a ring;\textsuperscript{23} or cigarette packs.\textsuperscript{24}

\textbf{Note: Caps and Hats:} The Minnesota Court of Appeals has held that a cap or hat should not be removed from a suspect's head during protective weapons search unless a pat-down reveals a weapon there.\textsuperscript{25}

\textbf{Note: Potential Civil Liability:} Some officers will intentionally exceed the scope of a lawful pat-down search hoping to find illegal contraband. Even though they know the evidence will not be admissible against the defendant, they may feel they are performing a public service by removing or destroying the contraband. Officers should be aware that the practice of knowingly and intentionally violating a person's Fourth Amendment rights (i.e. the right to be free from unreasonable searches and seizures) potentially exposes them and their department to possible liability under the federal civil rights statutes.

\section*{6. Opening Containers Found in Suspect's Possession:} What if, during a protective weapons search, officers find a closed container that is near or on the suspect's person, or in his or her possession? Is it permissible for the officer to open the container and examine the contents? As a general rule, the answer is yes, but depends on the circumstances and if there is a reasonable suspicion of danger.\textsuperscript{26} Generally, the officer who removes an object in a weapons search should be permitted to open the object unless it is clear upon observing or feeling it that it is not a weapon and does not contain a weapon.\textsuperscript{27} The right to frisk a person ordinarily includes the area within the suspect's immediate control (i.e. the area from which he might gain possession of a weapon), and depending on the circumstances, as long as there is a reasonable suspicion of danger, the search of a container is likely to be permitted.\textsuperscript{28} The court will also consider whether, under the circumstances, the officer can effectively protect himself from any risk should the container contain a weapon by removing it from the suspect's reach during the duration of the stop. However, if the officer reasonably suspects the possibility of harm by returning an unexamined container, the officer must be allowed to "inspect the interior of the item before returning it."\textsuperscript{29} The officer should make this determination based upon the size, weight, and feel of the container. Whether such suspicion exists depends upon the particular circumstances, not the least of which would be whether the suspected weapon is a pistol.\textsuperscript{30} If the stop is concluded by release rather than arrest, then, as a general proposition, it would seem unlikely the suspect would at that point attack the officer. But if the circumstances are extreme and the container is suspected of having a gun inside, then such a search is likely to be justified.\textsuperscript{31} However, a frisk is not an excuse for an exploratory search and does not give license for the opening of a container when there is no likelihood that the container holds a weapon.\textsuperscript{32}
7. Scope of Motor Vehicle Search: Although the United States and the Minnesota Supreme Courts hold that a protective weapons search may include "the passenger compartment of an automobile limited to those areas in which a weapon may be placed or hidden," it is unclear how far officers can go in searching the passenger compartment and items such as containers found inside the vehicle. If a suspect, at the time he is approached by the investigating officer, is too far away from his or her vehicle to have an opportunity to conceal weapons in it, the vehicle may not be searched to ensure the officer's safety. There are no United States Supreme Court or Minnesota Supreme Court decisions that have addressed the search of closed containers found inside a motor vehicle during a protective weapons search. The furthest the United States Supreme Court has gone is to allow officers to look inside an open leather pouch found next to the front seat. The furthest the Minnesota Supreme Court has gone is to allow officers to search the area underneath and around the driver's seat. However, under extreme circumstances (i.e., usually cases involving drugs, crimes of violence or suspected firearms), a number of other jurisdictions have upheld protective weapons searches of closed containers found inside a motor vehicle such as a locked and unlocked glove box, cooler, the center console, under the seat, and a purse. In at least one state, a locked trunk was searched. Conducting a search in reliance on current legal precedent provides strong support for upholding the search.

8. Plain Feel (probable cause) Exception: As a general rule, during a protective weapons search, officers should not take any item from the suspect other than items that the officer reasonably believes to be a weapon. In other words, if an officer, during a pat-down search, feels a soft object or a small hard object that cannot possibly be a weapon, the officer is not permitted to satisfy his or her curiosity by reaching inside the clothing to determine what the object is. However, assuming the object discovered in the pat-down search does not feel like a weapon, this only means that a further search is not justified under the protective weapons search exception. There remains the possibility that the feel of the object, alone or together with other suspicious circumstances, may amount to probable cause that the object is contraband or some other item subject to seizure, in which case there may be a further search based upon that probable cause. For example, if, during the course of a pat-down search, an officer feels (rather than observes) an object that the officer can immediately identify as contraband (e.g., "dime bag" of marijuana, cocaine bundle, crack cocaine, etc.), the officer can reach inside the clothing and seize the object without a warrant under the "plain feel" (probable cause) search exception.

Note – One Feel Rule: You can think of it as the "one feel rule" - during a pat-down search, an officer has the right to feel objects inside the suspect's clothing to determine whether they could be weapons. If, from that one feel, an officer can immediately determine the object is contraband, then the "plain feel" doctrine applies and the object can be seized without a warrant. However, once it is determined that the object is not a weapon, officers cannot continue to feel the object in an attempt to identify what it is. Continuing to feel or search through a defendant's pocket, after concluding that it contains no weapon, exceeds the scope of a lawful pat-down search and would be considered unreasonable under the Fourth Amendment.

6.2 VIGNETTE #8: DANGEROUS OCCUPANT

FACTS

1. A vehicle, occupied by a lone male driver, turns a corner at a high rate of speed and almost strikes a squad car.
2. The officer stops the vehicle and asks the driver for his driver’s license.
3. As the officer is standing by the driver’s door, he observes, in plain view on the front passenger floor, a knife, an empty holster and what appears to be a bullet clip for a gun.

4. The driver is removed from the vehicle, he is told that he is not under arrest but is being handcuffed for officer safety and is frisked for weapons. No weapons are found on the driver’s person.

5. The officer then enters the vehicle for the purpose of conducting a warrantless protective weapons search (i.e. looking for the gun that goes with the empty holster).

6. Within reaching distance of the driver’s seat officers locate a fanny pack, miscellaneous clothing, a metal stamp container containing a hard object, a cigarette pack and a plastic film container. Officers also locate on the back seat a large cardboard box containing a much smaller paper bag which visually appears to be empty.

Note: The driver is approximately six feet tall and weighs 200 pounds. He is shabbily dressed in motorcycle leather, has an ominous appearance and is clearly irritated at being stopped.

6.3 CAN THE VEHICLE BE SEARCHED WITHOUT A WARRANT?

ANSWER: Yes

However, the search must be strictly limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby.

Under the protective weapons search exception, following a lawful motor vehicle stop, a search of the passenger compartment area, limited to the area in which a weapon may be placed or hidden, is permissible if the officer possesses a reasonable suspicion, based on specific and articulable facts which, when taken together with the rationale inferences from those facts, reasonably warrant the officer in believing that the suspect is dangerous and, upon re-entering the car, could seize a weapon and harm the officer.

6.4 CAN THE PASSENGER COMPARTMENT AREA BE SEARCHED?

ANSWER: Yes

However, the protective weapons search should be limited to those areas in which the driver would generally have immediate control over and from which he could obtain a weapon. These clearly include any part of the passenger compartment within reach of the driver's seat and could extend, depending on the circumstances and the type of weapon involved, to the general area of the back seat and floor. How far beyond the immediate area of the driver's seat a protective weapons search can go will depend on the facts and circumstances of each case (i.e. the court will apply an objective reasonable person standard).

Note: The permissible scope of the search would not include areas within the passenger compartment too small to reasonably hold the types of weapons that would pose a danger to the officer if the driver and/or occupants were released and allowed to re-enter the vehicle.
6.5 CAN A FANNY PACK BE SEARCHED?

**ANSWER: Yes**

In the above example, because the fanny pack was located on the front seat within reach of the driver's seat and because the pack was capable of holding or hiding a weapon (i.e. a handgun), a carefully limited search of the pack would appear to be reasonable. However, only those compartments large enough to hold or hide a weapon (i.e. a handgun) would be subject to search. If the fanny pack has side compartments that are too small to reasonably hold a weapon, a search of those areas would exceed the scope of a protective weapons search. In addition, before officers can open the fanny pack (or any other soft container), they should first feel (frisk) the outside of the container to determine if it might contain a weapon.

**Note: Firearms:** Courts will usually give officers more leeway in conducting a protective weapons search when the suspect weapon is a firearm because of the greater danger to officers.

**Note: Razor Blades:** As a general rule, Minnesota Courts have been reluctant to recognize the possibility that an object may contain a razor blade (or other small weapon) as a justification for a protective weapons search of that object.\(^{51}\)

6.6 CAN MISCELLANEOUS CLOTHING BE SEARCHED?

**ANSWER: Yes**

In the above example, because the clothing (i.e. jacket, etc.) was located on the front passenger floor within reach of the driver's seat and because the clothing was capable of holding or hiding a weapon (i.e. a handgun), a carefully limited search of the outer clothing would be appropriate. However, before officers could reach inside the clothing or into pockets, etc., they should first feel (frisk) the outer clothing to determine if it might contain a weapon.

6.7 CAN THE GLOVE BOX, PHONE AND ASHTRAY BE SEARCHED?

**ANSWERS: GLOVE BOX - Yes  
PHONE and ASHTRAY - No**

**Glove Box:** In the above example, because the glove box is located within reach of the driver's seat and because the glove box is capable of holding or hiding a weapon (i.e. a handgun), a strong argument can be made that searching an unlocked glove box or other nearby unlocked containers is a reasonable part of a motor vehicle protective weapons search.\(^{52}\)

**Note:** If the glove box or other container is locked, see § 6.10.

**Phone and Ashtray:** Because most car phones and ashtrays are generally too small to reasonably hold the type of weapon (i.e. handgun) that would pose a danger to officers if the driver and/or occupants were released and allowed to return to the vehicle, a search of those areas would most likely exceed the scope of a protective weapons search.
6.8 CAN SMALL CONTAINERS BE SEARCHED?

**ANSWER:** Yes and No

It depends on the size, nature, and location of the container and what would be reasonable under the particular circumstances. If the unlocked container is so small that it could not reasonably hold the type of weapon that could be used to harm the officers, then a search of the container would exceed the scope of a protective weapons search. However, if the container is within reach of the driver's seat and is large enough to hold such a weapon, then a search of the object would appear to be reasonable. The touchstone in analyzing a warrantless search is always the reasonableness of the officer’s actions in light of the facts and circumstances of the particular case.

**Note:** See footnote 30 for additional examples of closed container searches found on or near a person subject to a protective weapons search not involving a motor vehicle.

**Note:** In the above example, because the metal stamp container was within reach of the driver's seat and was capable of concealing a weapon (i.e. possibly a small caliber handgun) and did, in fact, contain a hard metal object, a search of that container would appear to be reasonable. However, because the other two containers in the example (i.e. cigarette pack and plastic film container) are too small to reasonably hold such a weapon, a search of those containers would exceed the scope of a protective weapons search.

6.9 CAN LARGE CONTAINERS BE SEARCHED?

**ANSWER:** Yes and No

It depends on the size, nature, and location of the container and what would be reasonable under the particular circumstances. If the container is unlocked, could reasonably hold the type of weapon that could harm the officers, and is within reach of the driver's seat, then a search of that container would appear to be reasonable. The touchstone in analyzing any warrantless search is always the reasonableness of the officer's actions in light of the facts and circumstances of the particular case.

**Note:** See endnote 31 for examples of closed container searches found on or near a person subject to a protective weapons search not involving a motor vehicle.

**Note:** In the above example, because the cardboard box on the back seat was capable of holding a weapon and was within reach of the driver's seat, a search of the box would appear to be reasonable. However, a search of the paper bag found inside the cardboard box would clearly exceed the scope of a protective weapons search because the officer could tell, by feeling (frisking) the outside of the bag, that it did not contain a weapon.

**Note:** The further away from the driver's seat the object to be searched is located, the less of a threat it poses to an officer, even if the driver is released and allowed to re-enter the vehicle. How far an officer can go in conducting a motor vehicle protective weapons search depends upon the facts and circumstances of the particular case. Whether the vehicle is occupied by one or more occupants is always an important factor to consider in assessing the scope and reasonableness of a protective weapons search.
6.10 CAN LOCKED CONTAINERS BE SEARCHED?

**ANSWER:** Maybe, if there is a reasonable suspicion of danger

As a general rule, the scope of a protective weapons search may be expanded to include locked containers, provided there is a reasonable suspicion of danger, judged by an objective standard.\(^53\) There are no United States Supreme Court or Minnesota Supreme Court decisions that have addressed the search of closed (locked or unlocked) containers found inside a motor vehicle during a protective weapons search. There are, however, several federal jurisdictions (including the 8th Circuit Court of Appeals) that have upheld the search of a locked glove compartment during a protective weapons search.\(^54\) The rationale for permitting such a search is that "if the suspect is not placed under arrest, he will be permitted to re-enter his automobile and he will then have access to any weapons inside."\(^55\)

6.11 CAN BOOKS AND PAPERS BE SEARCHED?

**ANSWER:** No

Because books and papers cannot reasonably hold or conceal the type of weapon that could be used to harm the officer, a search of those objects would exceed the scope of a protective weapons search.

**Note:** However, some containers large enough to conceal a handgun could be disguised to look like a book.

6.12 CAN THE TRUNK AREA BE SEARCHED?

**ANSWER:** No

Because the trunk area is not considered part of the passenger compartment area, it is not subject to search under the protective weapons search exception.

**Note:** If, however, officers have a reasonable suspicion that someone is hiding in the trunk that might quickly emerge or shoot at them through the opening of the trunk, a search of that area would then fall within the scope of a protective weapons search.\(^56\)
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ENDNOTES:

1 State v. Wiggins, 788 N.W.2d 509, 515 (Minn. Ct. App. 2010); See 4 LaFave, SEARCH AND SEIZURE §9.6(a), 621 (4th ed. 2004) (articulating the Terry standard: “a protective search is permissible when there is reason to believe the suspect may be armed and dangerous.”); State v. Varnudo, 582 N.W.2d 886-90 (Minn. 1998); State v. Egggersgless, 483 N.W.2d 94, 97 (Minn. Ct. App. 1992) (“it is not a sufficient basis to assume that the presence of a weapon is always possible.”); State v. Crook, 485 N.W.2d 726 (Minn. Ct. App. 1992) (holding a hat should not be removed unless prior patdown reveals a weapon); Terry v. Ohio, 392 U.S. 1 (1968) (allowing the pat-down and plain-feel discovery of a firearm, even when suspect appeared nonthreatening, since officer reasonably believed an armed robbery was about to start.); State v. Gobely, 366 N.W.2d 600, 602 (Minn. 1985) (in a non-motor vehicle case, court upheld frisk of robbery suspect which included opening a closed jewelry box found on his person which uncovered stolen jewelry. Opening the closed jewelry box in defendant’s possession upheld as a valid protective weapons search.); State v. Payne, 406 N.W.2d 511, 513 (Minn. 1987) (holding that the right of officers to search is not an automatic sequel to a valid stop); Pennsylvania v. Minno, 434 U.S. 106 (1977) (allowing pat down of suspect of a minor traffic offense due to significant bulge in jacket); Coolidge v. New Hampshire, 403 U.S. 443, 466 (1971) (admitting evidence observed in plain view during a lawful pat-down search under the plain view doctrine.); U.S. v. Davis, 202 F.3d 1060 (8th Cir. 2010) (“The danger to officer safety that justifies a protective search may arise after a consensual encounter or investigative stop has commenced.”).

2 U.S. v. Johnson, 637 F.2d 532 (8th Cir. 1980) (allowing removal of a duffel bag featuring a protrusion, which turned out to be a sawed-off shotgun.); U.S. v. Poms, 484 F.2d 919 (4th Cir. 1973) (holding all companions of the arrestee within the immediate vicinity that are capable of accomplishing a harmful assault on the officer are constitutionally subject to the cursory “pat-down” reasonably necessary to give assurance that they are unarmed.); Adams v. Williams, 407 U.S. 143 (1972) (allowing removal of a handgun from suspect’s waistband by reaching into the passenger compartment due to prior informant testimony.).

3 State v. Waddell, 655 N.W.2d 803, 810 (Minn. 2003). In Waddell, the Minnesota Supreme Court applied Michigan v. Long, 463 U.S. 1032, 103 S. Ct. 3469 (1983), holding that “[a] protective search of the passenger compartment of the vehicle, limited to those areas in which a weapon may be placed or hidden, is permissible if the officer possesses a reasonable belief, based on specific and articulable facts, that the suspect is dangerous and may gain immediate control of a weapon”; U.S. v. Ivery, 427 F.3d 69 (1st Cir. 2005) (upholding a search because there existed a reasonable expectation of danger, even when one reason was later discounted.); State v. Robb, 605 N.W.2d 96 (Minn. 2000) (holding a search invalid because suspect was not an occupant of the vehicle by being removed from the vehicle and was under the control of the arresting officers, and the circumstances did not indicate danger.); U.S. v. Brown, 133 F.3d 993 (7th Cir. 1998) (upholding search of brown bag on floor of passenger compartment due to presence of shiny chrome object which turned out to be a .44 Magnum.); State v. Baugh, No. C0-93-1066 (Minn. Ct. App. Jan. 11, 1994) (unpublished opinion) (the Court of Appeals held that the defendant’s actions in hunching over to do something with his hands on two occasions following a valid traffic stop, even after being instructed by officers to keep hands up where the officer could see them, justified the pat-down search which led to the discovery of a baggie of drugs between defendant’s sock and his shoe.); State v. Proft, No. C9-96-701 (Minn. Ct. App. Jan. 14, 1997) (unpublished opinion.) (the passenger’s “furtive movements” provided an objective basis for the officer’s belief that he posed a potential danger and might be carrying a weapon justifying the pat-down search which led to a paper bag containing gold chains strapped inside his waistband); But see State v. Figaro, No. A07-1369 (Minn. Ct. App. Jan. 28, 2008) (unpublished opinion) (illegal frisk of passenger in vehicle because police lacked reasonable suspicion that passenger in vehicle was armed and dangerous.); Wold v. State, 430 N.W.2d 171 (Minn. 1988) (allowing frisk of defendant who was present at the scene while victim was being treated by a paramedic.); State v. Stimpert, 370 N.W.2d 473 (Minn. Ct. App. 1985) (allowing further search of vehicle interior based upon open bottle violation.); Michigan v. Long, 463 U.S. 1032 (1983) (allowing search of passenger areas within immediate control when reasonable belief (presence of a hunting knife and intoxicated state of defendant) of danger was present.).

4 Terry v. Ohio, 392 U.S. 1 (1968); State v. Crook, 485 N.W.2d 726 (Minn. Ct. App. 1992); U.S. v. Cox, 942 F.2d 1282 (8th Cir. 1991) (allowing search under driver’s compartment because specific defendant that brandished firearm, door was partially ajar, and intrusion was minimal because defendant was outside vehicle.); U.S. v. Davis, 569 F.3d 813 (8th Cir. 2009) (allowing a search under Gant because intoxicated passengers who outnumbered police officers were near a vehicle with a noticeable smell of marijuana and had empty beer bottles.); But see Arizona v. Gant, 556 U.S. 332 (2009) (holding no danger that could justify a search when suspect was arrested and in the back of a patrol car.).

5 Supra note 4; State v. Egggersgless, 483 N.W.2d 94, 97 (Minn. Ct. App. 1992) (Listing circumstances creating reasonable suspicion which include bulge in clothing, threat to officer, sudden or furtive movement toward place where a weapon could be concealed.); State v. Alessio, 328 N.W.2d 685, 688 (Minn. 1982) (suspect’s furtive movement was a key factor justifying a pat-down search for weapons.); State v. Lamar, 382 N.W.2d 226, 230 (Minn. Ct. App. 1986), review denied (Mar. 27, 1986) (defendant’s “quick movement” was important in providing the requisite suspicion for a pat-down search.).

6 U.S. v. Plummer, 409 F.3d 906, 909 (8th Cir. 2005) (“The test for reasonableness is an objective one…In the Eighth Circuit, the validity of a protective search does not depend upon the searching officer actually fearing the suspect is dangerous; rather, such a search is valid if a hypothetical officer in the same circumstances could reasonably believe the suspect is dangerous.”).

7 State v. Payne, 406 N.W.2d 511, 513 (Minn. 1987) (finding an officer’s brief delay does not invalidate a pat-down search if the circumstances supporting the search have not dissipated between the initiation of the stop and the time of the search.); State v. Plesa, 329 N.W.2d 329, 332 (Minn. 1983); Wold v. State, 430 N.W.2d 171, 174 (Minn. 1988); State v. Lothenbach, 296 N.W.2d 854 (Minn. 1980); State v. Gilchrist, 299 N.W.2d 913 (Minn. 1981) (the touchstone of the court’s analysis under the Fourth Amendment is always "the reasonableness" of the particular warrantless search and whether the officer is able to point to specific and articulable facts which justify the action taken.); New York v. Class, 475 U.S. 106 (1986) (allowing seizure of weapon after unobstructive search to uncover VIN number for safety concerns.).

8 Minn. Stat. § 624.714, Subd. 1a.

9 Minn. Stat. § 624.714, Subd. 1b requires “the holder of a permit to carry must have the permit card and driver’s license, state identification card, or other government-issued photo identification in immediate possession at all times when carrying a pistol and must display the permit card
and identification document upon lawful demand of a peace officer…a violation of this paragraph is a petty misdemeanor."

10 *State v. Timberlake*, 744 N.W.2d 390, 396 (Minn. 2011) (a report from a reliable informant that defendant was carrying a gun in a motor vehicle furnished police officers with a reasonable suspicion that defendant was engaged in criminal activity, so as to justify an investigatory stop. Because the nonexistence of a permit is not an element of the offense, the burden of providing evidence of a permit to carry is on the defendant, not the officer.); *State v. Williams*, 794 N.W.2d 867, 872 (2011).

11 *State v. Williams*, 794 N.W.2d at 871 (police officer had probable cause to arrest defendant after observing defendant possessed a pistol in a public place during a lawful investigatory stop related to an armed robbery report. Officer was under no obligation to ask defendant if he had a permit for the pistol before making the arrest.).

12 4 LaFave, SEARCH AND SEIZURE §9.4(e), at 467 (4th ed. 2004) ("As for a Terry-type 'forcible stop and detention,' there must be 'a reasonable suspicion that a particular person has committed, is committing or is about to commit' an offense. Unlike the preceding two types of intrusions, this one also permits a frisk if the officer reasonably suspects that he is in danger of physical injury by virtue of the detainee being armed.")

13 *State v. Johnson*, 444 N.W.2d 824, 827 (Minn. 1989) (one circumstance giving rise to reasonable suspicion to justify a pat-down is evasive conduct.); *State v. Payne*, 406 N.W.2d 511, 513 (Minn. 1987); *Wold v. State*, 430 N.W.2d 171 (Minn. 1988); *State v. Lunde*, 350 N.W.2d 355 (Minn. 1984); *State v. Lamar*, 382 N.W.2d 226 (Minn. Ct. App. 1986).


15 *State v. Crook*, 485 N.W.2d 726 (Minn. Ct. App. 1992); *State v. Gannaway*, 191 N.W.2d 555 (Minn. 1971); *State v. Bitterman*, 232 N.W.2d 91 (Minn. 1975); *State v. Cavegn*, 294 N.W.2d 717 (Minn. 1980).

16 *Gannaway*, 191 N.W.2d at 555.

17 *Bitterman*, 232 N.W.2d at 91.


20 *State v. Flynn*, 285 N.W.2d 710 (Wis. 1979).

21 *State v. Swaite*, 656 P.2d 520 (Wash. 1982).


25 4 LaFave, SEARCH & SEIZURE § 9.6(e) at 665 (4th ed. 2004) ("To permit officers to exceed the scope of a lawful pat-down whenever they feel a soft object by relying upon mere speculation that the object might be a razor blade concealed in a handkerchief, a "sap," or any other atypical weapon would be to hold that possession of any object, including a wallet, invites a plenary search of an individual's person. To allow a search for anything which could under some circumstances be employed as a weapon would be to permit a search just as intrusive as that which can be made incident to a custodial arrest, except in the rare case in which the suspect's pockets are entirely empty. For example, something of the size and flexibility of a razor blade could be concealed virtually anywhere, and accordingly provide the pretext for any search, however thorough. In determining what objects might be a weapon; consideration must be given to what types of objects could be so employed in the setting of the particular case. Generally speaking, it may be said that certain items which might be employed as weapons in a surprise attack from the rear would not be effective during the face-to-face encounter of a field interrogation. And in a particular situation, it may be apparent that a particular type of weapon would be of no use because of the superior police presence."); *State v. Crook*, 485 N.W.2d 726 (Minn. Ct. App. 1992) (the court concluded that a pat-down search would have revealed a weapon, such as a gun or knife, through the material of the cap and that a smaller weapon that would not be revealed through this method, such as a razor blade, would not present a harm or danger.); *U.S. v. Del Toro*, 464 F.2d 520 (2d Cir. 1972) (suppressing a finding of a razor blade in a folded dollar bill since no reasonable suspicion of a weapon could be aroused.).

26 *State v. Alessio*, 328 N.W.2d 685 (Minn. 1982) (generally, the officer who removes an object in a weapons search should not be permitted to open the object if it is clear upon observing it that it is not a weapon and does not contain a weapon.); *State v. Krenik*, 774 N.W.2d 178 (Minn. Ct. App. 2009) (allowing search of box in defendant's pocket because it was large enough to contain a weapon and frisk of suspect was allowable under Terry); *State v. Goebel*, 366 N.W.2d 600, 602 (Minn. 1985) (in a non-motor vehicle case, court upheld frisk of robbery suspect which included opening a closed jewelry box found on his person which uncovered stolen jewelry. Opening the closed jewelry box in defendant's possession upheld as a valid protective weapons search.).

27 Supra note 26.
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28 Supra note 26.

29 Supra note 26; 4 LaFave, SEARCH AND SEIZURE § 9.4(d) at 672 (4th ed. 2004) (“Whether such suspicion exists will depend upon the particular circumstances, not the least of which would be whether the weapon suspected is a pistol.”); See Crook, 485 N.W.2d at 726 (as a general rule, Minnesota courts have not acknowledged the possibility that an item may contain a hidden razor blade (or other similar object) as justification for a protective weapons search of the item.); Supra note 3.

30 4 LaFave, SEARCH AND SEIZURE § 9.4(d) at 672 (4th ed. 2004).

31 Most of the protective weapon search decisions involving containers involve non-motor vehicle cases. For example, State v. Gobely, 366 N.W.2d 600, 602 (Minn. 1985) (in a non-motor vehicle case, court upheld frisk of robbery suspect which included opening a closed jewelry box found on his person which uncovered stained jewelry. Opening the closed jewelry box in defendant’s possession upheld as a valid protective weapons search.); State v. Perkins, 353 N.W.2d 557 (Minn. 1984) (in a non-motor vehicle case, upholding search of checkbook box - suspect accused of pointing a gun at a city worker approached police with a visible bulge in his jacket. During pat-down search the object, which turned out to be a box for blank checks, was removed and opened. Inside was a loaded .25 caliber automatic handgun. Pre-arrest protective search upheld.); State v. Crook, 485 N.W.2d 726 (Minn. Ct. App. 1992). Other examples of courts (all of them outside Minnesota) upholding searches of containers that were large enough to conceal a gun inside, include: Search of camera case at suspect's feet, based upon reasonable belief that suspect was armed and dangerous, upheld. U.S. v. Riggs, 474 F.2d 699 (2d Cir. 1973); Search of a zippered shoulder bag, based on informant's tip that suspect always carried gun in shoulder bag, upheld. U.S. v. Poms, 484 F.2d 919 (4th Cir. 1973); Search of suspect's female companion's handbag, after officer found a loaded concealed handgun on suspect; U.S. v. Vigo, 487 F.2d 295 (2d Cir. 1973); Search of duffle bag based on informant's tip and suspicious behavior of suspect; U.S. v. Johnson, 657 F.2d 532 (8th Cir. 1980); Search of suspect's briefcase based on detailed anonymous tip he was carrying a sawed-off shotgun; U.S. v. McClain, 660 F.2d 500 (D.C. Cir. 1981); Search of bowling bag based on informant's tip and suspicious actions of suspect after stop; U.S. ex rel. Griffin v. Vincent, 359 F. Supp. 1072 (S.D.N.Y. 1973); Search of partially opened box at suspect's feet which officer had observed suspect to be guarding carefully; Brownwell v. State, 427 A.2d 884 (Del. 1981) Search of small duffel bag after officer felt a hard object in the bottom.

32 Hamrick v. State, 397 S.E.2d 503 (Ga. Ct. App. 1990). However, a frisk is not an excuse for an exploratory search and does not give license for the opening of a container when there is no likelihood that the container holds a weapon. U.S. v. Hunter, 550 F.2d 1066 (6th Cir. 1977). For example: It would be improper for an officer to open a small zippered coin purse weighing only a few ounces for it "could not conceivably have contained a gun, nor could any officer reasonably have believed that it contained a dangerous weapon of any kind." 4 LaFave, SEARCH AND SEIZURE § 9.6(d), at 671 (4th ed. 2004); When the pat-down search revealed that the "large solid object" felt inside the clothing was only a 3 x 1/4 x 1½ inch cigarette pack, officers were not justified in opening it because there was no reasonable suspicion that the case contained any kind of weapon. C.H. v. State, 548 So. 2d 895 (Fla. Dist. Ct. App. 1989); Note: Despite the general rule, some courts (outside Minnesota) have gone so far as to include the opening of cigarette packs in which marijuana cigarettes were hidden. State v. Yuresko, 493 P.2d 536 (Ariz. Ct. App. 1972); People v. Salvator, Jr., 602 N.E.2d 953 (Ill. App. Ct. 1992). In the absence of extreme circumstances, it is unlikely that Minnesota Courts would uphold such searches.


34 There are also no Minnesota rulings on whether the rear area of a station wagon or hatchback is included in a passenger area search. In U.S. v. Mayo, 397 F.3d 1271 (9th Cir. 2005) such areas are included.

35 State v. Robb, 605 N.W.2d 96 (Minn. 2000).

36 The closest case is State v. Neumann, 2004 WL 2521179 (Minn. Ct. App. 2004) in which a police officer asked defendant to retrieve a container (a pickle jar) from the back seat after seeing him hide it after being pulled over; suspecting it to contain a weapon (it turned out to be a clear jar containing a small amount of marijuana in plain view.). The court stated “Although it may reasonably be argued that the trooper placed himself in greater danger by requesting that appellant retrieve the item, a possible weapon, from the back seat, we conclude nonetheless that the trial court acted within its broad discretion in determining that the trooper was justified in acting as he did prior to retrieval of the pickle jar”; See also Raduanc v. Meyer, 2009 WL 504691 (D. Minn., 2009) (the scope of a permissible vehicle search extends to all containers within the passenger compartment of the automobile, including “glove compartments, consoles, and other receptacles located anywhere within the passenger compartment, as well as luggage, boxes, bags, and the like.”) citing United States v. McCrady, 774 F.2d 868, 871 (8th Cir. 1985) (allowing search of glove compartment since it was incident to an arrest.); See supra note 30 for examples of closed container searches found on or near a person subject to a protective weapons search not involving a motor vehicle.

37 Long, 463 U.S. at 1032 (search of open leather pouch upheld - The United States Supreme Court upheld a protective weapons search of the passenger compartment of a suspect's car during an investigative stop where the suspect was driving at an excessive speed and swerved into a ditch, appeared to be under the influence of some intoxicant, officers frisked the suspect after they observed a large knife in the interior of the car into which the suspect was about to re-enter, search of the car was restricted to those areas in which the suspect would generally have immediate control and could contain a weapon, and officers had an articulable and objectively reasonable belief the suspect posed a danger if he were permitted to re-enter his vehicle.

38 State v. Gilchrist, 299 N.W.2d 913 (Minn. 1981) (search underneath driver's seat upheld - Following a valid motor vehicle stop, the driver was ordered out of his automobile and, because he was known to carry firearms and had been earlier connected with a homicide in which a firearm was used, officers were justified in conducting a limited pat-down search of the driver. Even though no weapons were found, because of the driver's past
record, the police were justified in feeling that they should run a hand underneath the seat in the area within the suspect's immediate reach when he would re-enter the car, even though the defendant was outside the car at the time the limited search was conducted. As a result of the search, officers located a handgun hidden underneath the driver's seat; see also cases cited in endnote 3; U.S. v. Rainone, 586 F.2d 1132 (7th Cir. 1978) (Search of front and back seats upheld - Where suspects were properly stopped and frisked, peace officers acted within scope of a legitimate protective weapons search when they also searched the surface of the front and back seats, as well as under the front seat and, accordingly, dynamic discovered in search was properly admitted.); State v. Brown, 389 A.2d 507 (N.J. Super. Ct. Law Dir. 1978) (Protective weapons search of area limited to beneath the back seat of the vehicle was reasonable.).

39 U.S. v. Goodwin-Bey, 584 F.3d 1117 (8th Cir. 2009) (allowing search of gun in locked glove compartment when specific report of weapon displayed by defendant in vehicle, a locked glove box does not reduce the reasonableness of a suspicion of safety.); Radunc v. Meyer, 2009 WL 504691 (D. Minn. 2009) (the scope of a permissible vehicle search extends to all containers within the passenger compartment of the automobile, including “glove compartments, consoles, and other receptacles located anywhere within the passenger compartment, as well as luggage, boxes, bags, and the like”) citing United States v. McCready, 774 F.2d 868, 871 (8th Cir. 1985) (allowing search of glove compartment since it was incident to an arrest); United States v. Holifield, 956 F.2d 665 (7th Cir. 1992) (search of locked glove compartment upheld, “Based upon suspects erratic driving and aggressive and boisterous behavior, officers were justified in searching a locked glove compartment because suspect and two passengers were about to re-enter the car. The glove compartment is a container and it could contain a weapon, therefore, making it a reasonable part of a protective weapons search of the passenger compartment.”); See also United States v. Brown, 913 F.2d 570 (8th Cir. 1990) (peace officers had a reasonable suspicion that automobile occupants were dealing drugs, rendering a search of the automobile's locked glove compartment for weapons during an investigatory stop permissible, even absent probable cause; because weapons and violence are frequently associated with drug transactions and the officers reasonably believed that the vehicle's occupants were armed and dangerous.).

40 United States v. Aponte, 619 F.3d 799 (8th Cir. 2010) (allowing search of cooler even when it was unclear that it was used for drug transportation, though defendants' lack of knowledge could support acquittal of charges.); United States v. Perez-Rios, 5 F.3d 533 (8th Cir. 1993) (“Upon observing the cooler in the trunk, the officer had probable cause to believe it contained drugs when he saw the bulging sides and unglued seams, smelled ether, and felt that its weight was greater than its contents would warrant.”); United States v. Paulino, 935 F.2d 739 (6th Cir. 1991).


42 State v. Flowers, 734 N.W.2d 239 (Minn. 2007); State v. Gilchrist, 299 N.W.2d 913 (Minn. 1980).

43 United States v. Longmire, 761 F.2d 411 (7th Cir. 1985); but see Johnson v. Phillips, 664 F.3d 232, 237 (8th Cir. 2011) (disallowing search because evidence of traffic violation was not reasonable and the suspect was arrested in the patrol car).

44 Lawrence v. State, 375 N.E.2d 208 (Ind. 1978) (search of trunk upheld - when suspects were properly stopped and frisked, a peace officer acted within the scope of a legitimate protective weapons search when he ordered the trunk opened after he heard someone inside the trunk, because he could have reasonably perceived himself to be in danger from an armed person in the trunk who might quickly emerge or shoot at him through the opening of the trunk.).

45 Davis v. U.S., 131 S.Ct. 2419 (2011) (upholding search of jacket and passenger compartment, based on then legal precedent.).

46 Minnesota v. Dickerson, 508 U.S. 366 (1993) (finding search of small lump in pocket that turned out to be drugs exceeded scope of patdown: “Absent probable cause to arrest, the officer may exceed the scope of a limited pat search and reach into the suspect's clothing only for the purpose of recovering an object thought to be a weapon.”); State v. Cornell, 491 N.W.2d 668 (Minn. 1992).

47 State v. Ludke, 306 N.W.2d 111 (Minn. 1981) (search upheld - during a protective weapons search, although "the plastic bag of powder was soft and presumably did not feel like a weapon, removal of it was proper as the officer had already lawfully determined that another such bag (observed in plain view sticking out of suspect's pocket) contained marijuana" and, therefore, the officer had probable cause to believe that the second packet, which he had felt during the protective weapons search, also contained drugs.); State v. Hart, 412 N.W.2d 797 (Minn. Ct. App. 1987) (search upheld - defendant involved in a domestic dispute, paced nervously with his left hand in his coat pocket and refused to remove his hand from his pocket, justifying a protective weapons search. The searching officer felt a long object which could have been a knife. He removed it and it was a clear tube containing a drug residue. Based upon that finding, the officer had probable cause to search the other pockets for possible contraband.); State v. Cornell, 491 N.W.2d 668 (Minn. Ct. App. 1992) (search upheld - during a valid pat-down search, officer felt a soft bulge below the suspect's belt line but did not initially remove it. However, during the course of the investigatory stop, the officer developed probable cause to believe the soft bulge was contraband, and a second search seizing the soft bulge (baggie of marijuana) was upheld as a probable cause search for contraband. Probable cause supporting the contraband search was based on suspect's glassy eyes, the erratic driving, speeding, suspect's furtive movements in pushing the marijuana baggie further down his pants, his "incredible explanation" for the bulge (he claimed it was his penis), and his admission that he had been smoking marijuana earlier that evening.); But see State v. Gannaway, 191 N.W.2d 555 (Minn. 1971) (improper search - following a valid pat-down search, officer felt and removed a hard object from suspect's pocket which turned out to be a corn cob pipe. The officer then pulled everything out of suspect's pocket, including a soft baggie of marijuana. Although seizure of the corn cob pipe was valid under the protective weapons search exception, the remainder of the search exceeded the scope of a weapons search because no weapon was felt and because the officer did not have probable cause to expand the weapons search to a search for contraband.).

48 State v. Barton, 556 N.W.2d 600 (Minn. Ct. App. 1996) (seizing contraband felt under clothing by an officer during a pat-down search for weapons does not violate the limitation against unreasonable searches and seizures of either the Fourth Amendment of the United States Constitution or Article I, § 10 of the Minnesota Constitution.); Dickerson v. Minnesota, 506 U.S. 814 (1993) (based upon the defendant's evasive actions when approached by police officers and the fact that he had just left a building known for cocaine traffic, officers decided to investigate further and ordered defendant to submit to a pat-down search. The search revealed no weapons, but the officer conducting it testified that he felt a small lump in defendant's jacket pocket. Although the officer did not immediately recognize the lump as crack cocaine, after examining the object with his fingers by squeezing and
sliding the object, the officer determined that the lump was contraband; he reached into the pocket and retrieved a small bag of cocaine. In order for the "plain-feel" doctrine to apply, once an officer feels an object that he determines is not a weapon, he can only seize the object if the contour or mass of the object makes its identity as contraband immediately apparent. In the above example, once the officer determined that the object was not a weapon, he was not justified in squeezing, sliding or otherwise manipulating the object to determine what it was. Because the search exceeded the scope of a lawful pat-down search, the seized cocaine was not admissible at trial.

40 State v. Walsh, 495 N.W.2d 419 (1993) (The handcuffing restraint, by itself, did not mean defendant was in "custody" for purposes of Miranda, and the deputy even told defendant he was not necessarily under arrest. In Walsh, shortly after 3 a.m. the police received two 911 calls. The first 911 call was from the victim's boyfriend who had come home late and found his girlfriend's body stabbed and shot to death in her bedroom. He reported seeing a man (the defendant) standing in the driveway, and called police from a neighbor's phone. About the same time this call was made, defendant also called to report the murder. He said when he came to the residence he saw the broken garage door, went in the house, and found Pamela murdered. He said he was a co-worker and that he had been at the house about 45 minutes. When deputies arrived at the Sweeney residence they found defendant still talking to the 911 operator. Deputy Longbehn handcuffed defendant, telling him he was not under arrest but was being handcuffed for the officers' safety and to determine what had taken place.). See also, State v. Gunderson, A10-738, (Minn. App. Jan. 11, 2011) (unpublished opinion) (although "handcuff restraint, by itself, [does] not mean [an individual is] in 'custody' for purposes of Miranda", Officer Peek's handcuffing of appellant before questioning him and without telling him that he was not under arrest or explaining the reason for the handcuffing suggests that the interrogation was custodial.). Cf. Walsh, 495 N.W.2d at 603 (finding no custody where officers told defendant that "he was not under arrest but was being handcuffed for the officers' safety and to determine what had taken place.").

50 U.S. v. Plumner, 409 F.3d 906 (8th Cir. 2005) (upholding search of backseat and passenger compartment when suspect, which officer was informed was likely on drugs, repeatedly entered the passenger compartment where a rifle, loaded in spite of suspect's claims, was located.).

51 For example, to permit officers to exceed the scope of a lawful pat-down search, whenever they feel a soft object by relying on mere speculation that a razor blade might be hidden inside, would be to hold that possession of any object, including a wallet, invites a search of an individual's person. In other words, to allow a search for anything which could under some circumstances, be employed as a weapon would permit a protective weapons search to become as intrusive as that which can be made incident to a custodial arrest. For example, something of the size and flexibility of a razor blade could be concealed virtually anywhere, and accordingly provide the pretext for a search of almost anything in a suspect's possession, just as though he was being searched incident to an arrest. 4 LaFave, SEARCH AND SEIZURE § 9.6(c), at 665-666 (4th ed. 2004); United States v. Del Toro, 464 F.2d 520 (2d Cir. 1972); State v. Crook, 485 N.W.2d 726 (Minn. Ct. App. 1992).

52 Radunz v. Meyer, 2009 WL 504691 (D. Minn., 2009) (as a result, the scope of a permissible vehicle search extends to all containers within the passenger compartment of the automobile, including "glove compartments, consoles, and other receptacles located anywhere within the passenger compartment, as well as luggage, boxes, bags, and the like.") citing U.S. v. McCrady, 774 F.2d 868, 871 (8th Cir. 1985) (allowing search of glove compartment since it was incident to an arrest); U.S. v. Goodwin-Bey, 584 F.3d 1117 (8th. Cir. 2009) (allowing search of gun in locked glove compartment when specific report of weapon displayed by Defendant in vehicle; a locked glove box does not reduce the reasonableness of a suspicion of safety.); U.S. v. Holifield, 956 F.2d 665 (7th Cir. 1992) (search of locked glove compartment upheld "based upon suspects erratic driving and aggressive and boisterous behavior, officers were justified in searching a locked glove compartment because suspect and two passengers were about to re-enter car. The glove compartment is a container and it could contain a weapon, therefore, making it a reasonable part of a protective weapons search of the passenger compartment."); U.S. v. Brown, 913 F.2d 570 (8th Cir. 1990) (peace officers had a reasonable suspicion that automobile occupants were dealing drugs, rendering a search of the automobile's locked glove compartment for weapons during an investigative stop permissible, even absent probable cause; because weapons and violence are frequently associated with drug transactions and the officers reasonably believed that the vehicle's occupants were armed and dangerous.).

53 Supra note 51.

54 Supra note 51.


56 Lawrence v. State, 375 N.E.2d 208 (Ind. 1978) (search of trunk upheld - when suspects were properly stopped and frisked, a peace officer acted within the scope of a legitimate protective weapons search when he ordered the trunk opened after he heard someone inside the trunk, because he could have reasonably perceived himself to be in danger from an armed person in the trunk who might quickly emerge or shoot at him through the opening in the trunk.).
CHAPTER 7
CONSENT SEARCH

7.1 WHAT IS THE GENERAL RULE?

1. General Rule: A warrantless search of a motor vehicle may be conducted whenever the peace officer has a reasonable, articulable suspicion of criminal activity and asks for consent. The owner or someone with the authority to consent (usually the driver) has to voluntarily consent to the search. Consent may be found when the facts surrounding the consent would lead a reasonable police officer to believe that the person giving the consent has such authority. Only those areas which reasonably appear to be within the scope of the consent may be searched.

2. Legal Justification: The Fourth Amendment protects persons against unreasonable search and seizures. However, its protection can be affirmatively waived like any constitutional right. In other words, whenever an individual voluntarily consents to a search, he/she waives the Fourth Amendment warrant requirement, if peace officers have a reasonable, articulable suspicion for criminal activity. A peace officer cannot be persistent in his questioning. Evidence discovered during the course of a properly conducted consent search will be admissible against a defendant at trial. However, under the exclusionary rule, evidence obtained as a result of an unlawful (unreasonable) search will be excluded from use against a defendant.

3. Burden of Proof - Requirements for a Valid Consent: Where the validity of a search rests on consent, the State has the burden of proving by a preponderance of the evidence that consent was freely and voluntarily given without promises, threats or coercion. A suspect's consent is voluntary if it is the product of free will, rather than the product of duress or coercion, express or implied. "The question whether a consent to search was, in fact, voluntary or was a product of duress or coercion, express or implied, is a question of fact to be determined from the totality of the circumstances." All factors that might bear upon the issue are relevant, including the age, experience, intelligence, education, prior experience with the criminal justice system, whether the person received notice that he could refuse, length and conditions of detention, threats, conditions of interrogation, physical or mental brutality, a prior consent (if there's a repeated search), etc. There is no finite list or per se rule.

4. Suspect Need Not Be Told of Right to Refuse: There is no constitutional requirement that peace officers tell a person that he/she has the right to refuse consent. However, the suspect's awareness of the right to refuse consent is a “highly relevant” factor the court will consider when determining if the consent was voluntary. In cases where the voluntary nature of the consent is questionable, officers should consider advising the person of the right to refuse consent.

5. Threats to Obtain a Search Warrant: What if a person gives consent to search only after officers tell the person that they can get a warrant and conduct the search if consent is not given? The answer depends upon whether the officers’ advisory takes the form of a threat. The Minnesota Supreme Court has held a valid consent search existed where the police did not threaten to obtain a search warrant but merely advised the defendant that a search warrant would be or could be obtained. The line between a threat and an advisory is a thin one that has never been clearly defined. Officers should proceed with caution and supplement the consent with well written, detailed reports that clearly outline the circumstances surrounding the voluntary nature of the consent.
6. **Expanding the Stop and Excessive Intrusion to Obtain Consent:** The scope of a stop must be "strictly tied to and justified by the circumstances" that rendered the initial stop permissible.\(^{14}\) Expansion of the scope of the stop to include a request for consent to search or an investigation of other suspected illegal activity is permissible under the Fourth Amendment "only if the officer has reasonable, articulable suspicion of such other illegal activity."\(^{15}\) While the reasonable suspicion standard is less demanding than probable cause or a preponderance of the evidence, it still requires at least a minimal level of objective justification. Actions such as confining the suspect to the back of the squad car for a minor traffic offense will render consent invalid.\(^{16}\) The officers' actions must be appropriate for a man of reasonable caution,\(^ {17}\) as the analysis will be particularized and individualized to the driver or passenger granting consent.\(^ {18}\)

7. **Using Deceit or Misrepresentations to Obtain Consent:** A deceitful misrepresentation, whether made affirmatively or tacitly, used to obtain consent to search will invalidate the consent.\(^ {19}\)

8. **Obtaining Consent From a Suspect in Custody:** The fact that consent was given while the suspect was in custody does not, in and of itself, make it involuntary.\(^ {20}\) However, as a general rule, if the consent to search is obtained subsequent to an arrest, the validity of the consent will be less readily inferred than consent obtained prior to an arrest.\(^ {21}\) As a result, in cases when the suspect is in custody, officers should proceed cautiously in obtaining consent to search and should consider advising the suspect of his right to refuse it.\(^ {22}\) Ideally, the consent to search should be obtained before an arrest is made.

9. **Third Party Consent - Apparent Authority Doctrine:** Consent to a warrantless search of a motor vehicle may be obtained from the owner, or in the owner's absence, the driver or other third party who *reasonably appears to share common authority* over the vehicle to be searched. In applying the test, the most important factor is whether there is mutual use.\(^ {23}\) Accordingly, the owner of a motor vehicle who loans the vehicle to a third party driver is deemed to have assumed the risk that the third party driver may consent to a search of the vehicle.\(^ {24}\) As with other factual determinations bearing upon search and seizure, determination of consent to search a motor vehicle must be judged against an *objective standard*.\(^ {25}\) In other words, a warrantless search of a motor vehicle, based on the consent of a third party, is valid if the police, at the time of the search, had an objective *reasonable belief* that the third party possessed *common authority* over the vehicle, even though the third party may, in fact, not have had that authority.\(^ {26}\) However, the Apparent Authority Doctrine does not empower the police to legitimize a search merely by repeating the phrase, "I thought he/she had authority." The court's analysis of the validity of third party consent rests entirely on the reasonableness of the officer's belief.\(^ {27}\)

10. **Can Consent be Inferred From Non-Verbal Conduct?** Yes, although the consent must be unequivocal and specific, it may be verbally expressed or implied from the suspect's words, gestures or conduct.\(^ {28}\) For example, conduct such as a suspect opening an automobile trunk\(^ {29}\) or voluntarily handing the automobile keys to the officer,\(^ {30}\) and then failing to object to the ensuing search committed in the suspect's presence is evidence of consent.\(^ {31}\) However, as a general rule, officers should be extremely careful in relying on silence and non-verbal conduct in justifying a consent search. If at all possible, officers should obtain a clear and explicit verbal consent to search.\(^ {32}\)

11. **Obtaining Written Consent:** It is best for officers to have a suspect sign a written consent form before executing a consent search. Although it is not required, having a signed consent form makes it much more difficult for a suspect to later deny that consent was given. Although it is illogical, a person may verbally consent to a search but refuse to sign a consent form, but it does not automatically preclude a finding of voluntariness.\(^ {33}\) If an officer plans to rely on verbal consent and forego attempting to obtain written consent, it is strongly recommended that more than one officer be present to later testify to the suspect's consent.
12. **Scope of Consent Search:** Even if it is determined that the consent to search was freely and voluntarily given, that does not mean that the scope of the search is limitless. The scope of a consensual search is determined by the terms of the actual consent. The standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of objective reasonableness. In other words, what would the typical reasonable person have understood by the exchange between the officer and the suspect? In conducting the reasonableness inquiry, courts will consider what the parties knew at the time to be the object of the search. For example, permission to search a specific area for narcotics may reasonably be construed as permission to search anywhere within the specified areas where narcotics may be found, including closed (but unlocked) containers. However, if the object of the search was a larger item, say a handgun or stolen property, the search would be limited to those places or containers capable of holding those items. Consent given to the first officer who arrives at the scene can be extended to include all other law enforcement officers or medical personnel who arrive at the scene.

Note: If the container is locked, see § 7.5 for the general rule.

13. **Withdrawal of Consent:** The person granting consent has the right to change his or her mind at any time and entirely withdraw consent or place additional limitations on where and what the officer can search. Once consent to search is withdrawn, officers must stop the search unless a continued search can be justified under a different exception to the general warrant requirement. Withdrawal of consent to search need not be effectuated through particular magic words, but intent to withdraw consent must be made by unequivocal act or statement.

### 7.2 VIGNETTE #9: TRUNK SEARCH

1. A vehicle, occupied by a lone male driver, turns a corner at a high rate of speed and almost strikes a squad car.

2. The officer stops the vehicle and asks the driver for his driver’s license.

3. As the officer is standing by the driver's door, he observes, in plain view on the front passenger floor, a knife, an empty holster and what appears to be a bullet clip for a gun.

4. The driver is removed from the vehicle, he is told that he is not under arrest and is not going to jail, but will be handcuffed for officer safety and is frisked for weapons. No weapons are found on the driver's person.

5. The officer then enters the vehicle for the purpose of conducting a warrantless protective weapons search (i.e. looking for the gun that goes with the empty holster).

6. After no weapons are found during the protective weapons search, the officer reminds the driver, who is still handcuffed, that he is not under arrest. The officer then asks the driver for consent to search the trunk for weapons (i.e. the handgun to the empty holster).

7. The driver responds, "There's no gun in there," and the officer states, "I'd still like to look in the trunk and satisfy myself." The driver then, without saying a word, pushes his jacket pocket toward the officer. When the officer asks if the trunk key is located inside that pocket, the driver says, "Yeah, it's
the round one.” The officer then, without any objection from the driver, reaches inside the jacket pocket, takes the key and opens the trunk for the purpose of conducting a warrantless search.

8. Inside the trunk a large unlocked wood container is searched and several baggies of cocaine, money, and guns are recovered.

Note: The driver is approximately six feet tall and weighs 200 pounds. He is shabbily dressed in motorcycle leather, has an ominous appearance and is clearly irritated at being stopped. Although unknown to the officer, the driver has had prior experience in the criminal justice system.

### 7.3 IS THE CONSENT TO SEARCH VALID?

**ANSWER:** Yes

A suspect's consent is voluntary if it is the product of free will, rather than the product of duress or coercion, express or implied. Although the above example poses a close question, the totality of the circumstances would appear to support a finding of voluntary consent:

<table>
<thead>
<tr>
<th>Factors Weighing Against Consent</th>
<th>Factors Supporting Consent</th>
</tr>
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<tbody>
<tr>
<td>1. Driver was handcuffed.</td>
<td>1. Driver was told he was not under arrest, he was not going to jail, and he was only being handcuffed for officer safety.</td>
</tr>
<tr>
<td>2. Driver never gave a clear and explicit verbal consent.</td>
<td>2. Driver’s consent could easily be implied from his non-verbal conduct.</td>
</tr>
<tr>
<td>3. Driver was never told he could refuse consent.</td>
<td>3. Driver did not object to the search even though trunk was opened in his presence.</td>
</tr>
<tr>
<td>4.</td>
<td>4. Driver was an adult male with prior experience in the criminal justice system and clearly was not intimidated by the officer’s actions.</td>
</tr>
<tr>
<td>5.</td>
<td>5. No evidence of coercive, threatening, or otherwise intimidating conduct by the officer involved.</td>
</tr>
</tbody>
</table>

### 7.4 CAN SMALL CONTAINERS INSIDE THE TRUNK BE SEARCHED?

**ANSWER:** No

Although the driver voluntarily consented to a search of the trunk, because the object of the search is to find a handgun, the search must be limited to those places or containers capable of holding a handgun. A search of any place inside the trunk or of any container too small to reasonably hold a handgun would exceed the scope of the consent.
7.5 CAN LOCKED CONTAINERS INSIDE THE TRUNK BE SEARCHED?

ANSWER: No

Because the consent to search did not convey permission to break open a locked container, to do so would exceed the scope of the consent. It would be unreasonable to think that a suspect, by consenting to a search of his trunk, has also agreed to breaking open a locked briefcase found within the trunk.

Search of Locked Containers: Even if police officers receive a general and unqualified consent to search, they do not have carte blanche authority to do whatever they please. Even an unqualified consent is constrained by the bounds of reasonableness, i.e. what a peace officer could reasonably interpret the consent to encompass. For example, a peace officer, even if he has general permission to search, may not inflict intentional damage to the places or things to be searched. Under most circumstances, even if officers have a general consent to search, that consent would not include the right to break open a locked container. In other words, when the police are relying upon consent to conduct a warrantless search, they have no more authority than that reasonably conferred by the terms of the consent. If that consent does not convey permission to break open a locked or sealed container, it is unreasonable for the police to do so unless the search can be justified on some other basis.

7.6 IS SEIZURE OF THE GUNS, MONEY AND COCAINE LAWFUL?

ANSWER: Yes

The Fourth Amendment is satisfied when it is objectively reasonable for an officer to believe that the scope of the suspect's consent permitted him to open a particular container within the trunk. In the above example, the driver had been told that a gun was the object of the search and his consent to search the trunk was not limited in any way. Thus, it was reasonable for the officer to believe that he could search any unlocked container within the trunk where a gun might be found. Evidence discovered during the course of a properly conducted consent search will be admissible against a defendant at trial.
CONSENT SEARCH

ENDNOTES:

1 State v. Askerooth, 681 N.W.2d 353 (Minn. 2004) (consent and reasonable suspicion not found when given at the back of the police car for a minor traffic offense.); State v. Fort, 660 N.W.2d 415 (Minn. 2003) (finding consent limited to the scope of traffic violations. Suspection not established by presence in “drug dealing” area or nervousness of suspect.); State v. Smith, A10-0916 June 6, 2012 (Minn. 2012) (an officer’s expansion of the scope of a lawful traffic stop was supported by a reasonable, articulable suspicion of illegal activity, when the totality of the circumstances include a defendant shaking “very violently” and he offered an evasive explanation for the shaking. This decision departs from a line of cases generally holding that a defendant’s nervousness doesn’t give rise to reasonable suspicion.); State v. Syhavone, 661 N.W.2d 278, 282 (Minn. Ct. App. 2003) (“While an officer’s perception of an individual’s nervousness may contribute to an officer’s reasonable suspicion, nervousness is not sufficient by itself and must be coupled with other particularized and objective facts.”); Pishney v. Comm’n of Pub. Safety, 2002 WL 31011881 (Minn. Ct. App. 2002); State v. Ortega, 749 N.W.2d 851 (Minn. Ct. App. 2008) (finding consent for drug search allowable because of marijuana smell, creating reasonable suspicion of criminal activity; but see, State v. Burbach, 706 N.W.2d 484, 489 (Minn. 2005) (held that an odor of alcohol from an adult passenger, plus the driver’s nervousness, plus a “tip” of unknown origin, did not create a reasonable suspicion to justify a request to search the vehicle.).

2 See cases cited in endnote 35; State v. Auman, 386 N.W.2d 818 (Minn. Ct. App. 1984) (a limited voluntary consent to search does not authorize the indiscriminate rummaging into the consenting person’s possession.); State v. Powell, 357 N.W.2d 146 (Minn. Ct. App. 1984); State v. Kumpula, 355 N.W.2d 697 (Minn. 1984); State v. Pence, 669 N.W.2d 394 (Minn. Ct. App. 2003); Matter of Welfare of J.W.K., 574 N.W.2d 103 (Minn. Ct. App. 1998) (obtaining consent to search for evidence of one crime, and using that consent to search for evidence of another crime, exceeds the scope of the consent.) (reversed on other grounds 583 N.W.2d 752 (Minn. 1998)).

3 State v. White, 2012 WL 118232 (Minn. Ct. App. 2012) (determining whether consent is voluntary involves balancing an officer’s “legitimate need to search against the requirement that consent not be coerced.”); Florida v. Bostick, 501 U.S. 429, 433 (1991) (allowing police officers to ask permission to search luggage on a bus when suspect consented and understood that he could refuse.); State v. Elam, 2007 WL 7143963 (D. Minn. Ct. 2007) (finding no violation of privacy by person who submitted to authority by compliant conduct: no invasion of privacy where the search is with the express or tacit consent of the one who has the right to object. (emphasis in original)); State v. Thompson, 139 N.W.2d 490 (Minn. 1966) (allowing search based on silent acceptance by the defendant.).

4 State v. George, 557 N.W.2d 575 (Minn. 1997) (establishing a heightened scrutiny for traffic stops with purported consent since defendant was not informed of ability to deny and was reasonably intimidated by persistent, though non-authoritative, questioning.); U.S. v. Poe, 462 F.3d 997 (Minn. Ct. App. 2006) (repeated knocking on the door meant reasonable person would acquiesce; consent held involuntary under totality of circumstances.).

5 Arizona v. Gant, 556 U.S. 332, 351, 129 S. Ct. 1710, 1723-24, 173 L.Ed.2d 485 (2009); Davis v. U.S. 131 S. Ct. 2419, 2434, 180 L. Ed. 2d 285 (2011) (holding that where police conducted a search before the U.S. Supreme Court decided Arizona v. Gant, and in objectively reasonable reliance on binding appellate precedent at that time, the exclusionary rule did not apply.); Briscoe v. State, 422 Md. 384, 409-10 (2011) (good-faith rule applied and suppression is correctly denied where officer acted in objectively reasonable reliance on existing pre-Gant authority when he conducted a search of a vehicle that now violates the search incident to arrest rule in Gant); U.S. v. Payne, 119 F.3d 637 (8th Cir. 1997) (if there is probable cause to believe the vehicle contains contraband or evidence of a crime, consent is unnecessary for search of trunk and any hidden compartments – see Chapter 4 Probable Cause Exception.).

6 Cramer v. Comm’n of Pub. Safety, 2005 WL 89105 (Minn. Ct. App. 2005) (finding consent by leaving door open, not asking police to leave, and deferring to district court’s balancing of factors such as age, education, intelligence, prior contact with criminal justice, and lack of prior impairment.); Pishney v. Comm’n of Pub. Safety, 2002 WL 31011881 (Minn. Ct. App. 2002) (“When the officer asked if he could come in, Pishney opened the screen door and said, ‘Come on in.’ No evidence suggests that Pishney was confused or unable to ascertain the significance of her actions when she let the officer into the house. Neither does the record suggest that Pishney lacked the maturity, education, or intelligence necessary to give effective consent. Most significantly, the record contains no evidence of coercion, duress, deception, promises, threats, or any other undue influence that would affect Pishney’s consent.”); U.S. v. Chauds, 906 F.2d 377 (8th Cir. 1990) (consent to be established by a preponderance of the evidence standard.); Florida v. Royer, 460 U.S. 491, 497 (1983) (finding unlawful confinement in a small room renders consent invalid); State v. Bonner, 146 N.W.2d 770 (Minn. 1960) (consent to be established by a preponderance of the evidence standard.).

7 United States v. Antoon, 933 F.2d 200, 203 (3d Cir. 1991). (“The ultimate test of voluntariness is whether, under the circumstances, the consent was an exercise of free will or whether the actor’s free will ‘has been overborne and his capacity for self-determination critically impaired.’”); United States v. Chauds, 906 F.2d 377, 380-81 (8th Cir. 1990) (listing factors as to whether consent was voluntary: 1) Age. 2) General Education, 3) Intoxication, 4) Whether consent was after being informed of Miranda rights or right to withdraw consent, 5) If they were arrested before and aware of protections afforded to suspected criminals in the justice system.); see also Fisani, Christian A., VEHICLE SEARCH LAW DESKBOOK §3:3 at 49 (2010-2011 Ed., 2010) (“A typical set of factors is found in U.S. v. Chauds: 1) Length of detention, 2) Any threats of intimidation by police, 3) Any promises or misrepresentations by police, 4) Was person in custody or under arrest at time of consent, 5) Was consent given in a public or private place, and 6) Did person object to the search or stand by silently while it occurred.); State v. Diede, 795 N.W.2d 836 (Minn. 2011) (finding lack of consent by repeated refusals; subsequent opening of container was only after persistent questioning after having been seized and in the presence of four police officers and a police dog.).

8 Ohio v. Robinette, 519 U.S. 33, 117 S. Ct. 417 (1996) (Fourth Amendment test for valid consent to search is that consent be voluntary, and voluntariness is question of fact to be determined from all the circumstances.); Cramer v. Comm’n of Pub. Safety, 2005 WL 89105 (Minn. Ct. App. 2005); Pesterfield v. Comm’n of Pub. Safety, 399 N.W.2d 605 (Minn. Ct. App. 1987) (finding consent by the opening of the door, in spite of verbal statements for officers to ‘go away.’); State v. Howard, 373 N.W.2d 596 (Minn. 1985) (holding the standard as consent to enter, not consent to arrest); State v. Schüring, 342 N.W.2d 105 (Minn. 1983) (defendant was taken into custody by several officers, then given a Miranda Warning and then asked for consent to search his trunk with the officer implying he would get a warrant if defendant did not consent. The request for consent was found to be “window dressing” and the consent held involuntary.); U.S. v. Meedenhall, 446 U.S. 544, 557 (1980) (consent found through factors such as defendant’s 10th grade education, explicit statements that she could decline the search, and statements she could withhold her consent.); U.S. v. Townsend, 510 F.2d 1145 (9th Cir. 1975) (suspect asked to be taken to hotel room; police permitted this on condition that they be allowed to search
the room. At door of room, suspect recanted. When officers advised him they would honor his withdrawal of consent, such knowledge was highly relevant to the determination that there had been consent."

9 State v. Harris, 590 N.W.2d 90 (Minn. 1999); see also U.S. v. Gallardo, 495 F.3d 982 (8th Cir. 2007) (finding consent in spite of language barrier due to lack of coercion, lack of defendant’s impairment, and relative understanding of the inquiry based on responses.); U.S. v. Chavez, 906 F.2d 377, 380-81 (8th Cir. 1990) (The court lists 11 factors to consider in determining whether a consent to search was freely and voluntarily given.

10 See U.S. v. Drayton (2002) 536 U.S. 194, 206 (“The Court has rejected in specific terms the suggestion that police officers must always inform citizens of their right to refuse when seeking permission to conduct a warrantless consent search.”); Schneckloth v. Bustamonte (1973) 412 U.S. 218, 227 (“While knowledge of the right to refuse consent is one factor to be taken into account, the government need not establish such knowledge as a sine qua non of an effective consent.”); Ohio v. Robinite, 519 U.S. 33, 117 S. Ct. 417 (1996); See U.S. v. Buenrostro, 2011 WL 6152378 (8th Cir. 2011) (finding consent even if not informed of right to refuse and language barrier; factors of understanding the basis questions, adult status, and lack of coercion weighed in favor.)

11 U.S. v. Mendenhall, 446 U.S. 544, 558-59 (1980) (Although the constitution does not require proof of a defendant’s knowledge of a right to refuse as the sine qua non of an effective consent to a search, such knowledge was highly relevant to the determination that there had been consent.); Haaland v. Minnesota, A10-1124, March 8, 2011, Minn. App. 2011 (unpublished decision) (during a motor vehicle stop officers asked defendant for consent to search vehicle and also advised defendant he had the right to refuse the search, upheld.); Schneckloth v. Bustamonte, 412 U.S. 218 (1973) (right to refuse permission to search is a factor to be taken into account, it is not a prerequisite to a “voluntary” consent.); State v. DeCora, 512 N.W.2d 877 (Minn. 1994) (Fourth Amendment does not require a voluntary search that defendant know or be told that he has a right to refuse.); State v. Howard, 373 N.W.2d 596 (Minn. 1985); State v. Hanson, 364 N.W.2d 786 (Minn. 1985) (allowing search of car trunk upon discovery of marijuana cigarette and search of residences because consent given after Miranda warning); State v. Hanley, 363 N.W.2d 735 (Minn. 1985) (finding consent because person with authority was informed she could refuse before signing written consent; but see United States vs. $231,930.00 in U.S. Currency, 614 F.3d 837 (8th Cir. 2010) (finding no duty of officers to tell defendant right of refusal because seizure had not occurred, even when three officers were present.; Ohio v. Robinite, 519 U.S. 33, 117 S. Ct. 417 (1996).

12 Christiansen v. Comm’r of Pub. Safety, No. C2-99-1079 (Minn. Ct. App. Jan. 18, 2000) (unpublished opinion) (consent valid when record contained no evidence that the person lacked the maturity, education, or intelligence to give consent; there was no evidence that the person was under the influence of drugs or alcohol; the person had prior experience with the criminal justice system; no evidence of coercion, duress, deception, promises, threats or other undue influence, even though the officer had stated that he could obtain a warrant or proceed by some other means; and person initially limited his consent to one officer.); Hanley, 363 N.W.2d at 735; State v. Powell, 357 N.W.2d 146 (Minn. Ct. App. 1984); But see, State v. Schincirg, 342 N.W.2d 105 (Minn. 1983) (defendant taken into custody by several officers, given a Miranda Warning and then asked for consent to search his trunk with the officer implying he would get a warrant if defendant did not consent--consent held involuntary.

13 4 LaFave, SEARCH AND SEIZURE §8.2(c), 73-74 (4th ed. 2004) (a threat to obtain a search warrant will likely invalidate a subsequent consent if there were not then grounds upon which a warrant could issue, and likely not to affect the validity of the consent if the police then had probable cause.); United States v. Kaplan, 895 F.2d 618, 622 (9th Cir. 1990); But see, U.S. v. Poe, 462 F.3d 997 (8th Cir. 2006) (repeated knocking on the door meant reasonable person would acquiesce; consent held involuntary under totality of circumstances.); Bunperor v. North Carolina, 391 U.S. 543, 88 S. Ct. 1788 (1968) (an officers announcement that he has a warrant negates the possibility of consent.); Schneckloth v. Bustamonte, 412 U.S. 218 (1973); Kaplan, 895 F.2d at 622.

14 State v. Askerooth, 681 N.W.2d 353, 364 (Minn. 2004); State v. Wiegand, 645 N.W.2d 125, 135 (Minn. 2002); State v. Ortega, 749 N.W.2d 851, 853 (Minn. Ct. App. 2008), aff’d on other grounds, 770 N.W.2d 145 (Minn. 2009); State v. Dieder, 795 N.W.2d 836, 845 (Minn. 2011) (defective’s request to search cigarette package was an improper expansion of the scope of the stop, where the initial investigation and stop were based upon mismatched license plates, because “even if mismatched plates supported a reasonable suspicion that the truck was stolen or that the owner was attempting to evade automobile registration fees, a search for drugs was not reasonably related to those justifications.”); State v. Askerooth, 681 N.W.2d 353, 365, 367 (Minn. 2004) (“In essence, Article I, Section 10 of the Minnesota Constitution requires that each incremental intrusion during a traffic stop be tied to and justified by one of the following: (1) the original legitimate purpose of the stop, (2) independent probable cause, or (3) reasonableness, as defined in Terry. Furthermore, the basis for the intrusion must be individualized to the person toward whom the intrusion is directed.” With regard to traffic stops, a police officer may order a driver out of a lawfully stopped vehicle without an articulated reason; but there must be an additional basis, independent of an officer’s command for a driver to exit a vehicle, before a more serious intrusion is permitted, such as confining defendant in the back of a squad car. Court held that “the lack of a driver’s license, by itself, is not a reasonable basis for confining a driver in a squad car’s locked back seat when the driver is stopped for a minor traffic offense.”); State v. Fort, 660 N.W.2d 415, 419 (Minn. 2003) (investigative questioning, request for consent to search, and subsequent search of passenger for narcotics in vehicle stopped for routine traffic violations went beyond scope of traffic stop and was unsupported by any reasonable articulable suspicion, where officer testified that location of stop was in high drug area, and that he intended to offer defendant a ride home and conducted a pat down search for
purposes of officer safety, but officer never said he suspected any crime other than traffic violations.); State v. Cox, 807 N.W.2d 447, 452 (Minn. Ct. App. 2011) (“If a stop is initially justified on one basis, an officer cannot expand the scope of the investigation without additional reasonable suspicion to support the expansion,” where officer lawfully stopped defendant for suspicion of stolen tabs and upon approaching defendant to inquire as to the tabs officer immediately observed signs of defendant’s intoxication, officer lawfully developed additional reasonable suspicion that supported the expanded scope of the initial stop.); State v. Miller, 659 N.W.2d 275, 280 (Minn. Ct. App. 2003) (held dog sniff impermissible expansion of initial traffic stop for broken windshield, where officer did not have a reasonable, articulable suspicion that either defendant or other occupant was involved in drug-related or any criminal activity.).

16 Id.

17 Askerooth, 681 N.W.2d at 364; see State v. Tomaino, 627 N.W.2d 338 (Minn. Ct. App. 2001); State v. Shellito, 594 N.W.2d 182 (Minn. Ct. App. 1999); State v. Bell, 557 N.W.2d 603 (Minn. Ct. App. 1996) (consent may be invalid if tainted by an unlawful seizure or continuing detention.).

18 State v. Smith, 2011 WL 1236122 (Minn. Ct. App. 2011) (allowing search because asking of single question did not break expectation of privacy, distinguishing it from drug sniffing dogs or placing defendant in police car.); State v. Barbach, 706 N.W.2d 484 at 488 (Minn. 2005) (disallowing narcotics search based on only nervous behavior, an unsubstantiated tip of unknown origin, and speeding, when adult driver did not exhibit other signs of impairment.); State v. Sarber, 2005 WL 3527121 (Minn. Ct. App. 2005) (finding consent search based on officer’s discovery of a pearl handle that may belong to a weapon, driver and passenger’s inability to identify each other, inability to produce license or registration, and outstanding warrants.).

19 State v. Bunce, 669 N.W.2d 394 (Minn. Ct. App. 2003) (if consent is obtained by the use of misrepresentations it is invalid); State v. Schweich, 414 N.W.2d 227 (Minn. Ct. App. 1987) (suppression of evidence was justified when police told defendant they wanted to search for a weapon of another when, in fact, police also wanted to search for drugs belonging to defendant.); U.S. v. Briley, 726 F.2d 1301 (8th Cir. 1984) (finding consent voluntary because statements made by officers were not misrepresentative or intended to deceive, also significant that officers were leaving when consent was finally given); Pesterfield v. Comm’r of Pub. Safety, 399 N.W.2d 605 (Minn. Ct. App. 1987); Bumper v. North Carolina, 391 U.S. 543 (1968) (consent is not free and voluntary when officers tell someone they have a search warrant when in fact they do not.); See State v. Bruce, 669 N.W.2d 394 (Minn. Ct. App. 2003) (finding no misrepresentation because although police officers may have had secondary agenda, their purpose for conducting the search (suicide concerns) appeared genuine.).

20 State v. Cain, 2006 WL 619137 (Minn. Ct. App. 2006) (“The fact that a suspect is in custody when he consents to a search is not enough in itself to demonstrate a coerced consent to search.”); U.S. v. Kaplan, 895 F.2d 618, 622 (9th Cir. 1990) ("Here, appellant was read his Miranda rights, was informed that he had a right to refuse consent, was not a person lacking in education or understanding, and there was no evidence of undue force or intimidation. Even if Agent Clayton made it improperly appear to the defendant that the obtaining of a search warrant was a fait accompli, this error was not fatal under the circumstances of this case since there was probable cause to obtain a warrant and it was apparent no coercion was exercised."); U.S. v. Watson, 423 U.S. 411 (1976) (finding consent after arrest because it was on a public street, not given under coercion, defendant was familiar with the justice system, and he was aware he could withhold consent after Miranda warnings.).

21 State v. High, 176 N.W.2d 637 (Minn. 1970); State v. Hendricks, 2007 WL 4107361 (Minn. Ct. App. 2007); U.S. v. Martinez, 949 F.2d 1117 (11th Cir. 1992) (allowing search of automobile trunk when consent given to search mini-warehouse containing automobile, since the consent to search includes consent to open locked containers that may contain the objects of the search.); Bumper v. North Carolina, 391 U.S. 543, 548 (1968); State v. Hall, 176 N.W.2d 254, 258 (Minn. 1970) (“It is doubtful that, if defendant had refused to comply with the officer's requests, the police would have refrained from acting.”. Citations omitted, his consent would not be free and voluntary.).

22 Schneckloth v. Bustamonte, 412 U.S. 218 (1973); Kaplan, 895 F.2d at 622; See U.S. v. Buenrostro, 2011 WL 6152738 (8th Cir. 2011) (finding consent even if not informed of right to refuse and language barrier; factors of understanding the basis questions, adult status, and lack of coercion weighed in favor.).

23 U.S. v. Munoz, 590 F.3d 916 (8th Cir. 2010) (finding consent of passenger under mutual use limited to the vehicle interior and not to a backpack owned by defendant driver.); United States v. Chavez Loya, 528 F.3d 546 (8th Cir. 2008) (finding passenger with authority because driver was silent during passenger’s consenting actions and did not claim ownership of the vehicle.); State v. Baschkopf, 373 N.W.2d 756, 767 (Minn. 1985) (“In applying this definition, a finding of “mutual use” is the essential ingredient of effective consent. Furthermore, an independent right by the third person to inspect, and an assumption of risk by possible inspection by the defendant, must be reasonably inferable from that mutual use for the exception to attach.”.

24 State v. Liscari, 659 N.W.2d 243 (Minn. 2003) (requiring access, not mere access, for landlord’s consent to be valid, even if mistaken appearance of authority.); Baschkopf, 373 N.W.2d at 756; 7 Henry W. McCarr, MINNESOTA PRACTICE §39B, at 163 (3rd ed. 2001) (if the third party bears a certain relationship to the place or thing searched and to the aggrieved party, third party consent has been found adequate.); See also U.S. v. Chaldez, 919 F.2d 1193, 1202 (7th Cir. 1990) (“The underpinning of third-party consent is assumption of risk. (Citations omitted. One who shares a house or room or auto with another understands that the partner may invite strangers—that his privacy is not absolute, but contingent in large measure on the decisions of another. Decisions of either person define the extent of the privacy involved, a principle that does not depend on whether the stranger welcomed into the house turns out to be an agent or another drug dealer.”); U.S. v. Wade, 740 F.2d 625 (8th Cir. 1984) (finding authority for consent when roommate had made payments on borrowed van, had a set of keys, and kept property in the van.).

25 State v. Thompson, 578 N.W.2d 734, 740-41 (Minn. 1998).

26 U.S. v. Nichols, 574 F.3d 633, 636 (8th Cir. 2009) (“A search is justified without a warrant where officers reasonably rely on the consent of a third party who demonstrates apparent authority to authorize the search, even if the third party lacks common authority. Apparent authority is present when ‘the facts available to the officer at the moment...warrant a man of reasonable caution in the belief that the consenting party had authority over the premises.”); Illinois v. Rodriguez, 497 U.S. 177 (1990) (establishing an objective standard for a reasonable belief that the person
had authority to give consent.

27 Licari, 659 N.W.2d 243 (while searches based on honest, reasonable mistakes of fact are valid under the Fourth Amendment, a police officer's mistake of search and seizure law (here, a mistake as to the legal requirements for the authority of a landlord to consent to a search) cannot be reasonable.

28 U.S. v. Gleason, 25 F.3d 605 (8th Cir. 1994) (finding consent through friendly conduct of defendant that assisted officer in the search.); State v. Powell, 357 N.W. 2d 146 (Minn. Ct. App. 1984) (allowing search of defendant through consent by authorized party based on defendant's evasive actions); Watts v. State, 305 N.W.2d 860 (Minn. 1981) (allowing seizure of gun alluded to by defendant's head pointing.).

29 U.S. v. Nassar, 546 F.3d 569 (8th Cir. 2008) (finding consent by verbal confirmation five minutes after detention. Finding consent after suspect opened trunk by officer's request.); State ex rel. Branchaud v. Hedman, 130 N.W.2d 628 (Minn. 1964) (allowing search because suspect either opened the trunk or gave the keys to one of the officers under no threat of coercion.).

30 State v. Purdy, 153 N.W.2d 254 (Minn. 1967) (allowing search because keys were given to the officer and defendant made no contemporary objection to the search.).

31 Id. See United States v. Lopez-Mendoza, 601 F.3d 861 (9th Cir. 2010) (after officer obtained consent to look in the vehicle, the defendant stood nearby, expressing no concern during the thorough search. At no time did defendant attempt to retract or narrow his consent. “Failure to object to the continuation of the search may be considered an indication that the search was within the scope of the consent.”).

32 See State v. Othoudt, 482 N.W.2d 218, 223 (Minn. 1992) (finding no consent because of sheriff’s failure to seek a manifestation of consent when entering a house.); U.S. v. Lindsay, 506 F.2d 166 (D.C. Cir. 1974) (finding no invitation to enter by silence due to peace officers’ lack of stating their purpose of visit and the late night context.); People v. Edelman, 329 N.Y.S.2d 654, 657-58 (N.Y. 1972) (“Defendant's mere presence and silence at the gateway is simply too ambiguous to constitute the clear and convincing evidence needed to show that consent was ‘freely and voluntarily given.’

33 Fisanick, Christian A., VEHICLE SEARCH LAW DESKBOOK §3 at 64 (2010-2011 Ed., 2010) (“Refusing to sign a written consent to search form does not act as a withdrawal of previously given oral consent.”), citing U.S. v. Ross, 263 F.3d 844 (8th Cir. 2001) (motorist’s expressions of impatience during consent search did not manifest a withdrawal of consent.); U.S. v. Archer, 840 F.2d 567, 573 (8th Cir. 1988) (“Archer's refusal to sign the written consent form was concurrent with Archer's verbal consent and reasoned that such a response was not a retraction, although it was perhaps illogical.”); U.S. v. Boukater, 409 F.2d 537 (5th Cir. 1969) (Suspect twice gave oral consent but refused to sign written consent form - oral consent upheld.); U.S. v. Anderson, 859 F.2d 1171, 1176 (3d Cir. 1988) (allowing search of trunk and closed container following consent to remove any letters, documents, papers, materials, or other property which is pertinent to the investigation.); See State v. Frank, 650 N.W.2d 213 (Minn. Ct. App. 2002) (distinguishing U.S. v. Anderson due to lack of authority of person signing consent.).

34 U.S. v. Mayo, 627 F.3d 709 (8th Cir. 2010) (allowing search of minivan where drugs can be found as long as ‘minimally invasive’ due to specific request to search by officer and probable cause.); State v. Ortega, 749 N.W.2d 851 (Minn. Ct. App. 2008); U.S. v. Ruiz, 935 F.2d 982 (8th Cir. 1992) (allowing search of defendant 1’s luggage in defendant 2’s car when defendant 1 abandoned property and defendant 2 consented to search of the trunk.); U.S. v. Martinez, 949 F.2d 1117, 1119 (11th Cir. 1992).

35 See cases cited in endnote 2; State v. Maysonet, 74-CR-10-383 (Minn. Ct. App. 2012) (finding consent to include inspection of wheel-wells for hidden compartments when suspect did not object to dog search, opened truck for officer, and did not object while officer was searching. Officer’s observations during the consent search established probable cause to believe contraband was located inside the vehicle which permitted an exception to the search beyond the scope of the initial consent.); State v. Frank, 650 N.W.2d 213 (Minn. Ct. App. 2002) (disallowing search of luggage in trunk owned by passenger when only driver gave consent: scope only extended to the trunk itself.); Florida v. Jimeno, 500 U.S. 248 (1991) (in upholding a consent to search a motor vehicle, the U.S. Supreme Court stated "We think that it was objectively reasonable for the police to conclude that the general consent to search (defendant's car for narcotics.) included consent to search containers within that car which might bear drugs..."; U.S. v. McKines, 933 F.2d 1412 (8th Cir. 1991) (consent to search luggage for drugs allowed unsealing Mountain Dew bottle with cap in sealed position.); U.S. v. Kapperman, 764 F.2d 786 (11th Cir. 1985) (consent to search car and remove "whatever documents or items of property whatsoever, which they deem pertinent to the investigation, allowed search of unlocked suitcase in car."); U.S. v. Corvello, 657 F.2d 151 (7th Cir. 1981) (where defendant consented to "complete" search of car, it was lawful for officers to search three pieces of luggage found in the trunk.); U.S. v. Harris, 928 F.2d 1113 (11th Cir. 1991) (consent to search car for drugs extended to luggage in trunk, as "both defendant and the officer would reasonably interpret the consent as constituting consent to search in places where narcotics would reasonably be hidden."); U.S. v. Spriggs, 936 F.2d 1330 (D.C. Cir. 1991) (consent to search luggage for drugs extended to "baby powder container which was not an unlikely repository of narcotics.");

36 U.S. v. De La Rosa, 922 F.2d 675 (11th Cir. 1991) (where defendant consented to search of car and "placed no special restrictions on that search," officers could open notebook on seat.); U.S. v. Deanes, 918 F.2d 118 (10th Cir. 1990) (consent to search car for "drugs, weapons or contraband" covered looking inside travel bag in trunk.); U.S. v. Smith, 901 F.2d 1116 (D.C. Cir. 1990) (consent to search luggage for drugs allowed search of a paper bag found within, as "paper bag within a suitcase is as likely to contain drugs as the luggage itself."); U.S. v. Battista, 876 F.2d 201 (D.C. Cir. 1989) (where consent was given to search suitcase for drugs, scope of search was not exceeded when officers punctured plastic bag found inside the suitcase with a nail file and discovered cocaine; the court refused to "turn the search of the bag into a game of mother-may-I, in which officers would have to ask for new permission to remove each article from the suitcase to see what lay underneath."); U.S. v. Anderson, 859 F.2d 1171 (3d Cir. 1988) (where defendant consented to search of his car for "any letters, documents, papers, materials or other property which is pertinent to the investigation," this authorized police to look in trunk and to open closed bags within vehicle.); People v. Olivas, 54 Cal 1080 (Colo. 1993) (a consent form authorizing on its face a ‘complete search’ of defendant’s ‘vehicle and contents’ was broad enough to permit a search into the area behind a loose dashboard panel. “An objectively reasonable person - suspect or police - would understand that a consent to search a vehicle for drugs would include areas hidden from plain view.”).
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36 Supra note 35.


38 Florida v. Bostick, 501 U.S. 429, 433 (1991) (allowing police officers to ask permission to search luggage on a bus when suspect consented and understood that he could refuse); State v. Elam, 2007 WL 7143963 (Minn. Dist. Ct. 2007) (finding no violation of privacy by person who submitted to authority by compliant conduct: no invasion of privacy where the search is with the express or tacit consent of the one who has the right to object. Emphasis in text);

39 U.S. v. Lopez-Mendoza, 601 F.3d 861 (8th Cir. 2010) (withdrawing consent to search must be an act clearly inconsistent with the apparent consent, an unambiguous statement challenging the officer’s authority to conduct the search, or some combination of both); U.S. v. Sanders, 424 F.3rd 768 (8th Cir. 2005); U.S. v. Gray, 369 F.3d 1024 (8th Cir. 2004.).

40 State v. Walsh, 495 N.W.2d 419 (1993) (the handcuffing restraint, by itself, did not mean defendant was in “custody” for purposes of Miranda, and the deputy even told defendant he was not necessarily under arrest. In Walsh, shortly after 3 a.m. the police received two 911 calls. The first 911 call was from the victim's boyfriend who had come home late and found his girlfriend’s body stabbed and shot to death in her bedroom. He reported seeing a man (the defendant) standing in the driveway, and called police from a neighbor's phone. About the same time this call was made, defendant also called to report the murder. He said when he came to the residence he saw the broken garage door, went in the house, and found Pamela murdered. He said he was a co-worker and that he had been at the house about 45 minutes. When deputies arrived at the Sweeney residence they found defendant still talking to the 911 operator. Deputy Longbehn handcuffed defendant, telling him he was not under arrest but was being handcuffed for the officers' safety and to determine what had taken place.).

41 U.S. v. Martinez, 949 F.2d 1117, 1119 (11th Cir. 1992); U.S. v. Strickland, 902 F.2d 937 (11th Cir. 1990) (general consent to search vehicle did not authorize officer to slash open the spare tire.).

42 See Florida v. Jimeno, 500 U.S. 248 (1991) (it is very likely unreasonable to think that a suspect, by consenting to the search of his trunk, has agreed to breaking open of a locked briefcase within the trunk.); Strickland, 902 F.2d at 937 (general consent to search vehicle did not authorize officer to slash open the spare tire.). See, U.S. v. Martinez, 949 F.2d at 1120 (”we hold that a general consent to search a specific area for a specific thing includes consent to open a locked container that may contain the objects of the search, in the same manner that such locked container would be subject to search pursuant to a valid search warrant.”).

43 Jimeno, 500 U.S. at 248; See also U.S. v. Urbina, 431 F.3d 305 (8th Cir. 2005) (allowing search of auxiliary gas container because suspiciously not secured and thudding noise was not consistent with fluid.); U.S. v. Alvarez, 235 F.3d 1086 (8th Cir. 2000) (allowing movement of cardboard and materials in a trunk to uncover hidden compartment.); U.S. v. Martinez, 168 F.3d 1043 (8th Cir. 1999) (allowing search of trunk based on appearance of metal shavings and nervous demeanor of defendant.).
CHAPTER 8
MEDICAL EMERGENCY SEARCH

8.1 WHAT IS THE GENERAL RULE?

1. General Rule: Under the medical emergency exception, if the police find a person unconscious or disoriented and incoherent in or near a motor vehicle, it is reasonable for them to search the person and vehicle for the purpose of giving aid to the person in distress and to find information bearing upon the cause of the person's condition.  

2. Legal Justification: The emergency exception to the Fourth Amendment warrant requirement is a common sense approach to the reoccurring situation where police officers uncover evidence of crime in the course of providing emergency assistance to injured or unconscious persons. In other words, when responding to emergency situations, the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid. Evidence of crime discovered during a lawful emergency search is admissible under the plain view doctrine. See Chapter 3 "Plain View Seizure of Evidence."

3. Burden of Proof: The test for a valid warrantless search under the medical emergency doctrine requires a two step analysis. First, the search is invalid unless the searching officer is actually motivated by a perceived need to render aid or assistance (subjective test). Second, even though the requisite motivation is found to exist, unless it can be found that a reasonable person under the same circumstances would have thought an emergency existed, the search is invalid (objective test). Both the subjective and objective tests must be met. The burden is on the state to demonstrate that police conduct was justified under this exception.

4. Scope of Medical Emergency Search - Containers: The scope of the search is determined by what is reasonable considering the nature and circumstances surrounding the medical emergency. In other words, even if officers are acting in good faith (subjective test) and the officers' belief that there is an emergency is, in fact, reasonable (objective test), the search itself must still be reasonable and justified by the exigent circumstances. For example, the medical emergency search exception has been used to justify the search of a locked briefcase found on the front seat of a parked car when officers were unable to find identification on a man lying unconscious in the street next to the car. It was reasonable to search the briefcase to seek identification or medical alert cards that might assist in saving the injured party. A search of a person found in an unconscious or incoherent condition is both legally permissible and highly necessary. If no identification is found during the search of the injured person, a search of nearby "closed containers" may be, depending upon the circumstances, both reasonable and necessary. However, the search under this exception may have to end when officer learns that aid is not needed.
### 8.2 VIGNETTE #10: UNCONSCIOUS DRIVER

#### FACTS

1. Officers observe a parked vehicle at the bottom of a boat landing next to a river. Upon approaching the vehicle, officers observe a lone female occupant slumped back in the driver's seat, apparently unconscious.

2. When the driver fails to respond to the officer's verbal inquiries, the officer enters the vehicle and checks the driver's pulse. An ambulance is called based upon the medical emergency situation.

3. Located on the driver's lap, in plain view, are two used syringes. The officer also observes what appears to be a bleeding needle injection mark in the area of the driver's left forearm.

4. The officer then enters the vehicle and conducts a warrantless search of the driver's clothing, the passenger compartment area and all containers found within. Inside a large cloth bag, located on the back seat, the officer finds an uncased handgun and a baggie of cocaine.

### 8.3 CAN THE DRIVER'S CLOTHING BE SEARCHED WITHOUT A WARRANT?

**ANSWER:** Yes

As long as the officer is acting in good faith (subjective test), an emergency situation does, in fact, reasonably appear to exist (objective test), and the search itself is reasonably designed to discover information that might be useful in identifying, diagnosing or assisting in the treatment of the injured person, a search of the driver's clothing would be reasonable.

### 8.4 CAN THE PASSENGER COMPARTMENT AREA BE SEARCHED?

**ANSWER:** Yes

As long as the officer is acting in good faith (subjective test), an emergency situation does, in fact, reasonably appear to exist (objective test), and the search itself is reasonably designed to discover information that might be useful in identifying, diagnosing or assisting in the treatment of the injured person, a search of the passenger compartment area would be reasonable.
8.5 CAN A PURSE BE SEARCHED?

**ANSWER:** Yes

As long as the officer is acting in good faith (subjective test), an emergency situation does, in fact, reasonably appear to exist (objective test), and the search itself is reasonably designed to discover information that might be useful in identifying, diagnosing or assisting in the treatment of the injured person, a search of a purse found inside the passenger compartment area would be reasonable.

8.6 CAN MISCELLANEOUS CLOTHING BE SEARCHED?

**ANSWER:** Yes

As long as the officer is acting in good faith (subjective test), an emergency situation does, in fact, reasonably appear to exist (objective test), and the search itself is reasonably designed to discover information that might be useful in identifying, diagnosing or assisting in the treatment of the injured person, a search of miscellaneous clothing found inside the passenger compartment area would be reasonable.

8.7 CAN MISCELLANEOUS CONTAINERS BE SEARCHED?

**ANSWER:** Yes and No

It depends on the nature of the container and whether the search of that particular container is justified under the circumstances. In other words, even if the searching officer is acting in good faith (subjective test) and an emergency situation does, in fact, reasonably appear to exist (objective test), the search of any particular closed container itself must also be reasonable under the circumstances. For example, if the container to be searched could reasonably be expected to contain relevant information, then a search of that container would be reasonable. However, the medical emergency search exception does not give peace officers carte-blanche authority to go on a fishing expedition and search whatever they come across.

8.8 IS SEIZURE OF THE GUN AND COCAINE LAWFUL?

**ANSWER:** Yes

By the time the searching officer got to the large cloth bag, he still had no information as to the driver's identity or the nature of the substance injected. Because one could reasonably expect a container like a large cloth bag to contain relevant information, a search of the bag would be reasonable under the circumstances. As long as evidence of a crime (i.e. uncased handgun and cocaine) is discovered as a consequence of an otherwise lawful medical emergency search, seizure of both items would be lawful under the plain view exception. See Chapter 3 "Plain View Seizure of Evidence".
### 8.9 WHAT IF THE BAG HAD BEEN LOCKED?

**ANSWER:** The search of the bag would probably still be upheld.

Although there are no Minnesota Appellate Court decisions directly on point, since the searching officer still had no information as to the driver's identity or the nature of the substance injected by the time he got to the bag, and because a container like a large cloth bag could reasonably be expected to contain information relevant to the identity, diagnosis or treatment of the injured party, forcing open the locked bag for the purpose of obtaining relevant information would appear to be reasonable under the circumstances.\(^\text{11}\)

### 8.10 WHAT IF THE BAG HAD BEEN IN THE TRUNK?

**ANSWER:** Search of the bag, even if found in the trunk, would probably still be upheld.

Although there are no Minnesota Appellate Court decisions directly on point\(^\text{12}\), because the search to that point had still uncovered no information as to the driver's identity or the nature of the substance injected, and because a trunk could reasonably be expected to contain information that could be useful in identifying, diagnosing or treating the injured party, opening the trunk and searching the bag would appear to be reasonable under the circumstances.
ENDNOTES:

1 State v. Lopez, 698 N.W.2d 18 (Minn. Ct. App. 2005) (upholding check on unconscious and intoxicated passenger in parked vehicle by waking her up. The two part test is: 1) the officer motivated by the need to render aid or assistance; and 2) under the circumstances, would a reasonable person believe that an emergency existed.); State v. Volkman, 675 N.W.2d 337, 339–42 (Minn. Ct. App. 2004) (upholding finding of contraband hidden in a toolbox because search was asked by officer and consented by disoriented driver and driver had features of intoxication.); 3 Wayne R. LaFave, Search and Seizure § 7.4(f), at 666-67 (4th ed. 2004) (“If the police find a person unconscious or disoriented and incoherent in a vehicle…or connect him with a nearby vehicle, it is reasonable for them to enter the vehicle for the purpose of giving aid… and of finding information bearing upon the cause of his condition.”); see also State v. Auman, 386 N.W.2d 818 (Minn. Ct. App. 1986) (search of an eyeglass case removed from the pocket of a person suffering from what appeared to be a severe drug induced stupor was upheld under this exception.); Minn. v. Arizona, 437 U.S. 385, 392-93 (1978); but see State v. Carlson, 2011 WL 5829295 (Minn. Ct. App. 2011) (upholding Lopez test to find lack of reasonable belief that defendant was committing DWI at the time of the seizure, because defendant was acting lawfully and insufficient attempts were made to communicate or verify his condition.).

2 State v. Lopez, 698 N.W.2d 18 (Minn. Ct. App. 2005) (test also applied in the context of an officer checking the welfare of someone unconscious or sleeping in a vehicle); Michigan v. Tyler, 436 U.S. 408 (1978) (certain other emergencies, such as burning fires, may justify warrantless searches and seizures.).

3 State v. Lopez, 698 N.W.2d 18d (Minn. Ct. App. 2005); State v. Auman, 386 N.W.2d at 818; 3 LaFave, Search and Seizure, §7.4(f) at 667; State v. Halla-Poe, 468 N.W.2d 570 (Minn. Ct. App. 1991) (finding search of defendant’s apartment after DWI crash was lawful because it was to render assistance and not subterfuge to arrest.); State v. Perry, 2009 WL 233937 (Minn. Ct. App. 2009) (search of a parked minivan with a running motor lawful since police officer was precisely informed of defendant’s vehicle and nature of reckless driving, and the police officer witnessed unconscious occupants, meaning a medical emergency could not be ruled out.); but see State v. Othoudt, 469 N.W.2d 321 (Minn. Ct. App. 1991) (finding an unwarranted entry and arrest of an intoxicated individual at his home for DWI a violation of the 4th Amendment since no consent was given to search the house, medical aid had been provided, and officer told help not needed.); State v. Owen, 2001 WL 32787 (Minn. Ct. App. 2001) (finding an in-house arrest illegal due to lack of consent and injuries insufficient to be an emergency.).

5 State v. Lemieux, 726 N.W.2d 783, 788 (Minn. 2007) (upholding search of house because search was for victims in potentially ongoing crime. “In applying the emergency-aid exception to the warrant requirement, two principles must be kept in mind: first, that the burden is on the state to demonstrate that police conduct was justified under the exception; and second, that an objective standard should be applied to determine the reasonableness of the officer’s belief that there was an emergency.”); Fisianick, Christian A., VEHICLE SEARCH LAW DESKBOOK §8.2 at 153 (2010-2011 Ed., 2010) (the most important consideration to remember is that under any court-sanctioned exigency situation, police must have probable cause for the search and seizure. The exigent circumstances only dispense with the need for obtaining the warrant itself); Auman 386 N.W.2d at 821 (adopting the two-part test set forth by the Wisconsin Supreme Court in State v. Prober, 297 N.W.2d 1 (Wis. 1980)); State v. Othoudt, 482 N.W.2d 218, 223 (Minn. 1992) (stating “To determine whether the officer’s actions meet an objective standard of reasonableness, the court should ask whether with the facts available to the officer at the moment of the seizure or search, would cause a person of reasonable caution to believe that the action taken was appropriate.” No emergency exception where officer had been told no help was needed and driver was already receiving aid.).

6 State v. Lemieux, 726 N.W.2d 783, 788 (Minn. 2007) (upholding search of house because search was for victims in potentially ongoing crime.).

7 State v. Voss, 683 N.W.2d 846, 850 (Minn. Ct. App. 2004) (holding search of a disconnected freezer unlikely to be related to the emergency.); State v. Auman, 386 N.W.2d 818 (Minn. Ct. App. 1986); State v. Anderson, 388 N.W.2d 784 (Minn. Ct. App. 1986); State v. Othoudt, 482 N.W.2d at 218; see State v. Gray, 456 N.W.2d 251, 256 (Minn. 1990) (holding exigent circumstances can be established either by a single factor or “totality of the circumstances” analysis); State v. Johnson, 689 N.W.2d 247, 253 (Minn. Ct. App. 2004) (finding a finding of probable cause and exigent circumstances means a determination of medical emergency is not needed.).

8 U.S. v. Hale, 581 F.2d 723 (8th Cir. 1978) (upholding search of locked briefcase.); Auman, 386 N.W.2d at 818.


10 Auman, 386 N.W.2d at 818; see United States v. Dunavan, 485 F.2d 201 (6th Cir. 1973) (upholding search of two locked briefcases found in car.); Evans v. State, 364 So. 2d 93 (Fla. Dist. Ct. App. 1978) (upholding search of pocket book found in car.); Floyd v. State, 330 A.2d 677 (Md. Ct. Spec. App. 1975) (upholding search and recovery of heroin found during search of victim's clothing for identification.); State v. Prober, 297 N.W.2d 1 (Wis. 1980) (upholding search of purse found next to unconscious person.); But see State v. Loewen, 647 P.2d 489 (Wash. 1982) (finding an unlawful search of tote bag at hospital for identification since injured party was being treated by trained medical personnel and regaining consciousness; a reasonable person would not believe there was then an emergency.).

11 State v. Frey, No. C3-01-718 (Minn. Ct. App. Feb. 12, 2002) (unpublished opinion) (continued investigation and questioning exceeded the scope of emergency exception once appellant told the officers she did not need help.); Othoudt, 482 N.W.2d at 223 (no emergency exception where officer had been told no help was needed and driver was already receiving aid.).

12 Hale, 581 F.2d at 723 (upholding search of locked briefcase upheld.); see Auman 386 N.W.2d at 818; United States v. Dunavan, 485 F.2d 201 (6th Cir. 1973) (upholding search of two locked briefcases found in car.)

13 State v. Prober, 297 N.W.2d 1 (Wis. 1980) (finding a search of a purse in the trunk of the car wrongly conducted since it was not in the area of the medical emergency and officer’s intent was to inventory the car. A later ruling in State v. Weide, 455 N.W.2d 899 (Wis. 1990) would uphold the search as part of a regular inventory search.).
CHAPTER 9
OVERVIEW

9.0 VEHICLE SEARCH EXCEPTIONS

CHAPTER 2: SEARCH INCIDENT TO ARREST

CHAPTER 3: PLAIN VIEW SEIZURE OF EVIDENCE

CHAPTER 4: PROBABLE CAUSE SEARCH FOR EVIDENCE

CHAPTER 5: INVENTORY SEARCH

CHAPTER 6: PROTECTIVE WEAPONS SEARCH

CHAPTER 7: CONSENT SEARCH

CHAPTER 8: MEDICAL EMERGENCY SEARCH

1. Inevitable Discovery Rule: Under the inevitable discovery rule, even if evidence is initially obtained as a result of an illegal (unreasonable) search, if the prosecution can establish by a preponderance of evidence that the evidence would ultimately or inevitably have been discovered by lawful means (i.e. through application of a different exception, etc.), then the exclusionary rule does not apply and the evidence will be admissible at trial. Nix v. Williams, 467 U.S. 431, 444, 104 S. Ct. 2501, 81 L.Ed.2d 377 (1984); State v. Licari, 659 N.W.2d 243, 254 (Minn. 2003). The test established in Nix includes two elements: (1) there must be an “ongoing line of investigation that is distinct from the impermissible or unlawful technique;” and (2) there must be a “showing of a reasonable probability that the permissible line of investigation would have led to the independent discovery of the evidence.” United States v. Villalba-Alvarado, 345 F.3d 1007, 1019-20 (8th Cir. 2003); see also State v. Blaisdell, No. A06-467 (Minn. Ct. App. Aug. 8, 2006) (unpublished opinion) (even if driver was improperly seized when ordered back into the vehicle, the officer, who was in the process of running a registration check, would have inevitably discovered that the vehicle tabs were expired).
9.1 VIGNETTE #11: OVERLAPPING SEARCH EXCEPTIONS

FACTS

1. Officers make a good samaritan approach to an already stopped motor vehicle that has one male standing by the open car hood and one male slumped back in the passenger seat, apparently unconscious and bleeding from the mouth.

2. The male standing outside tells the officers that he had just picked up the male passenger but did not know who he was or what was wrong with him.

3. One of the officers opens the passenger door and checks the injured party’s pulse. An ambulance is called based upon the medical emergency situation.

4. While searching the injured party’s clothing, the officer finds an empty shoulder holster.

5. The male outside is immediately seized and told that although he is not under arrest, he will be handcuffed for officer safety. Officers then obtain the man’s verbal consent to search the car for a gun.

6. Shortly after the officer starts searching, the consenting male changes his mind and withdraws the consent to search. The officer continues to search and finds an uncased handgun on the floor under the driver’s seat. The male does not have a permit for the handgun.

7. The male is placed under arrest. During a search of a fanny pack located on the front seat, the searching officer finds a baggie of cocaine.

8. During a search of the trunk, the officer breaks open a locked tool box and finds a large amount of money, cocaine and guns.

9. The car is impounded and towed to a police impound lot. The following day, the officer re-enters the vehicle and during a search of a notebook, located in the back seat area, additional money and cocaine are found and seized.

9.2 CAN THE PASSENGER'S CLOTHING BE SEARCHED?

ANSWER: Yes

Under the "medical emergency search" exception, a search of the injured person's clothing for information that might be useful in identifying, diagnosing, or treating the person is reasonable.
### 9.3 CAN THE PASSENGER AREA AND GLOVE BOX BE SEARCHED?

**ANSWER:** Yes  

A search of the passenger compartment area, including the unlocked glove box, can be justified under:

a) The "consent to search" exception;  
b) The "protective weapons search" exception; or  
c) The “medical emergency search” exception.

### 9.4 IS SEIZURE OF THE HANDGUN LAWFUL?

**ANSWER:** Yes  

Seizure of the handgun can be justified under:

a) The "protective weapons search" exception;  
b) The "medical emergency search" exception; or  
c) The “plain view – plain feel” exception.

**Note - Consent Search:** Because the driver withdrew his consent to search prior to the officer finding the handgun, the "consent to search" exception cannot be used to justify seizure of the handgun.

**Note - "Plain View - Plain Feel" exception:** Although the officer never observed the handgun in plain view, he did have a lawful right to be where he was when he felt the gun, and because the incriminating nature of the gun was immediately apparent to the officer (based upon the feel), the handgun was subject to immediate seizure under the "plain view - plain feel" exception.

### 9.5 CAN THE FANNY PACK BE SEARCHED?

**ANSWER:** Yes  

A search of the fanny pack can be justified under:

a) The "search incident to arrest" exception;  
b) The "protective weapons search" exception; or  
c) The "medical emergency search" exception.
9.6 CAN THE TRUNK AREA BE SEARCHED?

ANSWER: Yes

A search of the trunk can be justified under:

a) The "probable cause search for evidence" exception; or
b) The "inventory search" exception. However, this exception would only apply if the inventory search is conducted pursuant to a standard departmental inventory policy that specifically authorizes the search of a locked trunk.

9.7 CAN LOCKED CONTAINERS INSIDE THE TRUNK BE SEARCHED?

ANSWER: Yes

A search of the locked toolbox found inside the trunk can be justified under:

a) The "probable cause search for evidence" exception; or
b) The "inventory search" exception. However, this exception would only apply if the inventory search is conducted pursuant to a standard departmental inventory policy that specifically authorizes the opening of a locked trunk and any other locked containers found within the vehicle.

9.8 IS SEIZURE OF THE MONEY AND COCAINE LAWFUL?

ANSWER: Yes

The search of the back seat notebook can be justified under:

a) The "probable cause search for evidence" exception; or
b) The "inventory search" exception, assuming that the inventory search is conducted pursuant to a standard departmental inventory policy.

Note: Evidence discovered during the course of a properly conducted warrantless search is subject to seizure and is admissible against a defendant at trial.

Note: A delayed search of the vehicle at a location other than where the vehicle was stopped (or located) is permissible under either the "probable cause search for evidence" exception or the "inventory search" exception, assuming the standard inventory policy allows for a delayed search at a different location such as an impound lot or a police station, etc.

** END **