



**Search Warrants:  
When You Need One & When You Don't**

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# Is it a “search” in the constitutional sense?

- If it is a “search” then a warrant is required
- A search without a warrant is presumed to be unlawful
- Commonwealth bears the burden of showing that the search falls within an exception to the warrant requirement
- Detailed report-writing and testimony prep are crucial



# Is it a “search” in the constitutional sense?

- An official intrusion into a place where a person has an actual expectation of privacy which society recognizes as reasonable



- So, no warrant is needed to search/seize items if they are located in a place where a person has NO expectation of privacy

# Reasonable Expectation of Privacy: Considerations

- Is the area a shared or common area?
- Is it accessible to others?
- Does someone control the area or has he/she taken steps to exclude others?
- Is the general public welcome there (business or commercial area)?



# **If there is a reasonable expectation of privacy, does a warrant exception apply?**

- **Consent Searches**
- **Searches upon Probable cause & Exigent Circumstances**
- **Emergency Aid**
- **Searches Incident to Arrest**
- **Inventory of Persons in Custody & Automobiles**
- **Plain View Seizures**

# Consent Searches

- Consent must be freely and voluntarily given
- By a person who has the authority to give consent
- \* Consider both capacity and authority to consent



# Scope of Consent Search

- Consenting party may impose limits on search & may withdraw consent at any time



- Ortiz:

*A driver's consent to allow the police to search for narcotics or firearms "in the vehicle" does not authorize a police officer to search under the hood of the vehicle and, as part of that search, to remove the vehicle's air filter.*

# Searches upon Probable Cause & Exigent Circumstances

An officer may enter a home without a warrant if:

- There is probable cause to believe that evidence of a crime will be found there;

AND

- There is probable cause to believe that evidence may be destroyed or others may be placed in danger or armed, fleeing suspect would escape in the time it would take to secure the warrant.

**URGENT**



# Automobile Exception

- Exigency is implied so long as vehicle is in public place



- Probable cause to believe that evidence of a crime will be found in the vehicle

*Is there a connection between the crime and the vehicle?*

- \* Note: Possession of less than 2 oz of marijuana isn't a crime



Mere odor of marijuana emanating from car is not enough (unless evidence of impaired driving)

Possession of small qty of marijuana or observation of occupant smoking marijuana not enough to search car (but can stop & issue citation for 'open container')

Can seize any amount over 1 oz but can't search car

# Scope of Automobile Exception Search

- May search any area where there is probable cause to believe that evidence of the crime will be found



- This includes passenger's belongings left in the vehicle (but not the passenger- they aren't a container)



# Emergency Aid



- Police may enter residence if objective evidence of imminent threat of death or serious injury, or to prevent a fire or explosion.
- Entry also permitted to protect animals in need of assistance



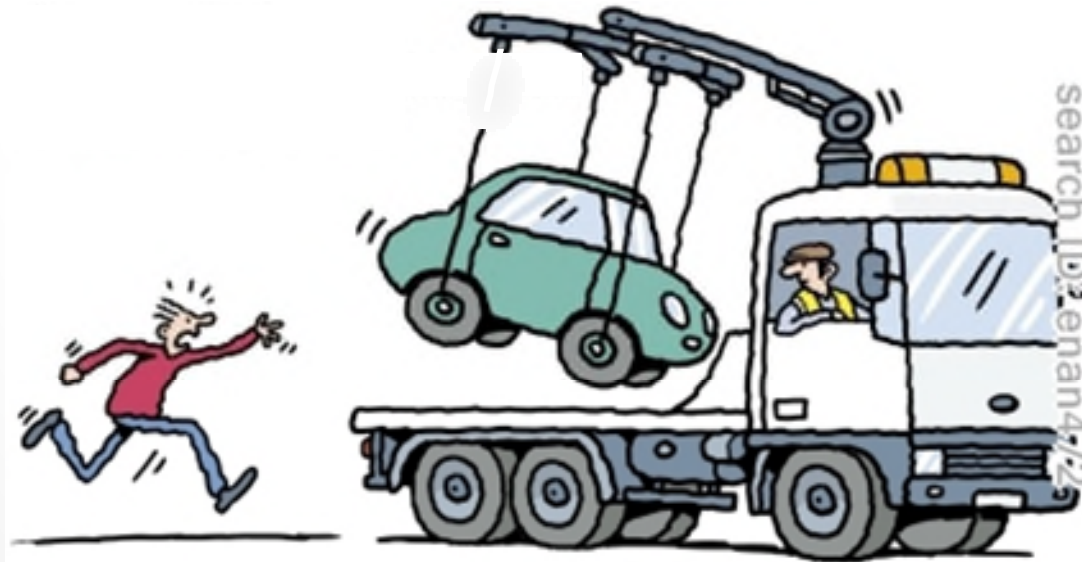
# Searches Incident to Arrest

- Lawful arrest supported by probable cause;
- Search limited to arrestee's body, clothing, possessions, and area in immediate control;
- Search for weapons and/or evidence of crime for which arrestee is arrested;
- Search substantially contemporaneous with time & place of arrest.



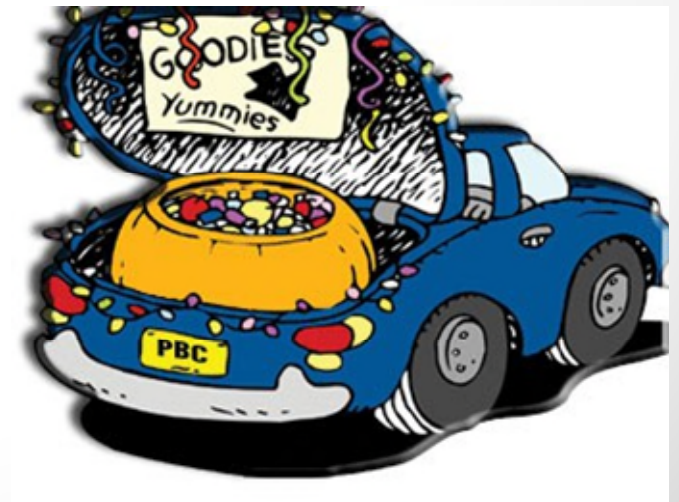
# Inventory of Automobiles

- To safeguard the vehicle and its contents
- To protect police against fraudulent claims of theft
- To protect the public from the possibility that the vehicle contains weapons or dangerous contraband



# Inventory of Automobiles

- Vehicle is lawfully impounded
- Inventory is conducted pursuant to standard, written police procedures, including specific provisions for closed/locked containers
- Inventory is not a pretext concealing investigative motive



# Inventory of Automobiles

- Is impoundment reasonable necessary? (i.e., could vehicle be left where it was parked? If not, is the owner or other authorized person present and able to drive the vehicle? If not, do they offer a lawful and practical alternative – someone to come and pick it up?)
- Even if car is lawfully impounded, cannot automatically seize & inventory items inside if there is a practical, available alternative (i.e., is there a third party who is present, willing & able to take property?)

# Inventory of Persons in Custody



- Arrestee is about to be jailed
- Inventory is conducted pursuant to standard, written police procedures



\* Are there reasonable alternatives to seizing item carried by defendant at scene of arrest and transporting it to station to be inventoried? (i.e., is a third party willing to take possession?)



# Plain View Seizures

An officer may seize evidence without a warrant if:

- The officer is lawfully in the place from which he/she sees the item;
- The item is in plain view;
- It is immediately apparent that the item is contraband or evidence of a crime;
- Discovery is inadvertent.



# Questions?



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