

# Arizona Peace Officer Standards and Training

## Basic Curriculum Model Lesson Plan

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**LESSON TITLE: SEARCH AND SEIZURE 2.3**

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SUBJECT: Search and Seizure

AZ POST DESIGNATION: 2.3

HOURS: 18

COURSE CONTENT: An analysis of constitutional requirements, statutes and case law on search and seizure. The probable cause and conditions under which an officer may make a legal search and seizure, including searches of persons, premises and vehicles, are identified. The procedure for obtaining and serving a search warrant, emphasizing the recording of probable cause in written reports and affidavits for search warrants, is outlined.

PERFORMANCE OBJECTIVES: Upon completion of this course of instruction, students using notes, handouts and other support materials as references, within the allotted time, will:

- 2.3.1 Identify examples of the conditions under which a lawful search with a warrant may be made per A.R.S. §13-3916 and §13-3917.
- 2.3.2 Identify the grounds for issuance of a search warrant per A.R.S. §13-3912.
- 2.3.3 Identify examples of the following search concepts per case law:
  - A. Consent.
  - B. Scope of search.
  - C. Contemporaneous.
  - D. Probable cause.
  - E. Instrumentalities of the crime.
  - F. Fruits of the crime.
  - G. Contraband.
  - H. Knock and announce.

- 2.3.4 Identify the requirements and procedures for obtaining, executing and returning a search warrant per A.R.S. §13-3911 through §13-3924.
- 2.3.5 Identify the following items for which an officer may legally search as delineated in case law decisions:
- A. Dangerous weapons.
  - B. Fruits of the crime.
  - C. Instrumentalities of the crime.
  - D. Contraband.
  - E. Suspects and additional victims.
- 2.3.6 Given a written, verbal or visual description of an instance where “probable cause” for police action may or may not exist, identify if probable cause exists to search consistent with the following standards:
- A. Probable cause to obtain a search warrant requires that enough credible information exists to make it reasonable to believe that the contraband, or evidence to be searched for, is located in the place to be searched.
  - B. Probable cause to search a vehicle without a warrant requires that enough credible information exists to make it reasonable to believe the contraband, or evidence to be searched for, is located in that part of the vehicle which is to be searched.
- 2.3.7 Given a written, verbal or visual description of possible criminal activity, identify whether “reasonable suspicion” exists for an officer to detain a suspect. The elements required to establish reasonable suspicion are a set of specific, articulable facts which support an inference consistent with the following standards:
- A. Crime-related activity has occurred, is occurring or is about to occur;
  - B. The person to be detained is connected with that activity.
- 2.3.8 Identify examples of situations/circumstances which do not require a search warrant, to include:
- A. Consent search.

- B. Exigent circumstances search.
  - 1. Response to an emergency.
  - 2. Hot pursuit.
  - 3. Likely destruction of evidence.
  - 4. Substantial risk of harm to persons involved.
  - 5. Substantial possibility of violence.
- C. Incidental to arrest search.
- D. Plain view search.
- E. Mobile vehicle search.
- F. Inventory of a person's property.
- G. Searching abandoned property.

2.3.9 Identify the permissible scope of the following searches:

- A. Consent search.
- B. Exigent circumstances search.
  - 1. Response to an emergency.
  - 2. Hot pursuit.
  - 3. Likely destruction of evidence.
  - 4. Substantial risk of harm to persons involved.
  - 5. Substantial possibility of violence.
- C. Incident to arrest search.
- D. Plain view search.
- E. Open fields search.
- F. Mobile vehicle search.

- G. Inventory of a person's property.
  - H. Searching abandoned property.
- 2.3.10 Identify the definition and the following purposes of the "exclusionary rule":
- A. The primary purpose is to deter unlawful searches and seizures by peace officers. This is accomplished by eliminating the incentive for such behavior by prohibiting the admission of any evidence which is illegally obtained.
  - B. A secondary purpose is to maintain the dignity and integrity of the courts by keeping "tainted" evidence out of the courtroom.
- 2.3.11 Identify the requirements and scope of both a lawful "stop" and a lawful "frisk" (Terry v. Ohio).
- 2.3.12 Given a simulated situation in which a "stop and frisk" is appropriate, **demonstrate** a lawful "stop and frisk."

DATE FIRST PREPARED: January 2000

PREPARED BY: SME Committee

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CLASS LEVEL: Student

TRAINING AIDS:

INSTRUCTIONAL STRATEGY: Interactive lecture and class discussion.

SUCCESS CRITERIA: 70% or higher on a written, multiple-choice examination.

COMPUTER FILE NAME: 2.3 Search and Seizure

DATE RELEASED TO THE SHARE FILE: August 2023

**I. INTRODUCTION**

- A. Instructor – (self) introduction.
- B. Preview of performance objectives.

**II. CONSTITUTION OF THE UNITED STATES**

- A. Fourth (4th) Amendment to the Constitution.
- B. “The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated and no warrants shall issue, but upon probable cause, supported by oath, or affirmation, and particularly describing the place to be searched and the persons or things to be seized.”
- C. Article II, Section 8 of the Arizona Constitution.
- D. “No person shall be disturbed in his private affairs, or his home invaded without authority of law.”
- E. This provision of the Arizona Constitution has been held to be more restrictive for law enforcement than the U.S. Constitution (i.e., situations that the U.S. Constitution would have ruled not allowable under the Arizona Constitution).
- F. Definition of search warrant – a search warrant is an order, in writing, issued in the name of the state of Arizona, signed by a magistrate, directed to a peace officer, commanding him/her to search for personal property, persons or items described in A.R.S. §13-3911.

**P. O. 2.3.4**

- G. Review of the key concepts.
  - 1. Right of the people to be secure in their persons, houses, papers and effects.  
**INSTRUCTOR NOTE:** *4th Amendment to the U.S. Constitution.*
  - 2. Against unreasonable searches and seizures.
    - a. Only applies to government conduct / government actors.
    - b. Standing: The right to challenge the legality and admissibility of the evidence in question. (Does a person have an expectation of privacy?)
    - c. A person cannot challenge search unless he/she has standing. (Rakas v. Illinois)
    - d. Example of non-governmental entity: A security guard not acting as an agent of the state; searches conducted by parents, neighbors or school officials. (ARS 32-2634)

3. The court assumes a search/seizure conducted with a warrant is “reasonable”.
  - a. A search/seizure without a warrant is considered “unreasonable” absent a search warrant exception.
  - b. The burden of proving reasonableness lies with the state.
  - c. The preferred method of a search is with a warrant.
  
- H. Requirements to obtain a search warrant:
  1. There is probable cause to believe that the specific items being sought are evidence of criminal activity, AND
  2. There is probable cause to believe that the specific evidentiary items are located at the place specified in the warrant. **INSTRUCTOR NOTE:** *This is not a wish list or a likely to be there list. It is a list of items for which you have probable cause to believe are there.*
  3. Signed by an impartial judge (Superior Court, Justice of the Peace, Magistrate, Court of Appeals or Supreme Court of Arizona). (ARS 13-3915) **P. O. 2.3.4**
  4. Affidavit documenting probable cause. (Illinois v. Gates)
  5. Specific in date/time/location.
  6. Scope of search – detailed and adhered to. **P. O. 2.3.3B**
  7. Search warrant return: **P. O. 2.3.4**
    - a. A search warrant must be executed within five (5) calendar days of being issued. An option to renew the warrant for five (5) calendar days is available with the judge’s authorization. ( ARS 13-3921 and ARS 13-3918)
    - b. Once served, the search warrant must be returned to a magistrate within three (3) court business days after being executed.
  8. Nighttime search (2200 – 0630) requires good cause. (ARS 13-3917) **P. O. 2.3.1**
  9. Good cause is an articulable reason the warrant must be served between 10:00 p.m. and 6:30 a.m. This can include officer safety or evanescent evidence. **P. O. 2.3.4**
  10. Reliable hearsay can support the issuance of a search warrant. (Jones v. United States)

11. Informant reliability issues. (Illinois v. Gates)
    - a. Detailed record of information.
    - b. Reliability buys.
  12. Receipt for property: A detailed receipt for property shall be given, or left, where the property was taken from. (ARS 13-3919) **P. O. 2.3.4**
  13. Retention of property: Seized property shall be retained by the seizing agency. (ARS 3920) **P. O. 2.3.4**
  14. Unlawful procurement of a search warrant with intent to harass and without probable cause, causes the search warrant to be executed as a misdemeanor. (ARS 13-3924) **P. O. 2.3.4**
- I. Definitions.
1. Search: “A governmental violation of a person’s reasonable expectation of privacy”; or physically intruding upon persons, houses, papers or effects for the purpose of obtaining information. (U.S. v. Jones.)
  2. Expectation of privacy – “What is sought to be preserved as private, even in an area accessible to the public, may be constitutionally protected.” (Katz v. U.S. v. Basher)
  3. Expectation of privacy issues:
    - a. Driveways. (AZ v. Olm; Florida v. Riley, Virginia v. Collins)
    - b. Front yards. (AZ v. Blakley; People v. Bradley)
    - c. Windows.
    - d. Neighbor’s property.
    - e. Open field. (AZ v. Paredes)
    - f. Use of binocular A.R.S./visual aids (i.e., flashlights). (CA v. Dunn)
    - g. Aerial view. (CA v. Ciralo)
    - h. Dog sniff. (AZ v. Weinstein, Florida v. Jardines)
    - i. Human sniff. (AZ v. Peters)



- j. Electronic tracking technology.
4. Seizure: An exercise of dominion or control of that person or object. Property seizure must be crime related, such as contraband.
- J. Service of warrant.
- 1. Service by a police officer; may be assisted by non-sworn personnel so long as their participation is reasonably related to a law enforcement purpose. (ARS 13-3916)
    - P. O. 2.3.1
    - P. O. 2.3.4
  - 2. Knock and announce requirements.
    - P. O. 2.3.1
    - P. O. 2.3.3H
  - a. Reasonable time to respond must be given. **INSTRUCTOR NOTE:** *The U.S. The Supreme Court refused to provide a bright line rule establishing a “reasonable time” before entry can be made, instead choosing to look at each situation independently, based on a totality of the circumstances.*
  - b. After notice of authority/presence and purpose of the search warrant, admittance is refused.
  - c. No knock requirements.
    - i. Refer to ARS 13-3915(B) On a reasonable showing that an announced entry to execute the warrant would endanger the safety of any person or would result in the destruction of any of the items described in the warrant, the magistrate shall authorize an unannounced entry."
    - ii. Officers should review their departmental policies on the use of no knock warrants.
  - 3. Items in “Plain View” may be seized based on probable cause even if an item was not enumerated in the warrant (contraband). (ARS 13-3916c)
    - P. O. 2.3.1
    - P. O. 2.3.5D
  - 4. Photographs, measurements, impressions and scientific tests are permitted. (ARS 13-3916d)
    - P. O. 2.3.1
  - 5. Searching persons found at the premises, or vehicle, is permitted if:
    - P. O. 2.3.1
    - a. It is reasonably necessary to protect against the use of a concealed weapon. (ARS 13-3916e)
    - b. It reasonably appears that property or items enumerated in the warrant may be concealed upon the person, or in the vehicle. **INSTRUCTOR NOTE:** *May detain residents within the immediate vicinity while searching. Factors to consider are*

*in case Bailey v. U.S.*

K. Grounds for issuance. (ARS 13-3912)

**P. O. 2.3.2**

**P. O. 2.3.4**

1. A search warrant may be issued upon any of six (6) grounds (list grounds in warrant).
  - a. Property to be seized was stolen or embezzled.
  - b. Used as a means of committing a public offense.
  - c. Property is in the possession of a person with the intent to use the property to commit a public offense or a person concealing property.
  - d. Property or items to be seized indicates a particular offense was committed or that a person has committed the offense.
  - e. Property is to be searched in the interest of public health.
  - f. The person sought is the subject of an outstanding arrest warrant.

L. When is a search warrant necessary?

1. If you are at all in doubt about the lawfulness of a search, then get a warrant. Failure to have a warrant puts the burden on the officer to justify an applicable exception to the warrant requirement.
2. Recognized exceptions.
  - a. Consent.
  - b. Exigent/emergency circumstances.
  - c. Incident to arrest.
  - d. Plain view.
  - e. Open fields.
  - f. Mobile vehicles.
  - g. Inventory of a person's property.
  - h. Abandoned property.
  - i. Items for which an officer may search:

**P. O. 2.3.5**

3. Dangerous weapons. (Terry v. Ohio) **P. O. 2.3.5A**
  4. Fruits of a crime (stolen property). (Ariz. v. Mahoney) **P. O. 2.3.3F**  
**P. O. 2.3.5B**
  5. Instrumentalities of a crime. (Abel v. U.S) **P. O. 2.3.3E**  
**P. O. 2.3.5C**
  6. Contraband (drugs). (Minnesota v. Dickerson) **P. O. 2.3.3G**  
**P. O. 2.3.5D**
  7. Suspects and additional victims. (Arizona v. Mincey) **P. O. 2.3.5E**
- M. Arrest warrants.
1. An arrest warrant allows an officer to force entry (after knocking and announcing) into the arrestee's residence, or command the arrestee to exit, for purposes of serving the warrant (making the arrest). ***INSTRUCTOR NOTE: Officers should check with agency policy as some agencies only allow entry into homes based upon an arrest warrant for a felony and not a misdemeanor. (Payton v. New York) AZ v. Aguilar, 228 Ariz. 401 (2011); U.S. v. Nora, 765 F.3d 1049 (9th Cir, 2014)***
    - a. It must be the residence of the subject of the arrest warrant, and:
    - b. The officer must have probable cause to believe that the subject of the arrest warrant is in the residence.
  2. Absent a recognized exception to the search warrant requirement, a separate search warrant is needed, along with an arrest warrant, to arrest someone in the home of a third party. (Steagald v. U.S.)
  3. If a defendant seeks to suppress evidence on grounds that the arrest warrant was invalid, the defendant has the burden and must present sufficient evidence to dispel the warrant's presumption of reasonableness. (AZ v. Hyde. Rule 16.2(b) Ariz. Rules of Criminal Procedure.)
  4. Police may use valid, pre-existing warrants to effect an arrest even if the arrest is made to investigate other suspected crimes.
  5. A search warrant authorizes the entry of law enforcement and other necessary personnel, not the media or other unrelated third parties. (Wilson v. Layne)

### III. WARRANTLESS SEARCHES AND SEIZURES

- A. Consensual Contact.

1. Any person may be contacted without reasonable suspicion, if the person voluntarily submits to the contact. The key is that it must be a consensual encounter, if the person indicates they do not wish to talk to the officer, the person may not be detained and must be allowed to proceed on his/her way. (Florida v. Bostick, AZ v. Rogers)
  2. A non-consensual field interview is a seizure; a frisk is a type of search.
- B. Investigative Detention/Terry stop. **P. O. 2.3.11**
1. Must have reasonable suspicion, based on articulable facts, that a crime has occurred or there is criminal activity “afoot.” (Review Terry v. Ohio). **P. O. 2.3.7**
  2. Reasonable suspicion: Articulable facts to believe that a crime has occurred, is occurring, or is about to occur, and the person stopped is involved in that criminal activity. “More than a hunch and less than probable cause.”
  3. Can use reasonable force to detain (handcuffs, physical restraint) only if there is a reasonable risk of flight and/or specific articulable officer safety concerns. (AZ v. Blackmore)
  4. Detention must be reasonable. (brief). (U.S. v. Sharpe)
    - a. The key is whether the police diligently pursued a means of investigation which was likely to confirm or reject their suspicion.
    - b. “Totality of the circumstances” is the test used by the courts.
  5. Cannot transport to a police station or other place for questioning; however, transporting a detainee a short distance for the purpose of an on-scene identification by a witness, is permissible. (AZ v. Solano)
  6. Still, the best practice is to transport the witness to the detainee.
  7. Any person may be contacted without reasonable suspicion, if the person voluntarily submits to the contact. The key is that it must be a consensual encounter.
  8. However, if the person indicates they do not wish to talk to the officer, the person may not be detained and must be allowed to proceed on his/her way.
- C. Terry frisk. **P. O. 2.3.11**
1. An officer may frisk (pat down) a person only if the officer has reasonable suspicion that the person is presently armed and dangerous. (AZ v. Garcia, Distinguish between armed AND dangerous not OR).
  2. A routine frisk of each person contacted is unconstitutional.

3. Must first be a lawful detention based on reasonable suspicion that the person is involved in unlawful activity. (AZ v. Serna. 235 Ariz 270, 2014)
4. Scope of a Terry frisk.
  - a. Pat down (frisk) of outer clothing for weapons only. (AZ v. Vasquez)
  - b. If bulky is clothing and the officer cannot feel the contents, the officer may reach in to ensure there is no weapon.
  - c. If the officer feels what is believed to be a weapon, but upon removal discovers contraband, then the plain view doctrine applies. **INSTRUCTOR NOTE:** *Terry stop on bicyclists with a backpack. Suspect was nervous and evasive regarding the backpack's owner. Police separated the suspect from the backpack because it was less intrusive than search or frisk of the backpack. Later, probable cause was developed to search the backpack. Separating the suspect from the backpack and the subsequent search was upheld. (State v. Baggett)*
  - d. If, during a lawful "frisk" an officer feels an object whose contour and mass makes its identity as contraband immediately apparent, it may be seized even though it is not believed to be a weapon. (Minnesota v. Dickerson)
    - i. This is known as the "plain feel" doctrine.
    - ii. The officer's experience/training are important to the "plain feel" doctrine.
    - iii. The item may not be squeezed or manipulated during pat down any more than necessary to determine that the item is/is not a weapon.
  - e. A vehicle may also be subject to a frisk, if there is reasonable suspicion to stop and reasonable suspicion that the vehicle contains weapons. (Michigan v. Long)
  - f. In such a case, the officer may check the entire passenger compartment for weapons where a weapon may reasonably be hidden.
- D. Special situations.
  1. Sobriety checkpoints.
    - a. No reasonable suspicion needed if:
    - b. All vehicles are stopped.
    - c. Vehicles are stopped in a specific pattern.

- d. An officer can see into a vehicle stopped at a checkpoint.
2. Wanted flyers (ATL).
- a. The issuing agency must state the probable cause for stop and arrest.
  - b. The issuing agency must state the reasonable suspicion for a lawful detention.
  - c. The receiving agency must verify facts.
3. Vehicle stops.
- a. Officers must have reasonable suspicion or probable cause of a traffic violation or criminal offense to stop a vehicle. (Whren v. U.S., CA v. Acevedo)
  - b. A vehicle may also be stopped if probable cause exists to believe evidence or contraband is within the vehicle.
  - c. Officers can have the driver and passengers exit the vehicle. (Maryland v. Wison, Pennsylvania v. Mims)
    - i. Can be physically removed if necessary.
    - ii. Must have reasonable suspicion to pat down for weapons.
  - d. Stopping a motorist who violates traffic law is not unlawful even if the officer has other motives for the stop. (Whren v. U.S.)
  - e. Profiling based solely on race is unconstitutional.
  - f. On traffic stop, officer may:
    - i. Immediately demand from the driver, their driver's license and vehicle registration. (AZ v. Paredes)
    - ii. Run warrants check on the driver.
    - iii. Run warrants checks on passengers if you are able to obtain their information through consent or other lawful means. (AZ v. Ybarra)
    - iv. Look for VIN.
    - v. If the driver does not have registration or refuses to provide it, officers can conduct a limited search of the vehicle for proof of ownership. (AZ v. Bonillas)

- a) Can only search in places where registration could be found.
  - b) One (1) Arizona Court of Appeals has held that the officer must also believe the vehicle is stolen before the officer can search for the registration. (AZ v. Branham)
  - vi. If the driver's name does not match the registered owner's name and there is a question as to the driver's identity, officers can search the car for evidence of identity. (AZ v. Bedoni)
  - vii. Can ask for consent to search the vehicle. Officers do not have to advise that the subject is free to go before asking for consent, but doing so does add credibility to the consent.
4. Use of canines. (Illinois v. Caballes)
- a. Items, including a vehicle, may be detained for canine sniff if reasonable suspicion exists to do so. **INSTRUCTOR NOTE:** *Officers can run a canine around a vehicle during a lawful traffic stop as long as it does not delay the stop.*
  - b. Length of detention is judged on a case-by-case basis; officers must diligently pursue the investigation.

#### IV. EXCEPTIONS TO SEARCH WARRANT REQUIREMENT

**P. O. 2.3.8**

**P. O. 2.3.9**

- A. Consent.
  - B. Incident to arrest.
  - C. Plain view (not a search).
  - D. Inventory (not a search).
  - E. Open fields (not a search).
  - F. Mobile vehicle.
  - G. Exigent/emergency circumstances.
  - H. Abandoned property (not a search).
  - I. Consent.
1. Always ask, even if you have another exception that might apply; however, do not use this as a shortcut.

**P. O. 2.3.8A**

**P. O. 2.3.9A**

2. Consent must be voluntary and intelligent; the suspect must know/understand that rights are being waived. (Florida v. Royer)
3. Court will look at voluntariness and the circumstances surrounding the consent. The government bears the responsibility for proving that the consent was voluntary. (AZ v. Flannigan)
  - a. Was force used?
  - b. Threats?
  - c. Clearness of consent (in order of priority: In writing, verbal and actions alone).
  - d. Misrepresentation.
  - e. Failure to object – submission to authority.
  - f. Knowledge of the right to refuse.
  - g. Physical and mental condition.
  - h. Experience and background.
  - i. Opportunity to talk with counsel.
4. Consent must be clear and explicit. Examples indicating consent was given voluntarily.
  - a. Written consent.
  - b. Evidence that the defendant first suggested search.
  - c. Evidence that the suspect told officers where to find the items.
5. Authority to search: A valid consent to search may only be given by a person who has a right to the “lawful use and control of the property at the time of the consent.”
  - a. The words “use and control” do not necessarily imply ownership of the property.
  - b. If two people have joint control over the property or area to be searched and one person, who is actually present, denies the officer consent then no search may be made. **INSTRUCTOR NOTE:** *Fernandez v. California states, one occupant’s consent is sufficient if the other occupant was removed from the scene for an objectively reasonable purpose e.g. committing domestic violence against the other occupant. (Georgia v. Randolph)*



- c. Examples:
    - i. Landlord/tenant.
    - ii. Husband/wife.
    - iii. Consent by parent(s) – (age/rent/control of room issues).
    - iv. Roommates – common areas.
  - 6. Ask a person's authority and scope of control.
    - a. Consider apparent authority, but do not depend on this.
    - b. Explain what the search is looking for.
  - 7. Limitation of consent: May search only where permission is given.
  - 8. Revocation of consent: Suspects may withdraw consent at any time and search must stop.
- J. Search incident to arrest. **P. O. 2.3.8C**  
**P. O. 2.3.9C**
- 1. Chimel v. California – prior to this case, search of an entire home incident to arrest was lawful; however, Chimel defined the requirements and narrowed the scope.
  - 2. Search incident to custodial arrests are approved by the courts because they are necessary to protect the arresting officer and avoid destruction of evidence by the arrested person.
  - 3. Search and arrest must be contemporaneous. (Knowles v. Iowa)
    - a. The term “contemporaneous” refers to actions occurring during the same time frame, but not necessarily simultaneously.
    - b. Arrest must be a custodial arrest. Consistent with ARS 13-3903 suspects can be issued a citation in lieu of detention subsequent to an arrest based on a variety of factors. (State v. Taylor)
  - 4. Permissible scope of the search – if the lawful custodial arrest takes place within the premises, the officer may search the arrestee and the area under his/her immediate control for weapons, fruits of the crime and evidence of the crime and any areas immediately adjacent from which an attack could be launched; additionally any other areas of the home for which there is reasonable suspicion to believe a suspect is present. (Maryland v. Buie)

5. Search of a motor vehicle incident to lawful, custodial arrest.
  - a. Police may search the passenger compartment of a vehicle incident to a recent occupant's custodial arrest ONLY in one of two circumstances: 1) "when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search" or 2) "when it is reasonable to believe evidence relevant to the crime of arrest may be found in the vehicle." **INSTRUCTOR NOTE:** *There is nothing in the vehicle worth your life: do not leave a person unsecured just to try to justify a search of the vehicle. (AZ v. Gant)*
  - b. Reasonable to believe is a standard that is less than probable cause.
  - c. The scope of the search includes the entire passenger compartment and may include glove box and console, but not the trunk. *New York v. Belton*
  - d. The search must be made within the immediate vicinity of the arrest contemporaneous in time to the arrest.
  - e. Emphasize this is a search incident to arrest, not a vehicle search based on another legal basis.
  
- K. Plain view doctrine. **P. O. 2.3.8D**  
**P. O. 2.3.9D**
  1. If the officer is where he/she has a right to be, whatever is observed in the open where it can be seen by anyone who cares to look, is in plain view and it is not a search to observe it. (*Horton v. California*)
  2. Key to the plain view doctrine is lawful presence and probable cause to believe the item to be seized constitutes evidence or contraband. (*AZ v. Hicks*)
  3. When an officer, outside of a constitutionally protected area, sees an item inside of that protected area and has probable cause to believe the item constitutes evidence, a search warrant is required to seize the item, unless an exception to the search warrant requirement exists. This is called "open view." Example: Standing on a sidewalk and seeing a drug lab inside a home.
  
- L. Inventory. **P. O. 2.3.8F**  
**P. O. 2.3.9G**
  1. Vehicle – inventory of vehicle is proper if the vehicle is lawfully taken into custody and if the following circumstances exist:
    - a. Inventory is done with the intent to protect the owner's property and/or the officer from allegations of theft. **INSTRUCTOR NOTE:** *Contraband found during an inventory search is subject to the plain view doctrine.*

- b. Good faith is essential.
  - c. Agency must have a written policy concerning inventory and policy must be complied with. (Colorado v. Bertine)
    - i. Agency's policy must specify the scope of the inventory to be done, especially relative to containers.
    - ii. The entire vehicle can be searched only if the policy specifically authorizes it as part of the inventory.
  - 2. Inventory search of person – personal property of subject taken into custody can/should be inventoried to protect the officer from allegations of theft and to safeguard the owner's property.
  - 3. Locked containers should be opened only if department policy directs such. (Florida v. Wells (1990); AZ v. Olm; AZ v. Blakley)
- M. Open fields. **P. O. 2.3.9E**
- 1. The Fourth (4th) Amendment does not protect open fields, only curtilage.
  - 2. "Curtilage" is the immediate area surrounding the home and is entitled to full 4th Amendment protection. (Oliver v. U.S., Fla v. Jardines 2013, AZ v. Foncette 2015)
  - 3. Consider the following facts to determine if the area is open field or curtilage.
    - a. Proximity to house or structure.
    - b. Fenced.
    - c. Nature and use of area.
    - d. Steps taken by property owners to maintain privacy. (U.S. v. Dunn)
- N. Vehicle Exception to the warrant requirement – May search without a warrant if probable cause exists. **P. O. 2.3.8F**  
**P. O. 2.3.9F**
- 1. If probable cause exists that the vehicle contains evidence or contraband (sufficient for a search warrant), a vehicle may be searched without a warrant. (Review Ross and Belton cases.) (Carroll v. U.S)
  - 2. Search no longer needs to be contemporaneous; the vehicle may be towed to another location and searched later. (Chambers v. Maroney)

- a. Discuss the benefits of a search warrant.
  3. Applies to felonies or misdemeanors.
  4. Applies to motor vehicles, buses, watercraft or aircraft.
  5. Includes closed containers and the trunk if the items sought could be found there. (U.S. v. Ross, CA v. Acevedo)
- O. Emergency/exigent circumstances. **P. O. 2.3.8B**  
**P. O. 2.3.9B**
1. Emergency: Entry may be made if the officer has probable cause to believe an emergency exists. The emergency cannot be created by the officer for purposes of making entry.
    - a. Officer must have facts that would lead a reasonable police officer to conclude that the emergency does exist (officer smells fire; officer hears screams). This includes response to an emergency, substantial risk of harm to persons involved and/or substantial risk of violence. (AZ v. Ault)
    - b. In some cases, the information received will lead to further investigation, while in some cases it will require immediate action.
    - c. Upon entry, plain view doctrine applies.
    - d. Once the emergency is resolved, obtain consent or warrant. (Mincey v. Arizona)
    - e. An “emergency” created by the officer is not a real emergency.
  2. Exigent circumstances: Probable cause to believe that evidence is present in the area and that the evidence will be lost or destroyed without immediate action. (Schmerber v. CA)
    - a. Evanescent evidence: Tending to vanish like vapor (i.e., blood, fingernail scrapings). (Dissipation of alcohol from blood not exigent circumstances by itself: Missouri v. Mcneely.)
    - b. Hot pursuit: If police are pursuing a subject who they have probable cause to arrest for a felony, immediately after commission of the crime and the subject runs into a home, officers can enter the home if they are in the midst of the chase.
    - c. Bomb searches/investigation.
    - d. Protective Sweep. A protective sweep is lawful in two situations: One, when

officers are searching the area immediately adjacent to the place of arrest from which an attack can be immediately launched. Two, when officers are searching adjoining areas (including a home) where a person posing a danger might be found. Officers must have a reasonable belief supported by specific and articulable facts that a home harbors persons posing a danger to the officers. (Maryland v. buie; AZ v. Fisher, Mendez v. Los Angeles, 9th Circuit 2016)

P. Abandoned property.

**P. O. 2.3.8G**

**P. O. 2.3.9H**

1. Under this exception, property abandoned or thrown away may be searched or seized by police officers without a warrant because there is no reasonable expectation of privacy. The property must be clearly abandoned (Greenwood case – difference between garbage left at the curb and garbage next to the house). (CA v. Greenwood, Abel v. U.S.)

Q. Other “exceptions”:

1. Airport/border searches.

- a. Conducted as a matter of public safety.
- b. Conducted by special authorities.

2. Parolee/probationer.

- a. Probation is a sentence handed down by a court just the same as prison time is a sentence handed down by a court. The person is convicted of the offense and then sentenced to “supervised” or “unsupervised” probation. Under the theory of probation, if the convicted offender does not meet the conditions of his/her probation...they are sentenced to prison.
- b. Parole is not a sentence like probation, but rather an early and conditional release from serving time in prison. A parole board determines whether or not the person is rehabilitated to the extent of benefiting from leaving prison to finish their prison term in the community under parole release conditions. A parole officer is assigned to monitor the behavior of the convicted offender. If the offender does not meet the parole conditions of release, they are placed back in prison after a parole hearing. **INSTRUCTOR NOTE: Class DISCUSSION**
- c. Agreed to by the suspect as a condition for release.
- d. If authority is not specifically provided by the court, the search must be done by a parole / probation officer, not by police officer.

3. Community Caretaking – (Cady v. Dombrowski, 1973)

- a. Local police may engage in non-criminal, non-evidentiary searches motivated by the welfare of the general public. **INSTRUCTOR NOTE:** *Impounds under 4th Amendment community caretaking, there must be facts to support a need to 1) keep the roadway safe and unobstructed, or 2) protect the vehicle from vandalism or theft if left in its current location, or 3) to prevent the driver from reoffending. (United States v. Cervantes, AZ v. Wisons, 2015)*
- b. Does not apply to houses.

## V. EXCLUSIONARY RULE

### P. O. 2.3.10

- A. If evidence or contraband is obtained in violation of the 4th Amendment, the evidence may be suppressed. The state is not allowed to use the evidence at trial against the defendant. (Wong Sun v. U.S.)
- B. Purpose of the exclusionary rule.
  1. The primary purpose is to deter unlawful searches and seizures by peace officers. This is accomplished by eliminating the incentive for such behavior by prohibiting the admission of any evidence which is illegally obtained. (Weeks v. U.S.)
  2. The secondary purpose is to maintain the dignity and integrity of the courts by keeping “tainted” evidence out of the courtroom.
- C. Good faith exception to exclusionary rule.
  1. If an officer is acting in good faith on a warrant which is later held to be invalid, evidence may be used.
  2. If an officer acts in good faith based on a law later determined to be unconstitutional, evidence may be used.

## VI. CONCLUSION

- A. Review of performance objectives.
- B. Final questions and answers.
- C. Instructor closing comment(s).



## A. BIBLIOGRAPHY

Abel v. U.S. – Abandoned property in a hotel room.  
362 U.S. 217 (1960)

AZ v. Ault – Exigent/emergency circumstances.  
150 Ariz. 459, 724 P.2d 545 (1986)

*AZ v. Baggett – Terry stop of bicyclist; reasonable suspicion to separate from backpack*  
232 Ariz. 424, 306 P.3d 81 (Ariz. 2013)

AZ v. Blakley -- officer's action of approaching vehicle in driveway violated R/E/P as driveway not a pathway to the front door  
243 P.3d 628 (2010)

AZ v. Blackmore – officer had RS that defendant committed burglary when handcuffed and put in patrol car  
925 P.2d 1347 (1996)

AZ v. Bonillas – pat down of driver for ID upheld  
3 P.3d 1016 (1999).

AZ v. Branham – unlawful to search car for registration merely because driver could not produce registration  
952 P.2d 332 (1997)

AZ v. Fisher – circumstances that can justify a protective sweep  
250 P.3d 1192 (2011)

AZ v. Flannigan – prosecution has burden to prove consent for blood draw; acquiescence is insufficient  
978 P.2d 127 (1998)

AZ v. Foncette – Curtilage searches, hallway of a hotel. 2015

AZ v. Gant – Search Incident to arrest.  
B. 129 S. Ct. 1710 - Supreme Court (2009)

AZ v. Garcia – OK to patdown person not under arrest who is to be voluntarily transported  
784 P.2d 297 (1989)

AZ v. Harding – Warrant check on driver.  
137 Ariz. 278, 670 P.2d 383 (1983)

AZ v. Hicks – Plain view doctrine.  
480 U.S. 321 (1987)

AZ v. Hyde – arrest warrant is presumed to be based on PC and burden on defendant to prove otherwise  
921 P.2d 655 (1996)

AZ v. Mahoney – Search of person incident to arrest for weapons, fruits of the crime or implements  
106 Ariz. 297 (1970)



AZ v. Mincey – there is no crime scene exception to the search warrant requirement  
437 U.S. 385 (1978)

AZ v. Olm – vehicle parked in front yard cannot be searched without SW or other exception as is part of curtilage  
224 P.3d 245 (2010)

AZ v. Paredes – Detainment for records check, canine sniff of vehicle.  
810 P.2d 607 (1991)

AZ v. Peters – human smelling odor of marijuana is not a search  
941 P.2d 228 (1997)

AZ v. Rogers – Detainment based on reasonable suspicion/voluntary contact.  
186 Ariz. 508, 924 P.2d 1027 (1996)

AZ v. Serna – Consensual contact is not reasonable suspicion to frisk. 232 Ariz 270 (2014)

AZ v. Solano – Detainment based on reasonable suspicion.  
187 Ariz. 512, 930 P. 2d 1315 (App. 1996)

AZ v. Vasquez – With Rs it is lawful to reach into pockets of jacket when pat down doesn't reveal whether there is a weapon  
807 P.2d 520 (1991).

AZ v. Weinstein – Protective sweep of home, canine sniff, search conducted by non-government agent.  
190 Ariz. 306,947 P.2d 880 (App. 1997)

AZ v. Wilson – Community Caretaking searches (Cady v. Dombrowski) do not apply to houses. 235 Ariz 447, 333 P. 3d 774 (2015)

AZ v. Ybarra – May ask vehicle passenger for ID.  
156 Ariz.257, 751 P.2d 591 (1987)

Bailey v. U.S. – officers may only detain occupants of premises within the immediate vicinity of premises when executing a search warrant. 133 S.Ct. 222, 184 L.Ed.2d 115 (2013)

Cady v. Dombrowski – Local police may engage in on-criminal, non-evidentiary searches motivated by the welfare of the general public. 413 U.S. 433 (1973)

California v. Acevedo – Searching of closed container in a vehicle.  
500 U.S. 565 (1991)

California v. Bradley – seizure of marijuana plants in yard lawful where in plain view from sidewalk/path leading up to house  
460 P.2d 129 (CA 1969).

California v. Ciralo – Warrantless aerial observation of fenced-in backyard.  
476 U.S. 207 (1986)

California v. Greenwood – no REP in clear garbage bags left at curbside; abandoned property  
486 U.S. 35 (1988).

California v. Hodari – Seizure started at time of capture.  
499 U.S. 621 (1991)

Carroll v. United States – Landmark case regarding vehicle searches.  
267 U.S. 132 (1925)

Chambers v. Maroney – p.c. search of car does not have to be contemporaneous to first contact  
399 U.S. 42 (1970)

Chimel v. California – search incident to arrest of entire home is unlawful  
395 U.S. 752 (1969)

Colorado v. Bertine – Inventory of locked containers.  
479 U.S. 367 (1987)

Fernandez v. California - Joint control over property, one person can give consent if the other has been removed for an objectively reasonable cause.  
571 US 292 (2014)

Florida v. Bostick – Voluntary contact does not require suspicion.  
501 U.S. 429 (1991)

**Florida v. Jardines -- taking a drug dog onto property to sniff air for drugs is a search. 133 S.Ct. 1409, 185 L.Ed.2d 495 (2013).**

Florida v. Riley – Observation from a helicopter.  
488 U.S. 445-50 (1989)

Florida v. Royer – airport stop circumstances did not support consensual moving of suspect  
460 U.S. 491 (1983)

Florida v. Wells – Requirement of a department policy for inventory.  
495 U.S. 1 (1990)

Georgia v. Randolph – If one of two present co-possessors of property refuse consent, do not have valid consent  
547 U.S. 103 (2006)

Horton v. California – Plain view seizure.  
496 U.S. 128 (1990)

Illinois v. Caballes – dog sniff was lawful where stop was not extended in duration to allow K-9 to arrive  
543 U.S. 405 (2005)

Illinois v. Gates – Elimination of Aguilar/Spinelli rule, informant rules.  
462 U.S. 213 (1983)

Illinois v. Rodriguez – Reasonableness of search based on officer's knowledge.  
497 U.S. 177 (1990)

Jones v. United States – hearsay can support issuance of search warrant  
362 U.S. 257 (1960)

Katz v. United States – Expectation of privacy rule.  
389 U.S. 347 (1967)

Knowles v. Iowa – Search incident to arrest, traffic infraction (cite and release).  
119 S. Ct. 484 (1998)

Maryland v. Buie – Protective sweep of home.  
494 U.S. 325 (1990)

Maryland v. Wilson – police officer making stop may order passengers out of a car  
519 U.S. 408 (1997).

Mendez v. Los Angeles – Protective Sweep of outbuildings and curtilage. 9<sup>th</sup> Circuit. 2016

Michigan v. Long – Protective sweep of vehicle for weapons.  
463 U.S. 1032 (1983)

Michigan v. Sitz – Sobriety checkpoints.  
496 U.S. 444 (1990)

Michigan v. Summers – Sw for contraband carries limited authority to detain occupants during search  
452 U.S. 692 (1981).

Mincey v. Arizona – Once emergency is removed, a warrant is necessary.  
437 U.S. 385 (1978)

Minnesota v. Dickerson – Plain feel doctrine.  
113 S. Ct. 2130, 124 L. Ed.2d 334 (1993)

Minnesota v. Olson – Overnight guest/expectation of privacy.  
495 U.S. 91 (1990)

**Missouri v. McNeely – dissipation of blood alcohol, by itself, does not constitute exigent circumstances sufficient to justify a warrantless search. 133 S.Ct. 1552, 185 L.Ed.2d 696 (2013)**

New York v. Belton – Search incident to arrest/motor vehicle.  
453 U.S. 454, 462 (1981)

Oliver v. United States – Open fields doctrine.  
466 U.S. 170 (1984)

Payton v. New York – officers may lawfully enter suspect's home having search warrant and probable cause to believe suspect is present  
445 U.S. 573 (1980)

Pennsylvania v. Mims – Can have a motorist exit vehicle.  
434 U.S. 106 (1977)

Rakas v. Illinois – Issue of standing/passengers of motor vehicle.  
439 U.S. 128, 143 (1978)

Schmerber v. California – taking a blood sample from a DUI arrestee proper exigent circumstances  
384 U.S. 757 (1966).

Steagald v. United States – Service of arrest warrant in a third party home.  
451 U.S. 204 (1981)

United States v. Banks – 15-20 seconds between knock and announce and entry was reasonable  
540 U.S. 31 (2003).

United States v. Basher – defendant had no expectation of privacy in campsite  
629 F.3d 1161 (2011)

United States v. Cervantes - Impounds under 4th Amendment community caretaking, there must be facts to support a need to impound.  
703 F.3d 1135, 1142 (9th Cir. 2012)

United States v. Dunn – Curtilage issues/expectation of privacy/use of flashlight.  
480 U.S. 294 (1987)

United States v. Jones – attachment of GPS to motor vehicle is a search  
132 S. Ct. 945 (2012).

United States v. Ross – Search of vehicle based on probable cause includes containers.  
456 U.S. 798 (1982)

United States v. Sharpe – 20 minute detention was reasonable where investigation diligently pursued  
470 U.S. 675 (1985).

Weeks v. United States – Exclusionary rule.  
232 U.S. 383 (1914)

Whren v. United States – No such thing as pretext for stop.  
517 U.S. 806 (1986)

Wilson v. Arkansas – Knock and announce requirements.  
514 U.S. 927 (1995)

Wilson v. Layne – Media involvement in warrant execution.  
119 S. Ct. 1692 (1999)

Wong Sun v. United States – Fruits of the poisonous tree doctrine.  
371 U.S. 471 (1963)