

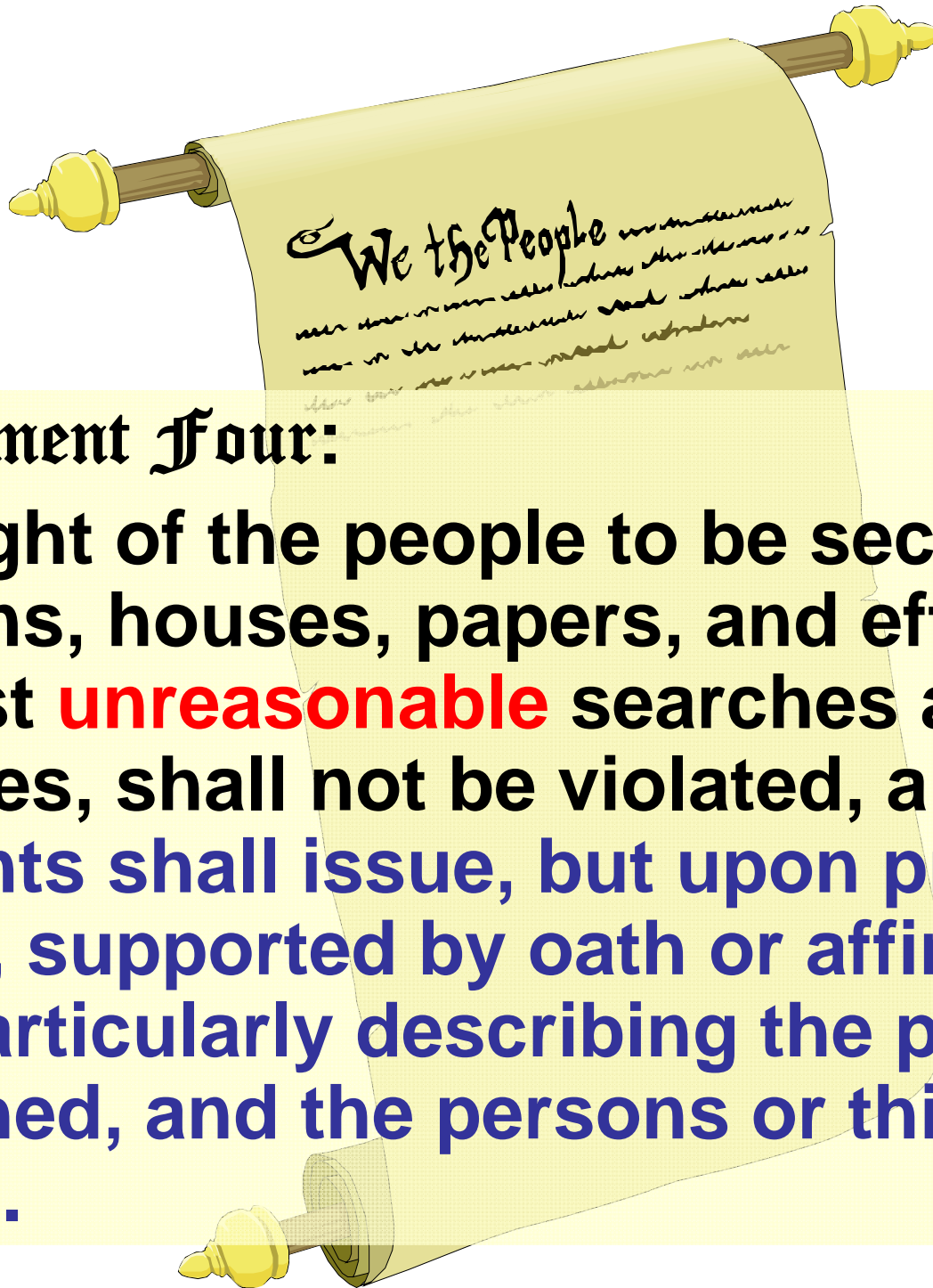
# CONSTITUTIONAL CRIMINAL PROCEDURE ISSUES AND TRAFFIC STOPS



A Presentation of the  
**Texas Municipal  
Courts Education  
Center**

**Municipal  
Prosecutors  
Conference  
2009**

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Portland, Texas – with slight,  
unauthorized modification  
by Geary Reamey



## Amendment Four:

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.

# Art. 1, Section 9, Texas Constitution

The people shall be secure in their persons, houses, papers and possessions, from all **unreasonable** seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause, supported by oath or affirmation.

**None of the following concepts and principles involve use of a warrant**

**While the courts prefer warrants, obtaining warrants is seldom practical or safe during traffic stops**

**Consequence: It is our burden to demonstrate legality of stops, searches, and seizures**

**Probable cause  
of criminal activity  
(such as traffic  
violation in  
officer's view)**

**Reasonable suspicion  
of criminal activity  
(such as DWI)**

**Community  
caretaking  
function**

**Authorized roadblocks  
and checkpoints**

**What are some legal  
bases for **stops** of  
vehicles?**

**Consent**

**Probable cause  
to believe contraband  
or evidence of crime  
is in vehicle**

**Search incident  
to arrest**

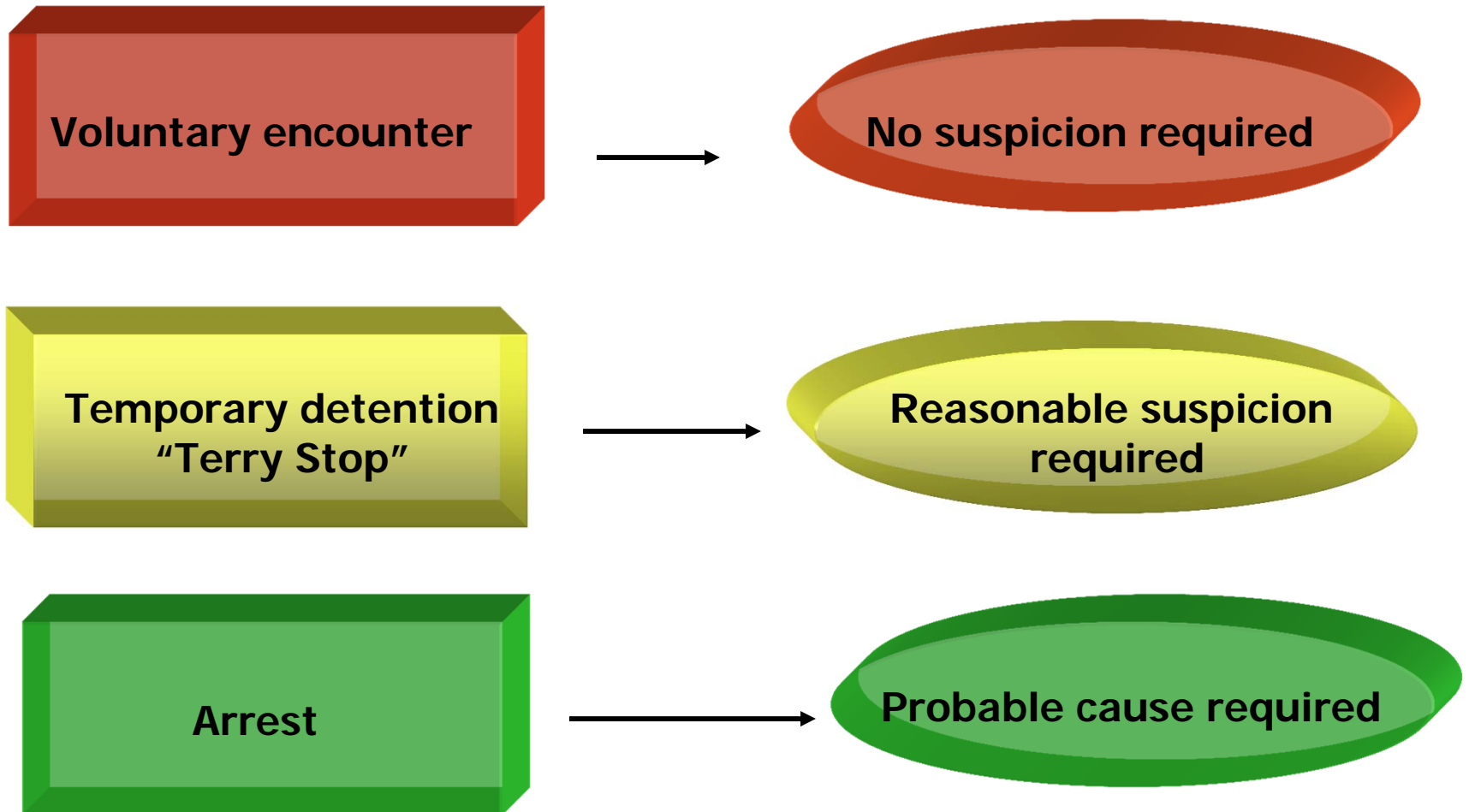
**Reasonable suspicion  
that weapon is  
in vehicle**

**Inventory**

**What are some legal  
bases for **searching**  
legally stopped vehicles?**

**Legal Contact With  
Drivers and  
Occupants of  
Vehicles**

# Law Enforcement / Citizen Contact





# Law Enforcement / Citizen Contact

## Voluntary Encounters

Temporary Detentions  
Community Caretaking  
Roadblocks

Arrests

Fourth  
Amendment  
"Seizures"  
=  
Reasons  
Required

**I know these  
guys are up  
to something  
illegal, but . .  
.**

**What  
can I  
do?**

**I'm sure I  
have NO  
Probable  
Cause**



# Temporary Detention

**A Fourth Amendment “seizure”**

**Requires individualized suspicion focusing on individual detained**

**Suspicion must be based on crime-related activity**

**Detention necessary to determine if suspicion is justified – to investigate**

# Temporary Detention

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

Officer's observation of two individuals suspected of "casing" a store (planning a robbery) leads to official action: detaining to investigate and pat down for weapons.

**"STOP and FRISK"** is born!

# Temporary Detention

Sometimes referred to as a “Terry Stop,” it requires less than probable cause, but still a minimum of articulable facts that make it **reasonable to suspect** that someone is engaged in crime-related activity.

# Temporary Detention

## “REASONABLE SUSPICION”

- Suspicion for which an officer has reasons. Reasons that can be explained.
- Suspicion that may be affected by officer's training and experience.

# Temporary Detention

“Particular facts and *inferences rationally drawn* from those facts that, when viewed under the totality of the circumstances and in light of the officer's experience, create a **reasonable suspicion** that criminal activity is afoot.” *Terry v. Ohio* (U. S. Supreme Court, 1968)

“This process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the **cumulative information** available to them that ‘might well elude an untrained person.’” *U. S. v. Arvizu* (U. S. Supreme Court, 2002)

# Temporary Detention

The Texas Test for Reasonable Suspicion:

- 1. Activity out of the ordinary**
- 2. Detain individual connected with activity**
- 3. Activity is crime-related**



# Temporary Detention

An investigative tool for law enforcement, useful in two circumstances:

1.

**Stop and detain** to investigate

2.

**Continue to detain** to investigate

# Example: **1. Stop and detain**

## ‘**DRUNK CAR**’

**Vehicle observed to be**

- 1. weaving, but within lane**
- 2. proceeding at speed slower than traffic flow**
- 3. driver making jerky, uncoordinated corrections**

**YET, no offense seen by officer . . .**

# Example: **1. Stop and detain**

## **Car in Suspicious Place**

### **Vehicle observed**

- 1. emerging from behind strip shopping center at 3:00 a.m.**
- 2. lights off until leaving parking lot**
- 3. all stores closed, only security lights on**
- 4. officer knows of recent burglaries in same neighborhood**

# Example: 1. Stop and detain

## **“BOLO” RE: VEHICLE USED IN ROBBERY**

Dispatcher relays info from officers at scene of robbery describing location, suspects, vehicle used and direction of travel . . .

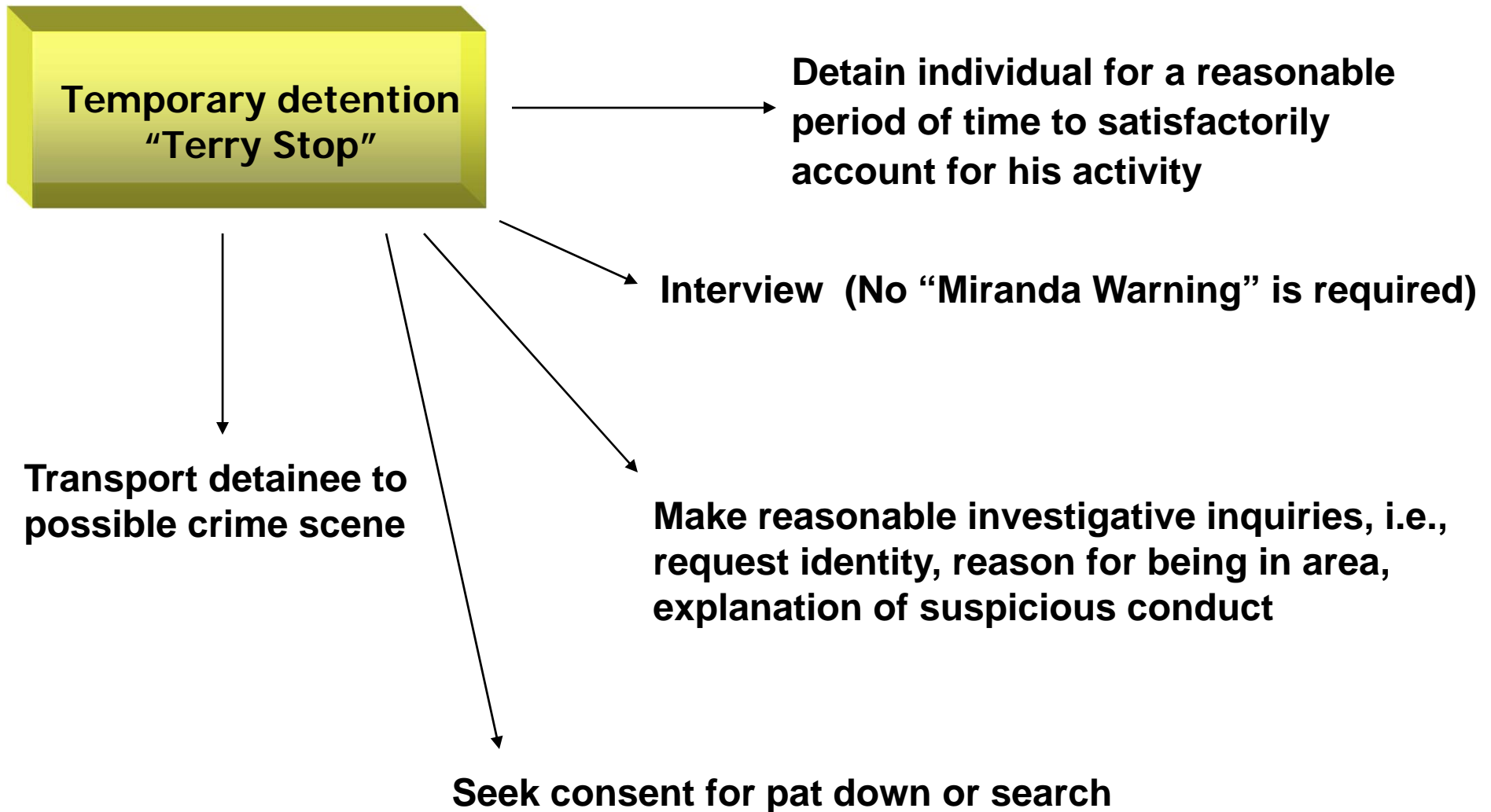
Patrol officer sees vehicle matching description, with matching number of occupants, going in described direction away from general area of robbery

## Example: 2. Continue to detain

Assume vehicle stopped for ‘**DRUNK CAR**’ facts (previous slide) but upon investigation officer learns

1. driver not intoxicated
2. after running plate, dispatcher advises vehicle matches description of one used minutes before during robbery
3. vehicle occupants unusually nervous and furtive

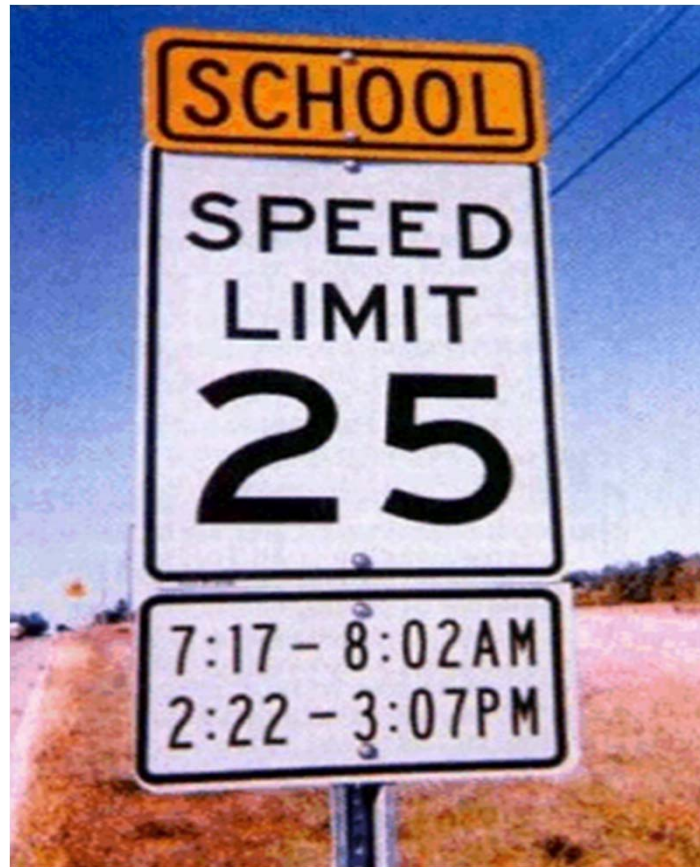
# Temporary Detention -- Options



# “Temporary”

- A detention last only for a “reasonable time”
- The length is limited by the purpose of the detention
- Every moment of the detention must be supported by r.s.
- When r.s. runs out, the seizure ends

When an officer observes  
a violation of the law



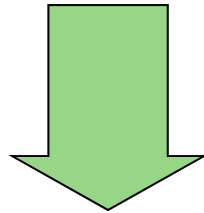


# “Traffic Stops”

- **Based on probable cause that an offense has occurred (officer observed conduct)**
- **Analyzed as investigative detention, not an arrest, unless and until individual taken into custody (even if right to arrest exists from beginning)**
- **“Reasonable” period of time to take care of business related to offense(s)**

# “Pretext” Stops

- Stop (or arrest) for one reason
- Motive is for another reason



**No problem if initial reason  
is lawful standing alone**

# “Pretext” Stops

*The constitutional reasonableness of traffic stops does not depend on the motivation of the officers involved.*

*If objectively valid reasons can be given to support a stop, subjective intent is not relevant.*

**Whren v. United States,**

517 U.S. 806, (1996).

# Stops Without Suspicion

**Vehicles may sometimes be lawfully stopped notwithstanding there is no reason to suspect wrongdoing on behalf of occupants:**

- **Community Caretaking**
- **Roadblocks/Checkpoints**

# Community Caretaking

**Crime fighting  
is not the only function of police.**

To “protect and serve” includes looking out for welfare and safety of citizens.

That may necessitate stopping to investigate -- not suspected criminal activity, but whether somebody needs protection, care or assistance.

# Community Caretaking

## United States Supreme Court:

**Cady v. Dombrowski**, 413 U.S. 433 (1973)

Dombrowski (who had identified himself as a Chicago policeman) had a one-car accident near a small Wisconsin town and was taken to a hospital; the police had the car towed. Early the next day, an officer searched the car to retrieve a service revolver to prevent it's being stolen or used illegally. Instead, the search produced murder evidence incriminating to Dombrowski.

## Texas Court of Criminal Appeals:

**Wright v. State**, 7 S.W.3d 148 (1999)

Patrol officer observed passenger of passing vehicle vomiting out window, stopped vehicle to render assistance, discovered marihuana in vehicle in plain view.

# Community Caretaking

- **Officer reasonably believes that, considering totality of circumstances, a person is in need of help**
- **Subjective motivation is significant (concern for safety and welfare of individual or community)**
- **Officer is not engaged in detection, investigation, or acquisition of evidence**
- **May not search incident to a vehicle stop unless necessary to address concern that justifies the stop initially**

# Community Caretaking

**Some factors to be considered according to Wright v. Texas:**

- (1) the nature and level of the distress
- (2) the location of the individual
- (3) whether individual alone or has access to assistance from others
- (4) extent of danger to self or others



# Ordering Occupants Out of Car

## *Pennsylvania v. Mimms*,

434 U.S. 106 (1977)

An officer may, as a matter of course, order the driver of a lawfully stopped vehicle to exit his vehicle.

**Reason: officer's safety**

# Ordering Occupants Out of Car

## *Maryland v. Wilson*,

519 U. S. 408 (1997)

Extends *Mimms* to the passengers of a vehicle stopped to investigate driver's conduct

- ➔ However, this is for **officer's safety** and control of contact. Some cases say officer may NOT require ID or other seizure-related activities unless and until each is **suspected individually**.

# Seizing Occupants: Arrest

Q: Who gets arrested?

A: All whom officer has probable cause to believe may be involved in commission of an offense

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

# “Pretext” Arrests

Q: Does the Fourth Amendment prohibit custodial arrest for fine-only traffic offenses?"

A: No, if allowed by state law

***Atwater v. City of Lago Vista,***

532 U.S. 318 (2001)

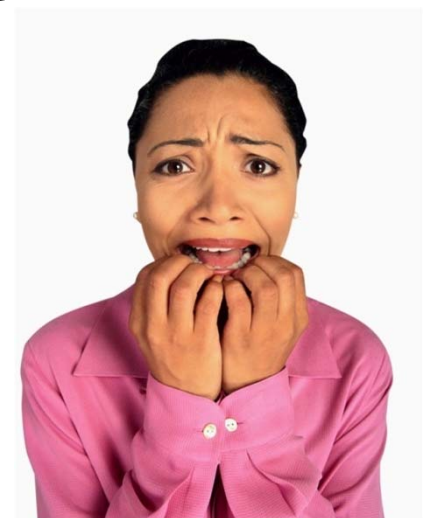
Seat belt violation by and arrest of “soccer mom” driving vehicle occupied by children.

# “Pretext” Arrests

**Atwater**, continued . . .

As with **Whren**, ultimate motive of arresting officer not relevant as long as officer has probable cause that individual arrested has committed offense for which state law permits arrest.

Questionable judgment of arresting officer jeopardized use of this tool in legitimate cases.



# **Legal Searches of Vehicles and Occupants**

# Search Incident to Arrest

- **General rule:** A search without warrant of a person and his immediate area following an arrest is reasonable.
- **Purposes:** (1) To remove any weapons that arrested person might seek to use, and (2) to prevent concealment or destruction of evidence of a crime

# Search Incident to Arrest

## General Principle:

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

*United States v. Robinson*, 414 U.S. 218 (1973)

## Applied to Vehicles:

*New York v. Belton*, 453 U.S. 454 (1981)

*Thornton v. United States*, 541 U.S. 615 (2004)

*Arizona v. Gant*, 129 S.Ct. 1710 (2009)



# Search Incident to Arrest

## Full custody arrest as prerequisite:

The justifications for the search enumerated in *United States v. Robinson*, do not exist in traffic stops wherein citations are issued in lieu of custodial arrests.

*Knowles v. Iowa*,  
525 U. S. 113 (1998)

# Search Incident to Arrest

**New York v. Belton:** After arresting any occupant of a vehicle . . .

Officers may examine the contents of any containers found within the passenger compartment.

**“Containers” denotes any object capable of holding another object, including closed or open glove compartments, consoles, or other receptacles located anywhere within the passenger compartment, as well as luggage, boxes, bags, clothing and the like.”**

# Search Incident to Arrest

- **Arizona v. Gant**. Search of vehicle interior incident to arrest is not allowed if the arrestee has no access to that space (e.g., he is handcuffed and locked in back seat of patrol car).

# Frisk Incident to Terry Stop

## Pat Down or Frisk

- Must be incident to **lawful detention**
- Officer must be reasonably concerned that individual detained is **armed and dangerous**
- Officer must be able to “**articulate**” that concern in court

# Frisk Incident to Terry Stop

- Officer need not be “afraid,” only reasonable to be concerned about presence of weapon
- May not justify by “standard procedure”
- May not justify by blanket, boilerplate statement, “for officer safety”
- Weapon may be returned if not illegal and no arrest results

# Frisk Incident to Terry Stop

A “pat down” of the outer clothing of the person, or personal articles such as a purse, in order to see if he/she has a weapon.

**Purpose is to allow the officer to pursue investigation *without fear of violence*, not to discover evidence -- it is *not a “search.”***

# Frisk Incident to Terry Stop

- If object suspected to be weapon, officer may investigate further to determine whether or not is weapon, even if necessary to go into pocket.
- If object **not** suspected to be weapon, officer must have **probable cause** it is contraband **without** further investigation (“Plain feel”).

# Frisk Incident to Terry Stop

Q: What if officer has reasonable suspicion that vehicle has weapon accessible to occupant during stop?

A: Officer may “frisk” the vehicle

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

Officers may search the passenger compartment of an automobile, limited to those areas in which a weapon could have been placed or hidden, if they have reasonable belief that weapon is present.



# Consent

A waiver of one's 4<sup>th</sup> Amendment rights, like a confession is a waiver of one's 5<sup>th</sup> Amendment rights.

If State is to show that seized evidence was discovered while conducting a consent search, it has the burden to prove that



# Consent

- ✓ the consent was from someone with an expectation of privacy in the place searched;
- ✓ the consenting party had common authority with others if more than one person shared control of premises; and
- ✓ the consent was voluntary; it was informed and not coerced.

# Consent

- ✓ Good when consequences are explained
- ✓ Better when request witnessed by third party
- ✓ Best when written form used
- ✓ SUPER good when recorded

# Consent

- ✓ May be limited as to scope by consenting party
- ✓ May be withdrawn at any time
- ✓ Reason(s) to request consent not necessary
- ✓ Officer must be “legitimate” at time of request

# Consent

## Joint use, common authority:

- Valid as against the absent, non-consulted person

**United States v. Matlock**, 415 U.S. 164  
(1974)

- NOT valid against present, objecting person

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

# Vehicle Searches w/ Probable Cause

## *Carroll v. United States,*

267 U.S. 132 (1925)

No warrant needed if:

1. **Probable cause\*** to believe contraband is somewhere in the vehicle
2. Exigent circumstances prevent obtaining warrant

## \* Probable Cause

Facts and circumstances that make it more likely than not that . . .

→ A particular person committed, or is committing, a crime (*for an arrest*)

or

→ **A particular thing will be in a particular place (*for a search*)**

# Vehicle Searches w/ Probable Cause

***Pennsylvania v. Labron*, 518 U. S.  
938 (1996)**

***State v. Guzman*, 959 S.W.2d 631  
(Tex. Crim. App. 1998)**

If vehicle is readily mobile:

1. Probable cause
- 2.



## Vehicle Searches w/ Probable Cause

### **Maryland v. Dyson,**

527 U.S. 465 (1999)

- An officer need only show probable cause that contraband is in a vehicle to justify a search without a warrant. There is no need for a separate finding of "exigency".

# Vehicle Searches w/ Probable Cause

## *United States v. Ross,*

456 U.S. 798 (1982)

If officer acquires probable cause to believe there is contraband somewhere in the vehicle, every container and cavity in or on the vehicle may be searched that is reasonably capable of concealing the contraband.

Bumper-to-bumper, no less thoroughly than if pursuant to warrant.

## Vehicle Searches w/ Probable Cause

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

Police officers were entitled to search an automobile passenger's belongings, without probable cause to search those specific items, because they had probable cause to believe the vehicle contained contraband.

## Vehicle Searches w/ Probable Cause

Using a dog on a traffic stop to acquire probable cause:

**Illinois v. Caballes**, 543 US 405 (2005).

- While officer still writing warning ticket,
- Dog alerted to presence of Marijuana.
- Sup. Ct. said no intrusion beyond the original purpose of the stop, no problem
- No requirement that officer have articulable suspicion as predicate to dog sniff

# Inventories

- Non-searches – administrative procedures used to identify the presence of property of value.
- Property inventoried expected to be returned to owner/possessor.
- May not be used as subterfuge for search; purpose not for discovering evidence of criminal offense.

# Inventories

## **Purposes for inventories:**

- Protection of the owner's property
- Protect police against false claims of theft
- Protection of police and public from dangerous items in vehicle

# Inventories

- Not as extensive as searches based on probable cause
- Evidence discovered during inventory
  - may be seized pursuant to **plain view rule**;
  - provides probable cause to search for more

# Inventories

If evidence discovered during inventory,  
State must show:

1. Property inventoried was lawfully in police custody;
2. Department has established procedures for inventorying impounded property;  
and
3. Procedures were followed and written record prepared reflecting property found present.



## ***Brendlin v. California***

127 S. Ct. 2400 (2007)

A passenger in a vehicle, like the driver, has been **seized** within the meaning of the Fourth Amendment when the police make a traffic stop of the vehicle. The passenger may, therefore, challenge the stop's constitutionality.

*Arizona v. Johnson*, U.S. Supreme Court  
2009)

Passenger, lawfully “seized” because vehicle legally stopped (*Brendlin v. California*) and asked to exit vehicle (*Maryland v. Wilson*) may, during period of lawful detention, be frisked if officer has usual reasons to justify frisking suspects (*Terry v. Ohio*).

**Virginia v. Moore,**

No. 06-1082, U. S. Supreme Court,  
April 23, 2008

**The Fourth Amendment does not require the suppression of evidence obtained incident to an arrest that is based upon probable cause, even if the arrest violates a provision of state law.**

# Traffic Law Enforcement

