



Garden State CLE
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GARDEN STATE CLE LESSON PLAN

A 1.5 credit course

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LESSON PLAN AND EVALUATION**

AUTOMOBILE SEARCHES – ALL THE BASICS

Featuring

Robert Ramsey, Senior Instructor

Program description

Here it is...fast and easy...all the exceptions to the warrant requirement involving automobiles. This should be your first defense consideration in every DWI and criminal case involving the recovery of criminal evidence from a motor vehicle.

- I. Fourth Amendment – US and NJ Constitution**
 - **NJ constitution of 1947 – Article I, Paragraph 7 – search and seizure clause – identical to that in the US Constitution**
 - **The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated**
 - **NJ has had this language since 1844 Constitution**
 - **3 NJ Constitutions – 1776, 1844, and 1947**
 - **As a result of the two “versions” of the 4th amendment (federal and state), arrest search and seizure law is different on state and federal level**
 - **Federalism – individual states can interpret own constitutions as they want and usually provide more protection under state constitutions than federal constitution**
 - **Federal constitution provides the “floor” (4th amendment US Constitution) – minimum protections; while state provides more**

- II. Evidence that you may want suppressed**
 - **In DWI case**
 - **Evidence that may suggest blood alcohol concentration through breath test or blood sample or from urine sample**
 - **Physical evidence, i.e. search of car recovers beer cans, empty bottles, etc – which provides the inference that there was recent consumption of alcohol; also possible to find marijuana, etc., that will allow certain inferences**
 - **Defendant may make admissions to the police following seizure**
 - **Arrest = seizure; seizure = arrest – 4th amendment issues**

- III. How to analyze these issues**
 - **After your client is arrested/stopped, you need to assess the issues/preliminary questions**

- **First ask: Is this a motor vehicle stop within the meaning of the 4th amendment? Was this a constitutionally recognized transaction?**
 - **Motor vehicle stop constitutes a seizure under 4th amendment**
 - **If client seeks out the police, then not an issue of a seizure but rather is a voluntary action**
 - **Police must act within 4th amendment – seizure – in order to have a constitutional issue**
- **Second: Did what police were doing constitute a search?**
 - **Did the police stumble upon evidence? Did they look for evidence? Were police engaged in some other activity that did not constitute a search and therefore is not a 4th amendment issue?**
- **Third: Did the search take place in an area where the defendant has a legitimate expectation of privacy?**
 - **If you don't have an expectation of privacy in the area the police are searching, then there is no 4th amendment issues and no requirement for the police to act reasonably**
 - **Hypothetical: you are driving your car and police pull you over because there is an equipment violation (tail lights burned out) – police can pull you over for the violation**
 - **Police take everyone's name and run through state system to see if anyone has warrants**
 - **Do the police have to have some level of suspicion in order to run your name through the computer?**
 - **If you are a passenger?**
 - **If the search through the database constitutes a search within the meaning of the 4th amendment (expectation of privacy in that information) – then the police must act reasonably by having suspicion to do that type of search or have search warrant**
 - **If no expectation of privacy then police don't have to act reasonably**

- **You do not have an expectation of privacy in this database information – this is not an expectation of privacy that society is willing to accept**
- **Hypothetical: Prisoners are assigned places to live and live in their cells, typically prison officials come in periodically to check for contraband**
 - **Do police need a suspicion to do that?**
 - **We as society are not willing to allow prisoners living in a cell to have an expectation of privacy in their cells**
- **Hypothetical: in jail talking to friend/loved one and do you have an expectation of privacy in those conversations? Is this a legitimate expectation of privacy?**
 - **Supreme Court does not find a 4th amendment protection in these conversations – balancing – society will not give expectation of privacy to conversations in a jail setting**

IV. Various levels of suspicion

- **Level of proof for the fact finder to find someone guilty at trial in criminal case – beyond a reasonable doubt – each element of the offense**
- **In civil context – standard of proof is preponderance of the evidence – anything more than 50% of credible evidence**
- **Intermediate proof – clear and convincing evidence – evidence that is supposed to be so clear, direct, weighty, and convincing that the fact finder can come to a clear conviction without hesitancy of the precise question in issue**
 - **Somewhere between beyond a reasonable doubt and preponderance of the evidence**
- **In re Seaman, 133 NJ 67, 74 (1993) – provides definition of clear of convincing level of proof**
- **Probable cause – a well grounded suspicion that the defendant is involved in criminal activity**

- **Less than proof beyond a reasonable doubt – but more than a hunch**
- **Some level of evidence is associated with it**
- **Relatively low on the evidence threshold**
- **Minimum evidence necessary to arrest or get search warrant**
- **Consider that there are many people in jails around the country based evidence that only is established by probable cause (low threshold of evidence)**
- **Reasonable and articulable suspicion – less than probable cause but more than nothing**
 - **Necessary for the police to take certain actions regarding the public:**
 - **For motor vehicle stop**
 - **Allows police to detain individuals for investigative purposes – to dispel or confirm suspicion – investigative detention**
 - **Searching – police are permitted to search when they believe that someone has a weapon on his person to conduct a limited frisk/pat down of the person for a weapon – only enough to ascertain whether person has a weapon**
- **Minimum amount of proof needed to arrest is probable cause – if police only have reasonable and articulable suspicion then can only detain**
- **When detention becomes an arrest then defendant has a number of additional rights that come into play, including Miranda rights**
- **If person is just detained, although you have the right to remain silent by the constitution, there is no requirement for the police to tell you of this**

V. Justification for Motor Vehicle Stops

- **Landmark decision – Delaware v. Prouse, 440 US 648 (1979) – stop of motor vehicle is a seizure under 4th amendment and police need reasonable and articulable suspicion (a relatively low level of proof)**

- **Consider that when police observe an infraction that leads to a motor vehicle stop, the police have absolute certainty of the violation because they witnessed it themselves**
- **Anonymous tip – usually through telephone – is it proper for police to conduct motor vehicle stop based on anonymous tip?**
 - **Hypothetical: if anonymous tip comes to police department that there is a particular that is swerving all of the road, can police just stop based on tip?**
 - **What evidence do they have?**
 - **No information about tipster!**
 - **Drunk driving represents ongoing safety issue for the community if not stopped**
 - **Need to stop is high**
 - **Not much time for police to corroborate tip**
 - **If this was an issue of someone picking up drugs at a train station, then more evidence is necessary in order to corroborate tip to develop suspicion**
 - **Amount of corroboration is very slight for DWI situation – need some identifiers for the car, police should corroborate tip by observing weaving/swerving**
- **Length of stop**
 - **Motor vehicle stops are detentions – not arrests**
 - **Police should conduct collateral investigations as long as investigations don't unduly prolong timing of stop**
 - **If the investigative detention becomes unreasonably lengthy, then considered a *de facto* arrest – then need probable cause and also Miranda would be required because the person is now considered “under arrest”**
- **Miranda and motor vehicle stops**
 - **Berkemer v. McCarty, 468 US 420, 437-39 (1984) – Miranda protects individuals in the context of making a statement to the police in the context of a custodial interrogation – need 1) custody AND 2)**

interrogation; in this case, during MV stop person is not under arrest – only detained for investigative purposes – police officer under no obligation to Mirandize because not under arrest; also difference between motor vehicle stop on the street (in the public) vs. being in a police department (coercive environment)

- **Police have stopped car and now want to search the car**
 - **Warrantless search in most situations**
 - **Plain view exception to warrant requirement**
 - **Officer must be lawfully in viewing area – in context of MV stop means that stop is based on reasonable and articulable suspicion to allow officer to legally be in position to make observations**
 - **Alternative, if MV stop took place on less than reasonable and articulable suspicion, then officer was not legally in a position to make observations**
 - **Road block is an example when less than reasonable and articulable suspicion may not be at issue yet the officer is legally in a position to make observations – defense to any search is that the road block was not legally constituted – there are guidelines that police must follow in order to have a lawful roadblock**
 - **Discovery of evidence must be inadvertent – police were not looking for ahead of time**
 - **Police must have probable cause that the discovery of that item is associated with some violation of the law**
 - **Example: MV stop, driver is 19, alcohol on breath, flashlight in vehicle and see beer cans**
 - **Were the police legally in the area to make observation?**
 - **Was the evidence discovered inadvertently?**

- **Is there PC to conclude that discovery of evidence is associated with a violation of the law? Can violation of law be concluded based on beer cans and age of driver??**
- **GPS tracking**
 - **US v. Jones, 565 US _____ (2012)**
 - **police got a search warrant and filed affidavit of probable cause and judge signed warrant;**
 - **2 problems: 1) judge says you have to install GPS on defendant's car within 10 days – but police don't install until 11th day; and 2) must be installed within territorial jurisdiction of Washington, DC but police install in Maryland;**
 - **as a practical matter there was no warrant because did not follow the terms of the warrant;**
 - **GPS is installed but did not have judicial authority to do it;**
 - **Issue: If defendant had an expectation of privacy in his car, did the police have an obligation to act reasonably by getting a warrant? If no expectation, then no need for a warrant.**
 - **No expectation of privacy when driving in public**
 - **Court looks at “effects” – Justice Scalia said that framers would recognize this type of property as an “effect” which would fall within ambit of 4th amendment – therefore GPS procedure is going to have to be guided by 4th amendment requirements, i.e. warrants**
 - **State v. Earls, 420 NJ Super 583 (App. Div. 2011)**
 - **police looking for defendant and called cell phone provider for defendant asking them to provide what cell tower defendant's cell phone was coming from**
 - **provider gave police this information without warrant or other court order**

- based on recovery of this information police were able to locate vehicle and defendant
- defendant argued that there is an expectation of privacy in his cell phone and where it is “pinging”
- the Appellate Division said “no” – this is something where you are in public and there is no expectation of privacy

VI. Justification for searches of automobiles

- **Automobile exception**
 - **Carroll v. US, 267 US 132 (1925) – what is required of police when want to search MV where there is probable cause to believe that contraband or evidence is in the vehicle? Court recognized that it is impractical based on communications available in that time period to get a warrant because cars are inherently mobile and people can just drive away and thwart police investigation; unreasonable to expect police can get a warrant quickly; court created automobile exception to warrant requirement**
 - **Auto exception to warrant requirement states that if police have probable cause to believe that something in vehicle is either fruits or instrumentalities of crime, contraband, etc. the police may conduct a search to recover that evidence in the absence of a warrant – essentially police are making their own probable cause determination because ability to get a warrant is impractical**
 - **Lessened expectation of privacy in vehicle as opposed to when you are in your home – people can see you when you are driving around – in public; diminished expectation of privacy and that justifies a warrantless search of the vehicle with probable cause determination by the police**
 - **Vehicles are pervasively regulated and there should be an expectation since you are engaging in a pervasively regulated activity that you have a**

lessened expectation of privacy, less privacy than you would expect in your own home

- **Pennsylvania v. Lebron, 518 US 938 (1996)**
 - **SCOTUS ruled that the exception to the warrant requirement that allowed police to conduct searches under the automobile exception is based solely on probable cause – if police believe there is probable cause, then they can conduct a search, there is no need for the police to demonstrate that they were confronted with exigent circumstances to further justify a search – only requirement under FEDERAL law is for probable cause to believe something is inside the vehicle**
 - **Scope of search is going to only occur in area where police have probable cause – if police believe it is in the trunk, that is where they will search, etc.**
- **State v. Cooke, 163 NJ 657 (2000) - NJ Supreme court determined that they were going to provide increased protections under the state constitution than what was provided under the US constitution and cases – the Court said that for purposes of state constitution they will continue to require that when police want to use automobile exception to warrant requirement they must demonstrate 2 things:**
 - **Probable cause AND**
 - **There are exigent circumstances tending to make it impractical for police to get a warrant**
- **In the absence of one of the two factors, the evidence will be suppressed**
- **Court did not define exigent circumstances**
- **Police need clear constitutional guidance from our court system – SCOTUS has always come up with simple, easy to apply guidelines to follow (i.e. plain view exception – easier for police to understand probable cause determinations)**
- **Exigent circumstances is requiring the police to follow a concept that we cannot define – that is not helpful**

- **State v. Dunlap, 185 NJ 543, 550-551 (2006)**
 - **Young girl had boyfriend and mother was concerned about relationship because turned out he was a drug dealer; police go to her house and search her room and find drugs; she is brought to the police department and she admits she got the drugs from her boyfriend; police pressure her into setting up boyfriend and she arranges with police assistance to meet with him; police go and set up trap for him – at least 10 officers waiting; defendant comes to location, arrest and search car – find lots of drugs and guns in car**
 - **Police want to use automobile exception to warrant requirement**
 - **Defendant argues no exigent circumstances because police were waiting for me; 1 defendant with 10 police**
 - **Evidence was suppressed that notwithstanding probable cause there was no exigency in this situation**
 - **Case did not give law enforcement a clear definition of exigent circumstances**
 - **Court said if there were only 2 officers there then the result may have been different but with 10 officers that is not exigency**
 - **Court also decided to tell police that they could have received an emergency telephonic search warrant – however under the law at the time the only way to get such a warrant required exigency – which the court here is questioning**
 - **Court was not able to define exigent circumstances in such a way that clearly advised the police their duties under the automobile exception**
- **State v. Pena Flores, 198 NJ 6, 30 (2009)**
 - **Court decides that police can get emergency telephonic warrant and only need to demonstrate probable cause – no need to prove exigent circumstances when they are applying for this type of warrant**

- **Change in court rules – not change in constitutional interpretation**
- **Factors to decide whether there are exigent circumstances were presented in the opinion**
- **Number of consent searches has increased as opposed to trying to get a telephonic warrant – telephone warrant procedures are not clear and therefore police are not using**
- **The future of the automobile exception**
 - **Pena Flores may not be the law in the future**
 - **NJ could adopt federal standard!**
 - **Cannot change the interpretation of the constitution depending on who is on the bench**
 - **Gideon v. Wainwright, 372 US 335 (1963) – overruled a previous interpretation of the 14th amendment which was only 20 years old at that point; court can reinterpret the constitution**
 - **Similarly Crawford v. Washington, 541 US 36 (2004) – paradigm shift in the rule and changed/threw out 35 years of evidence law in favor of the 6th amendment right of confrontation**
- **Consent searches**
 - **NJ has provided enhanced protection over and above what federal constitution provides**
 - **General rule is that consent searches have to be voluntary and knowing – you have to voluntarily and knowingly relinquish your right to privacy to allow a search**
 - **You have right to refuse to give your consent**
 - **In federal system – there is no obligation to advise the person that they have a right not to consent**
 - **In NJ – to provide extra protection to the people, there is a requirement that government must demonstrate that person giving consent knew that the consent had to be given voluntarily and knowingly and that he was aware that he could refuse to give consent**

- **Proven by confirm person knows through oral communication with person or tell the person that they have the right to refuse (verbally or in writing with signature)**
- **Issue arises when dealing with consent to search a motor vehicle**
 - **Highly political in NJ**
 - **Police during war on drugs were conducting motor vehicle stops and conducting consent searches on NJ turnpike and mostly without proper articulable suspicion and without full consent – people were being stopped and searched not based on objective evidence – allegations of racial profiling**
 - **State v. Carty, 170 NJ 632 (2002) – in automobile context if police want to conduct motor vehicle search based on consent, before asking for consent the police must have reasonable and articulable suspicion of contraband in inside vehicle; if less than probable cause and with reasonable and articulable suspicion can ask for consent to search; if probable cause then search under automobile exception**
 - **In absence of motor vehicle context and reasonable and articulable suspicion, police in NJ cannot ask for consent to search motor vehicle**
 - **Only in NJ**
 - **Only searches of motor vehicles – does not apply to a search of a house**
 - **Merely to address a specific problem of racial profiling in NJ and consent searches**
- **Challenges to a search based on consent**
 - **Consent was freely, voluntarily and knowingly given – based on threat or force**
 - **Person was not aware of right not to consent**
 - **Police did not have reasonable and articulable suspicion to ask for consent to conduct search to begin with**
- **Search incident to arrest**

- **Not as relevant in the current system**
- **Idea of search incident to arrest was contained in Chimel v. California, 395 US 752 (1969)**
 - **The court created a rule of law that the police can search a person when that person has been arrested**
 - **Reasons for search incident to arrest was to obtain weapons from the person that could be used against police, to recover implements of escape, and to recover evidence that might be in their possession at the time of arrest that they may try to discard after arrest**
 - **This is not a search based on probable cause**
 - **Reason being is that the purpose of the search are more public policy reasons, and that the person has been arrested and probable cause for arrest exists – then conducting a search incident to arrest – no separate probable cause to search is required**
 - **Anything found from search incident to arrest can be the subject of more charges**
- **Scope of search is wingspan area where person can grab something – his person, anything he is carrying, anything in area where he can grab, such as a weapon**
- **Automobile – search incident to arrest**
 - **New York v. Belton, 453 US 454 (1981) – Supreme Court took logic behind Chimel case and applied to motor vehicle context; when occupant of motor vehicle gets arrested, police can search interior of motor vehicle for limited purpose of searching for implements of escape, weapons, and evidence**
 - **Police would use Belton case to “toss” vehicle – for whatever reason for arrest of person based on motor vehicle arrest**
 - **Belton rule was subject to criticism**
 - **State v. Pierce, 136 NJ 184 (1994) – questioned fairness and utility of search incident to arrest rule as it pertained to motor vehicle searches**

- **State v. Eckel, 185 NJ 523 (2006) – search of motor vehicle incident to arrest pursuant to Belton is no longer good law in NJ**
- **With no basis for searching vehicle, how can police insure that there was nothing in the car that could hurt them?**
- **Arizona v. Gant, 556 US 332 (2009) – SCOTUS backed down on Belton rule; catching up with NJ; Belton is no longer good law in US; Gant required police to change procedures about motor vehicle searches after someone is arrested**

VII. What police can/can't do to insure safety during a motor vehicle stop?

- **Courts are very supportive of issue of police safety and realize that this is dangerous work by police**
- **Courts want to balance individual rights and practical aspects of police work**
- **Three things that flow from reasonable and articulable suspicion:**
 - **Pat down/frisk if police have a reasonable and articulable suspicion that person is possessing a weapon – this point leads to the following case:**
- **Michigan v. Long, 463 US 1032 (1983) – if police have a reasonable and articulable suspicion to believe that there is some type of weapon in a vehicle that would constitute a danger, the police have authority to go in and take control of that weapon; limited search with intention to recover weapons – search for weapons not a search for evidence; if during course of search in plain view, then entitled to seize that evidence; what places officer in legal position to view evidence? – the reasonable and articulable suspicion that there is a weapon in the car; officer is looking for weapons, and therefore the discovery of evidence is inadvertent**
 - **Scope of “vehicle frisk” is limited to passenger compartment of the vehicle in areas where someone in the vehicle can readily grab something – glove compartments, unlocked containers, consoles, unlocked luggage; “readily accessible”**

- **Areas not within the scope is an area not readily accessible to passengers, i.e. trunk, engine – especially if trunk is locked because not “readily accessible”**
- **Totality of circumstances is used to evaluate whether there is reasonable and articulable suspicion that there is a weapon in the vehicle**
- **Authority of police over individuals in motor vehicle at the time of the stop**
 - **If person is operator of vehicle – whether the operator stays in vehicle or not, this is police discretion – police can order driver out of vehicle – no level of articulated suspicion necessary – court deferring to police given what is best for police**
 - **When defendant gets out of car, officer can make observations that the police may not have seen if person remained in vehicle – police then able to see evidence when door is opened and person gets out – police can then seize contraband**
 - **Since there is no required suspicion for person to leave the car, then this is an opportunity for police to make observations**
 - **Pennsylvania v. Mimms, 434 US 106 (1977) – this case allowed for operator of car to be asked out of vehicle by police, but this case did not address how to deal with passengers**
 - **The law developed that the standard is the same for operators and passengers – so if police want to order passenger out of vehicle, they don’t need additional articulable suspicion to ask to get out of vehicle – FEDERAL standard**
 - **In NJ – our court follows SCOTUS with regard to drivers – officer call, no distinction**
 - **With passengers, police must have a heightened level of concern for their own safety – if police have this, then can order passenger out of vehicle – slight amount of protection – some level of concern for**

officer safety – less than reasonable and articulable suspicion

- **Must be something articulable to ask passenger out of vehicle, i.e. not paying attention to officer, nodding off, not cooperating**
- **When passenger gets out of car, then police can make plain view observations that they were not able to see when passenger was in vehicle**
- **If passenger commits a separate motor vehicle offense (as a passenger, i.e. seatbelt offense), then police can ask passenger to get out of vehicle**
- **When police open passenger door without any warning to individuals and then can see contraband in plain view – if there is a heightened sense of concern for officer safety or passenger has committed a separate motor vehicle offense, then the passenger could be asked to get out of car anyway, and if police open the door without warning, then no issue – probably same ruling if it was the driver and police opened door**

VIII. Final considerations

- **Road blocks**
 - **Road blocks in order to detect drunk drivers is constitutionally permitted under NJ and federal law**
- **Some motor vehicles are subject to pervasive regulations (i.e. trucks) – subject to administrative search exception – police undertake searches based on pervasive regulation of this type of industry, i.e. trucking – search based on administrative laws and regulations which have specific details – regulations are substitutes for search warrant – so no warrant required**