

# Rhode Island Search & Seizure Law

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## What is a Search?

- A government intrusion into an area where a person has a reasonable and justifiable expectation of privacy

## What is a seizure?

- The exercise of control by the government over a person or place – seizure occurs when by means of force or authority, freedom of movement is restrained (Calif. v. Hodari)

## Standing

- Fourth Amendment Rights are personal.
- A person must have a reasonable expectation of privacy to assert Fourth Amendment protections.

### Factors That Affect Expectation of Privacy

possession/ownership;  
prior use;  
ability to control or exclude other from use;  
legitimate presence in the area searched.

## Voluntary Encounters

- No 4<sup>th</sup> Amendment restrictions on conversations b/w police and citizens that are not seizures

## Reasonable Suspicion

- State v. Keohane (RI 2003) Factors for reasonable suspicion include: location of conduct, time in which incident occurred, suspicious conduct or unusual appearance of suspect and personal knowledge and experience of officer.
- United States v. Arvizu (US 2002)-Can be series of non-criminal acts.

## Brief Investigative Detention

- Based upon reasonable suspicion, officer may briefly detain person, absent probable cause, for investigative purposes.
- Reasonable suspicion basis:
  - Based upon specific, articulable facts
  - Along with reasonable inferences that
  - Criminal activity is being or is about to be committed

## Brief Investigative Detention

- **State v. Parra** (RI 2007)
  - Stop may last only long enough to confirm/dispel suspicion of the officer
  - Once the purpose of the stop has been accomplished, police officer may not detain a suspect and embark on “an expedition for evidence in the hope that something might turn up”.

## Brief Investigative Detention

- **Hibbel v. Sixth Judicial District of Nevada** (US 2004)-May ask suspect to ID self-request is related to Terry stop rationale.
- **State v. Casas** (RI 2006) May turn in to de facto arrest requiring probable cause-inquiry for reasonableness-court looks at basis for stop and was action reasonably related to stop-subjective intent of police a factor the court considered.

## Terry Stop/Frisk

- Pat-down to discover weapons, not recover contraband. Absent probable cause-protective search designed to neutralize threat to officers and others.
  - US v. Barboza, (1<sup>st</sup> Circuit 2005)
- Must have reasonable belief that suspect is armed and dangerous

## Terry Stop/Frisk

- State v. Foster(RI 2004)-passenger in m/v stopped for m/v infractions-furtive movement –veteran officer concludes passenger bending over means he’s armed or concealing something-detaining passenger reasonable where officer had encountered weapons in similar past circumstances and concerned for safety-once drugs found-reasonable more in car.

## Terry Stop/Frisk

- TO FRISK: You may frisk outer clothing for weapons and may search if you reasonably believe you are in danger.
- TO QUESTION: You may ask the suspects name and address and explanation of the suspects actions. You may detain him for a reasonable period of time to verify answers.

## Terry Stop/Frisk

- *Illinois v. Wardlow* (US 2000)
  - An individual's presence in a "high crime area," standing alone, is not enough to support reasonable suspicion of criminal activity-but location's characteristics may warrant further investigation.
  - Unprovoked flight or nervous, evasive behavior may raise suspicion to actionable level.

## Terry Stop/Frisk

- **Arizona v. Johnson** (US 2009)
  - M/V code violation justified stop-rear passenger locks in on officer, wearing gang colors, from gang area, scanner in pocket, no ID but offers that he served time for burglary. Ordered out of m/v, patdown reveals gun.
    - As long as the inquiries don't measurably extend stop, officer's inquiries into matters unrelated to initial stop don't make seizure unlawful-here officer had to be sure suspect not armed, Terry frisk ok'd.

## Anonymous tips

- **State v. Keohane** (RI 2003)-anonymous tip w/range of details relating not just to easily obtained facts existing at time of tip but to not easy to predict future actions of third parties would be enough to establish reasonable suspicion.
  - Sufficiently corroborated and detailed information may justify investigatory stop.

## Anonymous tips

- **State v. Keohane** (RI 2003)
  - Detailed anonymous tip, later corroborated, warranted suspicion of officer. Tip included suspect's residence, m/v, itinerary, purpose of travel. Once officers observed conduct mirroring tip and suspicious meeting, brevity of trip to Providence, erratic driving and association with known drug user-profile was developed of man more likely than not engaged in criminal activity.

## Note on Officer Safety-Search Warrant Execution

- "In the narcotics business, 'firearms are as much "tools of the trade" as are most commonly recognized articles of narcotics paraphernalia.' " Officers are ... engaged in an undertaking fraught with the potential for sudden violence.
  - **State v. Alamont** (RI 1990)
- Police executing s/w for narcotics at residence can frisk occupants for weapons. Interest in officer safety outweighs privacy interests.
  - **State v. Apalakis** (RI 2002)



## Search Warrant Execution

- **State v. Apalakís** (RI 2002)
  - Routine detention of residents while house searched for contraband pursuant to warrant is reasonable even absent probable cause.
  - Use of handcuffs during this encounter doesn't necessarily turn it into arrest for which probable cause is required-dangerousness of undertaking legitimizes police action.

## Arrest

- **State v. Castro** (RI 2006)
  - Court has never held absolute certainty required for probable cause-possibility of error is inherent in probable cause determination.
  - Where experienced officer observes apparent hand to hand transfer of object for money in area known for drug transactions-probable cause may exist.

## Arrest

- **State v. Flores** (RI 2010)-for probable cause, no need to show that belief “more likely than not”
  - Probable Cause exists when facts and circumstances within police officer’s knowledge and of which (s)he has reasonably trustworthy information are sufficient to warrant reasonable person’s belief that crime has been committed and that person to be arrested committed that crime.

## Exceptions to the Search Warrant Requirement

- 1. Incident to Lawful Arrest
- 2. Protective Sweeps
- 3. Abandoned Property
- 4. Pretrial Detainees
- 5. Consent
- 6. Plain View
- 7. Inventory Searches
- 8. Exigent Circumstances
- 9. Automobile
- 10. Community Care

## Search Incident to Lawful Arrest

Permits police officers who have made a lawful custodial arrest to conduct a warrantless search of the suspect's person and property without additional probable cause.

## Search Incident to Arrest

- *Chimel v. California* (US 1969)
  - Incident to lawful arrest, the police may search the person and areas into which he might reach to obtain weapons or destroy evidence.
    - Old “WINGSPAN” rationale

## Search Incident to Arrest

- A LEO may, contemporaneous with lawful custodial arrest of the occupant of a vehicle, search the entire passenger compartment and any containers (open or closed) therein.

*New York v. Belton* (US 1981)

## Search Incident to Arrest

- *Belton* search parameters
- Passenger Compartment: Does NOT encompass the trunk.
- Containers: Denotes any object capable of holding another object. Includes closed or open glove compartments, consoles, or other receptacles located anywhere within the passenger compartment, luggage, bags, clothes, etc.

## Search Incident to Arrest

- *State v. Robalewski*, (RI 1980)
  - The scope of the search is limited to areas in which the arrested person is expected to move, as well as articles handled by the arrestee.

## Search Incident to Arrest

- Pre-Arizona v. Gant Standard
- The 4<sup>th</sup> Amendment allows a LEO to search vehicle's passenger compartment as a contemporaneous incident of arrest, even when the officer does not make contact until the person arrested has already left the vehicle.
- *Thornton v. US*, 541 US 615 (2004)

## Search Incident to Arrest

- **Arizona v. Gant** (US 2009)
- “If there is no possibility that arrestee could reach into area that LEO seek to search, both justifications (protect officer and safeguard evidence) for search incident to arrest exception are absent and rule does not apply.”
- No search incident to arrest may occur

## Search Incident to Arrest

- Important Qualification by Supreme Court in **Arizona v. Gant** 2 instances when search incident to arrest may occur:
- Where it is reasonable for officer to believe that former vehicle occupant under arrest might access vehicle at time of search or vehicle contains evidence of offense of arrest.

## Protective Sweeps

- During in-home arrest, if officers have articulable facts of danger in specific area, may do limited protective sweep of premises.  
**Maryland v. Buie** (US 1990)
- **LA County v. Rettele** (US 2007)
  - Executing search warrant-officers may take reasonable action to secure premises and ensure safety-even leaving non-suspects unclothed reasonable under circumstances

## Abandoned Property

Relinquish the reasonable expectation of privacy in the property.

1. There must be intent to relinquish all claims to the object.
2. Relinquish control of the object to such an extent and in such circumstances that examination of it by others would not be unlikely.

## Abandoned Property

- Circumstances where abandonment found to have occurred: (i) guest in hotel after rental period lapses; (ii) public storage unit-after lease expires; (iii) common areas in apartment where others have access.

## Abandoned Property

- *State v. Briggs* (RI 2000)
- To preserve 4<sup>th</sup> Amendment protection in area immediately surrounding residence-person must not conduct activity or leave object in plain view of those outside of area.
- Abandonment turns on whether accused relinquished reasonable expect. of privacy by conduct, not whether the property is



## Abandoned Property

- *State v. Briggs* (continued)
- abandoned in property law sense.
- In search and seizure context, issue isn't whether person relinquished property interest so that another may have superior interest, in search and seizure question is whether person has relinquished expectation of privacy so seizure and search is reasonable in 4<sup>th</sup> Amend context.

## Pretrial Detainees

- *State v. Andujar* (RI 2006)
  - No legitimate expectation of privacy for pretrial detainee in his or her cell. Court applies rationale to find both warrantless search and seizure acceptable. Court does not reach question of whether warrant required before submitting seized objects for further scientific testing.
    - \*Note: D.O.C. policies influence the availability of pretrial detainees cells for searches and seizures.

## Consent

- FACTORS FOR COURT TO CONSIDER:
  - Custodial status
  - Presence of coercive police procedure
  - Awareness of right to refuse
  - Education and intelligence
  - Age of defendant
  - Was consent in writing.

## Consent

- The police may conduct a warrantless search (without probable cause) if consent is knowingly, intelligently and voluntarily given
- Totality of the Circumstances – Clearly explain to citizen:
  - What you want to search
  - The object of your search
  - Do not put the driver in the back of your patrol car during the search if it prevents him from communicating to you his desire to withdraw consent.
  - Schneckloth v. Bustamonte, (US 1973)

## Consent for Motor Vehicle Search

- R.I.G.L. §31-21.2-5 (2004)
- Motor vehicle infraction:
  - Cannot detain beyond time needed for violation paperwork, unless:
    - Reasonable suspicion or probable cause
    - Arrival of canine if r/s or p/c
  - Cannot request consent from operator or owner/passenger unless: reasonable suspicion or probable cause of crim. activity.

## Consent

- If a driver voluntarily consents to a vehicle and the scope of the search has been established prior to the search, then the search will be valid provided any containers can be opened without damage. Therefore, locked containers should not be forced opened during a consent search. The driver should be asked for the key.
- *Florida v. Jimeno*, 499 US 934 (1991)

## Third Party Consent

- *State v. Linde* (RI 2005)
- Third Party Consent is valid if there is common or mutual use, access and control to the property.
- Third Party consent commonly not found to exist in closed, locked containers or areas reserved for sole use of individual and no relinquishment of sole control.

## Third Party Consent

- *State v. Barkmeyer* (RI 2008)
  - Consent of an occupant who possesses common authority over premises or effects is valid as against the absent, nonconsenting person with whom authority is shared.
  - 3<sup>rd</sup> party authority rests on mutual use...and (non-consenting co-inhabitants) assume the risk that one of their number might permit a common area to be searched.

## Third Party Consent

- Landlords cannot give consent to search tenant's apartment.
- Cohabitant can consent to search of shared living quarters.

## Third Party Consent-Apparent Authority

- *State v. Linde* (RI 2005)
- Where officers reasonably but erroneously believe that person had authority to provide consent-activity will be upheld. Analysis focuses on whether person of reasonable caution would believe consenter had authority based upon facts known to officer at the time of the consent.

## Plain View

### *State v. Flores* (RI 2010)

Permits officers who observe evidence or contraband in plain sight to seize it without warrant and without probable cause:

1. Officer must be lawfully present.
2. Item is plainly visible.
3. Item must be immediately recognizable as evidence or contraband.

## Plain View

- Police were looking for stolen equipment.
  - Police are lawfully at a location, but no search warrant.
  - Can Police move equipment in order to view serial numbers?

## Plain View

- No
- Serial numbers of a stereo were not in Plain View where officers had to move equipment in order to see the numbers.

## Plain View

- Police were legally in a apartment.
- Police observe a plain brown bag hidden behind a water heater.
- Can the police seize the bag?

## Plain View

- No
- A sack of money taken from behind a water heater in an apartment was NOT lawfully seized.
- Money was not in Plain View.
- Plain Brown bag was in Plain View

## Plain View

- Police are executing a search warrant for gambling paraphernalia at a sporting goods store.
- Can Police seize a sawed-off shotgun that was seen in the office searched?





## Plain View

- Yes

- Since there is no readily available explanation for a lawful possession of a sawed-off shotgun, police had probable cause to seize the gun.

## Plain View

- Police stop car for motor vehicle violations.
- Police see that the Vin number is covered by papers.
- Police reach into move papers and observe a gun protruding from under the driver's seat.
  - Can Police legally seize the gun?

## Plain View

- YES
- Officer is entitled to look from outside the car for Vin number.
- When police moved the papers, this was a search, but a sufficiently unobtrusive search.
- Officer is entitled to seize the gun in Plain View.

## Plain Feel

- Where a officer is legitimately conducting a pat-down search of a suspect and encounters something IMMEDIATELY APPARENT as contraband, the officer may seize it without a warrant.
- Police may not manipulate the object once the police realize that no obvious weapons are present.

## Inventory

Probable Cause is NOT prerequisite.

1. Protect owner's property while it is impounded.
2. Protect the police against claims of lost or stolen property.
3. Protect the police from possible danger.

## Inventory

- *South Dakota v. Opperman*, (US 1976)
  - If police have lawfully impounded a vehicle, they may, pursuant to an established standard procedure, secure and inventory the vehicle's contents in order to protect the owner's property, protect the police from claims of lost/stolen property, and protect the police from potential danger.

## Inventory

- *State v. Grant* (RI 2004)
- To be valid, inventory search must be conducted pursuant to standardized criteria or as part of established routine; cannot serve as pretext for general rummaging for incriminating evidence.
- Recognized by court as legitimate for personal effects in motor vehicle and one's personal property.

## Exigent Circumstances

### *State v. Werner* (RI 2003)

Exigency exists when police have objective, reasonable belief that crisis can only be avoided by swift and immediate action.

*Werner* Court – looked at alleged crime – “Defendant had engaged in irrational and violent conduct” – used term 3 times

## Exigent Circumstances

- *State v. Portes* (RI 2004)
- One year after Werner
- Exigent circumstances requires that officer have objective, reasonable belief that swift and immediate action is required to avert a crisis. Impetus of police entry into area is to preserve life and liberty.

## Exigent Circumstances

- *State v. Portes* (RI 2004)
- There must be a legitimate need for type of search conducted-not a general “rummaging through person’s belongings”
- Search must be “carefully tailored” to render only the perceived need for help and should not extend further (response to 9-1-1 call led to search for victim/suspect, note: language barrier factor for exigency).

## Exigent Circumstances

Police must act quickly to:

1. Prevent imminent destruction of evidence
2. Hot pursuit of a fleeing suspect
3. Prevent harm – Persons lives are threatened

## Exigent Circumstances

- LEO may conduct a limited warrantless search of a private residence in response to an emergency situation reported by an anonymous 911 caller, where exigent circumstances (danger to human life) demand immediate response; any evidence in plain view is properly seized.
- US v. Holloway (2002)

## Exigent Circumstances

- NO CRIME SCENE EXCEPTION TO WARRANT REQUIREMENT
- *Flippo v. West Virginia* (US 1999)
  - Police may make warrantless entry onto property if reasonably believe person in need of immediate aid and may make prompt warrantless search of scene for victim(s)/killer. No general murder scene exception to search warrant requirement.

## Automobile Exception

- With probable cause to search a vehicle under the Carroll doctrine, even if the LEO has ample time to obtain a search warrant for a motor vehicle, they are not required to do so.
- *Maryland v. Dyson* ( US 1999)
- Consistent with RI case: *State v. Werner*

## Automobile Exception

- LEO with probable cause to search a car may inspect the passengers belongings found in the car if those belongings are capable of concealing the object of the search.
  - Wyoming v. Houghton ( US 1999)

## Community Caretaking Function

- Counselor/midwife/emissary/measurement taker-tasks not involved with apprehension of alleged criminals
- State v. Roussel (RI 2001)-trooper “investigates” erratic operation of motor vehicle by opening passenger side door of m/v-makes impaired operator observations-not a “search” because officer engaged in community care-taking.



## Search Warrant Preparation

- **State v. Byrne** (RI 2009)
  - Nexus between criminal article or activity in affidavit and place to be searched need not be based upon direct observation.
    - Nexus may be found in: type of crime, nature of items sought, extent of opportunity for concealment, and normal inferences about where criminal would hide things mentioned in warrant.
      - Here-logical to find child voyeurism video in suspect's home.

## Officers As Experts

- **State v. Flores** (RI 2010)
  - Training and experience may qualify officer to ID narcotics where layperson could not
    - Officer "knew" ID opium odor
    - Officer visually ID'd cocaine for plain view seizure
- Location may affect officer's belief
  - Observations of apparent drug deal in area known for such activity can raise suspicion to probable cause

## Officers As Experts

- *State v. Flores* (RI 2010)
  - Because of training and experience, officer can say immediately apparent:
    - Clear plastic bag partially wrapped in masking tape that fell out of suitcase is contraband
    - White rock-like substance on car floor was crack
    - Contents of cellophane bag was cocaine

## Officer As Experts

- *State v. Storey* (RI 2010)
- Reviewing courts and warrant-issuing magistrates are entitled to give credence to the expertise and experience of police officers in developing knowledge about the practices and proclivities of drug dealers.