

POLICE PRACTICES:

ARREST, SEARCH, AND SEIZURE

AND AN OVERVIEW OF

DISORDERLY CONDUCT ARRESTS

By:

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I. APPLICABLE CONSTITUTIONAL PROVISIONS

A. U.S. CONSTITUTION --- FOURTH AMENDMENT

“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.”

B. KENTUCKY CONSTITUTION --- SECTION 10

“The people shall be secure in their persons, houses, papers and possessions, from unreasonable search and seizure; and no warrant shall issue to search any place, or seize any person or thing, without describing them as nearly as may be, nor without probable cause supported by oath or affirmation.”

II. THE EXCLUSIONARY RULE — If the United States Constitution is violated during an arrest, search, or seizure of a person or property, the evidence obtained by the police pursuant to the unlawful conduct must be excluded by the courts.

A. Mapp v. Ohio, 367 U.S. 643 (1961).

1. *Facts*: Officers requested consent to search Ms. Mapp’s house. She declined. Three hours later the officers arrived on the scene, holding up a piece of paper, informing Ms. Mapp that they had a search warrant. They forcibly opened the door and searched the residence. The prosecutor sought to admit obscene material found during the search. **A valid warrant was never presented to Ms. Mapp, nor introduced at the trial.**
2. *Held*: **Absent consent to search, exigent circumstances, or a warrant, the evidence was not admissible.**

B. Budeau v. McDowell, 256 U.S. 465 (1921) — The U.S. Constitutional restraints are not applicable to a private person’s actions, so long as the private person is not acting at the request or direction of a police officer.

C. United States v. Jacobsen, 466 U.S. 109 (1984).

1. *Facts*: Federal Express employees opened a box, which they suspected to contain drugs. Once they found the drugs, they returned the drugs to the box and called the police. The police opened the box upon arriving.
2. *Held*: **The officers’ viewing of what a private person had made available for them, was not an unlawful search.**

III. WARRANT PREFERENCE

A. IF AN ARREST OR SEARCH WARRANT CAN BE OBTAINED, COURTS ARE MORE LIKELY TO ALLOW EVIDENCE OBTAINED TO BE INTRODUCED (and you are less likely to be found liable if sued).

1. U.S. v. Leon, 468 U.S. 897 (1984).
 - a. *Facts*: After an investigation that included an anonymous tip, officers applied for a warrant to search three houses and automobiles of three suspects. A warrant was issued and the search yielded large quantities of drugs and other evidence. The trial court found that the warrant was not supported by probable cause and the evidence was suppressed. The prosecution appealed.
 - b. *Held*: When an officer, acting in good faith, has obtained a search warrant from a judge or magistrate and acted within its scope, the evidence need not be suppressed so long as:
 - i. The affidavit for search warrant did not contain false information;
 - ii. The judge was neutral and detached; and
 - iii. The affidavit contained enough information to allow the judge to determine the existence of probable cause.

B. THE AFFIDAVIT TO SUPPORT A SEARCH WARRANT MUST:

1. Particularly describe the place to be searched;
2. Particularly describe the items to be seized;
 - a. Confidential informants need not be identified. Aguilar v. Texas, 378 U.S. 108 (1964).
3. Establish probable cause.

C. ANONYMOUS TIPS AND/OR INFORMANTS

1. Illinois v. Gates, 462 U.S. 213 (1983).
 - a. *Facts*: Police received an anonymous letter informing them that Mr. and Mrs. Gates were trafficking in drugs. The letter stated that on May 3, Mrs. Gates will be driving to Miami to pick up illegal drugs, and on May 5 Mr. Gates will be flying to Miami, where he will drive the vehicle back to Illinois. **The police monitored the Gates' actions, which followed that predicted in the anonymous letter.** An officer signed an affidavit for a search warrant, in which the relevant facts were presented to the judge. A search warrant for the Gates' residence and vehicle was issued. The officers found 350 pounds of marijuana in the vehicle and home.
 - b. *Held*: A judge may not issue a search warrant based on information from an anonymous tip and/or confidential informant unless the judge determines that, given all the circumstances set forth in the

affidavit, including the veracity and basis of knowledge of the informant, there is a fair probability that contraband or evidence of a crime will be found.

- c. *In this case: **The search warrant was valid.*** However, if the officers had not verified some of the information given to them by the anonymous informant, the search warrant would have been invalid.

2. ANONYMOUS TIP — must independently verify the information.

a. Alabama v. White, 496 U.S. 325 (1990).

- i. *Facts:* Police received a phone call from an unknown person who stated that the suspect would be leaving a particular address at a particular time in a specifically-described vehicle and would be traveling to a motel in possession of cocaine. After observing the suspect do all of these things, the police stopped her and requested permission to search, which she gave. Cocaine was found in her possession. The suspect attempted to suppress the evidence arguing that the stop was invalid.
- ii. *Held:* A sufficiently detailed and corroborated anonymous tip (especially one that predicts future conduct) may support a vehicle stop.

b. Florida v. J.L., 529 U.S. 266 (2000).

- i. *Facts:* Police received a tip that a young black male was standing at a particular bus stop, wearing a plaid shirt, and that he was in possession of a concealed gun. Officers found a person matching that description at the bus stop, seized and frisked him, finding a gun.
- ii. *Held:* An anonymous tip that is unsupported by specific information is not sufficient to satisfy the requirement of Terry that an officer have reasonable suspicion before initiating a search.
- iii. *Note:* Verifying information that anyone can provide (such as a description of a person standing on a public street) is insufficient to establish reasonable suspicion.

3. CONFIDENTIAL INFORMANT — must set forth specific facts in the affidavit which indicate that the confidential informant is reliable. Such ways would be as follows:

- a. used him/her in the past;
- b. personally know him/her;
- c. the statement given by the informant was against his penal interest;

OR

d. information given by informant has been corroborated.

D. PROBABLE CAUSE --- To show probable cause for the judge to issue a search warrant, the officer must present reliable, facts, information or circumstances that are sufficient for a reasonable man to believe:

1. That a crime has been committed; and
2. That evidence of this crime is on the premises or person to be searched.

E. SEARCH WARRANT REQUIREMENTS --- A search warrant must:

1. Be issued by a neutral, detached judge;
2. Contain the words “Commonwealth of Kentucky” at the top;
3. Be based on an affidavit showing probable cause;
4. Be based on an affidavit sworn to before the issuing judge;
5. Particularly describe the items to be seized;
6. Particularly describe the place or person to be searched; and
7. Be signed personally by the judge.

F. EXECUTION OF SEARCH WARRANT

1. Taylor v. U.S., 286 U.S. 1 (1932).

- a. *Facts:* Police had received complaints of illegal alcohol sales in a residence over a period of a year. As they approached they smelled whiskey and observed cardboard boxes in the garage that they believed contained jars of whiskey. They entered the garage, finding 122 cases of whiskey and arrested the owner.
- b. *Held:* Absent exigent circumstances, an officer must obtain a search warrant for an area in which an individual would have an expectation of privacy.

2. Ybarra v. Illinois, 444 U.S. 85 (1979).

- a. *Facts:* **A warrant to search a tavern**, in which the bartender was suspected of selling heroine, was issued and executed by police. During the search, **a customer was searched**, wherein packets of heroine were found in his pocket.
- b. *Held:* This was an unlawful search and seizure. **A person’s proximity to others who are suspected of drug activity does not, without more, give rise to probable cause to search the person.**

3. Michigan v. Summers, 452 U.S. 692 (1981) — Police officers **may detain an occupant of premises** being searched pursuant to a valid search warrant.

4. Illinois v. McArthur, 531 U.S. 326 (2001).
 - a. *Facts*: A female asked officers to accompany her to a residence that she shared with her husband to retrieve her personal belongings. The officers remained outside while she retrieved the belongings. When she came out of the house, she informed the officers that her husband, who was in the residence, had drugs. The officers knocked on the door. The husband came to the door and stepped outside. He refused permission to search. The officers would not allow him to reenter the residence while a search warrant was being obtained. Drugs were found when the search warrant was executed.
 - b. *Held*: It is lawful to deny entrance to a resident while a search warrant is being obtained if the restraint is “both limited and tailored reasonably to secure law enforcement needs while protecting privacy interests.”
5. Officers may only look into areas where items described in the search warrant may be found. For instance, if it is suspected that the occupant of the premises is in possession of a stolen television, the officers may not look in drawers smaller than the television.
6. Coolidge v. New Hampshire, 403 U.S. 443 (1971) --- **“Plain View Doctrine”** — Upon executing a search warrant, police officers may seize items of an incriminating nature, even if not named in the warrant, so long as they are in “plain view.”
7. U.S. v. Ramirez, 523 U.S. 65 (1998).
 - a. *Facts*: Officers had a warrant to search a residence. Upon arrival, rather than knocking and announcing their presence, they broke a window to gain access to the house and entered.
 - b. *Held*: It is the general rule that prior to entering a residence to execute a search or arrest warrant, the **police must knock and announce their presence**. However, the failure to do so in this case was justified for the officers’ safety since the officers had a reasonable suspicion that a prison escapee with a violent past and a reported access to a large supply of weapons was inside.
8. Richards v. Wisconsin, 520 U.S. 385 (1997).
 - a. *Facts*: Officers obtained a search warrant for a motel room where drug activity was suspected. The officers observed the suspect peer out the door a few minutes before they entered. Since they believed the suspect had seen them, they did not knock and announce their presence before kicking in the motel room door.
 - b. *Held*: Although the Court allowed the evidence in, they did so only because it was reasonable for the officers to believe that the suspect

may be destroying evidence under the facts of this case. **There is no blanket “no knock” exception when a drug activity warrant is being served.**

- c. Courts typically hold that 15 to 20 seconds is a reasonable period of time to wait before breaking down the door.

IV. WARRANTLESS ARRESTS

- A. U.S. v. Watson, 423 U.S. 411 (1976) — A police officer is permitted to arrest a person, without a warrant for a **misdemeanor or felony committed in his presence or for a felony not committed in his presence**, so long as there is probable cause for making the arrest.
- B. Arrests for Misdemeanors — The misdemeanor must occur in the officer’s presence, absent a warrant. Exceptions in Kentucky:
 1. DUI
 2. Domestic Violence
 3. Sexual Offender in violation of the Sexual Offense statute
 4. Violation of a Restraining Order
 5. Shoplifting

V. WARRANTLESS SEARCHES

A. HOME

1. Chimel v. California, 395 U.S. 752 (1969).
 - a. *Facts*: An arrest warrant was issued for Chimel, who was a suspect in a burglary. The officers went to his house to arrest him and were invited in by Chimel’s wife. Fifteen minutes later, Chimel returned home and was arrested. The officers requested **permission** from Chimel and his wife **to search the residence, which was denied**. Nevertheless, the officers searched the entire house and seized items taken in the burglary.
 - b. *Held*: The search was unlawful and the items seized could not be introduced as evidence. When an arrest is made, **an officer may search the person arrested for weapons and evidence and the immediate area surrounding the suspect**, i.e., the area into which he might reach in order to grab a weapon, but no further.
2. U.S. v. Escoba, 805 F.2d 68 (2d Cir. 1986).
 - a. *Facts*: Police arrested suspect, pursuant to an arrest warrant, in doorway of his home, upon answering their knock on the door.

- During arrest procedures, officers heard activity in the back of the house. They made a **quick and limited pass through the house to check for third persons** for their safety. Upon doing so, saw evidence of crime in plain view and seized it.
- b. *Held*: When making an arrest in a home, police, for their safety, may do a quick and limited pass through the house and any evidence seen in plain view may be seized.
3. Washington v. Chrisman, 455 U.S. 1 (1982).
 - a. *Facts*: Police officer arrested a college student for underage drinking. He accompanied the arrestee to his college dorm room to obtain his identification. While there, saw marijuana in plain view.
 - b. *Held*: **Officer may monitor the movements of an arrested person.** If in doing so, evidence of crime is seen in “plain view”, item may be seized and person may be charged.
 4. Arizona v. Hicks, 480 U.S. 321 (1987).
 - a. *Facts*: Police lawfully entered a residence where a gun was fired. While there, they saw a stereo which they believed to be stolen. They moved the equipment around so as to read the serial numbers.
 - b. *Held*: **Items in plain view must be immediately ascertainable as contraband. Officers may not move them around to make a determination.**
 5. Segura v. U.S., 468 U.S. 796 (1984).
 - a. *Facts*: Police observed Segura make a drug transaction and return to her apartment. They knocked on her door and upon answering, she was arrested and removed from the premises. **The premises were then secured while a search warrant was obtained**, which took approximately 19 hours.
 - b. *Held*: This was not an unlawful search and seizure.
 6. Payton v. New York, 445 U.S. 573 (1980).
 - a. *Facts*: Police went to murder suspect’s apartment to arrest him, without arrest or search warrant. When he did not open the door, the police used a crowbar to pry it open. Once inside, they saw a 30 caliber shell casing, which was evidence of the murder.
 - b. *Held*: The evidence could not be introduced at the trial. **Absent consent, exigent circumstances, or a warrant, police may not enter a dwelling to arrest a suspect.**
 7. EXIGENT CIRCUMSTANCES
 - a. Brigham City v. Stuart, 547 U.S. 398 (2006).

- i. *Facts*: Officers received a call about a loud party. They proceeded to the residence and walked up the driveway. As they approached the house, they heard an altercation inside, people yelling “stop” and “get off me.” They proceeded around to the back of the house where they observed two juveniles drinking alcohol. They then saw the altercation through a screen door and proceeded to that door, entering and announcing their presence.
- ii. *Held*: Four situations may give rise to exigent circumstances: (1) hot pursuit of a fleeing felon, (2) imminent destruction of evidence, (3) the need to prevent a suspect’s escape, and (4) a risk of danger to the police or others. In this case, the officers were justified in entering the curtilage as there was a risk of danger to persons in the residence.

b. HOT PURSUIT

- i. Warden v. Hayden, 387 U.S. 294 (1967) — established the “**Hot Pursuit**” exception.
- ii. Welsh v. Wisconsin, 466 U.S. 740 (1984).
 - (1) *Facts*: Suspect was observed weaving all over the road, crashing into a ditch, exiting his vehicle and entering his residence. Officers pursued him into his house and arrested him for DUI.
 - (2) *Held*: **If only a minor offense is committed, there are no exigent circumstances to justify hot pursuit.** It was important that the person was in his house and did not appear to be a threat to anyone at this time.
 - (3) The pursuit must be “immediate and continuous from the scene of a crime.”

c. IMMINENT DESTRUCTION OF PROPERTY

- i. U.S. v. Radka, 904 F.2d 357 (6th Cir. 1990).
 - (1) *Facts*: Police received an anonymous tip about drug activity at a residence. Following several days of surveillance at which time certain conduct led the officers to suspect drug activity, several vehicles that had left the residence were stopped for traffic violations approximately 2 miles from the residence. Drugs were found and the drivers admitted to purchasing the drugs at the residence. Officers then entered the house (without a warrant) to secure the house so that evidence would not be destroyed while a warrant was obtained.

Drugs and weapons were found during this process. Seven hours later, a warrant was obtained and more evidence was seized.

(2) *Held:* Evidence found before warrant was obtained was excluded. Officers did not have reason to believe that the destruction of evidence was imminent. Suspects in the residence were not aware that the individuals had been stopped by police. There would be no reason to believe that the suspects would destroy evidence.

ii. Modrell v. McCracken County

a. *Facts:* Deputy arrived at residence with social worker who had received tip that juvenile was being allowed to smoke m/j in the house. House was split between upper floor and basement into two residences, the lower being occupied by the son of the owner of the house. Juvenile lived in basement with son. Son consented to a search of the basement. Drugs were found at which time consent was withdrawn. Deputies proceeded to secure the residence when juvenile was seen walking up to first floor of house. Deputies spoke to father at front door, at which time the juvenile was observed wandering around the upper floor. Deputies entered the upper floor residence and secured this portion of the house as well. Search warrant was obtained for entire house. Drugs were found only in basement. Father sued claiming an illegal search of his residence (the upper floor).

b. *Held:* Judge Russell ruled that given the type of residence was not a typical duplex and given the juvenile was observed wandering around in both sections of the home, it was reasonable for the deputies to assume the residence was not treated as a duplex and it was therefore reasonable for the deputies to secure the entire house, especially given that the juvenile was a suspect and apparently had access to all areas of the house and could have destroyed evidence in the upper portion of the home before a warrant could be obtained.

d. Oliver v. City of Paducah --- LESSONS LEARNED

i. *Facts:* Police received an anonymous tip that an underage party was being held at the Oliver residence. Officer Reynolds and Officer Wentworth responded. Wentworth proceeded to the front door and Reynolds proceeded to the back door. When Reynolds rounded the corner into the backyard, he observed two underage males drinking alcohol. Through windows in the back, he also observed other underage persons drinking alcohol

in the basement. At about this same time, Wentworth knocked on the front door and requested to speak to the adult of the house. Ms. Oliver arrived at the front door. At about that same time, Reynolds observed minors running out the back door. He blocked their exit and followed them back into the house. Wentworth then informed Ms. Oliver that there was an officer in her house and asked if they could proceed to the basement. According to Wentworth, she responded “yes, by all means.” Ms. Oliver denied that she said this and claimed that Wentworth entered without her consent.

- ii. *Held:* Judge Russell held that Reynolds did not have sufficient justification to enter the backyard of the residence, i.e., the curtilage of the home. He also held that there was an issue of fact as to whether Wentworth had gained consent to search.
- iii. *Lessons learned:*
 - a. An anonymous tip is not sufficient evidence to enter the curtilage of a home --- even if the tip is that there is an underage drinking party at the residence.
 - b. If you request consent to enter a residence, record it in some way via a written signature or an audio recording.

8. Steagald v. U.S., 451 U.S. 204 (1981).

Facts: Arrest warrant issued for Lyons. Police officers believed him to be in Steagald’s house. They entered Steagald’s house, observed illegal drugs in plain view, seized them, and arrested Steagald.

Held: **An arrest warrant does not give police the authority to enter the home of a third party**, absent exigent circumstances or consent.

9. Flippo v. West Virginia, 528 U.S. 11 (1999) — There is no “crime scene exception” to the warrant requirement. Police may enter the premises of a crime scene for purposes of securing it, finding victims, and/or suspects, but must obtain consent or a search warrant beyond that.

10. CONSENT TO SEARCH

- a. Bumper v. North Carolina, 391 U.S. 543 (1968).

i. *Facts:* Officers requested owner of house to allow them to search and **falsely informed her that they had a search warrant**. Owner consented. Drugs were found.

ii. *Held:* **Drugs were not admissible** as consent to search was not voluntary.

- b. HUSBAND/WIFE --- Husband may consent to search his house, even if wife is the target and vice versa so long as the spouse has access to the area to be searched --- U.S. v. Morgan, 435 F.3d 660 (6th Cir. 2006).
 - i. *Facts*: Wife called police informing them that she believed her husband was viewing child porn on their computer. They did not get a search warrant but wife consented to them searching the computer. The computer was located in a common area and the wife informed them that she used the computer also and used the same password as her husband to access the computer.
 - ii. *Held*: Based on those facts, the officers reasonably could have concluded that the wife had authority to consent to the search.
 - iii. *However*: Police cannot search a home when one physically present resident consents and the other physically present resident objects. Georgia v. Randolph, 547 U.S. ____ (2006).
- c. PARENT/CHILD —
 - i. Parent may consent to search a child's living quarters. Parent may not consent to search an adult child's living quarters if parent is not given unlimited access to said living quarters.
 - ii. Child may consent to search home if allowed to remain in home by himself and therefore has the authority to permit visitors. The search is only valid to the extent that the child is allowed access to the areas in the house.
- d. LANDLORD/TENANT — Landlord may not consent to search of tenant's quarters. This is also true with respect to hotel-motel situations.
- e. Consent to search forms should be signed by individual consenting, if practical.

B. AUTOMOBILE

- 1. California v. Carney, 471 U.S. 386 (1985).
 - a. *Facts*: Motor home parked in a parking lot was under surveillance for illegal drug activity. A juvenile entered the motor home and soon thereafter the blinds were shut. Upon exiting the motor home, the police approached the juvenile, who informed them that she had exchanged sex for marijuana. **The officers entered the motor home and conducted a search, wherein they found large quantities of marijuana.**

- b. *Held:* The Court recognized the “Automobile exception” to the warrant requirement. **An automobile (including a motor home) may be searched if there is probable cause to believe that contraband will be found.** The key in this case was the fact that the motor home was being used more as a vehicle than a home. The fact that it was parked in a regular parking lot was important. Obviously, if a motor home is parked in a RV lot, the courts would consider this a home rather than a vehicle and a warrant to search, consent, or exigent circumstances would be necessary.

- 2. U.S. v. Ross, 456 U.S. 798 (1982).
 - a. *Facts:* Driver of automobile sold illegal drugs to an undercover police officer. He was stopped and arrested for trafficking. A search of the vehicle produced a paper bag and leather pouch in the trunk which contained illegal drugs.
 - b. *Held:* **A search of a vehicle pursuant to probable cause may include all areas and compartments, including the trunk and the glove compartment, so long as the items sought could be kept within said compartments.**

- 3. New York v. Belton, 453 U.S. 454 (1981).
 - a. *Facts:* Police observed driver and passengers of automobiles smoking marijuana. They were all arrested. The police searched the vehicle, including a jacket owned by a passenger, wherein crack cocaine was found.
 - b. *Held:* **A search of a vehicle pursuant to probable cause may include all areas, including purses, jackets, etc.**
 - c. Wyoming v. Houghton, 526 U.S. 295 (1999) --- This rule of law is true even if the purse searched is merely a passenger’s who has not yet been arrested.

- 4. Thornton v. U.S., 541 U.S. 615 (2004).
 - a. *Facts:* Police stopped a vehicle with a license plate that belonged to another vehicle. Driver got out of car and spoke to officer at rear of vehicle. Driver consented to search of his person. Officer found two bags of drugs. Officer arrested driver and searched vehicle where gun was found.
 - b. *Held:* Under the “search incident to arrest” exception to the Fourth Amendment, police may search the vehicle of a person they have arrested even if they did not make contact with the person until after he exited the vehicle.

- 5. Colorado v. Bertine, 479 U.S. 367 (1987).
 - a. *Facts:* Police officer arrested driver for DUI. While waiting on the

- tow truck, he conducted an inventory search of the vehicle and found drugs.
- b. *Held:* The **inventory search was lawful** so long as it was conducted pursuant to a policy of the police department.
6. Ohio v. Robinette, 519 U.S. 65 (1996).
 - a. *Facts:* Police officer stopped driver for traffic violation and gave him a warning. Before telling him that he may leave, the officer asked if he may search the vehicle, to which the driver consented. Found meth.
 - b. *Held:* In order for consent to search to be voluntary, it is not necessary to tell them that they are free to leave.
 7. Pennsylvania v. Mimms, 434 U.S. 106 (1977).
 - a. *Facts:* Suspect was observed driving an automobile with an expired registration. He was stopped and asked to step out of the vehicle. The officer noticed a bulge under the suspect's jacket. Upon frisking him, the officer found a gun in his waistband.
 - b. *Held:* **When a motor vehicle is stopped, the driver can be ordered out of the vehicle**, with or without reasonable suspicion.
 8. Maryland v. Wilson, 519 U.S. 408 (1997).
 - a. *Facts:* Vehicle was stopped for speeding. All occupants were ordered out of the vehicle. Upon exiting, the passenger dropped a bag of cocaine.
 - b. *Held:* **An officer making a traffic stop may order passengers to get out of the car** pending completion of the stop, with or without reasonable suspicion.
 9. U.S. v. Cleveland, 165 F.3d 28 (6th Cir. 1998).
 - a. *Facts:* Driver was pulled over for a traffic violation. The officers asked everyone to exit the vehicle. The passenger, Cleveland, was known to have a criminal history and was observed reaching into his front pockets and searching the dashboard area. A pat down of his outer clothing uncovered a handgun and crack cocaine.
 - b. *Held:* Because Cleveland's conduct caused the officers to reasonably suspect that he was armed with a weapon, the pat down of his person, pursuant to Terry v. Ohio, was lawful. Otherwise, **without reasonable suspicion, an officer may not pat-down or search a passenger.**
 10. Illinois v. Caballes, 543 U.S. 405 (2005).
 - a. *Facts:* Officer stopped vehicle for speeding. During the stop, a second officer arrived with a drug detection dog and walked the

dog around the suspect's car. The dog alerted to the trunk. Police searched the trunk and found marijuana. The entire incident lasted less than 10 minutes.

- b. *Held:* The Fourth Amendment does not require a reasonable, articulable suspicion before a canine sniff can be conducted during a routine traffic stop. It was important to the Court that the stop was not prolonged any longer than it would have taken to issue a ticket to the driver.

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

- a. *Facts:* Officers observed a vehicle swerving. It was stopped and Mr. Long met them at the rear of his vehicle with his driver's license. The officers requested that he retrieve his registration. As he was walking back to the car, officers observed a large hunting knife in the driver's side floorboard. Officers frisked him and searched the vehicle, where they found marijuana under the armrest.
- b. *Held:* **The search of a passenger compartment of an automobile, limited to those areas in which a weapon may be hidden, is permissible if there is a reasonable belief that the suspect is dangerous and may gain immediate control of the weapon.** In this case, the Court determined that a combination of the following factors caused the officers to suspect that he was dangerous: it was late, in a rural area, he was driving at an excessive rate of speed, appeared to be under the influence of alcohol, and had a large knife in his floorboard.

12. Schneckloth v. Bustamonte, 412 U.S. 218 (1973) CONSENT TO SEARCH VEHICLE.

- a. *Facts:* Police stopped vehicle for no headlight. The driver could not produce a driver's license. All six passengers were asked to step out of the vehicle. One of the passengers stated that the vehicle was his brother's (who was not with them). The officer asked the passenger for consent to search, which was granted. Stolen checks were found in the vehicle. The police did not inform the passenger that he had the right to refuse the search, nor could they show that the passenger knew he had such right.
- b. *Held:* Consent to search must be voluntarily given, and not the result of duress or coercion. But officers are not required to show that the person knew he had to right to refuse consent. Court held that this search was lawful.

C. PERSON

1. **Terry v. Ohio**, 392 U.S. 1 (1968).
 - a. *Facts:* Three persons were observed by a police officer acting nervously, conferring with each other on a street corner, and looking into a store window on at least 24 occasions in an hour period. The officer approached them, identified himself, and patted them down for weapons, wherein two handguns were uncovered.
 - b. *Held:* Where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot, and that the persons with whom he is dealing may be armed and dangerous; wherein the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, he may conduct a limited search of the outer clothing of the suspect in an attempt to discover weapons which might be used to assault him.

2. **FRISK ---**
 - a. A frisk is a pat down of the outer clothing of a person for the purpose of locating weapons.
 - b. If the officer feels something that he reasonably believes is a weapon, he may reach inside the clothing and seize the object.
 - c. If the officer feels something that he immediately knows is contraband, he may reach inside the clothing and seize the contraband. (See Maryland v. Dickerson below).

3. **Sibron v. New York**, 392 U.S. 40 (1968).
 - a. *Facts:* **Police officer observed Sibron speaking to several known drug addicts on a corner between 4:00 p.m. and midnight.** The officer did not hear any of the conversations, nor did he see anything pass between them. He conducted a Terry search of Sibron, which uncovered illegal drugs.
 - b. *Held:* Drugs were not admissible. **Without more, the officer did not have a reasonable suspicion** that criminal activity had or was about to take place. The search was unlawful.

4. **Illinois v. Wardlow**, 528 U.S. 119 (2000).
 - a. *Facts:* **Wardlow fled upon seeing police vehicles in an area known for heavy narcotics trafficking.** Officers gave chase, conducted a Terry stop and pat-down and found a concealed weapon.
 - b. *Held:* **An individual's presence in a high crime area is not sufficient to justify a Terry stop.** However, if his presence is coupled with suspicious activity, such as flight, a Terry stop and pat-down is appropriate.

- c. *Note:* If no evidence is found on the person to justify an arrest, the **individual may not be charged with a crime, including disorderly conduct for running from the police.**

5. Jose Lee v. City of Paducah

- a. *Facts:* PPD Officer Rob Hefner observed a male walking out of an alley in a high crime area. As Officer Hefner drove by, the male turned around and walked back into the alley. Once Officer Hefner had driven by, he observed the male walking out of the alley again. Officer Hefner turned around and approached, at which time the male walked back into the alley again but then came back out of the alley after Officer Hefner drove by. This exact sequence of events happened a third time. At this point, Officer Hefner got out of his vehicle and approached the male who took off running into the alley. Officer Hefner chased him and ultimately took him down. The male's sister came out of the back door to the residence and informed Officer Hefner that her brother was severely autistic. Officer Hefner let the male go. Nevertheless, he and the City were sued for, among other things, an unlawful search and seizure.
- b. *Held:* Judge Russell ruled that, because the area in which the male was seen acting suspicious was a high crime area (the second highest in the City), it was appropriate for Officer Hefner to conduct a Terry stop on the individual. Given that the individual took off running, Officer Hefner was justified in giving chase.

6. Maryland v. Dickerson, 508 U.S. 366 (1993).

- a. *Facts:* A Terry stop and pat-down was conducted of a person acting suspicious in a high crime area. In doing so, the officer felt a small lump in his jacket pocket. Although the officer was not immediately able to tell that the lump was cocaine, he suspected such after he had squeezed and manipulated it. The cocaine was seized and the suspect was charged.
- b. *Held:* Although a Terry stop and pat-down is to be strictly conducted for weapons, **if an officer, during the pat-down, feels an object whose contour or mass makes its identity immediately apparent, as illegal drugs or other contraband, the item may be seized and introduced at trial.**
- c. *Here:* Evidence was not admissible since the officer could not immediately tell that it was crack cocaine.

7. Adams v. Williams, 407 U.S. 143 (1972).

- a. *Facts:* Police officer was informed by person known to him that Williams had a gun on his waist. Officer approached Williams and

- conducted a pat down search of him, which produced a gun. Williams was charged with possession of a concealed weapon. Search incident to lawful arrest produced heroine.
- b. **Held: A reliable informant's tip may be justification for a Terry stop and frisk.**
 - c. *Compare: Florida v. J.L.*, 529 U.S. 266 (2000) --- discussed previously.
8. U.S. v. Hensley, 469 U.S. 221 (1985).
- a. *Facts:* A police bulletin was issued describing a suspect in a recent murder. Police officer stopped someone who matched that description, checked his identification, asked him questions, and conduct a pat-down. In the course of doing so, a concealed weapon was found.
 - b. *Held:* The Terry stop was justified. If police have a reasonable suspicion, grounded in specific and articulable facts, that a person they encounter was involved in or is **wanted in connection with a completed felony, then a Terry stop may be made to investigate that suspicion.**
9. During a Terry stop, the suspect:
- a. Does not have to produce identification;
 - b. May remain silent the entire time;
 - c. Is entitled to be detained no longer than is reasonable necessary for the officer to check out his suspicions.
10. Dunaway v. New York, 442 U.S. 200 (1979).
- a. *Facts:* Police did not have enough to arrest Dunaway but suspected he may have been involved in a robbery. He was picked up for questioning and taken to the police station, where he admitted to the crime.
 - b. *Held:* Admission was not admissible. Because Dunaway was not free to leave, his custody was unlawful as it was not based on probable cause. In order to “pick up” someone for questioning, you must have probable cause to arrest them, as picking them up is equivalent to an arrest, i.e., it is a seizure. Otherwise, questioning must be conducted pursuant to consent or during a Terry stop.
11. U.S. v. Robinson, 414 U.S. 218 (1973).
- a. *Facts:* The driver of a vehicle was arrested for operating on a suspended license. The officer patted him down and felt an object in his pocket. The officer reached into the pocket and pulled out a crumpled up cigarette package containing heroine.
 - b. **Held: A full search incident to a lawful arrest is lawful.**

VI. DISORDERLY CONDUCT

A. KRS 525.060 --- Disorderly Conduct (2nd Degree)

1. A person is guilty of disorderly conduct when in a public place and with intent to cause public inconvenience, annoyance or alarm, or wantonly creating a risk thereof, he:
 - a. Engages in fighting or in violent, tumultuous or threatening behavior; or
 - b. Makes unreasonable noise; or
 - c. Refuses to obey an official order to disperse issued to maintain public safety in dangerous proximity to a fire, hazard or other emergency; or
 - d. Creates a hazardous or physically offensive condition by any act that serves no legitimate purpose.
2. “PUBLIC PLACE” — A public place is not a private residence. It is defined as “a place to which the public or a substantial group of persons has access and includes but is not limited to highways, transportation facilities, schools, places of amusements, parks, places of business, playgrounds, and hallways, lobbies, and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence.”
3. Nails v. Riggs, 195 Fed. App. 303 (6th Cir. 2006).
 - a. *Facts*: Suspect was arguing loudly with her husband in her front yard. Police were called and responded. They asked her to go back into the house so that they could speak to her husband alone. She refused and continued to yell at her husband, as well as the police. She was arrested for disorderly conduct.
 - b. *Held*: A front yard is not a “public place.” The disorderly conduct charge was invalid.
4. Szelag v. City of Louisville, 2002 CA-001276-MR --- a "front porch . . . is not a public place within the meaning of Ky. Rev. Stat. 525.060.”
5. Although Kentucky has not addressed whether, if the effect of the conduct that occurs strictly on private property is heard in the public, such would constitute disorderly conduct, Massachusetts (which has the same statute) has. According to Massachusetts, if the conduct occurring on private property is nevertheless disturbing to the public on public property, the individual has engaged in disorderly conduct.

- ### B. CONDUCT — the statute is not intended to cover the situation in which a private citizen engages in an argument so long as the argument does not create a risk of

public disturbance.

1. “Public” --- is defined as “affecting or likely to affect a substantial group of persons.”
2. Thompson v. City of Louisville, 362 U.S. 199 (1960).
 - a. *Facts:* Suspect was arrested for loitering. According to the police, the suspect “was very argumentative -- he argued with us back and forth”. He was charged with disorderly conduct for this behavior.
 - b. *Held:* Merely "arguing" with a policeman is not, because it could not be, “disorderly conduct” as a matter of the substantive law of Kentucky.