THE FOURTH AMENDMENT

by

Leonard R. Stamm and Johanna Cohen Leshner
Goldstein & Stamm, P.A.
6301 Ivy Lane, Suite 504
Greenbelt, Md. 20770
301-345-0122
FAX 301-441-4652
EMAIL lstamm@lstamm.com
http://www.lstamm.com

Alan Goldstein Criminal Law Seminar

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SEARCHES, SEIZURES, AND ARRESTS

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Editor's note: This outline is intended to be used as a guide in litigating Fourth Amendment issues in the district and circuit courts of Maryland.

SEARCHES, SEIZURES, AND ARRESTS

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 seize.

United States Constitution, Amendment IV

I. FOURTH AMENDMENT APPLICABLE

A. WARRANT

1. WHEN NEEDED

A SEARCH WARRANT IS REQUIRED FOR ALL SEARCHES AND SEIZURES UNLESS THERE IS A WELL-DEFINED EXCEPTION TO THE WARRANT REQUIREMENT.

The current trend of the Supreme Court is to focus on the reasonableness of warrantless searches. For standing issues, see Section II.H., below.

AUTHORITY: United States Constitution, Amendments IV, XIV.

a. BUILDINGS

i. Homes

WITH FEW EXCEPTIONS, A WARRANT IS REQUIRED TO SEARCH A PRIVATE RESIDENCE.

However, where the police have probable cause to believe a home contains evidence of a crime and have a reasonable belief that the evidence would be destroyed if the suspect enters the home unaccompanied, and where, the police reconcile the demands of personal privacy with their law enforcement needs and imposed a minimal intrusion on a suspect's personal privacy, the home may be impounded pending the issuance of a search warrant.

AUTHORITY: Illinois v. McArthur, 531 U.S. 326, 121 S.Ct. 946, 148 L.Ed.2d 838 (2001)(impoundment of the house); Thompson v. Louisiana, 496 U.S. 17, 105 S.Ct. 409, 83 L.Ed.2d 246 (1984)(no murder scene exception to warrant requirement); Byrd v. State, 140 Md.App. 488, 780 A.2d 1224 (2001)(impoundment of a home); Jones v. State, 407 Md. 33, 962 A.2d 393 (2008) (no trespassing signs in and of themselves do not change defendant's reasonable expectation of privacy in property).

ii. Offices, workplaces

A WARRANT IS REQUIRED TO SEARCH AN EMPLOYEE'S PRIVATE PROPERTY IN THE WORK PLACE.

But a work related search by government employers does not require a warrant if reasonable in inception and reasonably related to justification.

AUTHORITIES: O'Connor v. Ortega, 480 U.S. 709, 107 S.Ct. 1492, 94 L.Ed.2d 714 (1987); Gamble v. State, 78 Md.App. 112, 552 A.2d 928, aff'd., 318 Md. 120, 567 A.2d 95 (1989); Martin v. State, 113 Md.App. 190, 686 A.2d 1130 (1996)(police cruiser).

b. CONTAINERS

AS A GENERAL RULE, SEARCHES AND SEIZURES OF ITEMS OF PERSONAL LUGGAGE OR OTHER CONTAINERS REQUIRE A WARRANT.

However, a warrant is not required if the container is in a vehicle which meets the requirements of a Carroll doctrine search.

c. VEHICLES

A WARRANT IS NOT USUALLY NEEDED TO SEARCH A VEHICLE IF THERE IS PROBABLE CAUSE TO BELIEVE THAT THE VEHICLE CONTAINS EVIDENCE OF A CRIME OR REASONABLE ARTICULABLE SUSPICION TO BELIEVE THE VEHICLE CONTAINS WEAPONS AND THE VEHICLE IS MOBILE OR POTENTIALLY MOBILE.

AUTHORITY: Berry v. State, 155 Md.App. 144, 843 A.2d 93 (2004)(exigent circumstances are not required under the automobile exception); State v. Harding, 166 Md. App. 230, 887 A.2d 1108 (2005)(smell of marijuana was probable cause to search hidden compartments in vehicle); Elliott v. State, 417 Md. 413, 10 A.3d 761 (2010)(officers had probable cause to search the trunk of Elliott's car based on the odor of marijuana and a positive K-9 alert).

However, if the police detain a vehicle for a long enough time to interfere with a possessory or proprietary interest, a warrant may be required.

AUTHORITIES: Carroll v. United States, 267 U.S. 132, 45 S.Ct. 280, 69 L.Ed. 543 (1925); Michigan v. Long, 463 U.S. 1032, 103 S.Ct. 3469, 77 L.Ed.2d 1201(1983); United States v. Johns, 469 U.S. 478, 105 S.Ct. 881, 83 L.Ed.2d 890 (1985); Doering v. State, 313 Md. 384, 545 A.2d 1281 (1988); Cross v. State, 165 Md.App. 164, 884 A.2d 1236 (2005)(during detention, search of the passenger compartment is permitted under Michigan v. Long); Byndloss v. State, 391 Md. 462, 893 A.2d 1119 (2006)(thirty minute delay after completing a routine traffic stop

was not unreasonable detention when officer was waiting for warrant check from the barracks).

d. SEARCH OF PERSON

A WARRANT IS NEVER NEEDED TO SEARCH THE EXTERIOR OF A PERSON FOR EVIDENCE IF THERE IS PROBABLE CAUSE TO BELIEVE THE PERSON HAS POSSESSION OF THE EVIDENCE AND IF THE PERSON IS LOCATED IN A PUBLIC PLACE.

But invasive intrusions into the body, including obtaining blood samples, may require a warrant where there is no exigency requiring an immediate search. Body cavity or strip searches where the person has been validly arrested require articulable reasonable suspicion the person is presently concealing the substance in a body cavity or private area.

AUTHORITIES: Schmerber v. California, 384 U.S. 757, 86 S.Ct. 1826, 16 L.Ed. 2d 908 (1966)(blood test permitted from suspected drunk driver); Winston v. Lee, 470 U.S. 753, 105 S.Ct. 1611, 84 L.Ed.2d 662 (1985)(compelled surgery to remove bullet denied); Wilson v. State, 132 Md. App. 510, 752 A.2d 1250 (2000)(once a blood sample has been obtained, police do not need a second warrant to run additional tests on the blood in a different case); Fontaine v. State, 185 Md. App. 471, 762 A.2d 1027 (2000)(where officer observed first-hand Fontaine's placing something in the area of his buttocks, and when coupled with specific knowledge of where he normally kept such drugs, the search was reasonable); State v. Raines, 383 Md. 1, 857 A.2d 19 (2004)(DNA collection act does not violate 4th Amendment); State v. Nieves, 383 Md. 573, 861 A.2d 62 (2004)(a strip search incident to arrest for a minor traffic violation was unlawful); In re Calvin S, 175 Md. App. 516, 930 A.2d 1099 (2007)(Probable cause to believe an individual is committing a civil offense is not a valid basis for a warrantless search of his person); State v. Harding, 196 Md. App. 384, 9 A.3d 547 (2010).

e. ARREST OF PERSON

GENERALLY, AN ARREST WARRANT IS NOT NEEDED TO ARREST A PERSON WHERE THERE IS PROBABLE CAUSE TO BELIEVE THE INDIVIDUAL HAS COMMITTED A FELONY, OR WHERE THE INDIVIDUAL HAS COMMITTED A MISDEMEANOR IN THE PRESENCE OF THE OFFICER. A SEARCH WARRANT IS NEEDED TO ARREST A PERSON IN A THIRD PARTY'S HOME.

However, some important statutory exceptions exist to the misdemeanor in the presence rule.

AUTHORITY: Steagald v. United States, 451 U.S. 204, 101 S.Ct. 1642, 68 L.Ed.2d 38 (1981); Howard v. State, 112 Md.App. 148, 684 A.2d 491(1996); Md. Code Ann., Transp. II § 26-202.

f. ELECTRONIC SURVEILLANCE

BUT FOR VERY FEW EXCEPTIONS, A WARRANT IS REQUIRED TO CONDUCT ELECTRONIC SURVEILLANCE.

Extensive affidavits, applications and orders are required by statute. Maryland has one of the most restrictive wiretap statutes in the country. Only two party consent and interception under the direction of a police officer for certain enumerated crimes are permitted by statute without a warrant.

AUTHORITIES: Courts & Judicial Proceedings § 10-401, et. seq. (also referred to as Title III of the Omnibus Crime Control and Safe Streets Act, 18 U.S.C. § 2510-2521 (1970) (upon which it was based)); an excellent reference is "The Law of Electronic Surveillance" by James Carr. This outline does not attempt to cover wiretap law.

g. VIDEO SURVEILLANCE

A WARRANT IS REQUIRED TO CONDUCT VIDEO SURVEILLANCE IN A PRIVATE RESIDENCE.

The Court of Appeals has held that video surveillance is not subject to the stringent requirements of Title III. However, such surveillance may be subject to reasonableness requirements derived from Title III including a showing that: (1) normal investigative techniques cannot be used; (2) particularization of the targeted communication and related crime; (3) a definite duration must be set no longer than needed to accomplish the goals of the investigation (no more than 30 days); and minimization precautions must be observed.

AUTHORITY: Ricks v. State, 312 Md. 11, 537 A.2d 612 (1988).

2. REQUIREMENTS FOR WARRANTS

a. PROBABLE CAUSE

A SEARCH WARRANT REQUIRES FACTS AND CIRCUMSTANCES FROM WHICH THE ISSUING MAGISTRATE CAN CONCLUDE THERE IS PROBABLE CAUSE, I.E., A REASONABLE PROBABILITY, TO BELIEVE THAT ITEMS SUBJECT TO SEIZURE ARE AT THE LOCATION SPECIFIED

The existence of probable cause is determined by a practical, common sense reading of the affidavit, taking into consideration the totality of the circumstances. "Probable cause" means "a fair probability that contraband or evidence of a crime will be found in a particular place." Gates, infra.

AUTHORITIES: Illinois v. Gates, 462 U.S. 213, 238, 103 S.Ct. 2317, 2332, 76 L.Ed.2d 527, 548 (1983); Winters v. State, 301 Md. 214, 482 A.2d 886 (1984); State v. Ward, 350 Md. 372, 712 A.2d 534 (1998); Braxton v. State, 123 Md.App. 599, 720 A.2d 27 (1998) (minimal showing defendant connected with address); Oesby v. State, 142 Md.App. 144, 788 A.2d 662 (2002)(no showing defendant was connected with address); Holmes v. State, 368 Md. 506, 796 A.2d 90 (2002)(activity outside residence was sufficient to show probable cause that evidence of crime was contained within the residence); Morris v. State, 153 Md.App. 480, 837 A.2d 248 (2003)(application sufficient for probable cause); Bornschlegal v. State, 156 Md.App. 322, 846 A.2d 1090 (2004)(defendant's admissions concerning his gambling provided sufficient probable cause for a warrant); United States v. Grubbs, 126 S.Ct. 1494 (2006)(anticipatory warrants are not unconstitutional assuming there is probable cause that the contraband will be there at the time the warrant is executed); State v. Faulkner, 190 Md. App. 37, 985 A.2d 627 (2010)(substantial basis for the search of a home can be found where there is a nexus between the suspect's criminal actions and his home sufficient to support a reasonable inference that the fruits of the crime probably will be found at the home); Agurs v. State, 415 Md. 62, 998 A.2d 868 (2010)(affidavit failed to establish a reasonable inference that contraband may be found in Agurs's home and limited facts suggesting that he was involved in criminal activity).

i. Four corners

WHETHER PROBABLE CAUSE EXISTS IS DETERMINED FROM THE FACTS AND CIRCUMSTANCES CONTAINED WITHIN THE "FOUR CORNERS" OF THE AFFIDAVIT.

AUTHORITY: Couser v. State, 37 Md.App. 485, 375 A.2d 399 (1977), aff'd., 282 Md. 125, 383 A.2d 389, cert. denied, 439 U.S. 852, 99 S.Ct. 158, 58 L.Ed.2d 156 (1978); Greenstreet v. State, 392 Md. 652, 898 A.2d 961 (2006)(under the four corners rule the state may not present additional testimony to controvert facts contained in a warrant affidavit).

ii. Timing

(1) Staleness

THE AFFIDAVIT MUST SHOW BY AVERMENT DATE OR OTHERWISE THAT THE EVENT OR CIRCUMSTANCE CONSTITUTING PROBABLE CAUSE IS NOT SO REMOTE FROM THE DATE OF THE AFFIDAVIT SO AS TO RENDER IT IMPROBABLE THAT THE

ALLEGED VIOLATION OF LAW IS STILL OCCURRING

AUTHORITY: Connelly v. State, 322 Md. 719, 589 A.2d 958 (1991); Greenstreet v. State, 392 Md. 652, 898 A.2d 961 (2006)(affidavit did not present enough internal, specific, and direct evidence to infer that stale date on affidavit was a typographical error); Patterson v. State, 401 Md. 76, 930 A.2d 348 (2007)(probable cause was stale without sufficient corroborating facts).

(2) Anticipatory warrants

ANTICIPATORY SEARCH WARRANTS VIOLATE CRIMINAL PROCEDURE § 1-203, BUT DO NOT VIOLATE THE FOURTH AMENDMENT IF THERE IS PROBABLE CAUSE THAT THE CONTRABAND WILL BE THERE AT THE TIME THE WARRANT IS EXECUTED.

AUTHORITY: United States v. Grubbs, 126 S.Ct. 1494 (2006)(anticipatory warrants are not unconstitutional assuming there is probable cause that the contraband will be there at the time the warrant is executed); Kostelec v. State, 348 Md. 230, 703 A.2d 160 (1998), reversing, 112 Md. App. 656, 685 A.2d 1222 (1996)(the Court of Appeals did not reach the constitutional issue, although the Court of Special Appeals had held that anticipatory warrants do not violate the Fourth Amendment or Article 26 of the Maryland Declaration of Rights).

iii. Good faith

WHERE THE REVIEWING COURT DETERMINES THAT PROBABLE CAUSE DID NOT EXIST FOR THE ISSUANCE OF THE WARRANT, THE SEARCH WILL STILL BE UPHELD IF THE OFFICER, IN GOOD FAITH, OBTAINED A SEARCH WARRANT AND RELIED UPON IT IN CONDUCTING HIS SEARCH.

Good faith is determined by an objective standard, i.e., whether a reasonable police officer under the same circumstances would conclude that the affidavit contained probable cause. However, the following four situations may require negate good faith: (a) false information in the affidavit; (b) the issuing magistrate is rubber stamp for police; (c) the affidavit is so lacking in probable cause as to render officer's belief in its existence unreasonable; (d) a facially invalid warrant (such as failing to particularize the place to be searched).

AUTHORITIES: United States v. Leon, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984); Connelly v. State, 322 Md. 719 (1991); Minor v. State, 334 Md. 707, 641 A.2d 214 (1994); McDonald v. State, 347 Md. 452, 474, 701 A.2d 675 (1997), cert. denied, 522 U.S. 1151, 118 S.Ct. 1173, 140 L.Ed.2d 182 (1998)(court may skip probable cause issue); Braxton v. State, 123 Md.App. 599, 720 A.2d 27 (1998) (minimal showing defendant connected with address); West

v. State, 137 Md.App. 314, 768 A.2d 150, cert. denied, 364 Md. 536, 774 A.2d 409 (2001)(search warrant was not issued upon probable cause but officers acted in good faith); Oesby v. State, 142 Md.App. 144, 788 A.2d 662 (2002)(no showing defendant was connected with address); Bornschlegal v. State, 156 Md.App. 322, 846 A.2d 1090 (2004)(even if the affidavit lacked probable cause the search can still be upheld under the good faith exception); Faulkner v. State, 156 Md. App. 615, 847 A.2d 1216 (2004)(although the arrest warrant contained a technical error, the police had probable cause to arrest the defendant and the warrant was saved by the good faith exception to the exclusionary rule); Ferguson v. State, 157 Md. App. 580, 853 A.2d 784 (2004)(upon finding that the officers acted in good faith there would generally be no need to consider the probable-cause question); Greenstreet v. State, 392 Md. 652, 898 A.2d 961 (2006)(the good faith exception does not apply when an error on a warrant is one that a reasonable officer should have been aware of); Patterson v. State, 401 Md. 76, 930 A.2d 348 (2007)(good faith exception to the exclusionary rule applied because the officer was objectively reasonable in his reliance on the district court judge's determination of probable cause); State v. Jenkins, 178 Md. App. 156, 941 A.2d 517 (2008)(There was a substantial basis for issuance of the search warrant but if there had not been, the good faith exception to the exclusionary rule would apply); Herring v. United States, 129 S. Ct. 695 (2009)(exclusionary rule not applicable where officer relied on a warrant found in police database even though warrant had been recalled months earlier); Agurs v. State, 415 Md. 62, 998 A.2d 868 (2010)(no reasonably well-trained police officer could have relied upon the warrant in good faith as the nexus requirement is sufficiently well established that officers should be aware that there must be a nexus between the suspected contraband and the place to be searched); Marshall v. State, 415 Md. 399, 2 A.3d 360 (2010)(warrant was not "so lacking in indicia of probable cause" as to render reliance on the issuance unreasonable).

iv. Bad Faith

A WARRANT MAY BE SUPPRESSED IF INFORMATION IN THE WARRANT IS INTENTIONALLY FALSE OR MADE WITH RECKLESS DISREGARD FOR THE TRUTH.

Even if a Franks violation is shown, the warrant may still be valid if probable cause still exists without the false information.

AUTHORITIES: Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978); Yeagy v. State, 63 Md.App. 1, 491 A.2d 1109 (1985); Kitzmiller v. State, 76 Md.App. 686, 548 A.2d 140 (1988).

v. Informants

INFORMATION PROVIDED BY INFORMANTS MAY PROVIDE THE BASIS FOR A FINDING OF PROBABLE CAUSE.

It is arguably no longer necessary to specifically relate facts and circumstances showing informant's reliability or basis of knowledge, so long as probable cause is shown by a totality of circumstances. Thus, detailed verified information from an informant may be sufficient, particularly if the informant accurately predicts future activity of the target. In Gates, the Supreme Court relegated the prior two pronged requirement of Aguilar and Spinelli of a showing of "veracity" and "reliability," and "basis of knowledge," to facts to be considered under the totality of the circumstances.

AUTHORITIES: Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983); Herrod v. State, 311 Md. 288, 534 A.2d 362 (1987); Ricks v. State, 82 Md.App. 369, 571 A.2d 887 (1990); Aguilar v. Texas, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964); Spinelli v. United States, 393 U.S. 410, 89 S.Ct. 584, 21 L.Ed.2d 637 (1969); Ashford v. State, 147 Md.App. 1, 807 A.2d 732 (2002); McKay v. State, 149 Md. App. 176, 814 A.2d 592 (2002); Smith v. State, 161 Md. App. 461, 870 A.2d 1228 (2005)(informant found reliable); Massey v. State, 173 Md. App.94, 917 A.2d 1175 (2007)(information provided by apprehended co-conspirator was sufficient to support probable cause to conduct warrantless arrest of Appellant); Carter v. State, 178 Md. App. 400, 941 A.2d 1222 (2008)(information provided by Carter's bank that on several occasions he made deposits in small bills that bore an odor of marijuana and disclosure of Carter's address did not warrant suppression); Elliott v. State, 417 Md. 413, 10 A.3d 761 (2010)(CI's tip alone did not amount to probable cause where the tip contained some inaccurate (Elliott's height) and unverified information (Elliott's name and presence of accent) and the officers did not verify that Elliott was engaged in illegal activity).

vi. Other sources

THE CONFIDENTIAL SPOUSAL COMMUNICATIONS PRIVILEGE UNDER CTS. & JUD. PROC., § 9-305 AND SPOUSAL TESTIMONY PRIVILEGE UNDER CTS. & JUD. PROC., § 9-306 ONLY APPLY TO JUDICIAL PROCEEDINGS NOT INVESTIGATIONS.

Confidential communications may be relied upon by police to support probable cause for a search. Police can rely in part on a canine sniff.

AUTHORITY: Chase v. State, 120 Md. App. 141, 706 A.2d 613 (1998); Fitzgerald v. State, 153 Md. App. 601, 837 A.2d 989 (2003)(canine sniff).

b. OATH

THE APPLYING OFFICER MUST SWEAR TO THE TRUTHFULNESS OF THE INFORMATION IN THE AFFIDAVIT.

AUTHORITY: U.S. Const., Amd. IV; Criminal Procedure § 1-203.

c. PARTICULARITY

i. Description of premises

THE DESCRIPTION OF THE PREMISES IS SUFFICIENT IF THE DESCRIPTION PERMITS THE OFFICER EXECUTING THE WARRANT TO LOCATE THE PREMISES WITH CERTAINTY

The good faith exception may apply.

AUTHORITIES: U.S. Const., Amd. IV; Green v. State, 38 Md. App. 63, 379 A.2d 428 (1977); Maryland v. Garrison, 480 U.S. 79, 107 S.Ct. 1013, 94 L.Ed.2d 72 (1987); Braxton v. State, 123 Md.App. 599, 720 A.2d 27 (1998)(minimal showing defendant connected with address); Walls v. State, 179 Md. App. 234, 944 A.2d 1222 (2008) (search warrant that allowed for the search of the "premise" authorized the search of shed within the curtilage of the residence).

ii. Items to be seized

THE ITEMS TO BE SEIZED MUST BE SPECIFIED

Some specificity required so that the warrant is not a general warrant. The degree of specificity required depends on the type of investigation.

AUTHORITIES: U.S. Const., Amd. IV; Groh v. Ramirez, 540 U.S. 551, 124 S.Ct. 1284 (2004)(search warrant that failed to specify things to be seized was facially invalid where the warrant did not incorporate by reference the terms of the facially valid affidavit and where the warrant was not accompanied by the supporting affidavit when served); Andresen v. Maryland, 427 U.S. 463, 96 S.Ct. 2737, 49 L.Ed.2d 627 (1976);Garcia-Perlera v. State, —A.3d—, 2011 WL 310954 (Md. App. 2011).

d. MAGISTRATE

THE WARRANT MUST BE ISSUED BY A NEUTRAL AND DETACHED MAGISTRATE WHO MAKES AN INDEPENDENT DETERMINATION OF PROBABLE CAUSE.

On review, the court looks to see if there was a "substantial basis" for the trial court to conclude there was probable cause to search the places and items specified in the warrants.

AUTHORITY: Lo-Ji Sales, Inc. v. New York, 442 U.S. 319, 99 S.Ct.2319, 60 L.Ed.2d 920 (1979); Ellis v. State, 185 Md. App. 522, 971 A.2d 379 (2009); State v. Faulkner, 190 Md. App. 37, 985 A.2d 627 (2010)(substantial basis for the search of a home can be found where there is a nexus between the suspect's criminal actions and his home sufficient to support a reasonable inference that the toold or fruits of the crime probably will be found at the home).

3. AUTHORITY UNDER THE WARRANT
a. SEARCH WARRANTS

AN OFFICER IS PERMITTED TO ENTER THE PREMISES AND SEARCH ANYWHERE THE ITEMS SOUGHT MAY BE FOUND.

It may, but does not always, authorize the arrest of persons found involved in illegal activity (usually CDS warrants). However, the location of contraband may give rise to probable cause for a warrantless arrest. Detention of persons present while search is conducted is authorized. Depending on the facts and circumstances of the case, police may be permitted to frisk the people detained during the search for weapons.

AUTHORITIES: Michigan v. Summers, 452 U.S. 692, 101 S.Ct. 2587, 69 L.Ed.2d 340 (1981)(detention of persons present permitted); Stanford v. State, 353 Md. 527, 727 A.2d 938 (1999)(no indication defendant had been in premises for which police had warrant); Ybarra v. Illinois, 444 U.S. 85, 100 S.CT. 338, 62 L.Ed.2d 238 (1979), (all patrons of a bar being searched pursuant to a warrant could not be frisked absent reasonable articulable suspicion to believe the persons were armed and dangerous); Dashiell v. State, 374 Md. 85, 821 A.2d 372 (2003)(frisk held valid where there was a "no-knock" warrant at the apartment and where there was sufficient basis to believe occupants were armed); Muehler v. Mena, 544 U.S. 93, 125 S.Ct. 1465 (2005)(detention of three occupants of a residence was reasonable under Summers when they were handcuffed and placed under guard for two to three hours while a search of the home proceeded); Cotton v. Maryland, 386 Md. 249, 872 A.2d 87 (2005)(under Summers, defendant was not defacto arrested after being detained 15-20 minutes despite being hand-cuffed, placed under guard, and given Miranda warnings); Cross v. State, 165 Md. App. 164, 884 A.2d 1236 (2004)(defendant was detained but not arrested when he was placed in handcuffs during search of his vehicle); Brown v. State, 168 Md.App. 400, 896 A.2d 1093 (2006) (A person who knocks on the door of a residence being searched may be ushered inside the residence and detained there for a reasonable

period of time and may be subject to a *Terry* frisk); Williamson v. State, 398 Md. 489, 921 A.2d 221 (Md. 2007)(police permitted to seize Appellant who was 20-30 feet away from home where officers had a valid search warrant and to bring him back to the home while executing the warrant).

b. ARREST WARRANTS

AUTHORIZED THE ARREST OF A PERSON, BUT DOES NOT PERMIT THE SEARCH OF PREMISES UPON WHICH THE PERSON IS FOUND.

Note: The search warrant authorizing a search of "a person" can provide authorization to conduct a some degree of a body cavity search.

AUTHORITIES: Moore v. State, 195 Md. App. 695, 7 A.3d 617 (2010).

However, exceptions to the search warrant requirement (see below) may be applicable, depending on the circumstances of the arrest.

B. WARRANTLESS SEARCHES, SEIZURES AND ARRESTS

1. AUTOMOBILE EXCEPTION

ALSO TERMED THE CARROLL DOCTRINE, THIS EXCEPTION PERMITS THE WARRANTLESS SEARCH OF MOBILE OR POTENTIALLY MOBILE VEHICLES IF THERE IS PROBABLE CAUSE TO BELIEVE THAT CONTRABAND OR EVIDENCE OF CRIME MAY BE FOUND WITHIN.

The mobility or potential mobility of the vehicle provides exigency needed to justify a warrantless search. Positive alert by drug sniffing dog is ipso facto probable cause for a Carroll doctrine search of an automobile.

AUTHORITIES: Carroll v. United States, 267 U.S. 132, 45 S.Ct. 280, 69 L.Ed.2d 543 (1925); United States v. Johns, 469 U.S. 478, 105 S.Ct. 881, 83 L.Ed.2d 890 (1985); Doering v. State, 313 Md. 384, 545 A.2d 1281 (1988); Pennsylvania v. Labron, 518 U.S. 938 , 116 S.Ct. 2485, 135 L.Ed.2d 1031 (1996); Florida v. White, 526 U.S. 559, 119 S.Ct. 1555, 143 L.Ed.2d 748 (1999)(probable cause to believe automobile is forfeitable contraband); Berry v. State, 155 Md.App. 144, 843 A.2d 93 (2004)(exigent circumstances are not required under the automobile exception); State v. Cabral, 159 Md.App. 354, 859 A.2d 285 (2004)(the fact that a drug dog might have alerted to the presence of an illegal drug that was in the vehicle as much as 72 hours prior to the alert does not negate the probable cause); State v. Harding, 166 Md.App. 230, 887 A.2d 1108 (2005)(smell of marijuana was probable cause to search vehicle including any hidden compartments); Larocca v. State, 164 Md.App. 460, 883 A.2d 986

(2005)(smell of burning marijuana around vehicle was reasonable basis for officer to believe that an occupant of the car was in possession of the drug); Jackson v. State, 190 Md. App. 497, 988 A.2d 1154 (2010)(Positive alert by drug sniffing dog is ipso facto probable cause for a Carroll doctrine search of an automobile.).

a. SCOPE

A SEARCH TERMINATES WHEN THE OBJECT OF SEARCH IS FOUND, UNLESS FURTHER SEARCH IS JUSTIFIABLE ON SOME OTHER GROUND.

If the police have probable cause to believe that the object of the search is within a vehicle, any container within the vehicle that may accommodate the object may be searched.

AUTHORITIES: Wyoming v. Houghton, 526 U.S. 295, 119 S.Ct. 1297, 143 L.Ed.2d 408 (1999)(including passenger's belongings); State v. Bell, 334 Md. 190, 638 A.2d 107 (1994); Whiting v. State, 125 Md.App. 404, 725 A.2d 623 (1999)(finding contraband in passenger compartment may justify search of trunk); Wilson v. State, 174 Md.App. 434, 921 A.2d 881 (2007)(odor of marijuana emanating from the vehicle establishes probable cause to search a vehicle's trunk).

b. LOCATION AND TIME OF SEARCH

IF POLICE ARE AUTHORIZED TO SEARCH A VEHICLE ON THE STREET, THEY DO NOT LOSE THAT AUTHORITY IF THEY MOVE THE VEHICLE TO THE STATION TO SEARCH.

Nor do they lose the authority to search by passage of time before the search initiated.

AUTHORITY: Bailey v. State, 16 Md.App. 83, 294 A.2d 123 (1972); but see, United States v. Johns, 469 U.S. 478, 105 S.Ct. 881, 83 L.Ed.2d 890 (1985); Maryland v. Dyson, 527 U.S. 465, 119 S.Ct. 2013, 144 L.Ed.2d 442 (1999)(even though where police have opportunity to obtain a warrant before stopping the vehicle and there is no exigency), reversing, Dyson v. State, 122 Md.App. 413, 712 A.2d 573 (1998); Smith v. State, 161 Md.App. 461, 870 A.2d 1228 (2005)(further search of vehicle conducted after tow permitted).

c. LOCATION OF DRIVER/OCCUPANTS

THE EXIGENCY JUSTIFYING THE SEARCH OF AN AUTOMOBILE IS NOT LOST MERELY BECAUSE OWNER/OCCUPANTS NOT IN VICINITY OF VEHICLE, IF DUE TO ARREST, VEHICLE LOCATED UNOCCUPIED.

AUTHORITY: State v. Bell, 334 Md. 190, 638 A.2d 107 (1994)(and cases cited therein).

d. JUSTIFICATION FOR SEARCH OR SEIZURE

CONFIDENTIAL INFORMANTS MAY BE USED TO JUSTIFY A WARRANTLESS SEARCH WHERE THERE IS A SUFFICIENT BASIS FOR DETERMINING THE RELIABILITY AND VERACITY OF THE INFORMANT.

AUTHORITY: Green v. State, 77 Md.App. 477, 487, 551 A.2d 127 (1989) (no probable cause where "absolutely no testimony establishing the reliability or character status of the ... informant"); Dedo v. State, 105 Md.App. 438, 660 A.2d 959, aff'd, 343 Md. 2, 680 A.2d 464 (1996); Smith v. State, 161 Md.App.461, 870 A.2d 1228) (2005)(informant found reliable); Cross v. State, 165 Md.App. 164, 884 A.2d 1236 (2005)(informant found reliable despite the fact that the officers did not ask for and he did not offer his name, but he had approached the officers on his own volition putting himself in a position to be held accountable).

2. PLAIN VIEW

A POLICE OFFICER MAY SEIZE EVIDENCE LOCATED IN PLAIN VIEW WITHOUT A WARRANT IF THE OFFICER IS LAWFULLY ON THE PREMISES WHERE THE OBSERVATION IS MADE AND WHERE IT IS IMMEDIATELY APPARENT THAT THE ITEMS OBSERVED MAY BE EVIDENCE OF A CRIME, CONTRABAND OR OTHERWISE SUBJECT TO SEIZURE.

a. LOCATION OF POLICE (PRIOR VALID INTRUSION)

THE OFFICER MUST HAVE LAWFUL RIGHT TO BE IN THE PLACE WHERE THE OBSERVATION IS MADE. (WARRANT, HOT PURSUIT, CONSENT, ANY OTHER LEGITIMATE BASIS FOR POLICE OFFICER PRESENCE).

b. NATURE OF EVIDENCE (IMMEDIATELY APPARENT)

THE OFFICER MUST HAVE PROBABLE CAUSE TO ASSOCIATE OBJECT WITH CRIMINAL ACTIVITY. (EVIDENCE OF CRIME, CONTRABAND, OTHERWISE SUBJECT TO SEIZURE).

Any movement of any item for reasons unconnected to the prior lawful intrusion constitutes a search. Arizona v. Hicks, 480 U.S. 321, 107 S.Ct. 1149, 94 L.Ed.2d 347 (1987). However, where there is a warrant for documents, officers may read the documents to determine if they are within the scope of the warrant.

AUTHORITIES: Coolidge v. New Hampshire, 403 U.S. 443, 91 S.Ct. 2022, 20 L.Ed.2d 564 (1971); Texas v. Brown, 460 U.S. 730, 103 S.Ct. 1535, 75 L.Ed.2d 502 (1983); Horton v. California, 496 U.S. 128, 110 S.Ct. 2301, 110 L.Ed.2d 112 (1990); State v. Wilson, 279 Md. 189, 367 A.2d 1223 (1977); State v. Boone, 284 Md. 1, 393 A.2d 1041 (1980); Hippler v. State, 83 Md.App. 325, 574 A.2d 348 (1990); Sandford v. State, 87 Md.App. 23, 589 A.2d 74 (1991); Williams v. State, 342 Md. 724, 679 A.2d 1106 (1996); Wengert v. State, 364 Md. 76, 771 A.2d 389 (2001)(police observed gambling evidence while investigating a burglary); Cason v. State, 140 Md.App. 379, 780 A.2d 466 (2000)(police observed evidence relating to drug distribution while investigating a burglary and promptly obtained a warrant to search further); Nero v. State, 144 Md.App. 333, 798 A.2d 5 (2002)(seizure of jewelry related to other crime not mentioned in warrant or affidavit was illegal); Bornschlegal v. State, 156 Md.App. 322, 846 A.2d 1090 (2004)(seizure of cocaine upheld under plain view doctrine when police were investigating gambling); Garcia-Perlera v. State, —A.3d—, 2011 WL 310954 (Md. App. 2011)(item properly seized were observed in plain view during the execution of a search warrant for which the officer has a reasonable basis to believe that the items may be stolen property. Not necessary to show that the belief is correct or more likely true than false).

3. CONSENT

AN OFFICER MAY CONDUCT SEARCHES AND MAKE SEIZURES WITHOUT A WARRANT IF CONSENT IS GIVEN TO THE SEARCH OR SEIZURE. THE STATE MUST SHOW THAT THE CONSENT WAS VOLUNTARY AND NOT A PRODUCT OF COERCION.

A "knock and talk" procedure, whereby police knock on the door and then ask for permission to search the premises does not violate the Fourth Amendment.

AUTHORITY: Scott v. State, 366 Md. 121, 782 A.2d 862 (2001); Perkins v. State, 83 Md.App. 341, 574 A.2d 356 (1990) (where the officer's deception enabled him to gain access to an area where the defendant had a reasonable expectation of privacy); Brown v. State, 378 Md. 355, 835 A.2d 1208 (2003)(deception may be used to obtain the opening of a door where occupant knows the person is an officer).

a. VOLUNTARINESS

STATE MUST DEMONSTRATE THAT CONSENT WAS VOLUNTARY.

To determine voluntariness courts will look to the totality of the circumstances.

AUTHORITIES: Bumpers v. North Carolina, 391 U.S. 543, 885 S.Ct. 1788, 20 L.Ed.2d 797 (1968); Schneckloth v. Bustamonte, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973); Whitman v. State, 25 Md.App. 428, 336 A.2d 515 (1975); Unites States v. $25,000 U.S. Currency, 853 F.2d 1501 (9th Cir. 1988); United States v. Gay, 774 F.2d 368 (10th Cir. 1985); Chase v. State, 120 Md.App. 141, 706 A.2d 613 (1998)(stepping aside in response to police request to enter is viewed as consent); Sifrit v. State, 383 Md. 77, 857 A.2d 65 (2004)(defendant's consent to search her purse for the purpose of obtaining her medication extended to all parts of the purse that could have contained the medicine); Smith v. State, 159 Md.App.1, 858 A.2d 1224 (2004)("consent once removed" only applies in cases where the undercover agent either remained on the premises while the other officers entered or maintained an express or implied right of reentry).

b. BY THE DEFENDANT

SEARCH CONDUCTED PURSUANT TO COERCION IS INVALID AND MUST BE SUPPRESSED.

Factors to be considered in determining validity of consent; Voluntariness of custodial status, presence of coercive police procedure, level of defendant's cooperation with police, defendant's awareness of his right to refuse, defendant's education and intelligence, defendant's belief that no incriminating evidence will be found. The police do not have to inform the defendant that he is not required to consent.

AUTHORITY: United States v. Drayton, 536 U.S. 194, 122 S.Ct. 2105, 153 L.Ed.2d 242 (2002); Cherry v. State, 86 Md.App. 234, 586 A.2d 70 (1991).

c. THIRD PARTY CONSENT

i. Actual authority

A VALID CONSENT MAY BE GIVEN BY SOMEONE WITH A COMMON POSSESSORY INTEREST IN THE PLACE SEARCHED, UNLESS A PRESENT CO-TENANT OBJECTS.

Mutual use of property or joint access is generally sufficient to validate search.

AUTHORITIES: United States v. Matlock, 415 U.S. 164, 94 S.Ct. 989, 39 L.Ed.2d 242 (1974); Georgia v. Randolph, 547 U.S. 103, 126 S.Ct. 1515 (2006)(a physically present co-tenant's objection to a police search renders the resulting search unreasonable even where the other tenant has explicitly consented to the search.); Nestor v. State, 243 Md. 438, 221 A.2d 364 (1966); Dorsey and Gladden v. State, 2 Md.App. 40, 232 A.2d 900 (1967); Christian v. State, 172

Md.App. 212, 914 A.2d 151 (2007)(Appellant's brother as joint occupant of the home had authority to consent to a search of the space occupied by Appellant); Jones v. State, 407 Md. 33, 962 A.2d 393 (2008)(wife who was the co-owner of the property and in business with husband had right to consent to warrantless search of a warehouse and a vehicle).

A parent may consent to a search of a child's room if the child is living at home.

AUTHORITIES: Jones v. State, 13 Md.App. 309, 283 A.2d 184 (1971); Tate v. State, 32 Md.App. 613, 363 A.2d 622 (1976); In Re: Tariq A-R Y, No. 100, October 21, 1997 (Md.Ct.App.)(minor's jacket in common area); State v. Miller, 144 Md.App. 643, 799 A.2d 462 (2002); Seldon v. State, 151 Md.App. 204, 824 A.2d 999 (2003)(mechanic may not consent to search of customer's car); State v. Rowlett, 159 Md.App. 386, 859 A.2d 303 (2004)(defendant's mother, and the owner of the house, had common and apparent authority to consent to the search of the room that defendant was using).

ii. Apparent authority

EVEN IF THIRD PARTY DOES NOT HAVE ACTUAL AUTHORITY TO CONSENT TO A WARRANTLESS SEARCH, THE SEARCH IS STILL VALID IF AUTHORITIES HAVE REASONABLE GROUNDS TO BELIEVE THAT THE CONSENTER HAS THE REQUISITE AUTHORITY.

AUTHORITIES: Illinois v. Rodriguez, 497 U.S. 177, 110 S.Ct. 2793, 111 L.Ed.2d 148 (1990); United States v. Chaidez, 919 F.2d 1193 (7th Cir. 1990); United States v. Yarborough, 852 F.2d 1522 (9th Cir. 1988), cert. denied, 109 S.Ct. 171, 102 L.Ed.2d 140.

4. ROADBLOCKS

THE LEGALITY OF A ROADBLOCK STOP IS DETERMINED BY A THREE PRONG BALANCING TEST:

1. THE STATE'S INTEREST

E.g., enforcing the drunk driving laws. The State's interest is often presumed to be high.

2. THE EXTENT TO WHICH THE STATE'S INTEREST IS ADVANCED BY THE ROADBLOCK - THE EFFECTIVENESS PRONG

The effectiveness of the roadblock may be shown by empirical evidence showing

the incidence of crime at the location of the roadblock and by statistical evidence of the ratio of vehicles stopped to arrests.

3. THE EXTENT OF INTERFERENCE WITH INDIVIDUAL LIBERTY - THE LEVEL OF INTRUSION PRONG

The Court should consider the presence or absence of numerous factors, including, but not limited to:

1. whether there are clear, carefully crafted regulations approved by high level administrators guaranteeing that drivers would not be arbitrarily singled out;

2. whether the guidelines contain explicit, neutral limitations on the conduct of the individual officers;

3. whether the guidelines explicitly inform officers how to communicate with drivers;

4. whether drivers who wished to avoid the checkpoint could do so;

5. whether ample provision was made for the safety of motorists passing through the checkpoint;

6. the duration of the average stop, whether short or long;

7. whether the checkpoint was well illuminated;

8. whether the checkpoint was staffed by numerous police officers to demonstrate the legitimacy of the roadblock and to dispel fright to the driver; and

9. whether potential drivers were given advance warning of the checkpoint through media or signs.

AUTHORITIES: City of Indianapolis v. Edmond, 531 U.S. 32, 121 S.Ct. 447, 148 L.Ed.2d 333 (2000)(checkpoints with the primary purpose of detecting the presence of illegal drugs, which is ordinary criminal wrongdoing, do not fit the limited exception allowing roadblocks, for example where the focus is drunk driving); Illinois v. Lidster, 124 S.Ct. 885 (2004)(highway checkpoint at which police stopped every vehicle at the location of a fatal accident that occurred on that highway one week earlier to hand out flyers and briefly question occupants was not presumptively invalid under Edmond); Michigan Department of State Police v. Sitz, 496 U.S. 444, 110 S.Ct. 2481, 110 L.Ed.2d 412 (1991); United States v. Martinez-Fuerte, 428 U.S. 543, 96 S.Ct. 3074, 49 L.Ed.2d 1116 (1976);Brown v. Texas, 443 U.S. 47, 99 S.Ct. 2637, 61 L.Ed.2d 357 (1979); Little v. State, 300 Md. 485, 479 A.2d 903 (1984); Gadson v. State, 341 Md. 1, 668 A.2d 22 (1995).

5. EXIGENT CIRCUMSTANCES

a. GENERALLY

POLICE MAY ENTER A RESIDENCE IF THEY HAVE PROBABLE CAUSE TO BELIEVE A FELONY HAS BEEN COMMITTED AND THERE ARE

EXIGENT CIRCUMSTANCES TO JUSTIFY THE ENTRY.

Police may search a residence without a warrant if they have a reasonable fear for the safety of someone inside the premises, or reasonably believe a person is in need of immediate aid.

AUTHORITIES: Payton v. New York, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980); United States v. Santana, 427 U.S. 38, 96 S.Ct. 2406, 49 L.Ed.2d 399 (1976); Warden v. Hayden, 387 U.S. 294, 87 S.Ct. 1642, 18 L.Ed.2d 782 (1967); Smith v. State, 72 Md.App. 450, 531 A.2d 302 (1987); Welsh v. Wisconsin, 466 U.S. 740, 104 S.Ct. 2091, 80 L.Ed.2d 732 (1984); Grant v. State, 141 Md.App. 517, 786 A.2d 34 (2001)(immediate aid); Williams v. State, 372 Md. 386, 813 A.2d 231 (2002)(no exigent circumstances); Michigan v. Fisher, 130 S. Ct. 546 (2009)("emergency aid exception" to the warrant requirement applies where there is a need to assist persons who are seriously injured or threatened with such injury).

b. EVANESCENT EVIDENCE

WHERE EVIDENCE OF A CRIME MAY BE DISSIPATED IF A SEARCH IS NOT CONDUCTED IMMEDIATELY, A SEARCH OTHERWISE REQUIRING A WARRANT MAY BE CONDUCTED WITHOUT A WARRANT.

AUTHORITIES: Schmerber v. California, 384 U.S. 757, 86 S.Ct. 1826, 16 L.Ed. 2d 908 (1966)(blood test permitted from suspected drunk driver); Gorman v. State, 168 Md.App. 412, 897 A.2d 242 (2006)(the smell of burnt marijuana created exigent circumstances that justified the officer's warrantless search of the apartment).

c. CRIME SCENE SEARCH

THE POLICE MAY ENTER A PRIVATE RESIDENCE TO SECURE A CRIME SCENE, BUT ONLY TO DETERMINE IF THERE ARE SUSPECTS ON THE PREMISES OR VICTIMS REQUIRING MEDICAL ATTENTION OR EMERGENCY AID.

There is no murder scene exception to the Fourth Amendment.

AUTHORITIES: Mincey v. Arizona, 437 U.S. 385, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978); Thompson v. Louisiana, 469 U.S. 17, 105 S.Ct. 409, 83 L.Ed.2d 246 (1984); Flippo v. West Virginia, 528 U.S.11, 120 S.Ct. 7, 145 L.Ed.2d 16 (1999); Carroll v. State, 335 Md. 723, 646 A.2d 376 (1994)(burglary crime scene); State v. Brooks, 148 Md.App. 374, 812 A.2d 342 (2002)(exigency subsided - warrant required); Brigham City v. Stuart, 547 U.S. 398 (2006).

d. HOT PURSUIT

THE POLICE MAY ENTER A RESIDENCE IN HOT PURSUIT OF A FLEEING FELON WITHOUT A WARRANT

In Santana, the Supreme Court held that a suspect in an open doorway is not inside the residence, and may be arrested without a warrant. However, in Smith, a majority of the Court of Special Appeals, sitting, en banc, held that answering a police knock on the door does not subject the person to a warrantless arrest. In Welsh, the Supreme Court refused to extend the rule allowing warrantless entry to misdemeanors, such as a first offense drinking and driving, and an arrest warrant is still required to enter the suspect's home to arrest.

AUTHORITIES: Payton v. New York, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980); United States v. Santana, 427 U.S. 38, 96 S.Ct. 2406, 49 L.Ed.2d 399 (1976); Warden v. Hayden, 387 U.S. 294, 87 S.Ct. 1642, 18 L.Ed.2d 782 (1967); Smith v. State, 72 Md.App. 450, 531 A.2d 302 (1987); Welsh v. Wisconsin, 466 U.S. 740, 104 S.Ct. 2091, 80 L.Ed.2d 732 (1984); Turner v. State, 133 Md.App. 192, 754 A.2d 1074 (2000)(discussion of implied consent for police to enter residence); Kirk v. Louisiana, 536 U.S. 635, 122 S.Ct. 2458, 153 L.Ed.2d 599 (2002)(exigent circumstances required for warrantless felony arrest in the home); Dunnuck v. State, 367 Md. 198, 786 A.2d 695 (2001)(seeing a marijuana plant in the window of a residence did not constitute an exigency justifying a warrantless search).

e. MOVING EVIDENCE

WHERE THE POLICE, WHILE PREPARING A SEARCH WARRANT, HAVE RELIABLE EVIDENCE THAT A SUSPECT IS ABOUT TO MOVE EVIDENCE, INCLUDING A VERY DANGEROUS WEAPON (AK-47), THEY MAY ENTER WITHOUT A WARRANT, SECURE THE PREMISES AND RESIDENTS, UNTIL OBTAINING A WARRANT.

AUTHORITY: Bellamy v. State, 111 Md.App. 529, 682 A.2d 1185, cert. denied, 344 Md. 116, 685 A.2d 451 (1996)("[W]e hold that under the circumstances of this particular case, in which the police had reliable information that the assault weapon and the cocaine were present and were about to be removed, and the police reasonably concluded that less intrusive measures to obtain the evidence and safeguard the weapon would be ineffective or, worse, could endanger the public, the warrantless entry was justified by exigency.").

6. INVESTIGATIVE SEARCH AND SEIZURE

a. TERRY STOP

POLICE MAY FORCIBLY STOP AND BRIEFLY DETAIN A PERSON FOR FURTHER INVESTIGATION IF THE OFFICER HAS FACTS GIVING RISE TO A REASONABLE, ARTICULABLE SUSPICION THAT THE PERSON HAS COMMITTED, IS COMMITTING, OR IS ABOUT TO COMMIT A CRIME.

Reasonable articulable suspicion is based on the totality of the circumstances. Nervous, evasive behavior, flight from police, may give rise to a reasonable articulable suspicion sufficient to justify a stop. But, a law enforcement officer cannot simply assert that innocent conduct was suspicious to him/her, but rather must explain how that conduct was indicative of criminal activity.

AUTHORITY: Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); Illinois v. Wardlow, 528 U.S. 519, 120 S.Ct. 673, 145 L.Ed.2d 254 (2000); United States v. Arvizu, 534 U.S. 266, 122 S.Ct. 744, 151 L.Ed.2d 740 (2002) Goode v. State, 41 Md.App. 623, 398 A.2d 801, cert. den., 285 Md. 730 (1979); Lawson v. State, 120 Md.App. 610, 707 A.2d 947 (1998); Cartnail v. State, 359 Md. 272, 753 A.2d 519 (2000); Sullivan v. State, 132 Md.App. 682, 753 A.2d 601(2000); Wise v. State, 132 Md.App. 127, 751 A.2d 24 (2000); Rowe v. State, 363 Md. 424, 769 A.2d 879 (2001)(edge line crossing - stop held bad); Edwards v. State, 143 Md.App. 155, 792 A.2d 1197 (2002)(center line crossing - stop held good); Dowdy v. State, 144 Md.App. 325, 798 A.2d 1 (2002)(excessive lane changing and drifting -stop held good); Stokes v. State, 362 Md. 407, 765 A.2d 612 (2001)(black man in a black tee shirt is too vague); Muse v. State, 146 Md.App. 395, 807 A.2d 113 (2002)(approving stop for cracked windshield); Collins v. State, 376 Md. 359, 829 A.2d 992 (2003)(approving stop where defendant was spotted on foot, within about fifteen minutes after the robbery, about 200 yards away, and met the description with reference to height, weight, type of clothing and method of escape); Ransome v. State, 373 Md. 99, 816 A.2d 901 (2003)(Terry stop not justified by bulge in pocket, and defendant staring at police officer in high crime area); Craig v. State, 148 Md.App. 670, 814 A.2d 41 (2002)(police had articulable reasonable suspicion); State v. Blasi, 167 Md.App. 483, 893 A.2d 1152 (2006)(conducting field sobriety tests constitutes a search for 4th Amendment purposes, but pursuant to *Terry*, such a search only requires articulable reasonable suspicion); Sykes v. State, 166 Md.App. 206, 887 A.2d 1095 (2005)(officer's grabbing, crumbling, and rolling techniques used in search were proper under Terry); Matoumba v. State, 162 Md.App. 39, 873 A.2d 386 (2005)(conduct of passenger of vehicle provided sufficient articulable reasonable suspicion for officer to frisk him following a stop); Madison-Shepard v. State, 177 Md.App. 165, 934 A.2d 1046 (2007)(officer did not have sufficient articulable reasonable suspicion to assume that the Appellant was the suspect described in the radio alert, because he was black, had corn row hair, did not have an ID, and acted nervous upon being approached by the

police); State v. Williams, 401 Md. 676, 934 A.2d 38 (2007)(rear window was darker than "normal" did not provide sufficient articulable reasonable suspicion for the stop); State v. Dick, 181 Md. App. 693, 957 A.2d 150 (2008)(officer had reasonable articulable suspicion where suspect in high drug crime area riding bike in gas station for 15 minutes, go up the street, and engage in a hand-to-hand transaction); Crosby v. State, 408 Md. 490, 970 A.2d 894 (2009)(a law enforcement officer cannot simply assert that innocent conduct was suspicious to him/her, but rather must explain how that conduct was indicative of criminal activity); Hicks v. State, 189 Md. App. 112, 984 A.2d 246 (2009); In re Jeremy P., 197 Md. App. 1, 11 A.3d 830 (2011)("Mere conclusory statements by the officer that what he saw made him believe the defendant had a weapon are not enough to satisfy the State's burden of articulating reasonable suspicion that the suspect was involved in criminal activity." The officer lacked reasonable suspicion based solely on adjustments in the waistband vicinity in an area known for criminal activity where the officer cannot recount additional specific facts that suggest that the suspect is concealing a weapon. The fact that the incident occurred in a "high risk area" also did not tilt the reasonable suspicion scale.).

i. Anonymous tip

AN ANONYMOUS TIP MAY FORM THE BASIS FOR THE STOP IF SUFFICIENTLY DETAILED TO GIVE RISE, UNDER TOTALITY OF CIRCUMSTANCES, TO REASONABLE, ARTICULABLE SUSPICION.

An anonymous tip that a person is carrying a gun is not, without more, sufficient to justify a police officer's stop and frisk of that person.

AUTHORITIES: Florida v. J. L., 529 U.S. 266, 120 S.Ct. 1375, 146 L.Ed.2d 254 (2000); Lee v. State, 311 Md. 642, 537 A.2d 235 (1988); Malcolm v. State, 314 Md. 221, 550 A.2d 670 (1988); Quince v. State, 319 Md. 430, 572 A.2d 1086 (1990); Alabama v. White, 496 U.S. 325, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990); State v. Lemmon, 318 Md. 365, 568 A.2d 48 (1990)(tip insufficient); Hardy v. State, 121 Md.App. 345, 709 A.2d 168 (1998)(insufficient detail); Dixon v. State, 133 Md.App. 654, 758 A.2d 1063 (2000)(tip insufficient, analysis of cases).

ii. Police may use force

INCLUDING DRAWING WEAPON, TO EFFECTUATE THE STOP.

AUTHORITIES: Watkins v. State, 288 Md. 597 (1980); Farrow v. State, 68 Md. App. 519, 514 A.2d 35 (1986); In re David S., 367 Md. 523, 789 A.2d 607 (2002)(where police had a basis to believe the defendant was about to burglarize

an abandoned building, and may have placed a gun in his pants, a "hard" take down, at gunpoint, where the defendant was forced to lie down was reasonable and did not exceed the scope of a permissible Terry stop and was not tantamount to an arrest); Harrod v. State, 192 Md. App. 85, 993 A.2d 1113 (2010), cert. granted, 415 Md. 337, 1 A.3d 467 (2010)(Where officers have reasonable articulable suspicion that a suspect is armed and dangerous and poses a threat to the their safety or safety of bystanders then the use of force usually associated with an arrest is justifiable during a *Terry* stop); Elliott v. State, 417 Md. 413, 10 A.3d 761 (2010)(Display of force, such as use of handcuffs is generally considered an arrest; however can be considered reasonable park of an investigative detention where the State proves force was used to protect officer safety or prevent the suspect's flight).

iii. Automobiles

MAY BE STOPPED BASED ON REASONABLE, ARTICULABLE SUSPICION. THE DRIVER AND PASSENGERS MAY BE ORDERED FROM THE VEHICLE FOR OFFICER SAFETY.

However, unless the officer has a reasonable articulable suspicion, he may not further detain a passenger.

AUTHORITY: Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977)(driver); Maryland v. Wilson, 519 U.S. 408, 117 S.Ct. 882, 137 L.Ed.2d 41 (1997)(passengers); Goode v. State, 41 Md.App. 623, 398 A.2d 801, cert. den., 285 Md. 730 (1979); Dennis v. State, 345 Md. 649, 693 A.2d 1150 (1997), cert. denied, 60 Crim.Law Rptr. 3034 (U.S. Oct. 14, 1997)(No. 97-286)(passenger detention); Graham v. State, 119 Md.App. 444, 705 A.2d 82 (1998)(passenger illegally detained for 25 minutes while waiting for drug dog); Russell v. State, 138 Md.App. 638, 773 A.2d 564, cert. granted, 365 Md. 473, 781 A.2d 778 (2001)(asking passenger if he had a driver's license to see if he could drive was not a seizure); Bryant v. State, 142 Md. 604, 791 A.2d 161 (2001)(eyewitnesses supplied sufficient information for stop where officer did not observe defendant driving); Farewell v. State, 150 Md.App. 540, 822 A.2d 513 (2003)(officer had articulable reasonable suspicion to detain cab passengers); Smith v. State, 161 Md. App. 461, 870 A.2d 1228 (2005)(officers were permitted to order passengers out of car and frisk after a traffic stop); Matoumba v. State, 162 Md.App. 39, 873 A.2d 386 (2005)(conduct of passenger of vehicle provided sufficient articulable reasonable suspicion for officer to frisk him following a stop); Lewis v. State, 398 Md. 349, 920 A.2d 1080 (2007)(police did not have an articulable reasonable suspicion to stop Appellant for "almost" striking a police car); State v. Williams, 401 Md. 676, 934 A.2d 38 (2007)(officer's testimony that William's rear window was darker than "normal" not sufficient articulable

reasonable suspicion); Brendlin v, California, 551 U.S. 249, 127 S. Ct. 2400 (2007); Henderson v. State, 183 Md. App. 86, 960 A.2d 627 (2008) (passenger in vehicle not free to leave where there is substantial evidence of criminal activity independent of the traffic violations); Smith v. State, 182 Md. App. 444, 957 A.2d 1139 (2008)(officer had reasonable articulable suspicion to perform a Terry stop on vehicle based on his estimate that the vehicle was traveling above the posted speed limit).

iv. Pretextual stops

IF THE OFFICER COULD HAVE STOPPED THE VEHICLE (HAD A REASONABLE, ARTICULABLE BASIS FOR STOPPING THE VEHICLE), IT IS IRRELEVANT THAT THE SUBJECTIVE PURPOSE IN STOPPING THE VEHICLE WAS PRETEXTUAL.

AUTHORITY: Arkansas v. Sullivan, 532 U.S. 769, 121 S.Ct. 1876, 149 L.Ed.2d 994 (2001); Whren v. United States, 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996); Thanner v. State, 93 Md.App. 134, 611 A.2d 1030 (1993); Cox v. State, 161 Md.App. 654, 871 A.2d 647 (2005)(a valid Whren stop is not invalidated by an officer's subjective motivation to further investigate a more serious offense).

b. TERRY DETENTION

THE LENGTH OF DETENTION IS DEPENDENT ON CRIME BEING INVESTIGATED, LOCATION OF DETENTION, AND METHODS USED TO CONFIRM OR DISPEL SUSPICION.

Once the purpose of the initial stop is fulfilled, in the absence of additional reasonable articulate suspicion, further detention may constitute a second illegal stop.

AUTHORITIES: United States v. Sharpe, 470 U.S. 675, 105 S.Ct. 1568, 84 L.Ed.2d 605 (1985); United States v. Place, 462 U.S. 696, 103 S.Ct. 2637, 77 L.Ed.2d 110 (1983); Illinois v. Caballes, 125 S.Ct. 834 (2005)(use of drug dog during stop for speeding did not violate 4th Amendment); Ferris v. State, 355 Md. 356, 735 A.2d 491 (1999); Snow v. State, 84 Md.App. 243, 578 A.2d 816 (1990); Munafo v. State, 105 Md.App. 662, 660 A.2d 1068 (1995); Timmons v. State, 114 Md.App. 410, 690 A.2d 530 (1997)(no illegal detention where passenger had no way to legally leave scene-couldn't walk away on interstate); Whitehead v. State, 116 Md.App. 497, 698 A.2d 1115 (1997); Graham v. State, 119 Md.App. 444, 705 A.2d 82 (1998)(passenger illegally detained for 25 minutes while waiting for drug dog); Pryor v. State, 122 Md.App. 671, 716 A.2d 338 (1998)(25 minute wait for drug dog after speed stop was unreasonable);McKoy v. State, 127 Md.App. 89, 732 A.2d 312 (1999)(twenty five minute delay from initial

stop to arrival of drug dog acceptable where initial stop had not ended); Brown v. State, 124 Md.App. 183, 720 A.2d 1270 (1998)(calling in for warrants after stop was over was illegal, but did not lead to later confession); Charity v. State, 132 Md.App. 598, 753 A.2d 556 (2000)(officer could not detain and question occupants of vehicle on a "hunch" after the ticket writing should have been completed); Wilkes v. State, 364 Md. 554, 774 A.2d 420 (2001)(under the facts of this case, ticket writing was ongoing when K-9 arrived); Nathan v. State, 370 Md. 648, 805 A.2d 1086 (2002)(distinguishing Ferris); State v. Green, 375 Md. 595, 826 A.2d 486 (2003)(distinguishing Ferris and finding consent); Wilson v. State, 150 Md.App. 658, 822 A.2d 1247 (2003)(two minute wait for drug dog was reasonable and an additional two minute wait for scan was reasonable); Byndloss v. State, 391 Md. 462, 893 A.2d 1119 (2006)(detention for 30 minutes after traffic stop was reasonable when the delay resulted from technical difficulties and was diligent in attempting to complete the stop); State v. Ofori, 170 Md. App. 211, 906 A.2d 1089 (2006)(court found that the officer "developed *Terry*-level articulable suspicion" that there were drugs in the car, amounting to a second detention independent of the traffic stop, making 24 minute delay reasonable under *Terry*); State v. Mason, 173 Md. App. 414, 919 A.2d 752 (2007)(detention of 25 minutes until K-9 arrived during a traffic stop for running a stop sign was unreasonable under the circumstances where the officer was only issuing a warning); Jackson v. State, 190 Md. App. 497, 988 A.2d 1154 (2010); King v. State, 193 Md. App. 582, 998 A.2d 397 (2010)(second stop); Henderson v. State, 416 Md. 125, 5 A.3d 1072 (2010)(second stop; name in an "alert system" does not provide reasonable articulable suspicion that the individual is presently engaged in criminal activity).

c. TERRY FRISK

i. People

IN ADDITION TO THE REASONABLE, ARTICULABLE, SUSPICION REQUIRED FOR THE STOP, IF THE OFFICER HAS REASONABLE, ARTICULABLE SUSPICION TO BELIEVE THAT THE PERSON IS ARMED OR OTHERWISE A DANGER, THE OFFICER MAY FRISK OR PATDOWN THE SUSPECT FOR WEAPONS ONLY.

For crimes which are inherently violent a frisk is appropriate based on the suspicion for the stop. The frisk or pat-down is only to search for weapons. Unless the pat-down search reveals the presence of a weapon, the officer may not reach in a pocket and remove an item which does not pose a threat to the officer's safety unless Minnesota v. Dickerson is satisfied. The officer may not pull the defendant's shirt out if the frisk is unsuccessful.

AUTHORITIES: Terry; Alfred v. State, 61 Md.App. 647, 487 A.2d 1228 (1985); Simpler v. State, 318 Md. 311, 568 A.2d 22 (1990); Quince v. State, 319 Md. 430,

572 A.2d 1086 (1990); Weedon v. State, 82 Md.App.692, 573 A.2d 92 (1990); Aguilar v. State, 88 Md.App. 276, 594 A.2d 1167 (1991); State v. Smith, 345 Md. 460, 693 A.2d 749(1997); Partee v. State, 121 Md.App. 237, 708 A.2d 1113 (1998)(passenger illegally detained when he was shot); In Re: David S., 367 Md. 523, 789 A.2d 607 (2002)(search exceeded scope of Terry frisk); Russell v. State, 138 Md. App. 638, 773 A.2d 564(nervousness of driver and taking items out of pocket and returning to pocket large enough to contain a weapon in high crime area after being asked if he had a driver's license supported pat down); Graham v. State, 146 Md. App. 327, 807 A.2d 75 (2002)(no basis for pat down); Bailey v. State, 412 Md. 349, 987 A.2d 72 (2010); Hicks v. State, 189 Md. App. 112, 984 A.2d 246 (2009)(Terry frisk for weapons justified based on the inherent dangers of drug enforcement and that a detention based on reasonable suspicion of drug dealing); In re Lorenzo C., 187 Md. App. 411, 978 A.2d 890 (2009)(reasonable belief that suspect may be armed stemmed from :refusal to take hands out of pockets, officer solo handling three subjects, subject's attempt to walk away from officer, furtive movement, investigation into crime of violence, and early morning hour); Epps v. State, 193 Md. App. 687, 1 A.3d 488 (2010)(order that defendant lift his shirt exceeded permissible scope of *Terry* pat-down frisk of outer clothing for weapons.; pat-down would not have permitted recovery of plastic baggie that was protruding from waistline of defendant's pants, as it was not hard object that could have been mistaken for weapon).

State must demonstrate that the means used by the officer were the least intrusive means to determine if the suspect is armed and dangerous.

AUTHORITY: McDowell v. State, 407 Md. 327, 965 A.2d 877 (2009)(Though officer had reasonable articulable suspicion to believe defendant's bag contained a weapon, the officer was not justified in ordering defendant to open the bag as the State failed to demonstrate that a pat down would not have been sufficient under the circumstances).

ii. Automobiles

IF CRITERIA FOR TERRY STOP AND FOR TERRY FRISK ARE MET, PASSENGER COMPARTMENT OF AUTOMOBILE MAY BE CHECKED FOR WEAPONS.

AUTHORITY: Michigan v. Long, 463 U.S. 1032, 103 S.Ct. 3469, 77 L.Ed.2d 1201 (1983); Payne v. State, 65 Md. App. 566, 501 A.2d 484 (1985), cert. den., 395 Md. 621, 505 A.2d 1342 (1986)(furtive movements and nervousness of passenger insufficient basis for Long search of leather bag); Cross v. State, 165 Md.App. 164, 884 A.2d 1236 (2005)(search of passenger compartment permitted under Long).

iii. Plain feel

IF TERRY FRISK FOR WEAPONS IS JUSTIFIED, AND DURING FRISK, OFFICER FEELS ITEM WHICH IS IMMEDIATELY APPARENT, WITHOUT FURTHER MANIPULATION OR SEARCH, AS CONTRABAND OTHER THAN A WEAPON, IT MAY BE LAWFULLY SEIZED.

The court is not required to accept as credible, the police officer's testimony that the presence of CDS was immediately apparent.

AUTHORITY: Minnesota v. Dickerson, 508 U.S. 336, 113 S.Ct. 2130, 124 L.Ed.2d 334 (1993); Jones v. State, 343 Md. 448, 682 A.2d 248 (1996); Sykes v. State, 161 Md.App. 206, 887 A.2d 1095 (2005)(officer felt a "deck" of illegal drugs pursuant to pat down); Madison-Shepard v. State, 177 Md.App. 165, 934 A.2d 1046 (2007)(officer exceeded scope of Terry pat down when he had to squeeze, grasp, and slide objects between his fingers); Bailey v. State, 412 Md. 349, 987 A.2d 72 (2010)(removal of glass vial from pocket constituted an exploratory search exceeding the scope of a Terry frisk.); Harrod v. State, 192 Md. App. 85, 993 A.2d 1113 (2010), cert. granted, 415 Md. 337, 1 A.3d 467 (2010) (when officer feels what he reasonably believes is a weapon, he may extend the search beyond the outer clothing even if he is not certain that the object is actually a weapon).

iv. Effects

PLACING A BAG ON A CONVEYANCE USED IN PUBLIC TRANSPORTATION DOES NOT CREATE A DIMINISHED EXPECTATION OF PRIVACY, AND A POLICE OFFICER MAY NOT MANIPULATE BAG IN AN EFFORT TO DETERMINE ITS CONTENTS.

AUTHORITY: Bond v. United States, 529 U.S. 334, 120 S.Ct.1462, 146 L.Ed.2d (2000).

d. TERRY INVESTIGATION

POLICE MUST HAVE ADDITIONAL ARTICULABLE REASONABLE SUSPICION IN ORDER TO JUSTIFY AN INTRUSION UNRELATED TO THE PURPOSE OF THE INITIAL STOP.

AUTHORITIES: Hiibel v. Sixth Judicial District Court of Nevada, Humboldt County,124 S.Ct 2451 (June 21, 2004)(police may require a suspect to disclose his name in the course of the stop); Flores v. State, 120 Md.App. 171, 706 A.2d 628 (1998)(do not need a full blown arrest to take the defendant's picture incident thereto); Ferris v. State, 355 Md. 356, 735 A.2d 491 (1999)(second detention requires independent reasonable articulable suspicion); Nathan v. State, 370 Md. 648, 805 A.2d 1086 (2002)(distinguishing Ferris); Green v. State, 145 Md. App. 360, 802 A.2d 1130 (2002)(following and applying Ferris, finding a third detention); King v. State, 193 Md. App. 582, 998 A.2d 397 (2010).

7. INVENTORY

POLICE MAY INVENTORY CONTENTS OF VEHICLE OR POSSESSIONS OF PERSON FOR SAFEKEEPING PROVIDED THE INVENTORY IS NOT A PRETEXT FOR AN INVESTIGATIVE SEARCH.

Officers must follow established police procedures in conducting inventory. Absence of written inventory may invalidate the search.

AUTHORITIES: South Dakota v. Opperman, 428 U.S. 364, 96 S.Ct. 3092, 49 L.Ed.2d 1000 (1976); Illinois v. Lafayette, 462 U.S. 640, 103 S.Ct. 2605, 77 L.Ed.2d 65 (1983)(people); Ciriaga v. State, 57 Md.App. 563, 471 A.2d 320 (1984); State v. Bell, 334 Md. 178, 638 A.2d 107 (1994); Sellman v. State, 152 Md. App. 1, 828 A.2d 803 (2003); Thompson v. State, 192 Md. App. 653, 995 A.2d 1030 (2010).

8. SEARCH INCIDENT TO ARREST
a. GENERALLY

POLICE OFFICER MAY, PURSUANT TO A LAWFUL ARREST, SEARCH THE PERSON ARRESTED, AND CONTAINERS ASSOCIATED WITH THE PERSON, FOR WEAPONS IN THE AREA WITHIN THE ARRESTEE'S IMMEDIATE CONTROL TO PROTECT THE SAFETY OF THE OFFICER AND OTHERS, AND FOR EVIDENCE, TO PREVENT ITS DESTRUCTION OR CONCEALMENT.

i. Lawful custodial arrest

A VALID CHIMEL SEARCH REQUIRES A LAWFUL CUSTODIAL ARREST

AUTHORITY: Knowles v. Iowa, 525 U.S. 113, 119 S.Ct. 484, 142 L.Ed.2d 492 (1998)(no search incident to citation allowed where defendant is not arrested, even where statute authorizes arrest); Daugherty v. State, 40 Md.App. 535, 392 A.2d 1165(1978)(Game Law citation not an in custody arrest); Howard v. State, 112 Md.App. 148, 684 A.2d 491 (1996); State v. Evans, 352 Md. 496, 723 A.2d 423, cert. denied, 528 U.S. 833, 120 S. Ct. 310, 145 L.Ed.2d 77 (1999)(irrelevant that defendant was released after arrest and charged later).

To determine if custodial arrest has occurred, the court will look to an officer's intent, as evidenced by his objective conduct and his subjective state of mind, to determine if the that officer intended to take the individual into custody.

AUTHORITIES: Belote v. State, 411 Md. 104, 981 A.2d 1247 (2009)(search of

pockets of suspect where officer declined to take him into custody at the time (because officer on bike patrol) but instead issued arrest warrant two months later, not a search incident to custodial arrest); Canela v. State, 193 Md. App. 259, 997 A.2d 793 (2010)(allowing the defendants to ride in a police car unrestrained and to enter the police station and the holding cells, again while unrestrained, and allowing them to wait at police headquarters in a room with the door open, it was clear by the objective conduct of the police officers that they did not intend to arrest defendants); Elliott v. State, 417 Md. 413, 10 A.3d 761 (2010)(hard take-down and handcuffing as he walked away from his vehicle to be an arrest where the officers' testimony indicated that they believed Elliott to be under arrest).

ii. Limited to the area of the defendant's immediate control

POLICE MAY SEARCH THE AREA COMMONLY REFERRED TO AS THE "WINGSPAN", AREA WITHIN THE LUNGE, REACH OR GRASP OF THE ARRESTEE, INCLUDING CLOSED CONTAINERS, THE AREA WITHIN WHICH A PERSON MAY GRAB FOR WEAPON OR DESTROY EVIDENCE.

AUTHORITIES: Chimel v. California, 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969); Howell v. State, 271 Md. 378, 318 A.2d 189 (1974).

iii. Made substantially contemporaneous with the arrest

MAY OCCUR NOT ONLY AT THE TIME AND PLACE OF THE ARREST BUT HOURS LATER AT THE STATION AFTER THE ARREST.

AUTHORITY: Conboy v. State, 155 Md.App. 353, 843 A.2d 216 (2004)(as long as the police have probable cause to arrest before they search the arrestee, it is irrelevant whether the search precedes the arrest or vice versa).

However, cases distinguish between searches incident to arrest of "luggage or other personal property not immediately associated with the person of the arrestee" where time and proximity requirements are fairly strict and searches of the person and articles "immediately associated with the person of the arrestee" for which time requirements are not as strict.

AUTHORITIES: Illinois v. Lafayette, 462 U.S. 640, 103 S.Ct. 2605, 77 L.Ed. 65 (1983); Anderson v. State, 78 Md.App. 471, 553 A.2d 1296 (1989); Colvin v. State, 299 Md. 88, 472 A.2d 953 (1984); Holland v. State, 122 Md.App. 532, 713 A.2d 364 (1998); Preston v. State, 141 Md.App. 54, 784 A.2d 601 (2001)(search

three hours after arrest of car towed to police garage held invalid).

b. AUTOMOBILE

THE INTERIOR COMPARTMENT OF THE VEHICLE AND ANY CONTAINERS, MAY BE SEARCHED, CONTEMPORANEOUSLY TO A LAWFUL ARREST OF ANY OF THE OCCUPANTS, WITHOUT A WARRANT ONLY IF THE ARRESTEE IS WITHIN REACHING DISTANCE OF THE PASSENGER COMPARTMENT AT THE TIME OF THE SEARCH OR IT IS REASONABLE TO BELIEVE THE VEHICLE CONTAINS EVIDENCE OF THE OFFENSE OF ARREST.

AUTHORITIES: Arizona v. Gant, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009).

9. PROTECTIVE SWEEPS

IN CONJUNCTION WITH THE LAWFUL ARREST OF A SUSPECT THE POLICE MAY CONDUCT A LIMITED PROTECTIVE SWEEP OF OTHER PARTS OF THE HOME, IF THE OFFICER HAS A REASONABLE BELIEF BASED ON SPECIFIC AND ARTICULABLE FACTS THAT THE AREA TO BE SWEPT HARBORS AN INDIVIDUAL POSING A DANGER TO THOSE ON THE ARREST SCENE.

AUTHORITY: Maryland v. Buie, 494 U.S. 325, 110 S.Ct. 1093, 108 L.Ed.2d 271 (1990); Murphy v. State, 192 Md. App. 504, 995 A.2d 783 (2010)(even where the arrest occurred outside of the apartment, the police had reason to believe that an individual posing a danger to the officers was in the apartment and protective sweep permissible).

10. WARRANTLESS ARRESTS OF PERSONS
a. GENERALLY

GENERALLY, AN ARREST WARRANT IS NOT NEEDED TO ARREST A PERSON IN A PUBLIC PLACE WHERE THERE IS PROBABLE CAUSE TO BELIEVE THE INDIVIDUAL HAS COMMITTED A FELONY, OR WHERE THE INDIVIDUAL HAS COMMITTED AN MISDEMEANOR IN THE PRESENCE OF THE OFFICER. A SEARCH WARRANT IS NEEDED TO ARREST A PERSON IN A THIRD PARTY'S HOME.

AUTHORITIES: Atwater v. Lago Vista, 532 U.S. 318, 121 S.Ct. 1536, 149 L.Ed.2d 549 (2001)(The Fourth Amendment does not prohibit an arrest for a fine only offense, e.g. seatbelt violation); Steagold v. United States,451 U.S. 204, 101 S.Ct. 1642, 68 L.Ed.2d 38 (1981); Davenpeck v. Alford, 125 S.Ct. 588 (Dec. 13, 2004)(the criminal offense for which there was probable cause does not have to be "closely related" to the offense stated at the time of arrest); Maryland Code Ann.,

Art. 27, §§ 594B, 602A; State v. Wiegmann, 350 Md. 585, 714 A.2d 841 (1998)(a master lacks authority to order an arrest for failure to pay child support); Torres v. State, 147 Md.App.83, 807 A.2d 780 (2002)(arrest must be made with "reasonable promptness"); Haley v. State, 398 Md. 106, 919 A.2d 1200 (2007)(based on the totality of the circumstances the officer had probable cause to arrest the Appellant without a warrant); Virginia v. Moore, 128 S. Ct. 1598 (2008) (Officer did not violate the Fourth Amendment by arresting defendant because there was probable cause to believe he had violation state law, even though the offense he was arrested for was a misdemeanor for which the officer should have issued a summons rather than make an arrest); Stokeling v. State, 189 Md. App. 653, 985 A.2d 175 (2009)(information obtained from the pat down (the bag felt in his pocket and resisting spreading his legs) and the residue in the car together amount to probable cause to believe defendant in possession of narcotics); Williams v. State, 188 Md. App. 78, 981 A.2d 46 (2009)(Probable cause to arrest where the officer has specialized knowledge and experience; hand to hand exchange observed in "open air drug market;" and the items involved in the exchange were concealed so the officer could not tell whether it was contraband); Donaldson v. State, 416 Md. 467, 7 A.3d 84 (2010)(probable cause to arrest where suspect observed concealing items in the rear of his pants, exchanging those unidentified item or items for money in a corner by an alleyway in a high drug area); Elliott v. State, 417 Md. 413, 10 A.3d 761 (2010)(CI's tip alone did not amount to probable cause where the tip contained some inaccurate (Elliott's height) and unverified information (Elliott's name and presence of accent) and the officers did not verify that Elliott was engaged in illegal activity); Allen v. State, —A.3d—, 2011 WL 338440 (Md. App. February 4, 2011)(probable cause to arrest Smith after observing him approach the car with Allen and other men as a drug transaction occurred; the incident occurred in a high drug crime area; and the detective had previously arrested him for drug distribution); Jones v. State, 194 Md. App. 110, 3 A.3d 465 (2010)(officer had probable cause to arrest for trespass without confirmation that suspect was banned from entering the property posted against trespass).

i. Some specific instances

AUTHORITIES: Maryland v. Pringle, 124 S.Ct.795 (2004)(where police had probable cause to believe someone in small vehicle possessed cocaine, and there was no evidence to narrow suspicion to one passenger, probable cause existed to arrest all three passengers); Johnson v. State, 142 Md.App. 172, 788 A.2d 678 (2002)("'powerful' and 'overwhelming' odor of marijuana" and bud of marijuana clearly visible on gearshift within arm's reach of the passenger, constituted probable cause to arrest the passenger for possession of marijuana); State v. Wallace, 372 Md. 137, 812 A.2d 291 (2002)(a canine "alert" to drugs in the vehicle, without more, does not constitute sufficient probable cause to arrest the

passengers of the vehicle); Larroca v. State, 164 Md.App. 460, 883 A.2d 986 (2005)(probable cause to arrest passenger with marijuana under his seat, within his reach, when evidence showed that all passengers were engaged in mutual use and enjoyment of marijuana).

b. LIMITS

WHERE AN INDIVIDUAL IS ARRESTED WITHOUT A WARRANT AND DETAINED, A DETENTION OVER 48 HOURS WITHOUT JUDICIAL REVIEW PRESUMPTIVELY VIOLATES THE FOURTH AMENDMENT

A subsequently obtained confession may be subject to suppression.

AUTHORITIES: Gerstein v. Pugh, 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975); County of Riverside v. McLaughlin, 500 U.S. 44, 111 S.Ct. 1661, 114 L.Ed.2d 49 (1991); Powell v. Nevada, 511 U.S. 79, 114 S.Ct. 1280, 128 L.Ed.2d 1 (1994).

c. STOP v. ARREST

WHETHER A DETENTION IS A STOP OR AN ARREST DEPENDS UPON ALL OF THE FACTS AND CIRCUMSTANCES

AUTHORITIES: Johnson v. State, 154 Md.App. 286, 839 A.2d 769 (2003)(police officer's detention of the defendant was an investigatory stop for which reasonable suspicion was required rather than an arrest for which probable cause was required when the detention lasted no longer than ten minutes while the officer waited for a report from other officers regarding the status of individuals suspected of buying drugs from the defendant, when defendant was not removed from the location during the detainment and instead was told to keep his hands on the steering wheel of his car, and the police cruiser was blocking the door of defendant's car); Cotton v. State, 386 Md. 249, 872 A.2d 87 (2005)(defendant was not de facto arrested either at the time of detention or after 15-20 minutes of detention despite being handcuffed, placed under guard and given Miranda warnings); Cross v. State, 165 Md.App. 164, 884 A.2d 1236 (2005)(defendant was detained but not arrested when he was placed in handcuffs near his car during search of his vehicle for weapons); Elliott v. State, 417 Md. 413, 10 A.3d 761 (2010)(hard take down and handcuffing was arrest); Canela v. State, 193 Md. App. 259, 997 A.2d 793 (2010); Jones v. State, 194 Md. App. 110, 3 A.3d 465 (2010); Moore v. State, 195 Md. App. 695, 7 A.3d 617 (2010)(detaining and transporting a person (even in handcuffs) to a police precinct for the sole purposes of conducting a strip search pursuant to a warrant does not constitute an "arrest" of the person).

II. FOURTH AMENDMENT APPLICABILITY

A. PRIVATE PERSON SEARCHING

1. REAL PRIVATE PERSON

SEARCHES AND SEIZURES BY PRIVATE PERSONS ARE NOT SUBJECT TO THE FOURTH AMENDMENT.

In some cases a private person's conduct will be sufficiently connected with the conduct of the police to be considered state action.

AUTHORITIES: United State v. Jacobsen, 466 U.S. 109, 104 S.Ct. 1652, 80 L.Ed.2d 85 (1984); Waters v. State, 320 Md. 52, 575 A.2d 1244 (1990)(private security guard not state action); State v. Collins, 367 Md. 700, 790 A.2d 660 (2002)(conduct of bail bondsman in concert with police held to be state action).

2. EXTRATERRITORIAL STOP OR ARREST BY POLICE OFFICER

EXTRATERRITORIAL SEARCHES AND SEIZURES BY POLICE OFFICERS MAY BE SUBJECT TO THE FOURTH AMENDMENT WHERE EVIDENCE IS OBTAINED ILLEGALLY UNDER COLOR OF LAW.

Police officers outside of their jurisdiction have no police powers, however they may make citizen's arrests for misdemeanors which occur in their presence which amount to a breach of the peace, where there is probable cause to believe an individual committed a felony, or where there is some authority granted by statute or otherwise to pursue the suspected offender from the officer's jurisdiction into another jurisdiction. If indicia of police authority, such as lights and siren, and uniform etc., are used by the police officer, he or she may be acting under color of law. Any evidence which is obtained as a result of the illegal use of police power may be subject to suppression. The extent of police authority to stop and/or arrest outside of their jurisdiction may be determined by statute e.g. Art. 27, § 602B, and/or a combination of statute and agreement, e.g. University of Maryland Police, Maryland National Capitol Park and Planning Police.

AUTHORITIES: Stevenson v. State, 287 Md. 504, 413 A.2d 1340 (1980); Gattus v. State, 105 A.2d 661 (1954); Wright v. State, 58 Md.App. 447, 473 A.2d 530 (1984); Boddie v. State, 6 Md.App. 523, 252 A.2d 290 (1969); Hutchinson v. State, 38 Md.App. 160, 380 A.2d 232 (1977), cert. denied, 282 Md. 734 (1978); Boston v. Baltimore County Police Dept., 357 Md. 393, 744 A.2d 1062 (2000)(interpreting Article 27, § 594A); Gattus v. State, 204 Md. 589, 105 A.2d 661 (1954)(search and seizure of vehicle outside jurisdiction held invalid); Brown v. State,

132 Md.App. 250, 752 A.2d 620 (2000)(seizure of vehicle outside Maryland may be legal if search occurs in Maryland); United States v. Beall, 581 F.2d 1457, 1463 (D. Md. 1984), aff'd without opinion, 767 F.2d 913 (4th Cir. 1985); State v. Shipman, 370 So. 2d 1195 (Fla. App. 1979); City of Wenatchee v. Durham, 718 P.2d 819, 821 (Wash. App. 1986); United States v. Foster, 566 F. Supp. 1403 (D.D.C. 1983); Settle v. State, 679 S.W.2d 310, 320 (Mo. App. 1984); Commonwealth v. LeBlanc, 551 N.E.2d 906, 909 (Mass. 1990); Commonwealth v. Fiume, 436 A.2d 1001, 1008 (Pa. 1981). State v. Longlois, 374 So.2d 1208 (1979); Commonwealth v. Anzalone, 410 A.2d 838 (Pa.Super. 1979); People v. Martin, 36 Cal. Rptr. 924 (Cal.App. 1964); Collins v. State, 143 So.2d 700 (Fla.App.), cert. den., 148 So.2d 280 (1962); Henson v. State, 49 S.W.2d 463 (Tex.Crim.App. 1932); District of Columbia v. Perry, 215 A.2d 845 (D.C. 1966); Irwin v. State Department of Motor Vehicles, 517 P.2d 619 (Wash. App. 1974); Commonwealth v. Grise, 496 N.E.2d 162 (Mass. 1986); City of Cincinnati v. Alexander, 375 N.E.2d 1241 (Ohio 1978); Commonwealth v. Gullick, 435 N.E.2d 348, 350-51 (Mass. 1982); Seip v. State, 153 Md.App. 83, 835 A.2d 187 (2003)(officer may make an extraterritorial stop under the doctrine of fresh pursuit); Brown v. State, 153 Md.App. 544, 837 A.2d 956 (2003)(presence of federal marshals when Baltimore City officers executed search warrant out of their jurisdiction made search and seizure lawful); Daniels v. State, 172 Md.App., 913 A.2d 617 (2006)(Md. officers conducted legal search pursuant to West Virginia warrant when collaborating with West Virginia officers).

The Maryland Uniform Act on Fresh Pursuit authorizes officers from other jurisdictions to pursue suspected felons into the State of Maryland.

AUTHORITY: Bost v. State, 406 Md. 341, 958 A.2d 356 (2008).

3. OFF-DUTY POLICE OFFICER

THE FOURTH AMENDMENT MUST BE APPLIED TO THE CONDUCT OF AN OFF-DUTY POLICE OFFICER WHENEVER THE OFFICER STEPS OUTSIDE THE SPHERE OF LEGITIMATE PRIVATE ACTION. WHETHER STATE ACTION EXISTS IN A GIVEN CASE IS NOT MEASURED BY THE PRIMARY OCCUPATION OF THE ACTOR, BUT BY THE CAPACITY IN WHICH HE [OR SHE] ACTS AT THE TIME IN QUESTION.

AUTHORITY: In re Albert S., 106 Md.App. 376, 664 A.2d 476 (1995); Harrod v. State, 192 Md. App. 85, 993 A.2d 1113 (2010), cert. granted, 415 Md. 337, 1 A.3d 467 (2010).

B. PUBLIC PLACE

PERSONS AND POSSESSIONS IN PUBLIC PLACES HAVE A REDUCED EXPECTATION

OF PRIVACY.

Probable felons may be arrested without a warrant while in a public place. Searches on private property that occur outside the curtilage do not implicate the Fourth Amendment.

AUTHORITIES: Warden v. Hayden, 387 U.S. 294, 87 S.Ct. 1642, 18 L.Ed.2d 782 (1967); Oliver v. United States, 466 U.S. 170, 104 S.Ct. 1735, 80 L.Ed.2d 214 (1984); Hester v. United States, 265 U.S. 57, 44 S.Ct. 445, 68 L.Ed. 898 (1924).

C. SCHOOLS

1. IN GENERAL

THE STANDARD FOR A SEARCH IN THE PUBLIC SCHOOL IS ARTICULABLE SUSPICION WHEN THE SEARCH IS CONDUCTED BY PUBLIC SCHOOL AUTHORITIES. REASONABLENESS OF A SEARCH CONDUCTED BY A PUBLIC SCHOOL AUTHORITY, AS OPPOSED TO THAT OF ONE CONDUCTED BY AN INVESTIGATIVE POLICE OFFICER, IS JUDGED BY THE ARTICULABLE SUSPICION STANDARD OF TERRY V. OHIO, 392 U.S. 1, 88 S.Ct. 1868, 20 L.ED.2 889 (1968).

The reason given for application of a lesser standard is that the school authority is not a trained police officer concerned primarily with the discovery of evidence of crime and that the mission of the school authority is to protect the health and welfare of the entire school community.

The search will be permissible when the measures taken are reasonably related to the objectives of the search and are not excessively intrusive in light of the age and sex of the student and the nature of the alleged infraction. A school search requires a reasonable suspicion of danger or of resort to underwear for hiding evidence of wrongdoing to justify a search leading to exposure of intimate parts.

AUTHORITIES: New Jersey v. T.L.O., 469 U.S. 325, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985); In Re: Patrick Y., 358 Md. 50, 746 A.2d 405 (2000)(search of all lockers in school was reasonable under all facts and circumstances; In Re Devon T., 85 Md.App. 674, 584 A.2d 1287 (1991); Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); Safford Unified School District #1, et al. v. Redding, 129 S. Ct. 2633, 174 L. Ed. 2d 354 (2009)(when assessing the degree of intrusiveness of the search it will be deemed permissible when the measures taken are reasonably related to the objectives of the search).

2. URINE TESTING

STUDENTS ARE SUBJECT TO SUSPICIONLESS URINE TESTING FOR DRUGS WHERE

THERE IS SOME SHOWING OF A DRUG PROBLEM, NOT NECESSARILY PERVASIVE, WHERE THERE IS A MINIMAL INTRUSION ON PRIVACY.

The existence of a drug problem among student athletes was not crucial to the Vernonia decision. The Court cited more important factors were the limited nature of the student's privacy interest; the "minimally intrusive nature of the sample collection and the limited uses to which the test results are put"; and "the nature and immediacy of the government's concerns and the efficacy of the Policy in meeting them" in upholding a urine testing requirement for all students participating in extracurricular activities.

AUTHORITIES: Vernonia School District 47J v. Acton, 515 U.S.646, 115 S.Ct.2386, 132 L.Ed.2d 564 (1995)(suspicionless urine testing for drugs for student athletes held not to violate the Fourth Amendment); Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls, 536 U.S.822, 122 S.Ct. 2559, 153 L.Ed.2d 735 (2002)(suspicionless urine testing for all extracurricular activities did not violate the Fourth Amendment).

D. PRISONS

PRISONERS DO NOT HAVE A LEGITIMATE EXPECTATION OF PRIVACY IN THEIR CELLS - OR CLOTHING.

AUTHORITIES: Hudson v. Palmer, 468 U.S. 517, 104 S.Ct. 3194, 82 L.Ed.2d 393 (1984); Wallace v. State, 373 Md. 69, 816 A.2d 883 (2003)(clothing); Carter v. State, 149 Md.App. 509, 817 A.2d 277 (2003)(personal papers- although violation of Sixth Amendment was found); McFarlin v. State, 409 Md. 391, 975 A.2d 862 (2009)(inmate at MCAC did not have objectively reasonable expectation of privacy in outgoing mail); Sparkman v. State, 184 Md. App. 716, 968 A.2d 162 (2009).

E. HOSPITALS

WHERE A HOSPITAL ACTS IN CONJUNCTION WITH POLICE TO TEST PATIENTS FOR PRESENCE OF DRUGS IN THEIR URINE AND TO DISCLOSE THE RESULTS TO POLICE WITHOUT THE PATIENT'S CONSENT, THE FOURTH AMENDMENT IS VIOLATED.

The test is deemed a search and the disclosure to police without consent is held unreasonable.

AUTHORITY: Ferguson v. City of Charleston, 532 U.S. 67, 121 S.Ct. 1281, 149 L.Ed.2d 205 (2001).

F. PROBATIONERS

PERSONS WHO SIGN A PROBATION AGREEMENT AGREEING TO BE SUBJECT TO A SEARCH WITHOUT A WARRANT MAY BE SUBJECT TO A SEARCH WITHOUT A WARRANT.

It is not necessary that the purpose of the search be related to the probation as opposed to an investigatory search.

AUTHORITY: United States v. Knights, 534 U.S. 112, 122 S.Ct. 587, 151 L.Ed.2d 497 (2002); Samson v. California, 126 S.Ct. 2193 (2006)(suspicionless search of a known California parolee conducted pursuant to California law which requires that all parolees agree to be subject to search or seizure at anytime did not violate the Fourth Amendment).

G. NO DETENTION

THE FOURTH AMENDMENT IS NOT IMPLICATED IF PERSON IS FREE TO LEAVE AND NOT ANSWER QUESTIONS. A SEIZURE OCCURS WHEN AN INDIVIDUAL SUBMITS TO THE POLICE AUTHORITY, INTENTIONALLY APPLIED.

The cases have mentioned slightly different standards for determining whether a seizure has occurred. The objective standard is whether a reasonable person would conclude that they were free to leave. Royer. The subjective standard is whether the police have obtained control over a person or object through means intentionally applied. Brower. In Bostick, the Supreme Court stated the test as follows:

> We adhere to the rule that, in order to determine whether a particular encounter constitutes a seizure, a court must consider all the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers' requests or otherwise terminate the encounter.

AUTHORITY: Florida v. Royer, 460 U. S. 491, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983); Brower v. County of Inyo, 489 U.S. 593, 109 S.Ct. 1378, 103 L.Ed.2d 628 (1988)(use of deadly roadblock to detain driving suspect constitutes a "seizure" for Fourth Amendment purposes); California v. Hodari D., 499 U.S. 621, 111 S.Ct. 1547, 113 L.Ed.2d 690 (1990); Florida v. Bostick, 501 U.S. 429, 111 S.Ct. 2382, 115 L.Ed.2d 389 (1991)(no per se rule on a bus); United States v. Drayton, 536 U.S. 194, 122 S.Ct. 2105, 153 L.Ed.2d 242 (2002)(police do not have to tell a bus passenger that he may refuse a search for drugs); Reynolds v. State, 130 Md.App. 304, 746 A.2d 422 (1999)(under the facts of this case a detention did occur, not a "mere

accosting"); Jones v. State, 139 Md.App. 212, 775 A.2d 421 (2001)(mere accosting); Trott v. State, 138 Md.App. 89, 770 A.2d 1045 (2001)(mere accosting which ripened into reasonable articulable suspicion); Scott v. State, 366 Md. 121, 782 A.2d 862 (2001)(approving "knock and talk" procedure where police randomly knocked on motel room doors to question occupants in hopes that occupants would allow police to enter and ultimately consent to a search); Swift v. State, 393 Md. 139, 899 A.2d 867 (2006)(officer's testimony that he was conducting an investigatory field stop, along with the warrants check lead to the conclusion that Appellant was seized).

H. NO SEARCH

A SEARCH OCCURS WHEN POLICE INTRUDE INTO AN AREA IN WHICH AN INDIVIDUAL HAS A LEGITIMATE EXPECTATION OF PRIVACY.

Certain police conduct, such as shining a flashlight into a dark vehicle at night, is not considered to be a search, and does not implicate the Fourth Amendment. Conversely, picking up a stereo to read the serial number to see if it is stolen, while legitimately inside premises for a different reason, is a search within the meaning of the Fourth Amendment. Using a thermal imaging device to detect the presence of heat with in a building to determine whether the resident is growing marijuana is a search.

AUTHORITIES: Kyllo v. United States, 533 U.S. 27, 121 S.Ct. 2038, 150 L.Ed.2d 94 (2001)(use of thermal imaging device is a search); Katz v. United States, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967); compare Florida v. Riley, 488 U.S. 445, 109 S.Ct. 693, 102 L.Ed.2d 835 (1989)(naked eye observation from helicopter 400 feet off ground not a search) with Arizona v. Hicks, 480 U.S. 321, 107 S.Ct. 1149, 94 L.Ed.2d 347 (1987)(picking up a stereo to read the serial number is a search) and United States v. Place, 462 U.S. 696, 103 S.Ct. 2637, 77 L.Ed.2d 110 (1983)(dog sniff of luggage for narcotics not a search); Texas v. Brown, 460 U.S. 730, 103 S.Ct. 1535, 75 L.Ed.2d 502 (1983)(flashlight); Fitzgerald v. State, 384 Md. 484, 864 A.2d 1006 (2004)(a dog sniff of the exterior of a residence is not a search under the 4th Amendment); Cruz v. State, 168 Md.App. 149, 895 A.2d 1076 (2006)(drug dog jumping up on vehicle and sticking its nose through an open window did not violate of the Fourth Amendment); U.S. v. Mowatt, 513 F.3d 395 (4th Cir. 2008)(officers ordering Mowatt to open the door to have visual contact was a search under the Fourth Amendment); Jackson v. State, 2010 WL 376418 (Md. App. February 4, 2010)(sniffing of the dog of exterior of the vehicle not a search within the Fourth Amendment).

I. OUTSIDE THE UNITED STATES

1. TERRITORIAL WATERS

BOATS ON TERRITORIAL WATERS MAY BE BOARDED AND SEARCHED WITHOUT ANY SUSPICION OF WRONGDOING

AUTHORITY: United States v. Villamonte-Marquez, 462 U.S. 579, 103 S.Ct. 2573, 77 L.Ed.2d 22 (1983).

2. BORDER SEARCHES

BORDER SEARCHES ARE PERMITTED WITHOUT REASONABLE SUSPICION OR PROBABLE CAUSE

However, lengthy detentions at the border are subject to a requirement of reasonable suspicion.

AUTHORITIES: United States v. Ramsey, 431 U.S. 606, 97 S.Ct. 1972, 52 L.Ed.2d 617 (1977)(search of international mail); United States v. Montoya de Hernandez, 473 U.S. 531, 105 S.Ct. 3304, 87 L.Ed.2d 381 (1985)(detention of suspected alimentary canal smuggler); United States v. Flores-Montano, 541 U.S. 149, 124 S.Ct. 1582, 158 K,Ed,2d 311 (2004)(government does not have to have articulable reasonable suspicion to search a fuel tank at the border); Davis v. State, 133 Md.App. 260, 754 A.2d 1111 (2000).

3. INTERNATIONAL WATERS AND OTHER COUNTRIES

THE FOURTH AMENDMENT DOES NOT APPLY OUTSIDE THE UNITED STATES.

AUTHORITY: United States v. Verdugo-Urquidez, 494 U.S. 259, 110 S.Ct. 1056, 108 L.Ed.2d 222 (1990)(Fourth Amendment does not apply to search of non-resident aliens in foreign countries); United States v. Alvarez-Machain, 504 U.S. 655, 112 S.Ct. 2188, 119 L.Ed.2d 441 (1992)(forcible abduction of Mexican citizen from Mexico to United States did not implicate the Fourth Amendment).

J. COMMUNITY CARETAKING FUNCTION

WHEN POLICE CROSS A THRESHOLD NOT IN THEIR CRIMINAL INVESTIGATORY CAPACITY, BUT AS PART OF THEIR COMMUNITY CARETAKING FUNCTION, STANDARD FOR ASSESSING FOURTH AMENDMENT PROPRIETY OF SUCH CONDUCT IS WHETHER THEY POSSESSED A REASONABLE BASIS FOR DOING WHAT THEY DID; QUESTION IS WHETHER THERE WERE REASONABLE GROUNDS TO BELIEVE THAT SOME KIND OF AN EMERGENCY EXISTED, OR WHETHER THERE

WAS EVIDENCE WHICH WOULD HAVE LED PRUDENT AND REASONABLE OFFICIAL TO SEE A NEED TO ACT, AND OFFICER MUST BE ABLE TO POINT TO SPECIFIC AND ARTICULABLE FACTS WHICH, TAKEN WITH RATIONAL INFERENCES FROM THOSE FACTS, REASONABLY WARRANT THE INTRUSION.

Police entry of house without warrant was proper where police reasonably believed a burglary was in progress. But a stop based on single brief crossing of lane marker was not.

AUTHORITIES: Rowe v. State, 363 Md. 424, 769 A.2d 879 (2001); State v. Alexander, 124 Md.App. 258, 721 A.2d 275 (1998); Lewis v. State, 398 Md. 349, 920 A.2d 1080 (2007)(community caretaking function was not applicable to justify a traffic stop where there was no evidence presented that the passenger was in danger); Thompson v. State, 192 Md. App. 653, 995 A.2d 1030 (2010)(Police officer was justified in taking the vehicle into custody in furtherance of their community caretaking function based on the totality of the circumstances: lack of proper registration, the conflicting VIN numbers, failure of Thompson to provide license information on demand, and the fact that the passenger was no longer on the scene and not available to drive the vehicle.).

K. STANDING

THE TEST TO DETERMINE STANDING IS WHETHER THE PERSON CHALLENGING THE SEARCH HAS A REASONABLE EXPECTATION OF PRIVACY IN THE PLACE OR THING SEARCHED.

AUTHORITY: Rakas v. Illinois, 439 U.S. 128, 99 S.Ct. 421, 58 L.Ed.2d 387 (1987); Rawlings v. Kentucky, 448 U.S. 98, 100 S.Ct. 2556, 65 L.Ed.2d 633 (1980).

1. RESIDENCE, OFFICES, MOTELS

a. OWNER/LESSEE

A BONA FIDE RESIDENT OF THE PREMISES, WHETHER OWNER OR LESSEE WILL ALWAYS HAVE STANDING TO CHALLENGE THE SEARCH.

AUTHORITY: State v. Rowlett, 159 Md.App. 386, 859 A.2d 303 (2004)(defendant's mother, the owner of the house, had common and apparent authority to consent to the search of the room that defendant was using).

However, the Court of Special Appeals denied standing to the manager of an X rated video rental store, where the videos seized were on public display. There was no legitimate expectation of privacy in the contents of the videos.

AUTHORITY: Hicks v. State, 109 Md.App. 113, 674 A.2d 55 (1996).

b. GUESTS/VISITORS

OVERNIGHT GUESTS HAVE STANDING TO CHALLENGE A SEARCH.

A mere visitor may not have standing to challenge the search of the premises, but may have standing to challenge the search of a particular object if the visitor can show a reasonable expectation of privacy in the item.

AUTHORITIES: Minnesota v. Olson, 493 U.S. 91, 110 S.Ct. 1684 (1990); Minnesota v. Carter, 525 U.S. 83, 119 S.Ct. 469, 142 L.Ed.2d 373 (1999)(short time guests); Thompson v. State, 62 Md.App. 190, 488 A.2d 995 (1985); Owens v. State, 322 Md. 616, 589 A.2d 59 (1991); Simpson v. State, 121 Md.App. 263, 708 A.2d 1126 (1998)(not other guests); Alston v. State, 159 Md.App. 253, 858 A.2d 1100 (2004)(no reasonable expectation of privacy for an occasional overnight guest, when not a guest on the night in question); State v. Savage, 170 Md.App. 149, 906 A.2d 1054 (2006)(Appellant, who was not an overnight guest, did not have a reasonable expectation of privacy in his co-defendant's mother's house).

c. CURTILAGE

STANDING TO OBJECT EXTENDS TO ITEMS WITHIN THE CURTILAGE OF THE HOME.

Where garbage is placed outside the curtilage and is picked up by a trash collector, the owner loses a legitimate expectation of privacy. Where it is inside the curtilage and not yet picked up, the legitimate expectation of privacy remains.

AUTHORITY: California v. Greenwood, 486 U.S. 35, 108 S.Ct. 1625, 100 L.Ed.2d 30 (1988); State v. Sampson, 362 Md. 438, 765 A.2d 629 (2001).

2. AUTOMOBILES

a. OWNERS

IF OWNER IS PRESENT AT TIME OF SEARCH, HE WILL HAVE STANDING.

b. DRIVERS

A PERMISSIVE DRIVER WILL HAVE STANDING, BUT A THIEF OR UNAUTHORIZED USER DOES NOT.

AUTHORITY: Ruffin v. State, 77 Md.App. 93, 549 A.2d 411 (1988); Colin v. State, 101 Md.App. 395, 646 A.2d 1095 (1994)(driver not listed on rental agreement has no standing).

c. PASSENGERS

A PASSENGER IN A VEHICLE HAS STANDING TO CHALLENGE THE SEARCH.

AUTHORITY: Brendlin v. California, 127 S.Ct. 2400 (2007)(passenger in a vehicle has standing to challenge the stop of a vehicle under the Fourth Amendment); Bates v. State, 64 Md.App. 279, 494 A.2d 976, (1985); State v.Cheek, 81 Md.App. 171, 567 A.2d 158 (1989); In re Albert S., 106 Md.App. 376, 664 A.2d 476 (1995) .

d. OTHERS

A NON-OWNER MAY HAVE A REASONABLE EXPECTATION OF PRIVACY IN A VEHICLE IF CAN SHOW SUFFICIENT OWNERSHIP-LIKE CONNECTIONS TO THE VEHICLE.

AUTHORITY: Ford v. State, 2009 WL 581573 (Md. App. March 9, 2009)(Defendant had reasonable expectation of privacy in girlfriend's car where he used the car regularly, had a key to the car, used his money to buy the car, and lived in the house where the vehicle was kept).

3. ABANDONED PROPERTY

THERE IS NO EXPECTATION OF PRIVACY IN ABANDONED PROPERTY SO LONG AS THE ABANDONMENT WAS NOT OCCASIONED BY UNLAWFUL POLICE CONDUCT.

Whether or not abandonment has occurred is a factual issue which may be inferred from words, acts, or other circumstances bearing on the issue.

AUTHORITIES: California v. Hodari D., 499 U.S. 621, 111 S.Ct. 1547, 113 L.Ed.2d 690 (1990); Duncan v. State, 281 Md. 247, 378 A.2d 1108 (1977); Stanberry v. State, 343 Md. 720, 684 A.2d 823 (1996); Brummell v. State, 112 Md.App. 426, 685 A.2d 835 (1996); Powell v. State, 139 Md.App. 582, 776 A.2d 700 (2001); Whiting v. State, 160 Md.App. 285, 863 A.2d 1017 (2004)(a squatter, trespasser living in a vacant home did not have a reasonable expectation of privacy under the 4th Amendment), clarified by Court of Appeals in, Whiting v. State, 389 Md. 334, 885 A.2d 785 (2005)(squatter had a subjective expectation of privacy, but no objective expectation of privacy); Williamson v. State, 413 Md. 521, 993 A.2d 626 (2010)(McDonald's cup discarded on floor of the holding cell

was abandoned property).

III. LITIGATING FOURTH AMENDMENT ISSUES

A. APPLICABILITY OF THE EXCLUSIONARY RULE TO VARIOUS PROCEEDINGS

1. CRIMINAL TRIALS

THE EXCLUSIONARY RULE APPLIES IN STATE CRIMINAL PROCEEDINGS.

AUTHORITIES: Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961).

2. FORFEITURE

THE EXCLUSIONARY RULE APPLIES IN FORFEITURE PROCEEDINGS.

Since forfeiture proceedings are considered to be quasi-criminal, the Fourth Amendment exclusionary rule applies.

AUTHORITIES: One 1958 Plymouth Sedan v. Pennsylvania, 380 U.S. 693, 85 S.Ct. 1246, 14 L.Ed.2d 170 (1965); One 1995 Corvette v. Mayor and City Council of Baltimore, 353 Md. 114, 724 A.2d 680, cert. denied, 528 U.S. 927, 120 S.Ct.321, 145 L.Ed.2d 251 (1999).

3. CIVIL PROCEEDINGS

THE FOURTH AMENDMENT EXCLUSIONARY RULE GENERALLY DOES NOT APPLY IN CIVIL PROCEEDINGS.

AUTHORITIES: United States v. Janis, 428 U.S. 433, 96 S.Ct. 3021, 49 L.Ed.2d 1046 (1976).

4. ADMINISTRATIVE PROCEEDINGS

THE FOURTH AMENDMENT EXCLUSIONARY RULE MAY APPLY IN ADMINISTRATIVE PROCEEDINGS, IF THE OFFICER ACTED IN BAD FAITH.

The Court of Appeals has mentioned the following considerations in determining the presence or lack of bad faith (this is not an exclusive list):
(1) whether at the time of the illegal search, the police were aware of the potential effect of using such evidence in civil proceedings;
(2) whether the severity of the consequences of civil proceedings roughly paralleled or exceeded that of the criminal proceedings;

(3) whether a reasonable officer would have believed the search to be a proper one;
(4) whether there was an agreement between the police and another party to pursue the investigation which led to the improperly obtained evidence; and
(5) whether the police had a special interest in the case.

AUTHORITIES: Sheetz v. City of Baltimore, 315 Md. 208, 553 A.2d 1281 (1989); Motor Vehicle Admin. v. Richards, 356 Md. 356, 739 A.2d 58 (1999)(Motor Vehicle Administration hearings).

5. SENTENCING

WHERE EVIDENCE IS ILLEGALLY OBTAINED WITH A VIEW TOWARDS INFLUENCING THE SENTENCE, THE EXCLUSIONARY RULE MAY APPLY AT SENTENCING

AUTHORITY: Logan v. State, 289 Md. 460, 425 A.2d 632 (1981).

6. PAROLE OR PROBATION REVOCATION HEARINGS

THE FOURTH AMENDMENT EXCLUSIONARY RULE DOES NOT APPLY IN PAROLE OR PROBATION PROCEEDINGS.

However, when the officer has acted in bad faith and not as a reasonable police officer would and should act in similar circumstances, the exclusionary rule may apply.

AUTHORITIES: Compare Pennsylvania Board of Probation and Parole v. Scott, 524 U.S.357, 118 S.Ct. 2014, 141 L.Ed.2d 344 (1998) with Chase v. State, 311 Md. 224, 522 A.2d 1348 (1987).

7. GRAND JURY PROCEEDINGS

THE FOURTH AMENDMENT DOES NOT APPLY IN GRAND JURY PROCEEDINGS.

AUTHORITIES: Calandra v. United States, 414 U.S. 338 (1974).

B. MOTIONS TO SUPPRESS ISSUES

1. BURDEN OF PRODUCTION

IN MOST CASES, THE STATE WILL BEAR THE BURDEN OF PRODUCING EVIDENCE, WHETHER THE SEARCH WAS WITH OR WITHOUT A WARRANT.

AUTHORITIES: E.g., Campofreda v. State, 15 Md.App. 693, 292 A.2d 703

(1972)(in some cases, original warrant may be required); State v. Brown, 129 Md.App. 517, 743 A.2d 262 (1999)(best evidence rule does not apply); Herbert v. State, 136 Md.App. 458, 766 A.2d 190 (2001)(where the defendant has a copy of the warrant and application, the defendant has the burden of production); Thompson v. State, 139 Md. App. 501, 776 A.2d 99 (2001)(the court, not the jury, must determine the validity of the warrant); Carter v. State, 367 Md. 447, 788 A.2d 646 (2002)(search incident to arrest was based on an arrest warrant was held valid despite the failure of the State to produce the actual warrant at the suppression hearing, where the suppression motion did not specifically question the existence of or legal defect in the warrant); Johnson v. State, 172 Md.App. 126, 913 A.2d 647 (2006)(defendant properly denied permission to inspect search warrant for unnamed individual who implicated defendant and was mentioned in warrant for defendant's arrest).

2. BURDEN OF PROOF

a. WARRANTLESS SEARCH

THE STATE BEARS THE BURDEN OF PERSUASION WHEN THE SEARCH OR ARREST WAS WITHOUT A WARRANT, AND THE DEFENDANT BEARS THE BURDEN OF PERSUASION WHEN THE SEARCH IS CONDUCTED WITH A WARRANT. THE BURDEN OF PERSUASION IS BY A PREPONDERANCE OF THE EVIDENCE.

Under the Fourth Amendment, warrantless searches are presumptively unreasonable.
AUTHORITIES: State v. Bell, 334 Md. 178, 638 A.2d 107 (1994); Stackhouse v. State, 298 Md. 203, 468 A.2d 333 (1983).

b. REVIEW OF A SEARCH WARRANT

THE REVIEWING COURT DOES NOT ENGAGE IN A *DE NOVO* REVIEW OF WHETHER THE WARRANT CONTAINED PROBABLE CAUSE, BUT RATHER GIVES DEFERENCE TO THE ISSUING MAGISTRATE'S DETERMINATION TO ISSUE THE WARRANT AND DECIDES WHETHER THERE WAS A SUBSTANTIAL BASIS TO SUPPORT THE ISSUANCE OF THE WARRANT.

AUTHORITIES: Illinois v. Gates, 462 U.S. 213, 238-29, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983); State v. Amerman, 84 Md. App. 461, 472-3, 581 A.2d 19 (1990); State v. Coley, 145 Md.App. 502, 805 A.2d 1186 (2002); State v. Riley, 147 Md. App. 113, 807 A.2d 797 (2002)(no-knock provision held valid); Davis v. State, 383 Md. 394, 859 A.2d 1112 (2004)(judicial officer in Maryland does not have the authority to issue a no-knock warrant); State v. Carroll, 383 Md. 438, 859 A.2d 1138 (2004)(upheld Davis); Parker v. State, 402 Md. 372, 936 A.2d 862 (2007)(Hudson v. Michigan does not necessarily overrule the applicable Maryland

law on the knock and announce principle).

3. CIRCUIT COURT

A MOTION TO SUPPRESS MUST BE FILED WITHIN 30 DAYS OF THE DEFENDANT'S FIRST APPEARANCE BEFORE THE COURT. THE SUPPRESSION HEARING IS HELD PRE-TRIAL, AND THE DEFENDANT DOES NOT NEED TO FURTHER OBJECT AT TRIAL.

However, this rule is not applied rigidly when the defendant has not waived counsel. The defendant may request the trial court to reconsider a ruling denying a motion to suppress, but the State may not, since only the State can file an interlocutory appeal. The court has discretion to reopen the evidentiary part of the hearing if it does not impair the ability of the defendant to answer and otherwise receive a fair trial. In exercising its discretion, the court must consider whether: the State deliberately withheld the evidence proffered in order to have it presented at such time as to obtain an unfair advantage by its impact on the trier of facts; whether the proposed evidence is merely cumulative to, or corroborative of, that already offered in chief or whether it is important or essential to a conviction; whether good cause is shown; whether the new evidence is significant; whether the jury would be likely to give undue emphasis, prejudicing the party against whom it is offered; whether the evidence is controversial in nature; and, whether the reopening is at the request of the jury or a party.

AUTHORITIES: Maryland Rule 4-252; Davis v. State, 100 Md. App. 369, 641 A.2d 941 (1994); Pugh v. State, 103 Md. App. 624, 654 A.2d 888 (1995); Long v. State, 343 Md. 662, 684 A.2d 445 (1996)(reconsideration by trial court); Cason v. State, 140 Md. App. 379, 780 A.2d 466 (2000)(discussion of court's discretion to allow additional evidence in a suppression hearing after the State has rested); Stewart v. State, 151 Md. App. 425, 827 A.2d 850 (2003)(trial court did not abuse its discretion in permitting State to re-open the suppression hearing, prior to the trial but before ruling on the motion, to consider additional testimony about whether police had probable cause to arrest defendant).

4. DISTRICT COURT

IN THE DISTRICT COURT SUPPRESSION ISSUES ARE DECIDED DURING THE TRIAL
AUTHORITY: Maryland Rule 4-251; Green v. State, 119 Md.App. 547, 705 A.2d 133 (1998).

5. DEFENDANT'S TESTIMONY

THE DEFENDANT'S TESTIMONY IN A SUPPRESSION HEARING MAY NOT BE USED

BY THE STATE AT TRIAL.

The defendant does not have to forfeit his or her Fifth Amendment right against self incrimination to protect against unreasonable searches and seizures prohibited by the Fourth Amendment. Using the defendant's suppression hearing testimony for impeachment has not been judicially approved.

AUTHORITIES: Simmons v. United States, 390 U.S. 377 (1968); see generally, LaFave, W., Search and Seizure - A Treatise on the Fourth Amendment, (2nd ed. 1987), § 11.2(d)(contains a thorough discussion of judicial comments regarding whether a defendant's suppression testimony may be used for impeachment at trial).

6. FRANKS ISSUES

THE DEFENDANT IS REQUIRED TO ALLEGE AND MAKE A SUBSTANTIAL PRELIMINARY SHOWING THAT "A FALSE STATEMENT KNOWINGLY AND INTENTIONALLY, OR WITH RECKLESS DISREGARD FOR THE TRUTH, WAS INCLUDED BY THE AFFIANT IN THE WARRANT AFFIDAVIT, AND IF THE ALLEGEDLY FALSE STATEMENT IS NECESSARY TO THE FINDING OF PROBABLE CAUSE, THE FOURTH AMENDMENT REQUIRES THAT A HEARING BE HELD AT THE DEFENDANT'S REQUEST."

If someone other than the affiant made the false statement or had a reckless disregard for the truth, it is not a Franks violation.

AUTHORITIES: Maryland Rule 4-252; Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978); Yeagy v. State, 63 Md.App. 1, 491 A.2d 1109 (1985); Emory v. State, 101 Md.App. 585, 647 A.2d 1243 (1985); Edwards v. State, 350 Md. 433, 713 A.2d 342 (1998); Holland v. State, 154 Md.App. 351, 839 A.2d 806 (2003).

7. TAINT HEARINGS

"THE DEFENDANT . . . MAY GO BEHIND THE SEARCH WARRANT AND AFFIDAVIT FOR THE PURPOSE OF SHOWING THAT KNOWLEDGE OF THE FACTS STATED IN THE AFFIDAVIT WAS OBTAINED BY AN ILLEGAL SEARCH MADE BY THE AFFIANT."

The Maryland Rules require a specific allegation that illegally seized evidence was used as probable cause for a subsequent search. Where the Defendant alleges the warrant was tainted by a prior violation of the Fourth Amendment, the court should determine whether probable cause existed after the alleged illegally seized evidence is excised from the application.

AUTHORITIES: Carter v. State, 274 Md. 411, 337 A.2d 415 (1975); Everhart v. State, 274 Md. 459, 337 A.2d 100 (1975); Klingenstein v. State, 330 Md. 402, 624 A.2d 532, cert. denied, 510 U.S. 918, 114 S.Ct. 312, 126 L.Ed.2d 259 (1993); Holmes v. State, 368 Md. 506, 796 A.2d 90 (2002).

8. STANDING

THE STATE IS REQUIRED TO ALLEGE THE DEFENDANT LACKS STANDING, OR STANDING IS WAIVED; IF THE STATE RAISES STANDING THE DEFENDANT BEARS THE BURDEN OF PROVING STANDING.

AUTHORITY: Thompson v. State, 62 Md.App. 190, 488 A.2d 995 (1985).

9. WAIVER

THE DEFENDANT MUST ARTICULATE THE BASIS URGED FOR SUPPRESSION.

When the defendant contests only the search of his person by police exercising a search warrant, evidence seized from the premises is not properly subject to the defendant's motion to suppress

AUTHORITY: Sutton v. State, 128 Md.App. 308, 738 A.2d 286 (1999)

C. WARRANT EXECUTION AND SEARCH/ARREST ISSUES

Md. Code Ann., CP § 1-203 and Md. Rule 4-601 for procedures regarding execution of warrants.

1. UNREASONABLE FORCE

THE USE OF UNREASONABLE FORCE BY THE OFFICER IN EFFECTING AN ARREST VIOLATES THE FOURTH AMENDMENT

While both Supreme Court unreasonable force cases were civil actions under 42 U.S.C. § 1983, where the police use unreasonable force that violates the Fourth Amendment, a good argument can be made for the use of the exclusionary rule.

AUTHORITIES: Brosseau v. Haugen, 125 S.Ct. 596, 73 USLW 3348, 18 Fla. L. Weekly Fed. S 48, (2004)(the deadly force standard is one which depends very much on the facts of each case); Tennessee v. Garner, 471 U.S. 1, 105 S.Ct. 1694, 85 L.Ed.2d 1 (1985)(use of deadly force to prevent escape of apparently unarmed suspected felon violated Fourth Amendment); Brower v. County of Inyo, 489 U.S. 593, 109 S.Ct. 1378, 103 L.Ed.2d 628 (1988)(use of deadly roadblock to detain driving suspect constitutes a "seizure" for Fourth Amendment purposes); County

of Sacramento, et al.,v. Lewis, 523 U.S.833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998)(death of innocent passenger resulting from high speed chase does not implicate the Fourth Amendment); Hines v. French, 157 Md.App. 536, 852 A.2d 1047 (2004)(standard used to determine excessive force is that of a reasonable police officer); Randall v. Peaco, 175 Md.App. 320, 927 A.2d 83 (2007)(Officer did not use excessive force when he shot a schizophrenic victim who posed an immediate threat to officer safety).

2. MISTAKE OF FACT

EXECUTION OF THE WARRANT UPON THE WRONG PREMISES DOES NOT NECESSARILY MANDATE SUPPRESSION OF THE EVIDENCE IF THE OFFICERS REASONABLY AND IN GOOD FAITH EXECUTED THE WARRANT.

Note that the cited Supreme Court case reversed the Maryland Court of Appeals which invalidated the search notwithstanding the officer's honest mistake.

AUTHORITY: Maryland v. Garrison, 480 U.S. 79, 107 S.Ct. 1103, 94 L.Ed.2d 72 (1987); Jackson v. State, 132 Md.App. 467, 752 A.2d 1227 (2000); Mazuz v. Maryland, 442 F.3d 217 (4th Cir.2006)(warrantless entry into student's dormitory room during the course of a drug raid was reasonable under the Fourth Amendment where detective simply made an honest mistake and entered the room next door to the room where he had a valid warrant).

3. KNOCK AND ANNOUNCE

POLICE MUST KNOCK AND ANNOUNCE PRIOR TO ENTERING A PREMISE, BUT THE EXCLUSIONARY RULE DOES NOT APPLY TO A FAILURE TO KNOCK AND ANNOUNCE

The common-law "knock and announce" principle forms a part of the reasonableness inquiry under the Fourth Amendment. The rule is not inflexible. Depending on the facts and circumstances of the particular case, an unannounced entry may be held "reasonable." The Supreme Court left it to the lower courts to flesh out any exceptions to the rule. Exceptions may be: (a) risk of danger to officers; (b) attempt to escape likely; (c) prevent destruction of evidence; (d) prevent harm to occupant; and (e) hot pursuit.

AUTHORITIES: United States v. Banks, 124 S.Ct. 521 (2003)(interval of 15 to 20 seconds from officers' knock and announcement of search warrant until forced entry was reasonable, where officers had reasonable suspicion of exigency of possible destruction of evidence); Wilson v. Arkansas, 514 U.S. 927, 115 S.Ct. 1914, 131 L.Ed.2d 976 (1995); Richards v. Wisconsin,520 U.S. 385, 117 S.Ct. 1416,

137 L.Ed.2d 615 (1997)(no "per se" exception to knock and announce); United States v. Ramirez, 523 U.S. 65, 118 S.Ct. 992, 140 L.Ed.2d 191 (1998)(Fourth Amendment does not hold officers to higher standard where there is a destruction of property); Hudson v. Michigan, 126 S.Ct. 2159 (2006)(violation of the knock and announce rule did not require suppression); Lee v. State, 139 Md.App. 79, 774 A.2d 1183 (2000)(inevitable discovery does not apply to a violation of the "knock and announce" requirement); Goodman v. State, 178 Md. 1, 11 A.2d 635 (1940); Ford v. Baltimore City Sheriff's Office, 149 Md.App. 107, 814 A.2d 127 (2002)(failure to knock and announce violated Fourth Amendment); Davis v. State, 383 Md. 394, 859 A.2d 1112 (2004)(judicial officer in Maryland does not have the authority to issue a no-knock warrant); State v. Carroll, 383 Md. 438, 859 A.2d 1138 (2004)(upheld Davis); Archie v. State, 161 Md.App. 226, 867 A.2d 1120 (2005)(after knocking an announcing, the length of time an officer must wait depends on the size of the area to be searched and destructibility of the evidence to be seized).

4. SCOPE VIOLATIONS

WHERE THE EXECUTION OF THE WARRANT RESULTS IN THE SEIZURE OF ITEMS NOT AUTHORIZED BY THE WARRANT AND NOT AUTHORIZED BY SOME EXCEPTION TO THE WARRANT REQUIREMENT (SUCH AS PLAIN VIEW), THOSE ITEMS SEIZED OUTSIDE THE SCOPE OF THE WARRANT COMMAND CLAUSE ARE SUBJECT TO SUPPRESSION

Although some writers have discussed the concept of flagrant disregard on the part of the police for the commands of the warrant as a basis for suppressing all the fruits of the warrant, even those that were lawfully seized subject to the warrant, neither the Supreme Court nor a Maryland appellate court has recognized flagrant disregard as a basis for total suppression of everything seized under the warrant.

AUTHORITIES: Andresen v. Maryland, 427 U.S. 463, 96 S.Ct. 2737, 49 L.Ed.2d 627 (1976); Klingenstein v. State, 330 Md. 402, 624 A.2d 532, cert. den., 510 U.S.918, 114 S.Ct. 312, 126 L.Ed.2d 259 (1993).

5. PRETEXTUAL SEARCHES AND SEIZURES

THE CONSTITUTIONALITY OF A SEARCH IS TO BE DETERMINED BY APPLYING A STANDARD OF OBJECTIVE REASONABLENESS WITHOUT REGARD TO THE UNDERLYING INTENT OR MOTIVATION OF THE OFFICERS INVOLVED.

In Whren, the Supreme Court dealt the concept of pretextual searches and seizures a death blow. In Thanner, with respect to an arguably pretextual traffic stop, the

Court of Special Appeals ruled that the relevant issue is whether the officer "could have made the stop" not whether the officer "would have made the stop." In Carroll, the Court of Appeals stated that the police can not use exigent circumstances as a pretext to conduct an illegal warrantless search of a residence. In Klingenstein, the Court of Appeals distinguished the Ninth Circuit opinion of Rettig v. United States, 589 F.2d 418 (9th Cir. 1978)(opinion by Kennedy, J.) where the entire search was a "massive subterfuge." Whren did leave room for equal protection challenges to "pretextual" stops.

AUTHORITIES: Whren v. United States, 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.2d 89, (1996); Scott v. United States, 436 U.S. 128, 98 S.Ct. 1717, 56 L.Ed.2d 168 (1978); Abel v. United States, 362 U.S. 217, 80 S.Ct. 683, 4 L.Ed.2d 668 (1960); Carroll v. State, 335 Md. 723, 646 A.2d 376 (1994); Thanner v. State, 93 Md.App. 134, 611 A.2d 1030 (1993); Klingenstein v. State, 330 Md. 402, 624 A.2d 532, cert. den., 510 U.S.918, 114 S.Ct. 312, 126 L.Ed.2d 259 (1993); State v. Funkhouser, 140 Md.App. 696, 782 A.2d 387(2001)(where the court found no legitimate traffic violation, Whren did not save the stop).

6. TIMING OF EXECUTION OF THE SEARCH

THE TIMING OF THE EXECUTION OF A SEARCH WARRANT MAY RAISE A QUESTION OF REASONABLENESS UNDER THE FOURTH AMENDMENT

Where an attorney's office was searched while a client was testifying before a grand jury, it presented a possible Fourth Amendment issue, but not an issue under the Fourteenth Amendment due process clause.

AUTHORITY: Conn v. Gabbert, 526 U.S. 286, 119 S.Ct. 1292 143 L.Ed.2d 399 (1999).

7. PRESENCE OF NEWS MEDIA

THE PRESENCE OF NEWS MEDIA DURING THE EXECUTION OF A SEARCH WARRANT VIOLATES THE FOURTH AMENDMENT

AUTHORITY: Wilson v. Layne, 526 U.S. 603, 119 S.Ct. 1692, 1695, 143 L.Ed.2d 818 (1999).

8. STRIP SEARCH - BODY CAVITY SEARCH

POLICE MUST HAVE ARTICULABLE REASONABLE SUSPICION PERSON VALIDLY UNDER ARREST IS CONCEALING CONTRABAND IN PRIVATE AREA IN ORDER TO CONDUCT BODY CAVITY SEARCH OR STRIP SEARCH

AUTHORITIES: State v. Nieves, 383 Md. 573, 861 A.2d 62 (2004)(no reasonable suspicion at time of strip search); Fontaine v. State, 185 Md. App. 471, 762 A.2d 1027 (2000)(where officer observed first-hand Fontaine's placing something in the area of his buttocks, and when coupled with specific knowledge of where he normally kept such drugs, the search was reasonable); Paulino v. State, 399 Md. 341, 924 A.2d 308 (2007)(no justification for body cavity search, and search was not conducted to protect suspect's privacy); Allen v. State, −A.3d−, 2011 WL 338440 (Md. App. February 4, 2011)(equates a "reach-in" search to a strip search); State v. Harding, 196 Md. App, 384, 9 A.3d 547 (2010); Moore v. State, 195 Md. App. 695, 7 A.3d 617 (2010) (warrant for search of "a person" provided authorization to conduct some degree of body cavity search);.

D. EXCLUSIONARY RULE

ANY EVIDENCE SEIZED IN VIOLATION OF THE FOURTH AMENDMENT MUST BE SUPPRESSED

The exclusionary rule is required to deter illegal police conduct and to protect the privacy of all.

AUTHORITIES: Weeks v. United States, 232 U.S. 383, 34 S.Ct. 341, 58 L.Ed. 652 (1914); Mapp v. Ohio, 367 U.S. 643, 84 S.Ct. 1684, 6 L.Ed.2d 1081 (1961).

No exclusionary rule exists for violations of Article 26 of the Maryland Declaration of Rights.

AUTHORITY: Padilla v. State, 180 Md. App. 210, 9494 A.2d 68 (2008).

1. FRUIT OF THE POISONOUS TREE AND EXCEPTIONS

ALL EVIDENCE OBTAINED AS A RESULT OF AN ILLEGAL SEARCH OR SEIZURE, KNOWN AS "THE FRUIT OF THE POISONOUS TREE," WHICH IS "TAINTED" BY THE PRIMARY ILLEGALITY, MUST BE SUPPRESSED

AUTHORITIES: Kaupp v. Texas, 538 U.S. 626 (2003)(where Petitioner was awakened in the middle of the night in his home by police without probable cause and without a warrant and told "we need to go and talk," confession should be suppressed unless the state could break "the causal connection between the illegality and the confession"); Silverthorne Lumber Co. v. United States, 251 U.S. 385, 40 S.Ct. 182, 64 L.Ed. 2d 319 (1920); Nardone v. United States, 308 U.S. 338, 60 S.Ct. 266, 84 L.Ed. 307 (1939); Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963); Everhart v. State, 274 Md. 459, 337

A.2d 100 (1975); Gibson v. State, 138 Md.App. 399, 771 A.2d 536 (2001)(investigation two and half years after illegal detention not fruit of poisonous tree); Myers v. State, 165 Md.App. 502, 885 A.2d 920 (2005)(exclusionary rule does not apply if there is not a causal link between the police illegality and the subsequently obtained evidence); State v. Savage, 170 Md. App. 149, 906 A.2d 1054 (2006); Wood v. State, 196 Md. App. 146, 7 A.3d 1115 (2010)(before evidence is subject to suppression under the exclusionary rule it must be shown that the evidence was the product of the Fourth Amendment violation at issue not simply recovered after the violation).

a. ATTENUATION

EVIDENCE WHICH IS SEIZED AS A RESULT OF AN ILLEGAL SEARCH, SEIZURE OR ARREST, BUT WHICH IS "ATTENUATED" BY INTERVENING CIRCUMSTANCES IS NOT SUBJECT TO SUPPRESSION

Attenuation is most often applied where a defendant is arrested illegally and later voluntarily confesses. A court should consider whether Miranda warnings were given, the temporal proximity of the arrest and the confession, the presence of intervening circumstances, and the purpose and flagrancy of the official misconduct.

AUTHORITIES: Brown v. Illinois, 422 U.S. 590, 95 S.Ct. 2254, 45 L.Ed.2d 416 (1975); New York v. Harris, 495 U.S. 14, 110 S.Ct. 1640, 109 L.Ed.2d 13 (1990); Kaupp v. Texas, 538 U.S. 626 (2003)(where Petitioner was awakened in the middle of the night in his home by police without probable cause and without a warrant and told "we need to go and talk," confession should be suppressed unless the state could break "the causal connection between the illegality and the confession," despite Miranda); Torres v. State, 95 Md.App. 126, 619 A.2d 566 (1993); Brown v. State, 124 Md.App. 183, 720 A.2d 1270 (1998)(calling in for warrants after stop was over was illegal, but did not lead to later confession); Faulkner v. State, 156 Md.App. 615, 847 A.2d 1216 (2004)(even if the arrest had been unlawful the exclusionary rule would not have applied to his confession because the police had probable cause to arrest and the statement was voluntary); Myers v. State, 395 Md. 261, 909 A.2d 1048 (2006)(discovery of an outstanding warrant during an illegal detention sufficiently attenuated the taint of the illegal traffic stop); Cox v. State, 397 Md. 200, 916 A.2d 311 (2007)(discovery of an outstanding warrant attenuated the taint of what appeared to be an otherwise illegal stop); Cox v. State, 194 Md. App. 629, 5 A.3d 730 (2010)(statements made in Central Booking sufficiently attenuated to dissipate the taint of the illegal detention and arrest where the statements were made the day after the arrest and were not the product of police exploitation of the illegal arrest, but rather unexpected voluntary admissions to another inmate in jail).

b. INDEPENDENT SOURCE

THE FRUIT OF THE POISONOUS TREE DOCTRINE MAY NOT REQUIRE SUPPRESSION WHERE THE STATE SHOWS THAT PROBABLE CAUSE FOR A SUBSEQUENT SEARCH CAME FROM AN INDEPENDENT SOURCE AND WAS NOT CAUSED BY CONSIDERATION OF TAINTED EVIDENCE

AUTHORITIES: Unites States v. Wade, 388 U.S. 218, 87 S.Ct. 1926, 18 L.Ed.2d 1149 (1967); Segura v. United States, 468 U.S. 796, 104 S.Ct. 3380, 82 L.Ed.2d 599 (1984); Murray v. United States, 487 U.S. 533, 108 S.Ct. 2529, 101 L.Ed.2d 472 (1988); State v. Lee, 374 Md. 275, 821 A.2d 922 (2003)(evidence seized from defendant's residence in violation of the knock and announce rule was not admissible under the independent source exception); Williams v. State, 372 Md. 386, 813 A.2d 231 (2002)(independent source did not apply); Hatcher v. State, 177 Md.App. 359, 935 A.2d 468 (2007)(that if the arrest and search were unlawful, the motion to suppress should still have been denied under the inevitable discovery rule).

c. INEVITABLE DISCOVERY

SUPPRESSION MAY BE DENIED WHERE THE STATE SHOWS THAT CERTAIN PROPER AND PREDICTABLE PROCEDURES WOULD HAVE BEEN UTILIZED AND THOSE PROCEDURES WOULD HAVE INEVITABLY RESULTED IN THE DISCOVERY OF THE EVIDENCE IN QUESTION

Inevitable discovery does not apply where there is a violation of the knock and announce requirement.

AUTHORITIES: Nix v. Williams, 467 U.S. 431, 104 S.Ct. 2501, 81 L.Ed.2d 377 (1984); State v. Lee, 374 Md. 275, 821 A.2d 922 (2003)(knock and announce); Stokes v. State, 289 Md. 155, 423 A.2d 552 (1980); Oken v. State, 327 Md. 628, 612 A.2d 258 (1992); Williams v. State, 372 Md. 386, 813 A.2d 231 (2002)(inevitable discovery did not apply).

d. MISTAKEN WARRANT/RECORDS

WHERE A COMPUTER ERROR RESULTING FROM A COURT CLERK'S FAILURE TO FOLLOW ESTABLISHED PROCEDURES SHOWS AN OUTSTANDING ARREST WARRANT WHICH SHOULD HAVE BEEN RECALLED, THE EXCLUSIONARY RULE DOES NOT REQUIRE SUPPRESSION OF EVIDENCE SEIZED

AUTHORITY: Arizona v. Evans, 514 U.S. 1, 115 S.Ct. 1185, 131 L.Ed.2d 34 (1995); but see, Ott v. State, 325 Md. 206, 600 A.2d 111 (1992)(where police

officials failed to correct record, suppression was required).

REASONABLE FOR POLICE OFFICER RELIES ON VEHICLE REGISTRATION INFORMATION RECEIVED FROM A MOBILE WORKSTATION COMPUTER DATABASE REGARDLESS OF THE ACCURACY OF THE RECORDS.

AUTHORITY: McCain v. State, 194 Md. App. 252, 4 A.3d 53 (2010)(good fath exception applies when the officer is relying on records from an agency (such as the MVA) who has no stake in the outcome of the particular criminal prosecution and no interest in maintaining inaccurate or outdated records).

e. IDENTITY OF DEFENDANT

THE IDENTITY OF THE DEFENDANT OR HIS PRESENCE AT TRIAL IS NOT A FRUIT THAT MAY BE SUPPRESSED

AUTHORITIES: United States v. Crews, 445 U.S. 463, 100 S.Ct. 1244, 63 L.Ed.2d 537 (1980); Modecki v. State, 138 Md.App. 372, 771 A.2d 521 (2001).

E. APPEALS

1. STATE APPEALS

IN CRIMES OF VIOLENCE AND DRUG CASES THE STATE IS PERMITTED TO FILE AN INTERLOCUTORY APPEAL FROM THE GRANT OF A SUPPRESSION MOTION, BUT MUST CERTIFY THAT THE EVIDENCE IS SUBSTANTIAL PROOF OF A MATERIAL FACT. THE CASE SHALL BE DISMISSED AND THE STATE MAY NOT PROSECUTE THE DEFENDANT FOR THOSE CHARGES OR ANY RELATED CHARGES IF THE APPELLATE COURT AFFIRMS THE SUPPRESSION ORDER.

However, that does not mean that if the State obtains other evidence of the defendant's guilt while the appeal is pending, that the case must be dismissed if the State abandons the appeal.

AUTHORITY: Cts. & Jud. Proc. Art., § 12-302; McNeil v. State, 112 Md.App. 434, 685 A.2d 839 (1996).

2. DEFENDANT APPEALS

THE DEFENDANT MAY NOT FILE AN INTERLOCUTORY APPEAL

3. PROCEDURE

a. ON APPEAL

THE COURT MAKES AN INDEPENDENT REVIEW BASED ON THE EVIDENCE PRESENTED AT THE SUPPRESSION HEARING. THE COURT WILL GENERALLY NOT

CONSIDER ISSUES NOT RAISED BELOW.

The court considers the record of the suppression hearing, and not the trial. Great deference is given to the (first-level) fact finding of the suppression court, and is not reversed unless clearly erroneous. Then the court makes an independent constitutional appraisal by reviewing the law and applying it to the facts. The appellate court makes a de novo determination of second level factual findings, i.e., the determination of probable cause.

AUTHORITY: Ornelas v. United States, 517 U.S.690, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996); Carroll v. State, 335 Md. 723, 646 A.2d 376 (1994); State v. Bell, 334 Md. 190, 638 A.2d 107 (1994); Aiken v. State, 101 Md.App. 557, 647 A.2d 1229 (1994); State v. Jones, 103 Md.App. 548, 653 A.2d 1040 (1995); State v. Wilson, 106 Md.App. 24, 664 A.2d 1 (1995).

b. ON REMAND

A PARTY MAY CORRECT FACTS WHICH WERE INCORRECT IN THE ORIGINAL RECORD.

However, where the State offers no evidence on a particular point and the defendant has properly preserved the issue, the State may not present new evidence on remand.

AUTHORITIES: Tu v. State, 336 Md. 406, 648 A.2d 993 (1994); Southern v. State, 371 Md. 93, 807 A.2d 13 (2002)(State not allowed to present new evidence on the initial stop).