

Chapter 15: Stops and Warrantless Searches

This chapter outlines a five-step approach for analyzing typical “street encounters” with police. It covers situations involving both pedestrians and occupants of vehicles. For a fuller discussion of warrantless searches and seizures, *see* WAYNE R. LAFAVE, *SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT* (3d ed. 1996) [hereinafter LAFAVE]; ROBERT L. FARB, *ARREST, SEARCH AND INVESTIGATION IN NORTH CAROLINA* (Institute of Government, 2d ed. 1992) [hereinafter FARB].

The five steps are:

1. Did the officer seize the defendant?
2. Did the officer have grounds for the seizure?
3. Did the officer act within the scope of the seizure?
4. Did the officer have grounds to arrest or search?
5. Did the officer act within the scope of the arrest or search?

Generally, if an officer lacks authorization at any particular step, evidence uncovered by the officer as a result of the unauthorized action is subject to suppression. *See generally* 5 LAFAVE § 11.4.

In many (although not all) of the situations described below, an officer may act without obtaining a warrant. The courts have long expressed a preference, however, for the use of both arrest and search warrants—even in situations where a warrant is not required. *See State v. Hardy*, 339 N.C. 207, 451 S.E.2d 600 (1994) (search and seizure of property unaccompanied by prior judicial approval in form of warrant is per se unreasonable unless search falls within well-delineated exception to warrant requirement); *see also Flippo v. West Virginia*, 528 U.S. 11 (1999) (court states that “warrantless search by the police is invalid unless it falls within one of the narrow and well-delineated exceptions to the warrant requirement”; court rejects any “homicide crime scene” exception to warrant requirement); *United States v. Ventresca*, 380 U.S. 102, 106 (1965) (“in a doubtful or marginal case a search under a warrant may be sustainable where without one it would fall”); *Beck v. Ohio*, 379 U.S. 89 (1964) (arrest without warrant bypasses safeguards provided by objective predetermination of probable cause).

15.1 Did the Officer Seize the Defendant?

The Fourth Amendment prohibits an officer from stopping, or “seizing,” a person without legally sufficient grounds, and evidence obtained by an officer after seizing a person may not be used to justify the seizure. *See* FARB at 23. It is therefore critical for Fourth Amendment purposes to determine exactly when a seizure occurs.

A. Consensual Encounters

“Free to Leave” Test. As a general rule, a person is seized when, in view of all of the circumstances, a reasonable person would have believed that he or she was not “free to leave.” See *United States v. Mendenhall*, 446 U.S. 544 (1980); *Florida v. Royer*, 460 U.S. 491 (1983); see also *Florida v. Bostick*, 501 U.S. 429 (1991) (when a person’s freedom of movement is restricted for reasons independent of police conduct, such as when a person is a passenger on a bus, the test is whether a reasonable person would have felt free to decline the officer’s requests or terminate the encounter). The “free to leave” test, used to determine whether a person has been seized, requires a lesser degree of restraint than under the test for “custody,” used to determine whether a person is entitled to *Miranda* warnings. See *State v. Buchanan*, 353 N.C. 332, 543 S.E.2d 823 (2001) (test for custody is whether there was formal arrest or restraint on freedom of movement of degree associated with formal arrest).

A seizure clearly occurs if an officer takes a person into custody, physically restrains the person, or otherwise requires the person to submit to the officer’s authority. An encounter may be considered “consensual” and not a seizure, however, if a person willingly engages in a conversation with an officer.

Factors. Factors to consider in determining whether an encounter is consensual or a seizure include:

- number of officers present
- display of weapon by officer
- physical touching of defendant
- use of language or tone of voice indicating that compliance is required
- holding a person’s identification papers or property
- blocking the person’s path

See *State v. Farmer*, 333 N.C. 172, 424 S.E.2d 120 (1993) (discussing factors); *State v. Johnston*, 115 N.C. App. 711, 446 S.E.2d 135 (1994) (trooper drove over to where defendant’s car was already parked, defendant voluntarily stepped out of car before trooper arrived, and trooper then exited his car and walked over to defendant; defendant was not seized); *State ex rel. J.G.*, 726 A.2d 948 (N.J. Super. Ct. App. Div. 1999) (although initial exchange was consensual, officer’s words to juvenile became authoritative and indicative of criminal suspicion, converting encounter into seizure that had to be supported by reasonable suspicion); *Popple v. State*, 626 So. 2d 185 (Fla. 1993) (officer approached defendant who was sitting in parked car and ordered him to exit car; defendant was seized); 4 LAFAVE § 9.3(a), at 102–08.

B. Chases

Even if a reasonable person would not have felt “free to leave,” the U.S. Supreme Court has held that a seizure does not occur until there is a physical application of force or submission to a show of authority. See *California v. Hodari D.*, 499 U.S. 621 (1991)

(when police are chasing person who is running away, person is not “seized” until person is caught or gives up chase); *State v. West*, 119 N.C. App. 562, 459 S.E.2d 55 (1995) (following *Hodari D.*); *but see, e.g., Commonwealth v. Matos*, 672 A.2d 769 (Pa. 1996) (court rejects *Hodari D.* rule and holds under state constitution that police pursuit of person may constitute seizure); *In re Welfare of E.D.J.*, 502 N.W.2d 779 (Minn. 1993) (court rejects *Hodari D.* rule and holds under state constitution that seizure occurs when police say “stop”). For example, under *Hodari D.*, if an officer directs a car to pull over, a seizure occurs when the driver stops, thus submitting to the officer’s authority.

A seizure may occur when a person tries to get away from the police in an effort to terminate a consensual encounter. *See United States v. Wilson*, 953 F.2d 116 (4th Cir. 1991) (defendant initially agreed to speak with officer and produced identification at officer’s request, but then declined request for consent to search and tried to leave; officer effectively seized defendant by following defendant and repeatedly asking for consent to search).

C. Race-Based “Consensual” Encounters

If officers select a defendant for a “consensual” encounter because of the defendant’s race, evidence obtained during the encounter potentially could be suppressed on Equal Protection and Due Process grounds. *See United States v. Avery*, 137 F.3d 343 (6th Cir. 1997); *United States v. Taylor*, 956 F.2d 572 (6th Cir. 1992); *see also Whren v. United States*, 517 U.S. 806 (1996) (Equal Protection prohibits selective enforcement of law based on considerations such as race).

In recognition of the potential for racial profiling, a new North Carolina statute (effective Jan. 1, 2000) requires the Division of Criminal Statistics of the Department of Justice to collect statistics on traffic stops by state troopers and other state law enforcement officers. *See* G.S. 114-10(2a). This statute was amended, effective Jan 1., 2002, to require the Division to collect such statistics on many local law enforcement agencies. Unless a specific statutory exception exists, records maintained by state (and local) government agencies are public records. *See generally News and Observer Publishing Co. v. Poole*, 330 N.C. 465, 412 S.E.2d 7 (1992).

15.2 Did the Officer Have Grounds for the Seizure?

A. Reasonable Suspicion

Officers may make a brief investigative stop of a person—that is, they may seize a person—if they have reasonable suspicion of criminal activity by the person. *See Terry v. Ohio*, 392 U.S. 1 (1968); *see also State v. Duncan*, 43 P.3d 513 (Wash. 2002) (holding that although *Terry* authorizes stop based on reasonable suspicion of criminal offense and possibly of noncriminal traffic violation, it does not authorize stop based on reasonable suspicion of other noncriminal infractions); G.S. 15A-1113(b) (requiring probable cause for officer to detain person for noncriminal infraction of any kind).

Factors to consider in determining reasonable suspicion include:

- the officer's personal observations
- information the officer receives from others
- time of day or night
- the suspect's proximity to where a crime was recently committed
- the suspect's reaction to the officer's presence, including flight
- the officer's knowledge of the suspect's prior criminal record

B. High Drug Areas

Presence in a high-drug area, standing alone, does not constitute reasonable suspicion. Compare cases finding stop valid (*State v. Butler*, 331 N.C. 227, 415 S.E.2d 719 (1992); *State v. Cornelius*, 104 N.C. App. 583, 410 S.E.2d 504 (1991)) with cases finding stop invalid (*Brown v. Texas*, 443 U.S. 47 (1979); *State v. Fleming*, 106 N.C. App. 165, 415 S.E.2d 782 (1992)).

C. Flight

In *Illinois v. Wardlow*, 528 U.S. 119 (2000), the Court held that the defendant's headlong flight upon seeing the officers, along with his presence in an area of heavy narcotics trafficking, constituted reasonable suspicion to stop. The Court reaffirmed that mere presence in a high drug area does not constitute reasonable suspicion and cautioned that reasonable suspicion is based on the totality of the circumstances, not any single factor.

D. Traffic Stops

An officer may not randomly stop motorists to check their driver's license or vehicle registration; an officer must have reasonable suspicion of criminal activity. See *Delaware v. Prouse*, 440 U.S. 648 (1979); see also *State v. Holmes*, 569 N.W.2d 181 (Minn. 1997) (officer may not make investigatory stop for parking violation). Police may establish systematic checkpoints, however, if certain conditions are met. See *infra* § 15.2H.

Whether an officer has reasonable suspicion of criminal activity—for example, that the motorist is driving while impaired or committing other traffic offenses—depends on the facts of each case. See, e.g., *State v. Watson*, 122 N.C. App. 596, 472 S.E.2d 28 (1996) (driving on center lane, weaving in own lane, and other factors justified stop); *State v. Hudson*, 103 N.C. App. 708, 407 S.E.2d 583 (1991) (officer had reasonable suspicion that temporary registration had expired and that vehicle was improperly registered); *State v. Aubin*, 100 N.C. App. 628, 397 S.E.2d 653 (1990) (driving excessively slowly and weaving in own lane justified stop); *United States v. Wilson*, 205 F.3d 720 (4th Cir. 2000) (Fourth Amendment does not allow traffic stop simply because vehicle had temporary tags and officer could not read expiration date as he drove behind defendant after darkness had fallen); *Barrientos v. State*, 39 S.W.3d 17 (Ark. App. 2001) (weaving in own lane, without more, did not justify traffic stop); *Hernandez v. State*, 983 S.W.2d 867 (Tex. App. 1998) (drifting once into adjacent lane on five-lane road did not justify stop).

E. Anonymous Tips

General Test. Information from informants is evaluated under the “totality of the circumstances,” but the most critical factors are the reliability of the informant and the basis of the informant’s knowledge. *See Alabama v. White*, 496 U.S. 325 (1990).

When considering whether an anonymous tip establishes reasonable suspicion, the courts often consider whether independent police work corroborates significant details of the tip. *See State v. Watkins*, 337 N.C. 437, 446 S.E.2d 67 (1994) (upholding stop based on corroboration), *rev’g* 111 N.C. App. 766, 433 S.E.2d 817 (1993); *United States v. Roch*, 5 F.3d 894 (5th Cir. 1993) (informant said blond white man, who drove white and orange pickup and was staying at local motel, was planning to pass forged checks; merely seeing such a person in such a vehicle at that motel was not sufficient corroboration given the absence of significant details and prediction of future behavior).

Application to Weapons Offenses. In *Florida v. J.L.*, 529 U.S. 266 (2000), the Court found that an anonymous tip—stating that a young black male was at a particular bus stop wearing a plaid shirt and carrying a gun—did not give officers reasonable suspicion to stop. The tip lacked sufficient indicia of reliability and provided no predictive information about the person’s conduct. The Court refused to adopt a “firearm exception,” under which a tip alleging possession of an illegal firearm would justify a stop and frisk even if the tip fails the standard test for reasonable suspicion. *See also State v. Hughes*, 353 N.C. 200, 539 S.E.2d 625 (2000) (following *Florida v. J.L.*, court finds anonymous tip insufficient to support stop); *State v. Brown*, 142 N.C. App. 332, 542 S.E.2d 357 (2001) (to same effect).

Application to Impaired Driving Cases. Several cases have arisen involving anonymous tips involving impaired driving. *See McChesney v. State*, 988 P.2d 1071 (Wyo. 1999) (unknown motorist’s tip that defendant was driving while impaired, without more, was insufficient to support stop of car that matched tip); *State v. Rewis*, 722 So. 2d 863 (Fla. Dist. Ct. App. 1998) (to same effect); *but see United States v. Wheat*, 278 F.3d 722 (8th Cir. 2001) (finding that when certain factors are present anonymous tip may be sufficient to support stop for impaired driving). *Florida v. J.L.* suggests that except possibly for certain offenses (such as offenses involving explosives) the standard for evaluating anonymous tips should be the same regardless of the type of offense involved.

F. Information from Other Officers

Generally. An officer may stop a person based on the request of another officer if:

- the stopping officer has reasonable suspicion for the stop;
- the requesting officer has reasonable suspicion for the stop; or
- the observations of the requesting officer were relayed to the stopping officer before the stop *and* the collective knowledge of both officers amounted to reasonable suspicion.

See State v. Battle, 109 N.C. App. 367, 427 S.E.2d 156 (1993) (discussing general standard); *see also State v. Watkins*, 120 N.C. App. 804, 463 S.E.2d 802 (1995) (information fabricated by one officer and supplied to the stopping officer may not be used to show reasonable suspicion, even if the stopping officer did not know that the information was fabricated).

Police Broadcasts. Police broadcasts may or may not be based on an officer's observations. Without any showing as to the basis of the broadcast, it should be given no more weight than other information. *See* 4 LAFAVE § 9.4(i), at 230–33; *McSwain v. State*, 522 S.E.2d 553 (Ga. Ct. App. 1999) (police broadcast to be on lookout for particular car did not give officer grounds for stop; state presented no evidence of facts on which lookout was based).

G. Pretext

In some instances, a court may find that a stop or search is unconstitutional because the purported justification for the stop or search is a pretext for an impermissible reason

Stops Based on Individualized Suspicion. In the context of stops based on probable cause, the United States Supreme Court has cut back on the pretext doctrine. In *Whren v. United States*, 517 U.S. 806 (1996), the Court held that an officer's actual motivation in making a stop (for example, to investigate for drugs) is generally irrelevant if the officer has probable cause for the stop and could have stopped the person for that reason (for example, the person committed a traffic violation). *Accord State v. McClendon*, 350 N.C. 630, 517 S.E.2d 128 (1999) (adopting *Whren* under state constitution); *State v. Hamilton*, 125 N.C. App. 396, 481 S.E.2d 98 (1997) (court recognized effect of *Whren* under U.S. Constitution); *but see State v. Ladson*, 979 P.2d 833 (Wash. 1999) (rejecting *Whren* under state constitution). Previously, the test in many jurisdictions, including North Carolina, was what a reasonable officer "would have" done in a similar circumstance, not what an officer lawfully "could have" done. *See State v. Hunter*, 107 N.C. App. 402, 420 S.E.2d 700 (1992) (stating standard); *State v. Morocco*, 99 N.C. App. 421, 393 S.E.2d 545 (1990) (stating standard).

Whren did not address whether a defendant may challenge as pretextual a stop based on reasonable suspicion. *See* 1 LAFAVE § 1.4, at 17–18 (Supp. 2002); *see also State v. Hamilton*, 125 N.C. App. 396, 481 S.E.2d 98 (1997) (dissent notes that *Whren* left this question open). Even assuming a defendant can raise the argument, it may be very difficult to show pretext in that context.

Exceptions. There are a number of limits to *Whren*.

- *Whren* itself stated that a defendant may challenge as pretextual inventory searches or administrative inspections because they are not based on individual suspicion. *Accord Bartruff v. State*, 706 N.E.2d 225 (Ind. Ct. App. 1999) (recognizing that *Whren* continues to prohibit inventory search if it is ruse for general rummaging).

- Likewise, a defendant may challenge as pretextual a license or other checkpoint when the real purpose is impermissible. *See infra* § 15.2H.
- A stop for a traffic violation or other matter still violates the Fourth Amendment if the officer exceeds the scope of the stop—for example, the officer detains and questions the defendant about a matter unrelated to the purpose of the stop. This limitation has proved significant in several cases. *See infra* § 15.3F.
- Some courts have held that a stop for a traffic violation cannot be upheld on a basis other than that articulated by the officer. *See Dennis v. State*, 693 A.2d 1150 (Md. 1997).
- If an officer stops a defendant because of his or her race, the stop may violate Equal Protection regardless of whether probable cause exists. *See* § 15.1C., above.

H. DWI and License Checkpoints

License Checkpoints. In *Delaware v. Prouse*, 440 U.S. 648 (1979), the Supreme Court held that officers may not randomly stop motorists to check their driver’s license or vehicle registration; the Court indicated, however, that license checkpoints, at which drivers’ licenses are systematically checked, may be permissible. *See also State v. Sanders*, 112 N.C. App. 477, 435 S.E.2d 842 (1993). Advance approval by a supervisor may be required before officers set up such a checkpoint. *See* 4 LAFAVE § 10.8(a), at 678; FARB at 36; *State v. Tarlton*, 146 N.C. App. 417, 553 S.E.2d 50 (2001) (evidence indicated that officers had obtained supervisors’ approval to set up license checkpoint; court states in dicta that supervisor’s permission is not constitutional requirement).

DWI Checkpoints. The Supreme Court also has upheld the constitutionality of impaired-driving checkpoints conducted under guidelines regulating officers’ discretion. *See Michigan Dept. of State Police v. Sitz*, 496 U.S. 444 (1990); *but see Ascher v. Commissioner of Public Safety*, 519 N.W.2d 183 (Minn. 1994) (impaired-driving checkpoints violate state constitution); *Sitz v. Dept. of State Police*, 506 N.W.2d 209 (Mich. 1993) (on remand from U.S. Supreme Court, court holds that impaired-driving checkpoints violate state constitution). Impaired-driving checkpoints in North Carolina must comply with both constitutional limitations and the procedures in G.S. 20-16.3A. *See State v. Barnes*, 123 N.C. App. 144, 472 S.E.2d 784 (1996) (checkpoint complied with statute). When officers have set up a DWI checkpoint, you should obtain a copy of the plan to be sure the officers have followed it.

Pretextual Checkpoints. A license or impaired-driving checkpoint is subject to challenge as pretextual under the Fourth Amendment. *See United States v. Huguenin*, 154 F.3d 547 (6th Cir. 1998) (pretext analysis applies when officer lacks individualized suspicion for stop; court reviews conflicting decisions of circuit courts and finds that checkpoint is constitutional only if primary motive is lawful, not merely if one of motives is lawful); *see also City of Indianapolis v. Edmond*, 531 U.S. 32 (2000) (checkpoint is unconstitutional if primary purpose is unlawful; checkpoint was unlawful in this case because primary purpose was to investigate for drugs). Further, a checkpoint labeled as a license checkpoint but actually directed at detecting impaired drivers may be invalid if it does not comply with the requirements of G.S. 20-16.3A.

Avoiding Checkpoint. In *State v. Foreman*, 351 N.C. 627, 527 S.E.2d 921 (2000), the North Carolina Supreme Court held that, in the totality of the circumstances, the defendant's avoidance of a lawful checkpoint constituted reasonable suspicion to stop to inquire why the defendant turned away from the checkpoint. Compare *Commonwealth v. Scavello*, 734 A.2d 386 (Pa. 1999) (investigatory stop of defendant who made legal U-turn to avoid police roadblock not justified; avoidance or attempt to avoid roadblock must be coupled with other articulable facts to support reasonable suspicion of criminal activity); *Murphy v. Commonwealth*, 384 S.E.2d 125 (Va. Ct. App. 1989) (making a lawful right turn before roadblock does not give rise to reasonable suspicion of criminal activity unless driver's turn is coupled with other articulable facts); see also Robert L. Farb, Does Avoiding License or DWI Checkpoint Support Reasonable Suspicion to Stop a Vehicle? (last modified April 2002) <<http://ncinfo.iog.unc.edu/crimlaw/faculty.htm>>.

Limits on Detention at Checkpoint. Although motorists may be briefly stopped at an impaired driving checkpoint, the Court in *Sitz* indicated that detention of a particular motorist for more extensive investigation, such as field sobriety testing, may require satisfaction of an individualized suspicion standard. See *Sitz*, 496 U.S. at 451; see also 4 LAFAVE § 10.8(d), at 706–08; FARB at 36; G.S. 20-16.3A (requiring reasonable suspicion before alcohol screening test may be administered); *State v. Colbert*, 146 N.C. App. 506, 553 S.E.2d 221 (2001) (ordering driver stopped at DWI checkpoint to take alcohol screening test was permissible because officer had developed reasonable suspicion that driver was impaired).

I. Drug Checkpoints

The U.S. Supreme Court has refused to uphold drug checkpoints. To stop a person to investigate for drugs, officers must have reasonable suspicion. See *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000); see also *United States v. Huguenin*, 154 F.3d 547 (6th Cir. 1998) (drug checkpoint unconstitutional); *Wilson v. Commonwealth*, 509 S.E.2d 540 (Va. Ct. App. 1999) (drug checkpoint inside entrance to public housing project unconstitutional); *Commonwealth v. Rodriguez*, 722 N.E.2d 429 (Mass. 2000) (drug checkpoint violated state constitution).

J. Vessels

Compare *State v. Pike*, 139 N.C. App. 96, 532 S.E.2d 543 (2000) (wildlife officers could stop boat for safety inspection without individualized suspicion because of interest in water safety) with *Klutz v. Beam*, 374 F. Supp. 1129 (W.D.N.C. 1973) (boarding and search of boat without individualized suspicion violated Fourth Amendment).

15.3 Did the Officer Act within the Scope of the Seizure?

This part concentrates on the restrictions on an officer's investigation following a stop based on reasonable suspicion. The same principles generally apply to traffic stops based on probable cause. See 3 LAFAVE § 5.2(h), at 94–96.

A. Frisks for Weapons

Grounds for Frisk. An officer who has reasonable suspicion to stop a person does not automatically have the right to frisk the person for weapons. The officer must have reasonable suspicion that the person has a weapon and presents a danger to the officer or others. *See Terry v. Ohio*, 392 U.S. 1 (1968); *State v. Pearson*, 348 N.C. 272, 498 S.E.2d 599 (1998) (officer did not have grounds for weapons frisk during traffic stop; defendant's consent to search of car did not authorize frisk of person); *State v. Rhyne*, 124 N.C. App. 84, 478 S.E.2d 789 (1996) (insufficient grounds for weapons frisk; drugs discovered during frisk suppressed); *State v. Artis*, 123 N.C. App. 114, 472 S.E.2d 169 (1996) (suppressing evidence for same reason); *United States v. Burton*, 228 F.3d 524 (4th Cir. 2000) (in absence of reasonable suspicion, officer may not frisk person merely because officer feels uneasy for his or her safety).

Factors. Circumstances to consider include:

- the nature of the suspected offense
- a bulge in the person's clothing
- observation of an object that appears to be a weapon
- sudden, unexplained movements by the person
- failure to remove a hand from a pocket
- the person's prior criminal record and history of dangerousness

See 4 LAFAVE § 9.5(a), at 257–59.

Other Protective Measures. Whether officers may take other protective measures in connection with a weapons frisk depends on the circumstances of the case. *Compare State v. Sanchez*, ___ N.C. App. ___, 556 S.E.2d 602 (2001) (multiple occupants of vehicle were briefly handcuffed while officers frisked for weapons and then handcuffs were removed; handcuffing did not exceed scope of stop and convert stop into arrest), *with People v. Delaware*, 731 N.E.2d 904 (Ill. App. Ct. 2000) (stop was converted into arrest, requiring probable cause, when officers kept defendant handcuffed after patdown search revealed no weapons); *United States v. Melendez-Garcia*, 28 F.3d 1046 (10th Cir. 1994) (circumstances did not justify officers drawing of guns and handcuffing of defendants as part of stop).

B. Vehicles

Ordering Driver to Exit Vehicle. On a stop based on reasonable suspicion, an officer may require the driver to exit the vehicle without specifically showing that requiring such an action was necessary for the officer's protection. *See Pennsylvania v. Mimms*, 434 U.S. 106 (1977); *see also* 4 LAFAVE § 10.8(d), at 707 (in context of impaired-driving checkpoints there is not automatically a need for self-protective measures and therefore an officer may not order a motorist out of a vehicle at such a checkpoint either as a matter of routine or on a hunch).

Ordering Passengers to Exit Vehicle. Previously, officers could require passengers to exit the vehicle only if the officers had grounds to do so. *See State v. Hudson*, 103 N.C. App. 708, 407 S.E.2d 583 (1991) (officer had reasonable belief that passenger might be armed); *State v. Adkerson*, 90 N.C. App. 333, 368 S.E.2d 434 (1988) (officer arrested defendant for driving while impaired and had right to require passenger to exit vehicle so officer could search vehicle incident to arrest of driver). In *Maryland v. Wilson*, 519 U.S. 408 (1997), the Court held that an officer making a traffic stop may order the passengers out of the car, without specific grounds, pending completion of the stop. *But see, e.g., Commonwealth v. Gonsalves*, 711 N.E.2d 108 (Mass. 1999) (based on state constitution, court rejects rule that officer may automatically order driver or passenger to exit vehicle).

The Court in *Wilson* expressed no opinion on whether an officer may automatically detain a passenger during the duration of the stop. *See Wilson*, 519 U.S. at 415 n.3. Some cases since *Wilson* have found that an officer must have reasonable suspicion to detain a passenger. *See Wilson v. State*, 734 So. 2d 1107 (Fla. Dist. Ct. App. 1999); *Walls v. State*, 714 N.E.2d 1266 (Ind. Ct. App. 1999); *see also State v. Mendez*, 970 P.2d 722 (Wash. 1999) (so holding on state constitutional grounds). *But see Tawdul v. State*, 720 N.E.2d 1211 (Ind. Ct. App. 1999) (disagreeing with panel of Indiana court of appeals that issued *Walls*).

Although an officer may order a passenger to exit the vehicle, a passenger still may be able to challenge the validity of the initial stop and therefore the results of any subsequent investigation. *See United States v. McKneely*, 6 F.3d 1447 (10th Cir. 1993) (passenger has standing to challenge stop of vehicle and thus may seek suppression of evidence found in search of vehicle as fruit of illegal stop); *State v. Harris*, 557 N.W.2d 245 (Wis. 1996) (passengers have standing to challenge stop as unconstitutional); 5 LAFAVE § 11.3(e), at 173 & n.231 (collecting cases); *but cf. State v. Smith*, 117 N.C. App. 671, 452 S.E.2d 827 (1995) (defendant did not have standing to contest validity of search of luggage of another passenger). Officers also must have grounds to frisk occupants; a valid stop and order to exit the vehicle does not automatically give the officer the right to frisk. *See supra* § 15.3A.

Sweep of Interior of Vehicle. Officers may conduct a protective sweep of the passenger compartment of a vehicle in areas where a weapon may be located—in other words, they may conduct a “vehicle frisk” but not a search for evidence—if the officers reasonably believe that the suspect is dangerous and may gain immediate control of a weapon. *See Michigan v. Long*, 463 U.S. 1032 (1983) (stating standard); *State v. Minor*, 132 N.C. App. 478, 512 S.E.2d 483 (1999) (officer had insufficient grounds to search car for weapons); *State v. Green*, 103 N.C. App. 38, 404 S.E.2d 363 (1991) (officer could not look in glove compartment of defendant’s car as part of protective weapons search; officer had already placed defendant in patrol car and defendant could not obtain any weapon or other item from car); *State v. Braxton*, 90 N.C. App. 204, 368 S.E.2d 56 (1988) (facts did not warrant belief that suspect was dangerous and could gain control of weapon).

C. Plain view

Generally, observations by officers of things in “plain view” do not constitute a search. *See* 1 LAFAVE § 2.2; FARB at 80–85. Under the Fourth Amendment, a seizure is lawful under the plain view doctrine if the officer is lawfully in a position to observe the items and it is immediately apparent to the officer that the items are evidence of a crime, contraband, or otherwise subject to seizure. *See Horton v. California*, 496 U.S. 128 (1990) (discovery of evidence need not be inadvertent if these two conditions are met); *but see* G.S. 15A-253 (under North Carolina law, discovery of evidence in plain view during execution of search warrant must be inadvertent).

Shining a flashlight into a vehicle that has been lawfully stopped is ordinarily not considered a search, so objects that officers observe thereby are considered to be in plain view. *See Texas v. Brown*, 460 U.S. 730 (1983); *see also* 1 LAFAVE § 2.2(b), at 410–11 (discussing limits on this doctrine—for example, officer may not open door to shine flashlight into car unless officer has grounds to open door); *Kyllo v. United States*, 533 U.S. 27 (2001) (use of sense-enhancing technology—in this case, a thermal imager that detected relative amounts of heat within home—constituted search).

A defendant still may have grounds to suppress plain-view observations if the initial stop was invalid (discussed *supra* § 15.2) or, at the time of the observation, the officer was engaged in activity beyond the scope of the stop (for example, the officer searched the car for weapons without adequate justification, discussed *supra* § 15.3B, or the detention lasted longer than necessary to effectuate the purpose of the stop, discussed *infra* § 15.3F). *See also Bond v. United States*, 529 U.S. 334 (2000) (officer’s physical manipulation of defendant’s carry-on bag was unlawful search).

D. Drug Dogs

The U.S. Supreme Court has held that use of a drug dog to sniff luggage in a public place does not constitute a search under the Fourth Amendment. *See United States v. Place*, 462 U.S. 696 (1983). Walking a dog around a vehicle (although not a person) likewise is not a search. *See State v. Fisher*, 141 N.C. App. 448, 539 S.E.2d 677 (2000) (sniff of vehicle’s perimeter by drug dog is not search under Fourth Amendment). An “alert” by the dog may constitute probable cause if a sufficient showing is made as to the dog’s reliability to detect the presence of particular contraband. *See generally* 1 LAFAVE § 2.2(f); FARB at 85. A defendant may still have grounds to suppress, however, if the officers have violated other Fourth Amendment restrictions. *See infra* § 15.3F (discussing actions exceeding scope of initial stop).

E. “Plain Feel” and Frisks for Evidence

General Prohibition. An officer who stops a person on reasonable suspicion may not frisk the person for evidence. *See Ybarra v. Illinois*, 444 U.S. 85 (1979).

“Plain Feel” Exception. Under what has come to be known as the “plain feel” doctrine, when an officer conducts a proper weapons frisk and has probable cause to believe that an object is evidence of a crime, then the officer may remove it. But, if an officer does not *immediately* recognize that the object is evidence of a crime, he or she may not manipulate or explore the object further; such action constitutes a search, which is not authorized as part of a weapons frisk. *See Minnesota v. Dickerson*, 508 U.S. 366 (1993) (officer’s continued exploration of lump until he developed probable cause to believe it was cocaine was an unlawful search); *State v. Wise*, 117 N.C. App. 105, 449 S.E.2d 774 (1994) (officer lawfully stopped vehicle for speeding and lawfully patted down defendant, but officer lacked probable cause to open non-transparent aspirin bottle that officer found on defendant; officers also may have needed warrant to search container, although issue was not decided); *State v. Beveridge*, 112 N.C. App. 688, 436 S.E.2d 912 (1993) (in frisking defendant for weapons, officer noticed cylindrical bulge that felt like plastic baggie; once officer determined that bulge was not weapon, he could not continue to search defendant to determine whether baggie contained illegal drugs), *aff’d per curiam*, 336 N.C. 601, 444 S.E.2d 223 (1994); *see also State v. Graves*, 135 N.C. App. 216, 519 S.E.2d 770 (1999) (warrantless search of wads of brown paper that fell from defendant’s clothing not justified under plain view doctrine because it was not immediately apparent that wads contained contraband); *State v. Sapatch*, 108 N.C. App. 321, 423 S.E.2d 510 (1992) (under plain view doctrine, officers did not have probable cause to believe film canisters contained evidence of crime and, therefore, were not justified in opening canisters; officers also may have needed warrant to search canisters, although issue was not decided).

Even if an officer has probable cause to remove an object when frisking a person for weapons, he or she may need a search warrant before inspecting the interior of the object. *See infra* § 15.5C on searches of containers.

F. Nature, Length, and Purpose of Detention

Generally. An investigative detention must be temporary and last no longer than necessary to effectuate the purpose of the stop. *See Florida v. Royer*, 460 U.S. 491 (1983) (officers exceeded limits of *Terry*-stop and required probable cause).

For example, if an officer stops a person for a traffic violation, the officer may detain the person only for the purpose of investigating that violation unless the officer develops reasonable suspicion to investigate other possible violations of the law. *See G.S. 15A-1113(b)* (an officer who has probable cause to believe a person has committed an infraction may detain the person for a reasonable period of time to issue and serve citation); *United States v. Beck*, 140 F.3d 1129 (8th Cir. 1998) (once purpose of traffic stop completed, officer must have reasonable suspicion to continue to detain defendant); *McGaughey v. State*, 37 P.3d 130 (Okla. Crim. App. 2001) (police officer’s continued detention of truck after initial traffic stop violated Fourth Amendment; officer stopped truck based on perception that its taillights were not working, but once officer saw that both taillights were working, purpose of stop was satisfied, and officer’s subsequent actions of asking driver to exit truck, requesting his driver’s license, checking truck’s

inspection sticker, and briefly surveying truck's interior were all illegal and exceeded scope of stop's initial justification).

Consent. If a request to consent is unrelated to the stated purpose of the stop, a consent to search may be suppressed as beyond the scope of the stop. *See United States v. Mesa*, 62 F.3d 159 (6th Cir. 1995) (officer may stop person for traffic violation even if real purpose is to uncover narcotics; however, once purpose of traffic stop is completed, officer may not detain person further and request consent to search); *United States v. Walker*, 933 F.2d 812 (10th Cir. 1991) (consent to search was product of unlawful detention; officer did not have grounds to continue to detain defendant in patrol car after checking defendant's license and registration); *United States v. Sandoval*, 29 F.3d 537 (10th Cir. 1994) (to same effect); *see also State v. Beveridge*, 112 N.C. App. 688, 436 S.E.2d 912 (1993) (once officer had frisked defendant for weapons, officer could not continue to search or question defendant), *aff'd per curiam*, 336 N.C. 601, 444 S.E.2d 223 (1994).

Consent after Stop Has Ended. If the detention has ended and the person is free to leave, an officer may request consent to search. *See State v. Morocco*, 99 N.C. App. 421, 393 S.E.2d 545 (1990) (trooper did not detain defendant in patrol car longer than necessary to write citation, and after detention ended defendant consented to search); *see also State v. Kincaid*, 147 N.C. App. 94, 555 S.E.2d 294 (2001) (questioning unrelated to traffic stop was permissible where defendant consented to being questioned after detention had ended).

In *Ohio v. Robinette*, 519 U.S. 33 (1996), the state court held that officers must clearly inform a motorist that a traffic stop has ended and that the motorist is free to go before requesting consent to search on an unrelated matter. Without this warning, the state court held, the motorist's consent is involuntary. The U.S. Supreme Court rejected such a requirement, holding that the voluntariness of a motorist's consent is evaluated under the totality of circumstances. *Robinette* does not affect the law discussed above, however. If an officer detains a person longer than necessary to effectuate the purpose of the stop, a request for consent to search may exceed the scope of the stop and violate the Fourth Amendment. *See State v. Robinette*, 685 N.E.2d 762 (Ohio 1997) (on remand from U.S. Supreme Court, state supreme court found that officer exceeded scope of stop and that consent was therefore invalid). Any consent given must also be voluntary. *See infra* § 15.4B.

Drug Dogs. *See State v. Fisher*, 141 N.C. App. 448, 539 S.E.2d 677 (2000) (detaining defendant after traffic stop for drug dog sniff exceed scope of stop); *State v. Falana*, 129 N.C. App. 813, 501 S.E.2d 358 (1998) (officer exceeded scope of traffic stop by detaining defendant even briefly for dog to do drug sniff).

G. Does *Miranda* Apply?

A person generally is not entitled to *Miranda* warnings on a stop. *See Berkemer v. McCarty*, 468 U.S. 420, 104 S. Ct. 3138, 82 L. Ed. 2d 317 (1984).

Some stops, however, may amount to custody for *Miranda* purposes even though the person may not be under arrest. See Mark A. Godsey, *When Terry Met Miranda: Two Constitutional Doctrines Collide*, 63 *FORDHAM L. REV.* 715 (1994); see also *State v. Buchanan*, 353 N.C. 332, 543 S.E.2d 823 (2001) (test for custody is whether there was formal arrest or restraint on freedom of movement of degree associated with formal arrest); *State v. Washington*, 330 N.C. 188, 410 S.E.2d 55 (1991) (on facts presented, defendant was in custody for *Miranda* purposes when officer placed him in back seat of patrol car), *rev'g* 102 N.C. App. 535, 402 S.E.2d 851 (1991); *People v. Rivera*, 709 N.E.2d 710 (Ill. App. Ct. 1999) (stop became custodial interrogation, requiring *Miranda* warnings).

H. Field Sobriety Tests

North Carolina cases have assumed (although not specifically decided) that during a stop based on reasonable suspicion of impaired driving, field sobriety tests and questioning related to possible impairment are within the scope of the stop. However, once the defendant is considered to be in custody (see G., above), *Miranda* warnings are required.

I. VIN checks

Officers may make a limited warrantless search of a vehicle when they need to determine its ownership. See *United States v. Class*, 475 U.S. 106 (1986) (check of vehicle identification number valid); *State v. Green*, 103 N.C. App. 38, 404 S.E.2d 363 (1991) (check invalid on facts of case); *United States v. Caro*, 248 F.3d 1240 (10th Cir. 2001) (trooper's request to search for VIN inside automobile during traffic stop, after having viewed VIN on dashboard, was not reasonable under Fourth Amendment and exceeded permissible scope of detention).

15.4 Did the Officer Have Grounds to Arrest or Search?

A. Probable Cause

Required for Arrest or Search. Although reasonable suspicion may be sufficient to support an officer's initial stop and investigative actions, an officer must have probable cause to make an arrest or to search for evidence (absent consent to search, discussed below). See, e.g., *State v. Wise*, 117 N.C. App. 105, 449 S.E.2d 774 (1994) (officer lawfully stopped vehicle for speeding and lawfully patted down defendant, but officer lacked probable cause to open non-transparent aspirin bottle that officer found on defendant; officers also may have needed warrant to search container, although issue was not decided); *State v. Pittman*, 111 N.C. App. 808, 433 S.E.2d 822 (1993) (initial encounter was consensual and subsequent stop was supported by reasonable suspicion, but officers did not have probable cause to search).

Requirement of Arrest Warrant. Although officers may have probable cause to arrest for a criminal offense, they may not make a warrantless arrest except in one of the

following circumstances: (a) the crime committed by the person is a felony; (b) the crime was committed by the person in the officer's presence; (c) the crime is one of certain misdemeanors; or (d) the person poses certain risks if not arrested for the crime immediately. *See* G.S. 15A-401(b). An officer has no authority to arrest for an infraction. *See* G.S. 15A-1113; FARB at 56; *cf. Atwater v. City of Lago Vista*, 532 U.S. 318 (2001) (Fourth Amendment does not bar officer from making warrantless arrest for offense punishable by fine only; ruling has no practical effect in North Carolina because North Carolina does not authorize arrest for infractions).

Scope of Search without Warrant. The permissible scope of a search without a warrant depends on whether the officers have probable cause to arrest or probable cause to search. *See infra* § 15.5.

B. Consent

For several reasons a purported consent to search may be invalid.

Length of Detention. Officers may not unduly detain a person for the purpose of requesting consent to search. *See supra* § 15.3F (nature, length, and purpose of detention).

Voluntariness of Consent. Consent must be voluntary. *See Schneckloth v. Bustamonte*, 412 U.S. 218 (1973) (voluntariness determined from totality of circumstances); *United States v. Worley*, 193 F.3d 380 (6th Cir. 1999) (defendant did not give voluntary consent when he said, "You've got the badge, I guess you can" in response to officer's request to search); *United States v. Washington*, 151 F.3d 1354 (11th Cir. 1998) (officer's show of authority on bus was sufficiently coercive to render passenger's consent involuntary in absence of indication from officer that consent could be refused); *Carmouche v. State*, 10 S.W.3d 323 (Tex. Crim. App. 2000) (consent to search involuntary when defendant was surrounded by officers, backed against hood of car, and told to assume position).

Authority to Consent. The person must have authority to consent or, at least, the officer must reasonably believe the person had authority. *See Illinois v. Rodriguez*, 497 U.S. 177 (1990) (officers must reasonably believe person had authority to give consent); G.S. 15A-222 (to same effect); *but see State v. McLees*, 994 P.2d 683 (Mont. 2000) (rejecting apparent authority doctrine under state constitution; for consent to be valid against defendant, third party must have actual authority to give consent to search). Whether the officer's belief is reasonable depends on the facts of each case. *Compare State v. McDaniels*, 103 N.C. App. 175, 405 S.E.2d 358 (1991) (passenger failed to object when driver consented to search of car and contents; search of contents upheld), *aff'd per curiam*, 331 N.C. 112, 413 S.E.2d 799 (1992), *with People v. James*, 645 N.E.2d 195 (Ill. 1994) (driver consented to search outside of hearing of defendant-passenger; consent did not authorize police to search purse on passenger's seat).

Scope of Consent. General consent does not necessarily extend to all places within the area to be searched. *See Florida v. Jimeno*, 500 U.S. 248 (1991) (consent to general

search of car would lead reasonable officer to believe that consent extended to unlocked containers); *State v. Pearson*, 348 N.C. 272, 498 S.E.2d 599 (1998) (defendant's consent to search of car did not authorize frisk of his person); *United States v. Osage*, 235 F.3d 518 (10th Cir. 2000) (defendant's consent to search did not permit officer to destroy container or render it useless for intended function); *United States v. Elliott*, 107 F.3d 810 (10th Cir. 1997) (officer's disclaimer of intent to look through each item limited consent-search to visual observation); *State v. Arroyo-Sotelo*, 884 P.2d 901 (Ore. App. 1994) (general consent to search car did not extend to prying open of panels within car).

Withdrawal of Consent. A person may withdraw consent at any time prior to completion of the search. *See* 3 LAFAYE § 8.1(c), at 631–34. Prior to withdrawal of consent, however, officers may have uncovered sufficient evidence to justify continuing the search regardless of the presence or absence of consent.

15.5 Did the Officer Act within the Scope of the Arrest or Search?

A. Search Incident to Arrest

Of Person. Officers may search a person incident to a lawful arrest of that person. *See United States v. Robinson*, 414 U.S. 218 (1973); *but see State v. Hardaway*, 36 P.3d 900 (Mont. 2001) (holding under state constitution that search incident to arrest of person is permissible only to prevent arrestee from escaping, using weapons, or destroying incriminating evidence in arrestee's possession).

Of Vehicle. As a general rule, officers may search the passenger compartment of a vehicle, including containers found within, incident to a lawful arrest of an occupant. *See State v. Logner*, ___ N.C. App. ___, 557 S.E.2d 191 (2001) (warrantless search of defendant's vehicle proper incident to arrest of passenger). The stated rationale for the establishment of this rule was that officers needed a bright-line rule allowing them to search in areas where an arrestee might be able to use a weapon or destroy evidence. *See New York v. Belton*, 453 U.S. 454, (1981) (stating basic rule); *see also State v. Andrews*, 306 N.C. 144, 291 S.E.2d 581 (1982) (applying *Belton* principles to search of vehicle incident to arrest; state constitution not raised); *State v. Cooper*, 304 N.C. 701, 286 S.E.2d 102 (1982) (to same effect). *But see, e.g., Commonwealth v. White*, 669 A.2d 896 (Pa. 1995) (court rejects *Belton* rule and holds that state constitution limits warrantless search incident to arrest to areas immediately accessible to person arrested); *State v. Pierce*, 642 A.2d 947 (N.J. 1994) (rejecting *Belton* rule under state constitution); *see also State v. Parker*, 987 P.2d 73 (Wash. 1999) (en banc) (under state constitution, if officers know or should know that articles belong to passenger, they do not have automatic right to search the articles incident to arrest of driver).

B. Limits on Searches Incident to Arrest

Citations. Officers may not search a person or vehicle incident to issuance of a citation if they do not arrest the person. *See Knowles v. Iowa*, 525 U.S. 113 (1998); *State v.*

Fisher, 141 N.C. App. 448, 539 S.E.2d 677 (2000) (defendant had been issued citation for driving while license revoked but had not been placed under arrest; search could not be justified as search incident to arrest); *see also Sibron v. New York*, 392 U.S. 40 (1968) (“It is axiomatic that an incident search may not precede an arrest and serve as part of its justification”).

Area and Persons. *See* FARB at 104 (arrest of occupant of vehicle does not automatically authorize officers to search trunk of vehicle *or* to frisk or search other occupants based on search-incident-to-arrest justification); 3 LAFAVE § 7.1(c), at 450–52

Locked Containers. There is conflicting authority on whether officers may search locked containers incident to arrest. *See State v. Thomas*, 81 N.C. App. 200, 343 S.E.2d 588 (1986) (officers could not search, incident to arrest, locked suitcase arrestee was carrying); 3 LAFAVE § 5.5(a), at 177–80 (discussing potential limits on search of containers in arrestee’s possession), § 7.1(c), at 451–52 (suggesting that *Belton* does not necessarily authorize dismantling of vehicle or search of locked containers within vehicle); *but see* FARB at 104 (arguing that prevailing federal case law allows search of locked containers in arrestee’s possession as search incident to arrest); *State v. Brooks*, 337 N.C. 132, 446 S.E.2d 579 (1994) (officers may search locked compartments within vehicle as part of search incident to arrest).

Non-Contemporaneous Search of Vehicle. *See Preston v. United States*, 376 U.S. 364 (1964) (where vehicle had been towed to garage, search of vehicle was not contemporaneous with arrest and was disallowed); *United States v. Vasey*, 834 F.2d 782 (9th Cir. 1987) (search of vehicle was not contemporaneous with arrest where search took place 30 to 45 minutes after occupant had been arrested, handcuffed, and placed in back of patrol car).

Inspections of and Intrusions into Body. *See generally* 3 LAFAVE § 5.3(c), at 130–45; *State v. Smith* 118 N.C. App. 106, 454 S.E.2d 680 (although officers had grounds to conduct warrantless search, it was unreasonable to require defendant to pull down his pants on public street), *rev’d in pertinent part*, 342 N.C. 407, 464 S.E.2d 45 (1995) (court adopts dissenting opinion, which found that search was not unreasonable).

Proximity to Vehicle before Arrest. *See State v. Robb*, 605 N.W.2d 96 (Minn. 2000) (when approached by officer, arrestee was so far removed from vehicle that he did not have opportunity to conceal weapons or evidence; rationale for *Belton* therefore did not apply and officers could not search vehicle incident to arrest).

Pretext. Before *Whren* (discussed *supra* § 15.2G), it could be argued that a search incident to arrest violates the Fourth Amendment if the officers arrest the person, rather than issue a citation, as a pretext to search the person incident to arrest. In *Arkansas v. Sullivan*, 532 U.S. 769 (2001), the Court extended the rule in *Whren* to arrests, holding that an officer’s decision to arrest a person for a traffic violation, if supported by probable cause, is not invalid even though the arrest is a pretext for a narcotics search incident to arrest.

C. Probable Cause to Search Person

Person. Officers may conduct a warrantless search of a person who they have not arrested if both probable cause to search and exigent circumstances exist. *See, e.g., State v. Smith*, 118 N.C. App. 106, 454 S.E.2d 680, *rev'd on other grounds*, 342 N.C. 407, 464 S.E.2d 45 (1995); *State v. Watson*, 119 N.C. App. 395, 458 S.E.2d 519 (1995).

Containers. The same rule applies to containers found on a person. Officers may conduct a warrantless search of a container found on a person that they have not arrested if both probable cause to search *and* exigent circumstances exist. If exigent circumstances do not exist, they must obtain a search warrant. *See* FARB at 99; *State v. Gilkey*, 18 P.3d 402 (Ore. App. 2001) (officers could seize chapstick container found during frisk but could not open it without a warrant).

D. Probable Cause to Search Vehicle

Generally. Officers may conduct a warrantless search of an automobile, including the trunk and closed containers, if they have probable cause to believe the items may be located there. The rationale for what is known as the automobile exception to the warrant requirement is that cars are capable of being moved quickly and people have a reduced expectation of privacy in cars. *See California v. Acevedo*, 500 U.S. 565 (1991) (stating general standard); *State v. Holmes*, 109 N.C. App. 615, 428 S.E.2d 277 (1993) (to same effect); *State v. Corpening*, 109 N.C. App. 586, 427 S.E.2d 892 (1993) (to same effect); *State v. Poczontek*, 90 N.C. App. 455, 368 S.E.2d 659 (1988) (officer lacked probable cause to search car for drugs based on informant's tip and officer's observations after stop); *see also State v. Gomez*, 932 P.2d 1 (N.M. 1997) (finding under state constitution that officers may not conduct warrantless search of vehicle without exigent circumstances); *State v. Miller*, 630 A.2d 1315 (Conn. 1993) (finding under state constitution that warrantless automobile search at police station was invalid even though supported by probable cause).

If probable cause exists to search an automobile, officers may conduct an immediate search at the scene, or a later search at the police station, without a warrant. *See Acevedo, supra; compare supra* § 15.5B (delay in search of car may undermine grounds for search of vehicle incident to arrest of occupant).

In *Maryland v. Dyson*, 527 U.S. 465 (1999), the Court reaffirmed that a finding of probable cause that a vehicle contains contraband satisfies the automobile exception to the search warrant requirement. *See also Florida v. White*, 526 U.S. 559 (1999) (police do not need warrant to seize vehicle from public place when they have probable cause to believe that vehicle is forfeited contraband).

Passengers' Belongings. In *Wyoming v. Houghton*, 526 U.S. 295 (1999), the Court held that officers with probable cause to search a car may search passengers' belongings found in the car that are capable of concealing the object of the search. This ruling does not authorize officers to search passengers themselves, however. Nor does it necessarily

authorize searches of passengers' belongings in other contexts—for example, when the driver but not the passenger consents to a search. *See supra* § 15.4B on consent searches.

Seizure of Object. Before seizing an object found in a vehicle, officers must have probable cause to believe that the object constitutes evidence of a crime. *See State v. Bartlett*, 130 N.C. App. 79, 502 S.E.2d 53 (1998) (no probable cause to seize plastic-like substance found in car, which upon laboratory analysis turned out to be controlled substance, because officers admitted that they did not know what substance was at time of seizure).

E. Inventory Search

Arrestees. Officers may search and inventory possessions of arrestee. *See* FARB at 105.

Vehicles. Officers may *impound* a vehicle if pursuant to departmental policy and grounds for impoundment exist, such as the need to safeguard the vehicle and its contents. Officers may *inventory* the vehicle and its contents if pursuant to departmental policy. *See State v. Phifer*, 297 N.C. 216, 254 S.E.2d 586 (1979) (failure to follow standardized procedure; inventory search suppressed); *State v. Peaten*, 110 N.C. App. 749, 431 S.E.2d 237 (1993) (inadequate grounds to impound vehicle; inventory search suppressed).

Pretext. Inventory searches may still be challenged as pretextual. *See supra* § 15.2G (discussing exceptions to *Whren*).