

Warrentless Home Entries

1.5 Hour Webinar


Course Outline

Blue to Gold Law Enforcement Training
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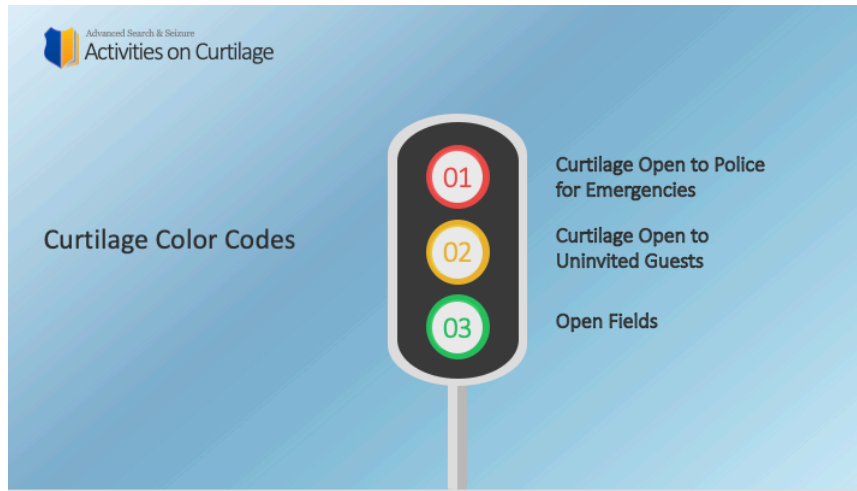
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Module One: Course Introduction – 10 minutes

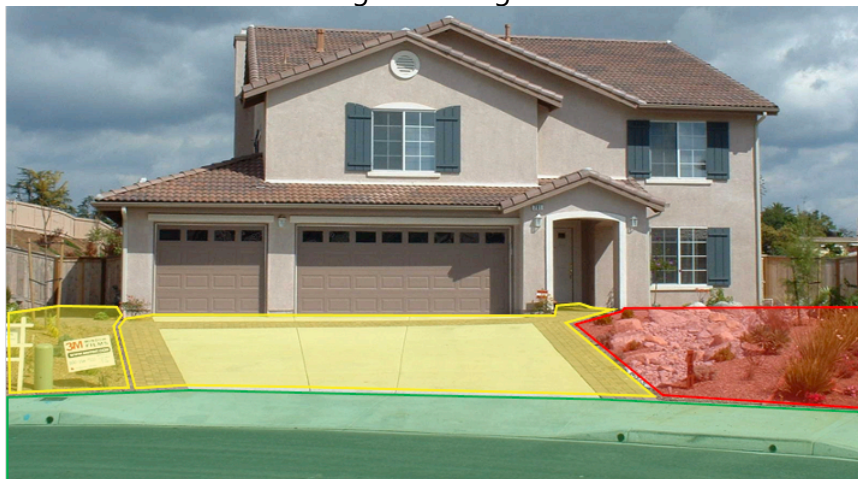
- 1) Instructor introduction.
- 2) Explain the course objective.
- 3) Encourage attendees to ask questions and share feedback with other attendees.
- 4) Explain that certificates will be emailed after the class.
- 5) Go over the three disclaimers:
 - a) Laws and agency standard operating procedures may be more restrictive. Blue to Gold is teaching the federal standard unless otherwise stated. Therefore, students must know their state and local requirements in addition to the federal standard.
 - b) If students have any doubts about their actions, ask a supervisor or legal advisor.
 - c) The course is not legal advice, but legal education. Therefore, nothing we teach should be interpreted as legal advice. Check with your agency's legal advisor for legal advice.

 Agenda	One	Curtilage
	Two	Hot Pursuit
	Three	Imminent Destruction
	Four	Prevent Escape
	Five	Danger to Officers or Others

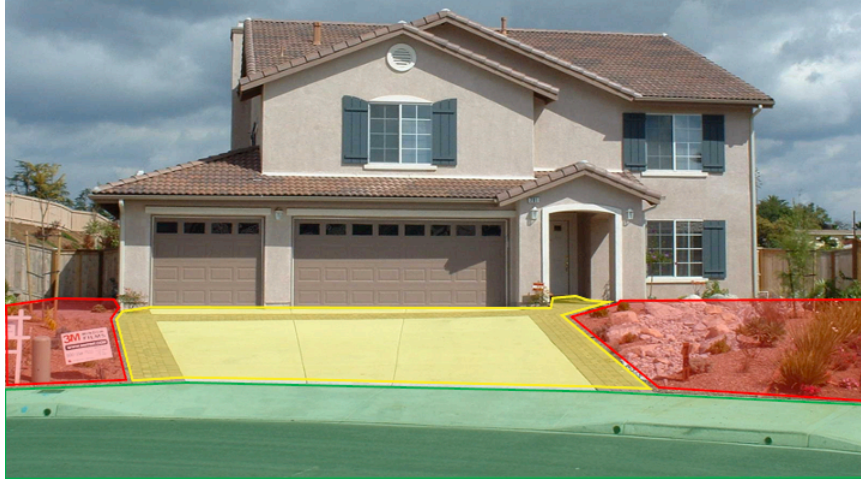
Module Two: Curtilage - 15 minutes



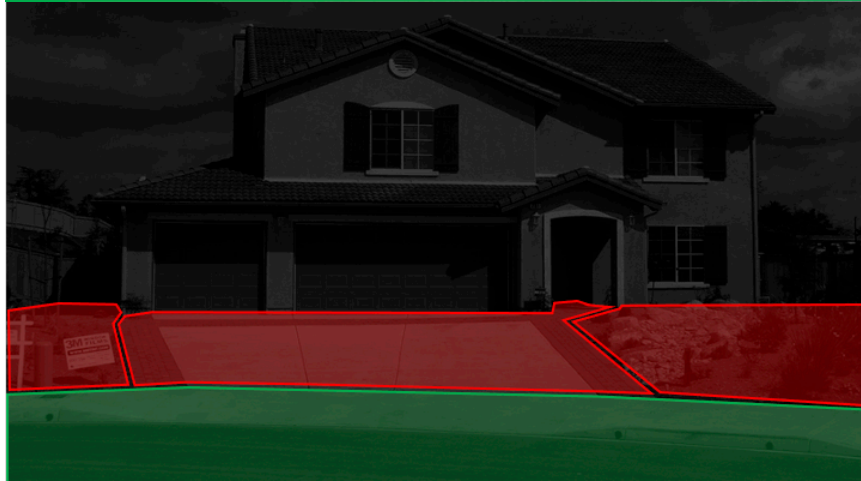
- 1)
- 2) Curtilage is protected “like the home itself.” The public, including police, have implied consent to approach the front door, “knock promptly,” “wait briefly to be received.” And if unanswered, “leave.” But, in bringing a drug-sniffing dog onto the porch, the police exceeded the scope of that implicit license, and their search was thus unconstitutional. U.S. Supreme Court.
- 3) Complying with the terms of traditional knock and talk do “not require fine-grained legal knowledge; it is generally managed without incident by the Nation's Girl Scouts and trick-or-treaters.” U.S. Supreme Court
- 4) **Video:** “Terminator: Curtilage Scanning”



- 5) Red can become yellow with the proper justification, like party in the back or implied invitation.



6)



7)

Viewing from red may be a search

State v. Waldschmidt, 12 Kan.App.2d 284, 740 P.2d 617, *rev. denied* 242 Kan. 905 (1987), the Kansas Court of Appeals held that a fenced back yard was within the curtilage. In that case, the court noted the yard was behind and immediately adjacent to the residence and was surrounded by a six-foot high wooden privacy fence which obstructed the view of the yard. The court found the fence was of the type used for intimate family activities and by erecting it, the defendant exhibited a subjective expectation of privacy that society will protect as reasonable. Thus, when a law enforcement officer scaled the fence, placed his arm and flashlight over the fence, and observed marijuana plants, the court suppressed the plants as the product of an unconstitutional warrantless search.

Where defendant's residence was located one-eighth mile from the public road, along a private drive, and house and yard were enclosed in part by a stone wall with a wire gate, the yard area was protected from unreasonable searches and seizures and warrantless seizure of spent rifle shell from the yard the day after

defendant's husband was shot in the yard was unreasonable; seriousness of the homicide investigation did not create exigent circumstances.



- 8) Police officers' warrantless entry into defendant's home in middle of night to turn down loud music that was disturbing neighbors, after unsuccessful attempts to contact occupant, was justified by exigent circumstances, given that time was of the essence due to continuing noise, that officers entered home to vindicate compelling governmental interest in restoring neighbors' peaceful enjoyment of their homes and neighborhood, and that defendant undermined his right to be left alone by projecting loud noises into neighborhood. *United States v. Rohrig*
- 9) **Case Sample:** Officers stopped people in front of a house for open container violation. Alexander was on the property and grabbed a bag and walked to back of property. He came back empty handed. **Ruling:** Court of appeals held that area in front of shed that was just a few steps from the back door of defendant's residence was curtilage, protected against search by government without warrant or suspicion. Conviction vacated, denial of suppression motion reversed and remanded.

144 Harrison Ave
Staten Island, NY
US v. Alexander 888 F3d 628



Guns Found Here



Red Areas Require Exigency





Look under garage door?
State v. Bowling, 867 SW2d 338





Officer's actions, of getting on his hands and knees with his head almost touching ground and looking into garage through garage door that had been raised one and a half feet to allegedly enable dog to come and go from garage, constituted warrantless "search" which violated Fourth Amendment and state constitutional provision governing searches and seizures. The victim was walking on the shoulder of the road when she was struck from behind and killed by a vehicle which fled the scene. At the scene of the incident, several pieces of plastic and debris common to the type used on the front of vehicles and automobile grills were recovered. One of the recovered pieces was a Ford logo. A witness at the scene also indicated that the vehicle involved in the incident was a tan or light brown colored vehicle. After further investigation Officer Poteete ascertained that the recovered pieces were from the grill of a 1983 to 1986 Ford truck or Bronco. State v. Bowling

- 10) To find a visitor knocking on the door is routine (even if sometimes unwelcome); to spot that same visitor exploring the front path with a metal detector or marching his bloodhound into the garden before saying hello and asking permission, would inspire most of us to—well, call the police.



11) If you would be offended, then it probably violates curtilage.

12) **Legal Rule:** Areas not considered curtilage are **open fields** and are often provided **no protection**.



13) Open fields exception to warrant requirement of state Constitution excused warrantless entry onto private lands by conservation officers investigating suspected violations of fish and game laws, though one means of ingress was gated and had "No Trespassing" sign posted, as effort to keep people off property was feeble and was not reasonably calculated to provide expectation of privacy, and nature of hunting in open spaces denigrates reasonableness of such expectation.

14) **Legal Rule:** There are four **exigent circumstances**:

- Hot Pursuit
- Imminent destruction of evidence
- Prevent escape
- Danger to officers or others

Module Three: Hot Pursuit - 15 minutes

- 1) Legal Rule: You may chase a fleeing suspect into their home for any **arrestable offense** if the chase is **immediate and continuous**.



2)



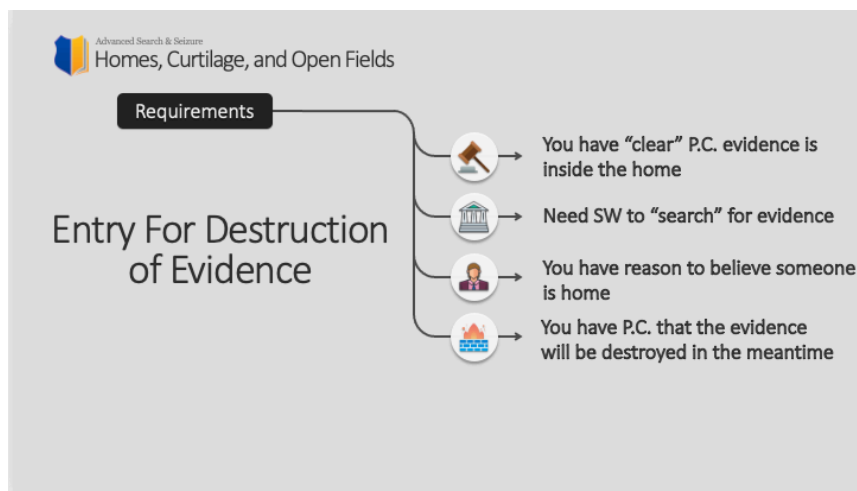
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Even assuming that police officer had arguable probable cause to arrest a suspect for resisting officer's attempts to question him in connection with earlier altercation with his estranged wife, in ignoring officer's requests that he follow officer off the front porch of his parents' home, away from his mother and brother, where they could talk more privately, turning his back on officer, and walking back inside his parents' home, officer violated suspect's clearly established Fourth Amendment rights, and thus was not protected by qualified immunity, when he pursued suspect across the home's threshold and tackled him inside in order to effect a warrantless arrest. *Bailey v. Swindell*. A law enforcement officer arrested a person for, resisting arrest without violence, because the person declined the officer's

request to leave his home to come out to the officer's police car to speak with the officer. The officer would not reveal he wanted the person to leave his home or what the officer wanted to speak to the person about. After the person announced his intentions to leave without objection from the officer, he turned around and walked into his house. The officer never told the person he was under arrest, detained, or not free to leave prior to the person reentering his home and then being arrested.

- 4) **Pro Tip:** When detaining people outside the front door, **tell them** they are being detained.
- 5) **Pro Tip:** If you lose sight of the suspect articulate that the pursuit was "**continuous**" while looking for him. If you lost him for over +/- 15 min and track him down to his house, **have another reason** for the warrantless entry.
- 6) **Video:** "Hot Pursuit"

Module Four: Imminent Destruction- 15 minutes



- 1) Exigent circumstances will of course vary from case to case, and the inherent necessities of the situation at the time should be scrutinized, including (1) the degree of urgency involved and the amount of time necessary to obtain a warrant, (2) the reasonableness of the officer's belief that contraband is about to be removed, (3) the possibility of danger to the police officers guarding the site while a warrant is obtained, (4) information indicating that the possessors of the contraband are aware that the police are on their trail, (5) the ready destructibility of the contraband, and (6) the knowledge that efforts to dispose of narcotics and escape characterize those involved in the narcotics trade. In the Commonwealth v. Gillespie Supreme

Court held that the temporary seizure of a dwelling place does not violate Article I, Section 8 of the Pennsylvania Constitution when four factors are satisfied: (1) the police had probable cause to believe the suspect's home contained evidence of a crime and contraband; (2) the police had good reason to fear that, unless restrained, the defendant would destroy the evidence before they returned with a warrant; (3) the police made reasonable efforts to balance the interests of law enforcement with those of privacy; and (4) the restraint imposed was limited in time and scope

- 2) **Case Sample:** Officer's investigating a burning car on someone's property smelled the distinct odor of a methamphetamine lab coming from a trailer and then heard people running out the back as they approached. **Synopsis:** Defendant was convicted in the 167th Judicial District Court, Travis County, Bob Jones, J., of possession of controlled substance, and he appealed. The Austin Court of Appeals, Third Supreme Judicial District, 777 S.W.2d 570, affirmed, and defendant petitioned for discretionary review. The Court of Criminal Appeals, Campbell, J., held that exigent circumstances justified warrantless entry into trailer home from which odor of methamphetamine laboratory was emanating. **Held:** Exigency existed to enter and clear the trailer for a SW.



- 3) Defendant was convicted in the Superior Court, Law Division, Essex County, of possession of cocaine with intent to distribute. Defendant appealed. The Superior Court, Appellate Division, D'Annunzio, J.A.D., held that defendant's attempt to bar police from house by closing door did not convert reasonable suspicion into probable cause to believe drugs were sold at house, and therefore warrantless search of house was invalid.

Reversed and remanded. State v. Rice. **Held:** Occupant slamming the door on the police did not supply the missing ingredient” for P.C.

- 4) **Pro Tip:** If you want to enter because you have P.C. that evidence will be **removed** before S.W., you should surveil the house unless it would be **dangerous** or **unfeasible**.

- 5) Exigent circumstances will of course vary from case to case, and the inherent necessities of the situation at the time should be scrutinized, including (1) the degree of urgency involved and the amount of time necessary to obtain a warrant, (2) the reasonableness of the officer's belief that contraband is about to be removed, (3) the possibility of danger to the police officers guarding the site while a warrant is obtained, (4) information indicating that the possessors of the contraband are aware that the police are on their trail, (5) the ready destructibility of the contraband, and (6) the knowledge that efforts to dispose of narcotics and escape characterize those involved in the narcotics trade.

In Commonwealth v. Gillespie, the Supreme Court held that the temporary seizure of a dwelling place does not violate Article I, Section 8 of the Pennsylvania Constitution when four factors are satisfied: (1) the police had probable cause to believe the suspect's home contained evidence of a crime and contraband (2) the police had good reason to fear that, unless restrained, the defendant would destroy the evidence before they returned with a warrant; (3) the police made reasonable efforts to balance the interests of law enforcement with those of privacy; and (4) the restraint imposed was limited in time and scope.

- 6) **Case Sample:** Reliable informant told police that suspect was packaging drugs and were preparing to leave. Eight officers then entered house and seized evidence in plain view. **Held:** The “appropriate police procedure” in this case was to watch the house while warrant was obtained.

- 7) **What would you do?** Does the warrant have to be brought to the scene before the search can begin? Should the affiant tell the officers on scene the scope of warrant?

Module Five Prevent Escape – 15 minutes

- 1) **Legal Rule:** If a **serious crime** has been committed and you have reason to believe the suspect will **escape** before getting a warrant, you can enter and arrest him

- 2) **Case Sample:** The Minnesota Supreme Court applied essentially the correct standard in determining whether exigent circumstances existed. The court observed that “a warrantless intrusion may be justified by hot pursuit of a fleeing felon, or imminent destruction of evidence, *Welsh [v. Wisconsin]*, 466 U.S. 740 [104 S.Ct. 2091, 80 L.Ed.2d 732] [(1984)], or the need to prevent a suspect's escape, or the risk of danger to the police or to other persons inside or outside the dwelling.” 436 N.W.2d, at 97. The court also apparently thought that in the absence of hot pursuit there must be at least probable cause to believe that one or more of the other factors justifying the entry were present and that in assessing the risk of danger, the gravity of the crime and likelihood that the suspect is armed should be considered. Applying this standard, the state court determined that exigent circumstances did not exist. We are not inclined to disagree with this fact-specific application of the proper legal standard. The court pointed out that although a grave crime was involved, respondent “was known not to be the murderer but thought to be the driver of the getaway car,” *ibid.*, and that the police had already recovered the murder weapon, *ibid.* “The police knew that Louanne and Julie were with the suspect in the upstairs duplex with no suggestion of danger to them. Three or four Minneapolis police squads surrounded the house. The time was 3 p.m., Sunday.... It was evident the suspect was going nowhere. If he came out of the house, he would have been promptly apprehended.” *ibid.* We do not disturb the state court’s judgment that these facts do not add up to exigent circumstances.

Here’s what police knew:

- PC that Olsen was get-a-way driver during an armed robbery that occurred days prior.
- PC he was at home with two roommates
- No evidence roommates were in danger
- His two accomplices were already arrested
- Gun used was found
- House was surrounded

Held: US Supreme Court held there was no exigency to enter the house without warrant

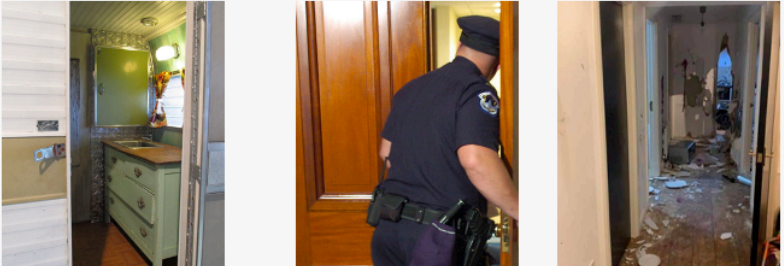


- 3) Morgan and Graf alleged that forming a perimeter around the house intruded on their curtilage, an area protected by the Fourth Amendment. What is more, the intrusion was not a one-time event—it was the county's policy to do so during every 'knock and talk.' On cross-motions for summary judgment, the district court dismissed all of the claims.
- 4) Per U.S. Supreme Court: It is clear that police "may enter a dwelling without a warrant to render emergency aid and assistance to a person they reasonably believe to be in distress and in need of that assistance."
- 5) Case Sample: A housekeeping employee disappeared during her shift. Her street clothes and lunch were found in 6th floor break room. After thorough two-hour search of hotel, every room was searched on 6th floor. She was found murdered inside defendant's room. **Synopsis:** Consider, for example, the situation in *People v. Mitchell*.²⁶ A chambermaid at a hotel disappeared shortly after reporting for work. She had been seen on the sixth floor, where she was assigned, and her street clothes and lunch were found there. Police called for assistance, checked all the vacant rooms and made inquiries of the hotel residents, and then conducted a thorough but equally futile investigation of the hotel basement, roof, air ducts and alleyways. Thereafter, a room-by-room search was commenced on the sixth floor, and in the last room on that floor the police entered they found the body of the chambermaid in a laundry basket. In upholding this police action, the court reasoned: Appraising a particular situation to determine whether exigent circumstances justified a warrantless intrusion into a protected area presents difficult problems of evaluation and judgment. This difficulty is highlighted by the fact that Judges, detached from the tension and drama of the moment, must engage in

reflection and hindsight in balancing the exigencies of the situation against the rights of the accused. Thus, we think it necessary to articulate some guidelines for the application of the “emergency” doctrine. The basic elements of the exception may be summarized in the following manner: (A) The police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property. (B) The search must not be primarily motivated by intent to arrest and seize evidence. [This element was rejected by the Supreme Court in *Stuart, supra.*] *People v. Mitchell*. **Held:** Exigency existed to enter defendant’s room. Appraising a particular situation to determine whether exigent circumstances justified a warrantless intrusion into a protected area presents difficult problems of evaluation and judgment. This difficulty is highlighted by the fact that Judges, detached from the tension and drama of the moment, must engage in reflection and hindsight in balancing the exigencies of the situation against the rights of the accused.

6) **Video:** “Domestic Call”

Advanced Search & Seizure
Three Protective Sweeps



ZONE ONE
Lunge Area
Automatic

ZONE TWO
Adjacent Areas
Automatic

ZONE THREE
Throughout Home
Requires Articulation

7)

8) **Video:** “Warrantless Entry and Search.” What legal issues did you see?

Plain View Seizure:

01.
You are lawfully present
02.
You didn't manipulate the evidence
03.
You had lawful access

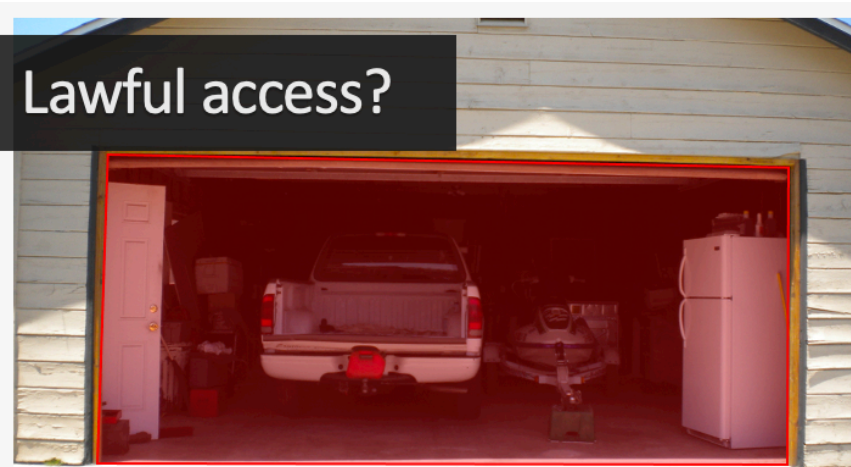
- 9) 2 prong plain view test: (1) ofc. legally in position to view; (2) ofc. has prob cause to associate item w/ crime (eliminates 3rd prong (inadvertent)).
- 10) **Pro Tip:** Remember Plain View (including smell and hearing) is nothing more than **right to be, right to see, hear, or smell.**



- 11) Defendant was convicted in the District Court, Linn County, Robert E. Sosalla, District Associate Judge, of possession of a controlled substance, and she appealed. The Supreme Court, en banc, Snell, J., held that actions of police, who had arrest warrant, did not justify their presence and entry into defendant's motel room and their subsequent seizure of contraband in plain view in room, where defendant actually answered the door and stepped out, police subsequently forced defendant back into the room so that they could get inside to see what was in plain view, defendant's arrest could have been accomplished on the outside, and it was not defendant's idea to return inside. State v. Kubit



12)



13)

You are driving by a house with its garage door open, you see a stolen ATV inside. Can you seize it? You see suspect in driveway. Can you make consensual encounter? Arrest? What is suspect is in backyard?



14)

Officer were inside conducting DV. Plain view evidence was

found, and Narc unit was called. They arrived 30 minutes later and based on those observations wrote SW

- 15) **Pro Tip:** Also, be careful about freezing a home, calling detectives, and then reentering home to show them around.

Module Six: Takeaways – 5 minutes

End of class.