



Searching Cars & Occupants

1.5 Hour Webinar

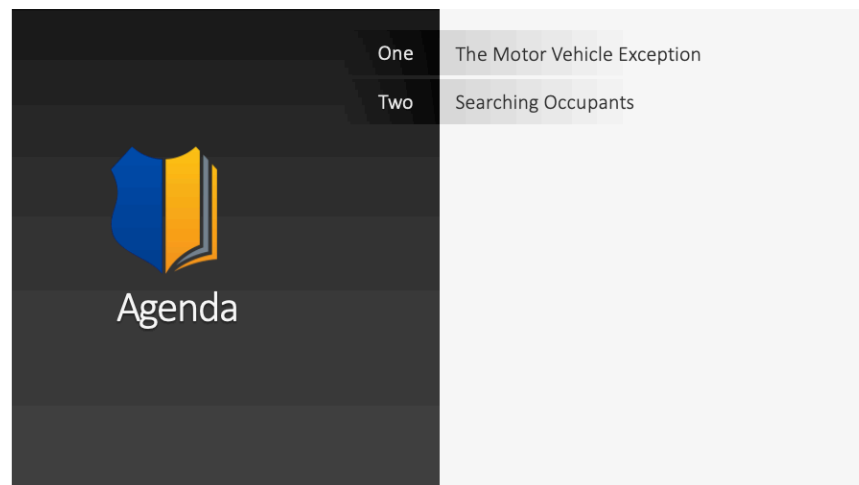
Course Outline

Blue to Gold Law Enforcement Training
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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.



Module Two: Searching Vehicles - 35 minutes

- 1) Legal Rule: Generally ,you may search a vehicle if you have **probable cause** there is evidence or contraband inside.

1925
Carroll v. US, 267 US 132



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- 3) **Case Sample:** During the night of May 20, 1963, a Gulf service station in North Braddock, Pennsylvania, was robbed by two men, each of whom carried and displayed a gun. The robbers took the currency from the cash register; the service station attendant, one Stephen Kovacich, was directed to place the coins in his right-hand glove, which was then taken by the robbers. Two teen-agers, who had earlier noticed a blue compact station wagon circling the block in the vicinity of the Gulf station, then saw the station wagon speed away from a parking lot close to the Gulf station. About the same time, they learned that the Gulf station had been robbed. They reported to police, who arrived immediately, that four men were in the station wagon and one was wearing a green sweater. Kovacich told the police that one of the men who robbed him was wearing a green sweater and the other was wearing a trench coat. A description of the car and the two robbers was broadcast over the police radio. Within an hour, a light blue compact station wagon answering the description and carrying four men was stopped by the police about two miles from the Gulf station. Petitioner was one of the men in the station wagon. He was wearing a green sweater and there was a trench coat in the car. The occupants were arrested, and the car was driven to the police station. In the course of a thorough search of the car at the station, the police found concealed in a compartment under the dashboard two .38—caliber revolvers (one loaded with dum dum bullets), a right-hand glove containing small change, and certain cards bearing the name of Raymond Havicon, the attendant at a Boron service station in McKeesport, Pennsylvania, who had been robbed at gunpoint on May 13, 1963. In the course of a warrant-authorized search of

petitioner's home the day after petitioner's arrest, police found and seized certain .38-caliber ammunition, including some dum dum bullets similar to those found in one of the guns taken from the station wagon. Chambers v. Maroney.

- 4) **Case Sample:** The Supreme Court in *Cady v. Dombrowski*,⁹ an early inventory search case, upheld the trunk search of a car that was impounded on the pretext that the officers were searching for a gun which could fall into the hands of vandals. The Court, while stating that contraband and evidence of criminality will often come into "plain view" of law enforcement officials, seems to suggest that a reduced expectation of privacy justifies warrantless searches of automobiles. The "reduced expectation of privacy" justification for the automobile exception was slowly emerging.

- 5) **Case Sample:** Local ordinances prohibit parking in certain areas of downtown Vermillion, S. D., between the hours of 2 a. m. and 6 a. m. During the early morning hours of December 10, 1973, a Vermillion police officer observed respondent's unoccupied vehicle illegally parked in the restricted zone. At approximately 3 a. m., the officer issued an overtime parking ticket and placed it on the car's windshield. The citation warned: "Vehicles in violation of any parking ordinance may be towed from the area." At approximately 10 o'clock on the same morning, another officer issued a second ticket for an overtime parking violation. These circumstances were routinely reported to police headquarters, and after the vehicle was inspected, the car was towed to the city impound lot. From outside the car at the impound lot, a police officer observed a watch on the dashboard and other items of personal property located on the back seat and back floorboard. At the officer's direction, the car door was then unlocked and, using a standard inventory form pursuant to standard police procedures, the officer inventoried the contents of the car, including the contents of the glove compartment which was unlocked. There he found marijuana contained in a plastic bag. All items, including the contraband, were removed to the police department for safekeeping. During the late afternoon of December 10, respondent appeared at the police department to claim his property. The marijuana was retained by police. Respondent was subsequently arrested on charges of possession of marijuana. His motion to suppress the evidence yielded by the inventory search was denied; he was convicted

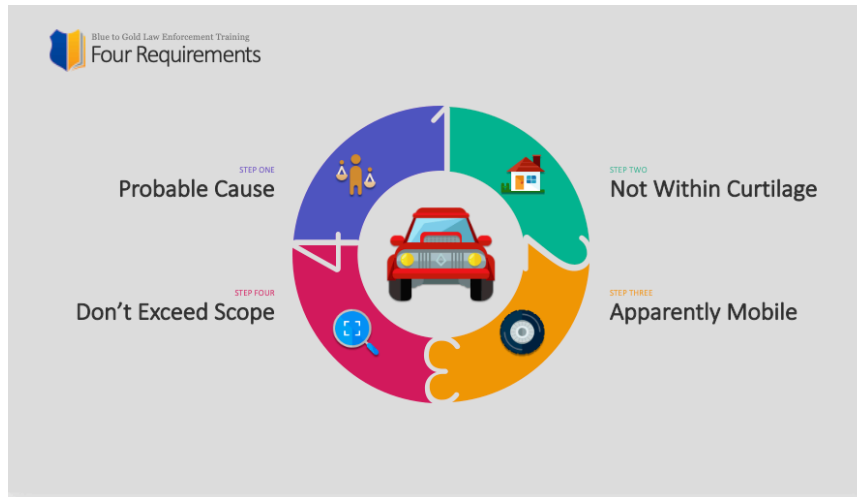
after a jury trial and sentenced to a fine of \$100- and 14-days' incarceration in the county jail. On appeal, the Supreme Court of South Dakota reversed the conviction. 228 N.W.2d 152. The court concluded that the evidence had been obtained in violation of the Fourth Amendment prohibition against unreasonable searches and seizures. We granted certiorari, 423 U.S. 923, 96 Ct. 264, 46 L.Ed.2d 248 (1975), and we reverse.



- 6) When vehicle is being used on highways or is capable of that use and found stationary in place not regularly used for residential purposes, justifications for vehicle exception to warrant requirement that vehicle is readily mobile and there is reduced expectation of privacy stemming from pervasive regulation of vehicles capable of traveling on highways comes into play, and warrantless search is justified.



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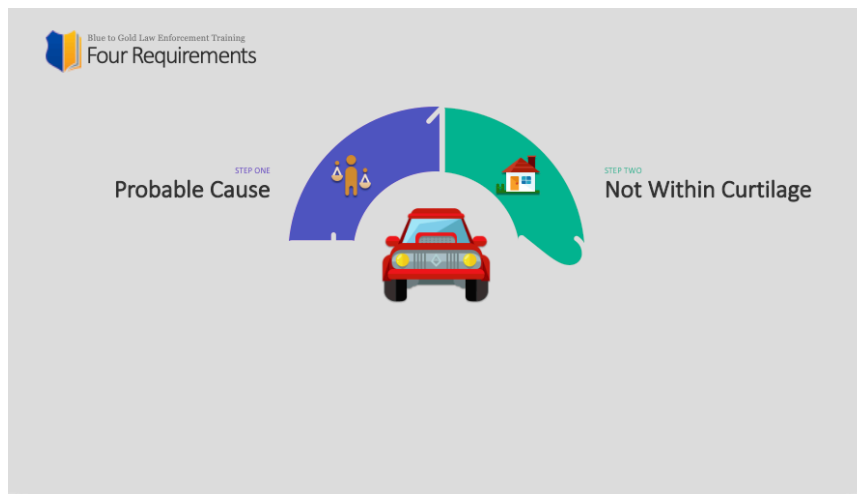


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- 10) **Pro Tip:** Probable cause is all about **mastering articulation**. Write like you're talking to an uninformed person...explain why you knew what you knew.
- 11) **Case Sample:** Officers had "abundant" probable cause to get a SW for a car that was expected to cross into the state in 10 hours. They searched the car without getting SW. **Synopsis:** At 11 a.m. on the morning of July 2, 1996, a St. Mary's County (Maryland) Sheriff's Deputy received a tip from a reliable confidential informant that respondent had gone to New York to buy drugs and would be returning to Maryland in a rented red Toyota, license number DDY 787, later that day with a large quantity of cocaine. The deputy investigated the tip and found that the license number given to him by the informant belonged to a red Toyota Corolla that had been rented to respondent, who was a known drug dealer in St. Mary's County. When

respondent returned to St. Mary's County in the rented car at 1 a.m. on July 3, the deputies stopped and searched the vehicle, finding 23 grams of crack cocaine in a duffel bag in the trunk. Respondent was arrested, tried, and convicted of conspiracy to possess cocaine with intent to distribute. He appealed, arguing that the trial court had erroneously denied his motion to suppress the cocaine on the alternative grounds that the police lacked probable cause, or that even if there was probable cause, the warrantless search violated the Fourth Amendment because there was sufficient time after the informant's tip to obtain a warrant. *Maryland v. Dyson*.

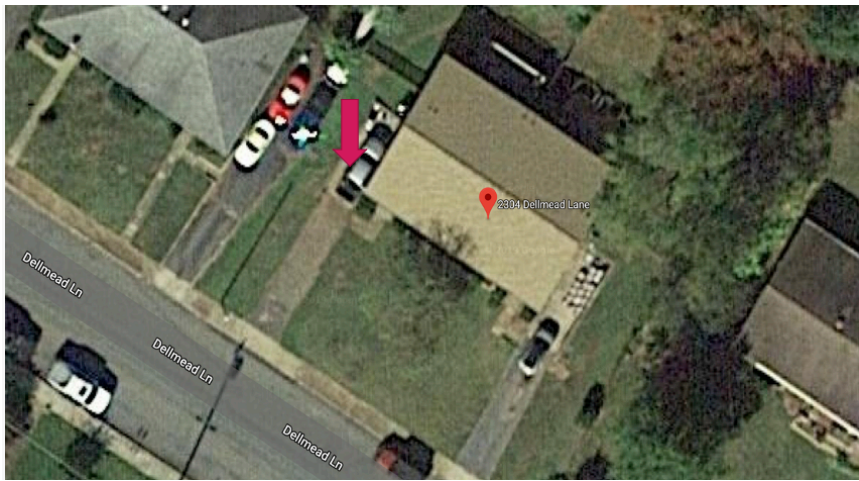
- 12) **Case Sample:** Along with other factors, the officer articulated that he observed a large amount of used Kleenex tissues on the floorboard of vehicle. **Synopsis:** As Deputy Whitlock spoke with Scott, he noticed a large amount of used Kleenex on the floorboard of the truck. This also aroused Deputy Whitlock's suspicion inasmuch as it had been his experience that people who "snort" cocaine constantly have a "runny" nose which requires constant wiping. *United States v Hill*. **Held:** This contributed to P.C. because cocaine users often need to wipe their noses!



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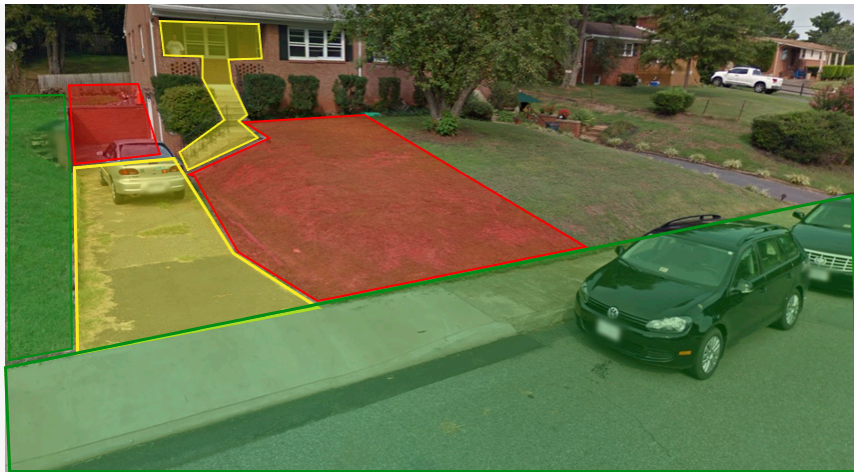


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During the investigation of two traffic incidents involving an orange and black motorcycle with an extended frame, Officer David Rhodes learned that the motorcycle likely was stolen and in the possession of petitioner Ryan Collins. Officer Rhodes discovered photographs on Collins' Facebook profile of an orange and black motorcycle parked in the driveway of a house, drove to the house, and parked on the street. From there, he could see what appeared to be the motorcycle under a white tarp parked in the same location as the motorcycle in the photograph. Without a search warrant, Office Rhodes walked to the top of the driveway, removed the tarp, confirmed that the motorcycle was stolen by running the license plate and vehicle identification numbers, took a photograph of the uncovered motorcycle, replaced the tarp, and returned to his car to wait for Collins. When Collins returned, Officer Rhodes arrested him. The trial court denied Collins' motion to suppress the evidence on the ground that Officer Rhodes violated the Fourth Amendment when he trespassed on the house's curtilage to conduct a search, and Collins was convicted of receiving stolen property. The Virginia Court of Appeals affirmed. The State Supreme Court also affirmed, holding that the warrantless search was justified under the Fourth Amendment's automobile exception. **Held:** The automobile exception does not permit the warrantless entry of a home or its curtilage in order to search a vehicle therein. *Collins v Virginia*



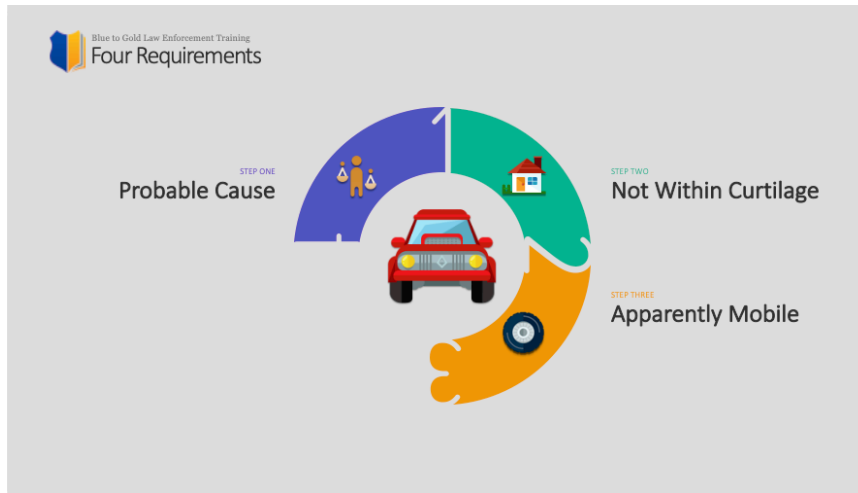
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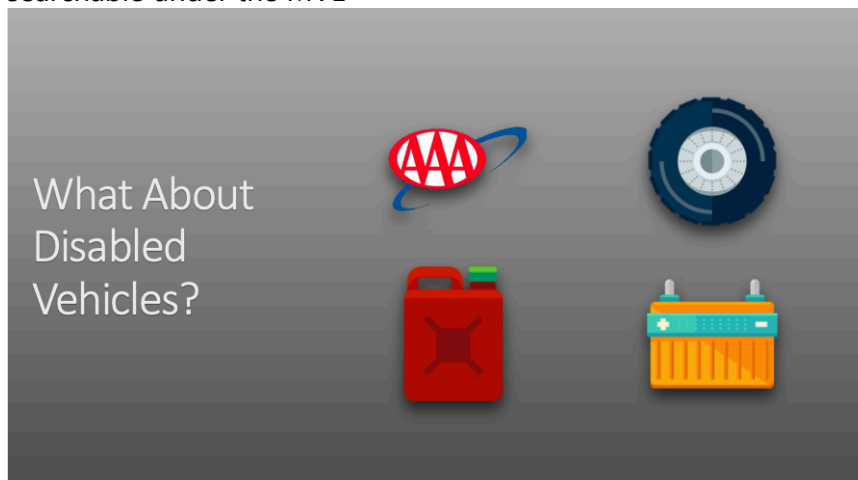


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Even if the car needed a carburetor if it's apparently mobile its searchable under the MVE



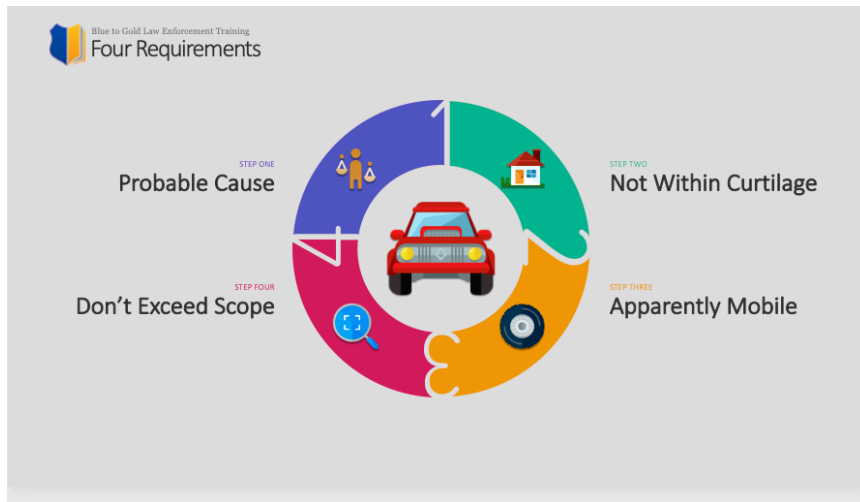
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Basically, if AAA could help, then it's mobile

24) **Case Sample:** Officers searched a car in an impound lot. **Fact** that 38 days transpired between seizure of defendant's car at

his arrest and warrantless search of hidden compartment behind dashboard while car was impounded was legally irrelevant to whether warrantless search of car was valid under automobile exception to warrant requirement. **Held:** The fact that the car was in an impound lot was “irrelevant.”

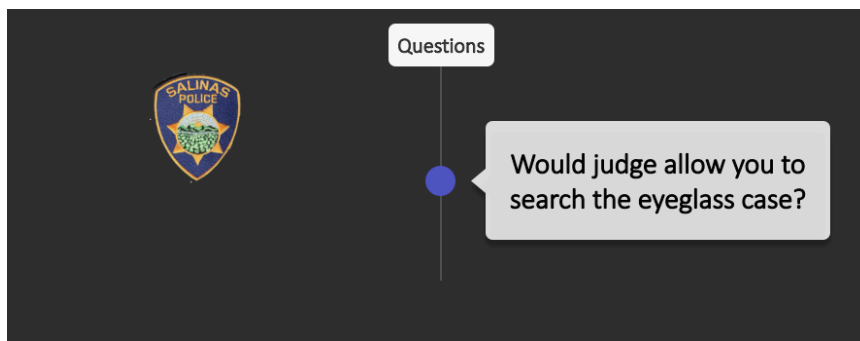
- 25) **Pro Tip:** We don't want to lose the motor vehicle exception...get a search warrant when there's **plenty of time** and for **important cases**.



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- 27) **Legal Rule:** Generally, you conduct the search in the **same manner** as if you had a warrant.

- 28) **Video:** “Traffic Stop: PC Search”



29)

- 30) **Case Sample:** Officers searched a car for narcotics and looked into a passenger's purse and found narcotics belonging to passenger, not driver. **Synopsis:** In the early morning hours of July 23, 1995, a Wyoming Highway Patrol officer stopped an automobile for speeding and driving with a faulty brake light. There were three passengers in the front seat of the car: David

Young (the driver), his girlfriend, and respondent. While questioning Young, the officer noticed a hypodermic syringe in Young's shirt pocket. He left the occupants under the supervision of two backup officers as he went to get gloves from his patrol car. Upon his return, he instructed Young to step out of the car and place the syringe on the hood. The officer then asked Young why he had a syringe; with refreshing candor, Young replied that he used it to take drugs.

At this point, the backup officers ordered the two female passengers out of the car and asked them for identification. Respondent falsely identified herself as "Sandra James" and stated that she did not have any identification. Meanwhile, in light of Young's admission, the officer searched the passenger compartment of the car for contraband. On the back seat, he found a purse, which respondent claimed as hers. He removed from the purse a wallet containing respondent's driver's license, identifying her properly as Sandra K. Houghton. When the officer asked her why she had lied about her name, she replied: "In case things went bad." Wyoming v. Houghton. **Held:** Search upheld since a it could contain contraband and it's inside the vehicle.

- 31) **What would you do?** Does the smell of "burnt" marijuana justify the search of the trunk?
- 32) **Pro Tip:** Courts around the country are torn on this issue. Where illegal, best practice is to provide some fact or circumstance on why you think contraband could be in the trunk.

Module Three: Searching Occupants - 35 minutes

Blue to Gold Law Enforcement Training
Search Cars and Occupants

Dealing with Occupants

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| Permissible Activities | Protective Sweeps | Searching Passengers |

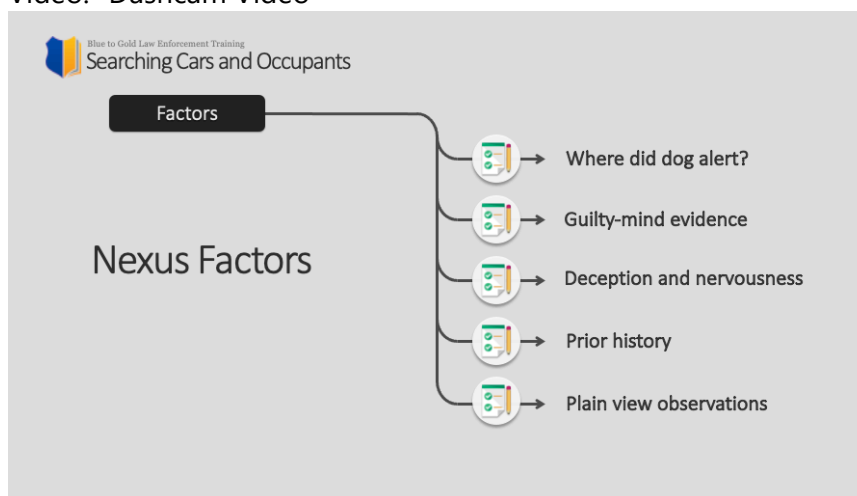
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- 2) **What would you do?** Are passengers free to leave a traffic stop?
- 3) Any reasonable passenger would have understood the police officers to be exercising control to the point that no one in the car was free to depart without police permission.
- 4) A lawful roadside stop begins when a vehicle is pulled over for investigation of a traffic violation. The temporary seizure of driver *and passengers* ordinarily continues, and remains reasonable, *for the duration of the stop*.
- 5) **Legal Rule:** You may order any occupant in or out of the vehicle for any **legitimate reason**.
- 6) In summary, danger to an officer from a traffic stop is likely to be greater when there are passengers in addition to the driver in the stopped car...We therefore hold that an officer making a traffic stop may order passengers to get out of the car pending completion of the stop.
- 7) **Pro Tip:** Even though passengers are seized under the Fourth Amendment, use **good judgment**, and have a reason to keep them on scene.
- 8) **What would you do?** Can you demand that passengers identify themselves?
- 9) **Case Sample:** Officer stopped car for speeding and demanded passenger's ID. AZ law requires ID if person stopped for R.S. or P.C. When asked, officer said it's "routine for LE to ID all occupants." **Held: 4th Amendment violation.**
- 10) **Protective Sweeps**
- 11) **Legal Rule:** You can patdown a passenger if you have reason or believe they pose a danger.
- 12) **Case Sample:** A passenger admitted that he was a gang member and was patted down. A gun was found in his waistband. **Held:** Terry patdown rules apply to passengers as well as drivers.
- 13) **Video:** Terry Stop Patdown"

14) Searching Passengers

- 15) **Legal Rule:** Generally, you cannot automatically search passengers when you have PC to search the car. Instead, you need PC as to them.
- 16) **Case Sample:** We see no ground for expanding the ruling in the Carroll case to justify this arrest and search as incident to the search of a car. We are not convinced that a person, by mere presence in a suspected car, loses immunities from search of his person to which he would otherwise be entitled. U.S. v. Di Ri
- 17) **Pro Tip:** Warrantless searches of passengers requires: There is a nexus between contraband and passenger AND you have exigency.
- 18) **Case Sample:** A drug dog alerted to the driver's side of the vehicle. **Synopsis:** The driver In *Funkhouser*, the Court of Special Appeals stated, "The police not only had probable cause [after a positive canine scan] to search the Jeep wrangler; they also had probable cause to arrest Funkhouser as its *158 driver and lone occupant." *Funkhouser*, 140 Md.App. 721, 782 A.2d 402 (2001). (alteration added). Admittedly, we stated in *Wilkes* "that once a drug dog has alerted the trooper to the presence of illegal drugs in a vehicle, sufficient probable cause existed to support a warrantless arrest." 364 Md. at 554 n. 24, 774 A.2d at 439 n. 24. However, as in *Funkhouser*, *Wilkes* was the driver and the only person in the vehicle. was the sole occupant and searched. *State v. Wallace*. Held: There was probable cause to search the lone occupant and driver.
- 19) **Case Sample:** A drug dog alerted with multiple occupants. When no narcotics were found cops searched all occupants. **Synopsis:** A positive canine scan to contraband in a vehicle's interior compartment generally, without more, does not rise to probable cause to search all passengers of that vehicle; some additional substantive nexus between the passenger and the criminal conduct must appear to exist in order for an officer to have probable cause to either search or arrest a passenger. *State v. Wallace* **Held:** Unlawful search. No nexus articulated.
- 20) We affirm that a positive canine scan to a vehicle's interior compartment generally, without more, does not rise to probable cause to search all passengers of that vehicle.

- 21) **Pro Tip:** Remember, you need a nexus! What would you tell a judge **why** you want to search the passenger? If you don't know, don't search.
- 22) **Case Sample:** Cops smelled the odor of marijuana and arrested four suspects. **Held:** Unlawful arrest and search.
- 23) In effect, defendant's arrest was prompted by a mere suspicion that someone must have been smoking marijuana...and therefore, the best thing to do was to arrest and search everybody.
- 24) **Case Sample:** Cops smelled marijuana and saw smoke coming out of vehicle. **Synopsis:** Court holds there were grounds to arrest passenger in parked car where "the constable's actions were based not on the smell of burning marijuana alone, but on the contemporaneous presence of smoke coming out of the car: State v. Mitchell. **Held:** Lawful arrest and search.
- 25) Video: "Dashcam Video"



- 26) Generally, a passenger's joint possession of a controlled substance found in a vehicle can be established by evidence that (1) supports an inference that the driver was involved in drug trafficking, as distinguished from possessing illegal drugs for personal use; (2) shows the passenger acted suspiciously during a traffic stop; and (3) shows the passenger was not a casual occupant but someone who had been traveling a considerable distance with the driver.
- 27) **What would you do?** What about searching containers attached to a person? Like a wallet or fanny pack?

- 28) **Legal Rule:** In order to search a container under the automobile exception, it must be “**sitting on its own**” inside the vehicle.
- 29) **Pro Tip:** Finally, you need exigency (again easy).
- 30) We deal first with the matter of exigent circumstances, for we have no doubt that such existed here. If there was probable cause to search Smith, promptness in acting thereon was essential, for the time expended to obtain a warrant would probably have permitted Smith to **escape** or **consume** the heroin or **both**.
- 31) **Pro Tip:** If you have exigency, it does not mean it requires an arrest. Exigency exists as to the evidence, not the requirement to arrest.
- 32) **Legal Rule:** If you **have PC to arrest**, and intend to arrest, then you can conduct a search even when there’s no PC the passenger has evidence on their person.
- 33) **Pro Tip:** These searches should be based on a **legitimate intent** to take suspect in custody. The evidence found should not justify the decision to arrest.
- 34) **Case Sample:** Cop told driver he planned to issue citation for no license and then conducted patdown and unlawfully opened small container and found drugs. State claimed that since cop could arrest, search valid. **Synopsis:** Search incident to arrest exception to search warrant requirement did not justify law enforcement officer's search of containers, in which officer discovered controlled substances, that were found in suspect's pockets following a justified *Terry* frisk after suspect was stopped for driving without privileges, and thus search of containers was unlawful, although officer initially had probable cause to arrest suspect for driving without privileges before he searched the containers, and although arrest was substantially contemporaneous to officer's search; officer told suspect that he would issue him a citation for driving offense rather than arresting him, and officer did not intend to arrest suspect until he discovered the controlled substances. *State v. Lee*. **Held:** Court held that this was not a SITA since there was no intent to arrest. **Note:** Some courts don’t follow this rule. If cop “could” arrest, SITA lawful.

Module Four: Takeaways – 2 minutes