Michael Stankan's Fourth Amendment Outline[1]

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[1] Version 1.0 4/1/2017. In November of 2015, Michael Stankan gave a presentation to the Western Maryland Criminal Defense Bar regarding Fourth Amendment issues in traffic stops. This is his outline of cases from that presentation.

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Outline for WMCDA Presentation:

AUTOMOBILE STOPS SEARCHES SEIZURES:

Burden of Proof:

Defendant seeking suppression of fruits of warrantless automobile search had initial burden to challenge evidence and to go forward in offering support for that challenge. U.S.C.A. Const.Amend. 4.
When a search is warrantless, the state assumes the burden of overcoming the presumption of invalidity by demonstrating, by however many steps are necessary, that the warrantless search satisfied one of the firmly established exceptions to the warrant requirement; in such a posture, it is the state that loses any "tie" resulting from equivocal evidence. U.S.C.A. Const.Amend. 4.
Graham v. State, 146 Md. App. 327, 807 A.2d 75 (2002)

Jones:

The state bears the burden to prove, by a preponderance of the evidence, that ***consent*** to search was freely and voluntarily given. U.S.C.A. Const.Amend. 4. Jones v. State, 139 Md. App. 212, 775 A.2d 421 (2001)

Herbert:

If it is established that a search was pursuant to a judicially issued warrant but record is utterly silent as to justification for warrant, state enjoys presumption as to its validity and defendant, having failed to carry burden of rebuttal, loses the nothing-to-nothing tie; if, on the other hand, it is established that search was warrantless and record is utterly silent as to justification for warrantless search, the defendant enjoys presumption as to its invalidity and state, ***having failed to carry its burden of rebuttal, loses that nothing-to-nothing tie. U.S.C.A. Const.Amend. 4.*** Defendant who moved to suppress evidence seized pursuant to a search warrant, based on a challenge to validity of warrant, bore burden of producing warrant, application for warrant, and supporting affidavit, and state was under no obligation to offer anything. U.S.C.A. Const.Amend. 4. Herbert v. State, 136 Md. App. 458, 766 A.2d 190 (2001)

Standing:

Held: Defendants charged with crimes of possession may only claim the benefits of the exclusionary rule if their own Fourth Amendment rights have in fact been violated. United States v. Salvucci, 448 U.S. 83, 83

Brendlin:

Passenger of automobile that was pulled over by police officer for traffic stop was "seized" under the Fourth Amendment from moment automobile came to halt on roadside and, therefore, was entitled to challenge constitutionality of traffic stop; any reasonable passenger would have understood police officers to be exercising control to point that no one in the automobile was free to depart without police permission
When police make a traffic stop, a passenger in the car, like the driver, is seized for Fourth Amendment purposes and so may challenge the stop' A person is "seized" by the police and thus entitled to challenge the government's action under the Fourth Amendment when the officer, by means of physical force or show of authority, terminates or restrains his freedom of movement through means intentionally applied See: Brendlin v. California, 551 U.S. 249, 127 S. Ct. 2400, 168 L. Ed. 2d 132 (2007) (Dennis vs. State).

Graham:

Delay of 25 minutes between investigatory stop of vehicle and arrival of drug-sniffing dog was unreasonable and violated Fourth Amendment where officer knew within five minutes of stop that driver did not have valid license, but ordered passenger to remain in vehicle for the duration until dog arrived and alerted for drugs. U.S.C.A. Const.Amend. 4. ***Detention of automobile passenger beyond time when purpose of investigative stop was effectuated precipitated discovery of illegal drugs was unreasonable and violated Fourth Amendment absent reasonable articulable suspicion to justify extending detention. (defendant denied any interest in the car, but still had standing in this matter.) Note: Drugs were found on Defendant…not in car.*** Graham v. State, 146 Md. App. 327, 807 A.2d 75 (2002)980)

Colin:

Operator of rented automobile not listed in rental agreement as authorized driver did not have standing to challenge constitutionality of search of automobile…

Heath ***was the driver of a rented automobile which he borrowed from the lessee," but was not "listed as an authorized driver on the rental agreement," nor did Heath "produce evidence of any independent agreement with Enterprise allowing him to drive the automobile lawfully." Id. at 403, 646 A.2d 1095. In fact, "the contract between Enterprise and ..., [Heath's girlfriend] expressly prohibits the motor vehicle from being driven by anyone other than the Renter...." The Court ultimately ruled that the renter of the vehicle was without any authority to give Heath her permission to drive the automobile and that,***

even if Heath had a subjective expectation of privacy in the vehicle, such an expectation of privacy was not "one that we are willing to consider as reasonable." Colin =Passenger / Heath=Borrower of vehicle-neither had standing. Colin v. State, 101 Md. App. 395, 646 A.2d 1095 (1994)

Ford:

Defendant had reasonable expectation of privacy in vehicle owned by his fiancee, and therefore had standing to challenge warrantless search of vehicle, though defendant was not driving vehicle at time of search; there was strong circumstantial evidence that defendant possessed a key to vehicle, his money was used to purchase vehicle, he lived in house where vehicle was kept, he had maintained long-time romantic relationship with fiancee, and he had used vehicle regularly with fiancee's permission for almost five years. U.S.C.A. Const.Amend. 4. Ford v. State, 184 Md. App. 535, 967 A.2d 210 (2009)

Traffic Violations:

Rowe Case :

…***defendant's actions while driving did not amount to conduct prohibited by statute and did not support traffic stop, and (2) assuming applicability of doctrine of police community caretaking function, defendant's actions while driving did not support stop as exercise of such function.*** (rumble strip does not = public safety)-statuatory. Driver's ***momentary crossing of edge line of roadway and later touching of that line did not amount to unsafe lane change or unsafe entry onto the roadway,*** conduct prohibited by statute, and did not support traffic stop. Code, Transportation, § 21–309. Rowe v. State, 363 Md. 424, 769 A.2d 879 (2001)

Edwards Case:

Defendant was convicted after bench trial in the Circuit Court, Harford County, Maurice W. Baldwin, Jr., J., of possession of a concealed weapon and possession of marijuana. Defendant appealed. The Court of Special Appeals, Hollander, J., held that traffic stop based on failure to drive in single lane was lawful. ***Crossing the center line of an undivided, two lane road by as much as a foot, on at least one occasion***, provided a legally sufficient basis to justify a traffic stop, as it provided officer with a reasonable suspicion that statute requiring motorists to drive in single lane was violated. Code, Transportation, § 21–309(b). Edwards v. State, 143 Md. App. 155, 792 A.2d 1197 (2002) (center line does = public safety)

Lewis Case:

Background: Defendant was charged with possession of controlled dangerous substance. The Circuit Court, Baltimore City, John N. Prevas, J., granted defendant's motion to suppress in part, and denied motion in part. Defendant noted appeal to the Court of Special Appeals.Holdings: Following issuance of writ of certiorari on its own initiative, the Court of Appeals, Battaglia, J., held that:1 ***police officers did not have reasonable suspicion to believe that defendant had committed traffic violation when defendant "almost" hit police car, and 2 automobile stop was not justified under police officers' community caretaking function***
Lewis v. State, 398 Md. 349, 920 A.2d 1080 (2007)

Smith:

Police officer had a reasonable articulable suspicion that vehicle in which defendant was a passenger was violating traffic law and, thus, was justified in making a traffic stop, where officer saw vehicle traveling ***at what he estimated to be 40 to 45 miles per hour, and posted speed limit was 25 miles per hour. U.S.C.A. Const.Amend. 4; West's Ann.Md.Code, Transportation, § 21–801.1.*** A police officer conducting an automobile stop makes a valid Fourth Amendment intrusion if the officer has probable cause to believe that the driver has committed a traffic violation or if the officer has reasonable articulable suspicion that criminal activity may be afoot, including reasonable articulable suspicion to believe that the car is being driven contrary to the laws governing the operation of motor vehicles. U.S.C.A. Const.Amend. 4. ***An experienced, licensed operator of a car can express an opinion regarding the apparent speed of another car, for the purpose of determining whether a traffic stop was justified. U.S.C.A. Const.Amend. 4.*** Smith v. State, 182 Md. App. 444, 957 A.2d 1139 (2008)

Smith:

police officer's observation that vehicle's ***rear deck brake light did not illuminate upon driver's application of brakes provided reasonable suspicion for officer to conduct traffic stop of vehicle***, and2 even if officer's observation that vehicle's rear deck brake light did not illuminate upon driver's application of brakes was not reasonable suspicion for officer to conduct traffic stop, the stop was ***justified nonetheless on basis that vehicle was driven in an unsafe condition.*** Smith v. State, 214 Md. App. 195, 75 A.3d 1048 cert. denied, 436 Md. 330, 81 A.3d 459 (2013) ***20 Blunts Local Case:*** Noonan Case: traffic stop pulling over line "20 Blunts".

Equipment Violations:

Police officer had reasonable articulable suspicion to initiate a traffic stop of vehicle in which defendant was a passenger based on officer's belief that the vehicle ***had headlamps that emitted blue light contrary to the laws governing the operation of motor vehicle***s.

U.S.C.A. Const.Amend. 4; West's Ann.Md.Code, Transportation, § 22–203(b). Ray v. State, 206 Md. App. 309, 47 A.3d 1113 (2012) aff'd, 435 Md. 1, 76 A.3d 1143 (2013)

Turkes:

Police officer had reasonable suspicion to support traffic stop of defendant's vehicle on suspicion of a window-tinting violation; officer ***had training and experience in recognizing legally tinted windows***, observed that, on a sunny morning, he was unable to see into defendant's vehicle at all to tell the number of occupants in the car or to distinguish movement in the car***, did not see an inspection sticker*** on the tint, and had approximately 8 to 10 seconds to observe the car before initiating a stop. U.S.C.A. Const.Amend. 4. If a police officer stops a car for a window-tinting violation based solely on visual inspection, ***the officer could check the car for an inspection sticker to determine whether the sticker indicates that the tint is in compliance with the law;*** if there is no reason to believe the sticker is not genuine, there would be no reasonable suspicion to support continuing to detain the motorist, but if there is no label, or the label appears to be not genuine, that alone may justify a citation, a repair order, and some further investigation. U.S.C.A. Const.Amend. 4. Turkes v. State, 199 Md. App. 96, 20 A.3d 173 (2011)

Police officer had probable cause to stop defendant's vehicle to investigate crack in his windshield and for purpose of writing an equipment repair order; having observed cracked windshield, officer could reasonably have been concerned that crack rendered vehicle "unsafe," and that sighting this phenomenon compelled further investigation. West's Ann.Md.Code, Transportation, § 22–101(a)(1)(i). Muse v. State, 146 Md. App. 395, 807 A.2d 113 (2002) ***Post Stop probable Cause=Continued Detention: Driving While Suspended/Without a License etc.- state gets at the least into the passenger compartment (Gant). State also gets PC to continue to hold until dog arrives.***

RAS of other than traffic Crimes:

Davis:

I find that there is ***a preponderance of the evidence*** here that the officer had a minimum of articulable suspicion to stop this vehicle, and I think he had probable cause to stop this vehicle, based on the fact that it was a far different cry in the case that was cited to me with respect to just a black male with a black top. Here we have a very specific identification of a ***very specific vehicle, possible Econoline, and it was an Econoline, a van, which it was a van, and it had the word "Furniture" on the side, which is the most identifying mark that you could possibly have, and the close proximity, three-quarters of a mile from the scene of the burglary. So the officer acted properly in stopping the vehicle.*** Davis v. State, No. 1951 SEPT.TERM 2013, 2015 WL 6112285, at *2 (Md. Ct. Spec. App. July 21, 2015)

Hardy:

…held that anonymous tip was ***insufficient to justify investigatory stop of vehicle.*** Under certain circumstances, an anonymous tip may be sufficient to justify an investigatory stop. U.S.C.A. Const.Amend. 4. to support an investigatory vehicle ***stop based on an anonymous informant's tip, the tip must provide something more than facts or details that are readily visible to the public, and to the extent the tip predicts a suspect's future conduct, the quality of the informant's information must be sufficient to demonstrate a familiarity with the suspect's itinerary or affairs. U.S.C.A. Const.Amend. Anonymous tip informing officers that "burgundy Honda" was traveling eastbound on named highway and that occupants were believed to have weapons and drugs was insufficient to justify investigatory stop; tip was, at best, quite scanty in regard to any details about vehicle or occupants, and though tip contained some predictive information concerning vehicle's route and destination, that information was unremarkable, especially considering that named highway was major artery. U.S.C.A. Const.Amend. 4.*** Hardy v. State, 121 Md. App. 345, 709 A.2d 168 (1998)

Alabama v. White:

…held that anonymous telephone tip, as corroborated by independent police work, exhibited sufficient indicia of reliability to provide reasonable suspicion to make investigatory stop of defendant's vehicle. Anonymous telephone tip that defendant would be leaving a particular apartment at a ***particular time*** in ***a particular vehicle,*** that she would be going to a ***particular motel***, and that she would be in possession of cocaine, as corroborated by independent police work, exhibited sufficient indicia of reliability to provide reasonable suspicion to make investigatory stop; although not every detail mentioned by tipster was verified, such as defendant's name, or precise apartment from which she left, officers did corroborate that woman left building and got ***into particular vehicle described by caller, within time frame predicted by caller;*** moreover, although officers stopped defendant just short of motel designated by caller, four-mile route driven by defendant was the most direct route possible to the motel. U.S.C.A. Const.Amend. 4. Alabama v. White, 496 U.S. 325, 110 S. Ct. 2412, 110 L. Ed. 2d 301 (1990)

Carter:

Articulable or reasonable suspicion existed for the initial Terry-stop of the van and its occupants; police ***received anonymous telephone call reporting that suspicious vehicle was parked on school's parking lot on a Sunday evening when school was not in session,*** and when police arrived at school six minutes after call, van was the only vehicle on school parking lot and two persons were seen walking away from van, and as these two persons observed approach of the police, ***they began running, and van itself started to pull out of the parking lot, but was immediately stopped.*** An anonymous call that might not be reliable enough to establish

probable cause for arrest might nonetheless be reliable enough to establish reasonable suspicion for stop. Carter v. State, 143 Md. App. 670, 795 A.2d 790 (2002)

Farewell:

Evidence was sufficient, under totality of circumstances, to support court's finding that law enforcement officers had reasonable suspicion to stop automobile, a taxicab, in order to perform an investigative detention of its occupants in relation to two robberies; ***robberies occurred in same general area and occurred close in time, taxicab screeched wheels near store robbed, robbers were described as two black males, one tall and one short, wearing dark cloths and men in car matched description, officer spotted vehicle shortly after robbery, similar taxicabs were not generally seen in area at time of pursuit, vehicle's driving was erratic, and cab was reported leaving area of first robbery. U.S.C.A. Const.Amend.*** 4. Farewell v. State, 150 Md. App. 540, 822 A.2d 513 (2003)

The Whren Stop:

Jackson:

The First Immateriality: There Is Nothing Wrong With Investigative Opportunism The first of the immaterialities advanced by the appellant consists of casting **1157 aspersions on the bona fides of Trooper McCarthy in making the traffic stop. He contends that Trooper McCarthy, by summoning immediate backup and by calling for a drug-sniffing canine, betrayed his true purpose of being on the trail of a narcotics violation and that he ***merely exploited the traffic infraction*** as a subterfuge. He dismissively belittles the traffic stop as "nothing but a ploy." It is fair comment, but it is also of no avail. Even should the appellant's suspicion be true, it would not make the slightest difference. As this Court observed in Charity v. State, 132 Md.App. 598, 601, 753 A.2d 556 (2000):In Whren v. United States, 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996***), the Supreme Court extended law enforcement officers a sweeping prerogative, permitting them to exploit the investigative opportunities presented to them by observing traffic infractions even when their primary subjective intention is to look for narcotics.(Emphasis supplied).2 Even if a ploy, it is a ploy that the Fourth Amendment forthrightly condones.*** In assessing a so-called "Whren-stop," the only pertinent concern is that of whether the officer had facts before him that would, objectively, justify the traffic stop. That the officer, subjectively, may have had some other or some additional purpose in mind is beside the point. The Charity case itself is a classic illustration of the broad latitude extended to the police by Whren. The initial stop of the appellant's automobile for a traffic infraction was completely legitimate ....The hearing judge found as a fact that the appellant was "following too closely" and that the stop for the traffic infraction was fully justified. We accept that as historic fact.

Jackson:

Lewis was not a highway patrolman with any apparent interest in enforcing the traffic regulations per se. He was a 15–year veteran of the Maryland *504 State Police assigned to the special task of drug interdiction. He had made between 400 and 600 arrests on the Eastern Shore of Maryland in cases "involving controlled dangerous substances being transported into or through the State of Maryland." He recounted at length his extensive training in drug interdiction at special schools and courses in Florida, Canada, Illinois, Nevada, Detroit, New Jersey, West Virginia, Virginia and North Carolina. There is every reason to believe that when he saw the appellant's car traveling as one of what appeared to be three cars "in convoy" southbound on a major drug corridor from New York to Norfolk and points south, he suspected the appellant to be a drug courier. ***The fortuitous traffic infraction simply gave him the opportunity to pursue his primary investigative mission. All of that is beside the point, however, because Whren v. United States permits a narcotics officer to seize the opportunity presented by a traffic infraction to make a stop that would not otherwise be permitted***. The narcotics officer need not apologize for this. The "Whren stop" is part of the arsenal.132 Md.App. at 609–10, 753 A.2d 556 (emphasis supplied). Opportunism, far from being a constitutional sin, is an investigative virtue. Where police develop reasonable suspicion to detain defendant for a drug offense during the course of a traffic stop of defendant's vehicle, the processing of the traffic infraction and the Terry investigation for narcotics involvement ***may proceed simultaneously on parallel tracks; while the time limit for processing the traffic infraction might run its course before the Terry drug investigation time limit runs out, the detention itself will still be reasonable as long as either of its justifying rationales remains vital.*** U.S.C.A. Const.Amend. 4. Jackson v. State, 190 Md. App. 497, 503-04, 988 A.2d 1154, 1156-57 (2010)

-RAS = legal continued detention

-when RAS is developed/ developing-sequence and timing are everything-Moylan

Detention: Automobile Stop, Second Stop or RAS/ PC developed:

Charity/White, Snow, Munafo, Whitehead, Pryor, Mason, Ferris, Graham -Defendant wins
Vs.
Byndloss, Wilson, Wilkes, Padilla, Stokeling, Jackson, Graham -State wins.

CHARITY:

Defendant was convicted in the Circuit Court, Wicomico County, D. William Simpson, J., of possession of cocaine with intent to distribute. Defendant appealed. The Court of Special Appeals, Moylan, J., held that: (***1) detention of defendant to engage in narcotics-related***

investigation was beyond permissible scope of Whren traffic stop; (2) Terry stop to investigate for drugs was not justified; and (3) defendant's consent to pat-down was the fruit of the poisoned tree, and thus, invalid. Charity vs. State, 132 Md. App. 598, (2000) Reversed

White v. State:

No. 70, Sept. Term, 2000.March 5, 2001.Defendant was convicted in a jury trial in the Circuit Court, Wicomico County, D. William Simpson, J., of importation of cocaine, possession of cocaine with intent to distribute, conspiracy to import cocaine, and conspiracy to possess cocaine with intent to distribute. Defendant appealed. The Court of Special Appeals, Moylan, J., 132 Md.App. 640, 753 A.2d 578, affirmed. Defendant's petition for writ of certiorari was granted, 360 Md. 485, 759 A.2d 230. The Court of Appeals, Harrell, J., held that circumstantial evidence upon ***which the state's case rested was insufficient as a matter of law to show, beyond a reasonable doubt, that defendant, who was front seat passenger, exercised dominion or control over the cocaine found inside the pots and pans box in the trunk of co-defendant's automobile, and as such, defendant's drug convictions could not stand.***
-note standing issue and discuss Rental vehicles

Passenger of automobile that was pulled over by police officer for traffic stop was "seized" under the Fourth Amendment from moment automobile came to halt on roadside and, therefore, was entitled to challenge constitutionality of traffic stop; any reasonable passenger would have understood police officers to be exercising control to point that no one in the automobile was free to depart without police permission
White v. State, 363 Md. 150, 767 A.2d 855 (2001) See Brendlin v. California, 551 U.S. 249, 127 S. Ct. 2400, 168 L. Ed. 2d 132 (2007)

Padilla:

Under the Fourth Amendment, using a dog is accepted as a perfectly legitimate utilization of a free ***investigative bonus as long as the traffic stop is still genuinely in progress, but, once a traffic stop is over, there is no waiting for the arrival, even the imminent arrival, of the K–9 unit. U.S.C.A. Const.Amend. 4.***
…it is ... clear that a seizure that is lawful at its inception can violate the Fourth Amendment if its manner of execution unreasonably infringes interests protected by the Constitution. A seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission.

Citing: Illinois vs. Caballes, 543 U.S. 405, (2005)
On August 3, 2005, Trooper First Class Kennard of the Maryland State Police3 was operating a stationary laser in the area of I–95 southbound at the 99–mile marker in Cecil County, when he

observed a green Honda Accord traveling southbound at a speed he believed exceeded the posted speed limit of 65 mph. After pointing his radar gun at the vehicle, Kennard obtained a speed reading of 73 mph. At **approximately 8:29 p.m.,** he initiated a traffic stop near the 97.3 mile marker of southbound I–95.Trooper Kennard approached the vehicle and made contact with appellant, who was the driver and sole occupant of the vehicle. Appellant gave the officer a New York "temporary license" bearing the name "Melvin Allen," but lacking a photograph. Upon questioning about the ownership of the vehicle, appellant advised the trooper that he did not own the car. He explained that the vehicle was owned by and registered to his sister, who lived in North Carolina. Appellant initially told the trooper that his sister's name was "Sandra Lane," but later told the Trooper that his sister's name was "Sandra Allen." In addition, appellant told the trooper that he was driving the vehicle to High Point, North Carolina to return the car to his sister. However, appellant could not provide his sister's specific address in North Carolina, and told the trooper that he was going to contact her for directions upon his arrival in the area. While conversing with appellant, Trooper *215 Kennard "smelled an overwhelming smell of air freshener coming from the car."4Upon receipt of Mr. Padilla's "temporary license," Trooper Kennard went back to his patrol vehicle and asked dispatch to perform a check on the vehicle's registration and on the driver's license. On the basis of appellant's representations and the circumstances, which the prosecutor characterized as "criminal indicators," the trooper also radioed for a K–9 unit to conduct a scan of the vehicle.Minutes later***, at approximately 8:41 p.m., Trooper First Class Joseph Catalano***, a certified Maryland K–9 handler, arrived with "Bruno," his drug detection dog, and **72 performed a scan of the exterior of the vehicle. ***Approximately twelve minutes*** after the initiation of the traffic stop, the drug dog alerted to the presence of a controlled dangerous substance in the vehicle. By the time the dog alerted, however, Trooper Kennard "still hadn't received anything back regarding the defendant's ... identity***.... [N]othing was coming back on that license...." Therefore, the traffic stop had not yet concluded.*** Padilla v. State, 180 Md. App. 210, 214-15, 949 A.2d 68, 71-72 (2008)
Even if we were to hold that the dog scan in the instant case violated Article 26, appellant's claim would fail. This is because no exclusionary rule exists for a violation ***of Article 26.*** Padilla v. State, 180 Md. App. 210, 232, 949 A.2d 68, 82 (2008)

Wilkes:

Police officers' use of K–9 inspection for controlled dangerous substances (CDS) during routine traffic stop did not improperly extend that stop in violation of Fourth Amendment; K–9 unit arrived on scene ***approximately five minutes after stop*** and conducted scan prior to officers' ***receipt of radio verification of validity of motorist's driver's license, vehicle registration card, and warrants check, and thus, K–9 scan occurred while initial reason for traffic stop was still being investigated. U.S.C.A. Const.Amend. 4.*** Wilkes v. State, 364 Md. 554, 774 A.2d 420 (2001)

Byndloss:

Upon grant of petition, the Court of Appeals, Cathell, J., held ***that thirty-minute detention of defendant,*** who was a passenger, during traffic stop was reasonable.
As a general matter, ***the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.***
Thirty-minute detention of defendant, who was passenger in automobile, during traffic stop which had been initiated by state trooper for traffic infraction, i.e., a concealed license plate, was reasonable; canine sniff of automobile, during which dog alerted to presence of narcotics, ***was being conducted prior to trooper receiving any information concerning records check on driver and defendant and, thus, initial purpose for stop had not yet been fulfilled, extended period of detention was caused by technical computer difficulties in determining status of driver's and defendant's driver's licenses, vehicle registration, and warrant checks, and trooper was sufficiently diligent in his pursuit of records check. U.S.C.A. Const.Amend.*** 4 "During a routine traffic stop, may a State trooper withhold the issuance of a written warning and continue to detain the occupants of a vehicle after the driver and passenger have both provided driver's licenses and registration for the vehicle and the trooper has written a warning for the traffic infraction, but he has not issued it to the driver because the computer system, through which record[s] are checked, is inoperable, preventing the trooper from confirming the validity of the licenses and registration and checking for outstanding warrants? ***"We hold that, under the particular factual circumstances of the case at bar, the police **1123 did not improperly detain petitioner.*** Byndloss v. State, 391 Md. 462, 893 A.2d 1119 (2006)

Graham:

Delay of 25 minutes between investigatory stop of vehicle and arrival of drug-sniffing dog was unreasonable and violated Fourth Amendment where officer knew within five minutes of stop that driver did not have valid license, but ordered passenger to remain in vehicle for the duration until dog arrived and alerted for drugs. U.S.C.A. Const.Amend. 4.
Detention ***of automobile passenger*** beyond time when purpose of investigative stop was effectuated precipitated discovery of illegal drugs was unreasonable and violated Fourth Amendment absent reasonable articulable suspicion to justify extending detention. U.S.C.A. Const.Amend. 4. ***Again note that the drugs were located on the passenger during a search if his person…*** Graham v. State, 119 Md. App. 444, 705 A.2d 82 (1998)

Ferris:

The Court of Appeals, Raker, J., held that: (***1) trooper's questioning of defendant after completion of traffic stop was "seizure" under Fourth Amendment, and (2) trooper did not have reasonable, articulable suspicion to support continued detention or seizure of defendant after completion of traffic stop.***

Trooper's request that defendant move to rear of his vehicle and subsequent actions after completion of traffic stop constituted "seizure" within meaning of Fourth Amendment prohibition on unreasonable searches and seizures, and did not constitute a "consensual encounter," where trooper never told defendant that he was free to leave, trooper's "request" of defendant to exit vehicle seamlessly followed the pre-existing lawful detention, trooper removed defendant from vehicle, trooper separated defendant from passenger, there were two uniformed law enforcement officers present, police cruiser emergency flashers remained operative throughout entire encounter, and it was in middle of night on dark rural interstate. U.S.C.A. Const.Amend. 4.

In determining whether particular encounter was seizure within meaning of Fourth Amendment prohibition on unreasonable searches and seizures or a consensual encounter, court must apply totality-of-the circumstances approach, with no single factor dictating whether a seizure has occurred. U.S.C.A. Const.Amend. 4.

Factors that are probative of whether a reasonable person would have felt free to leave, as would show whether particular encounter was seizure within meaning ***of Fourth Amendment or a consensual encounter, include: (1) time and place of encounter, (2) number of officers present and whether they were uniformed, (3) whether police removed person to different location or isolated him or her from others, (4) whether person was informed that he or she was free to leave, (5) whether police indicated that person was suspected of a crime, (6) whether police retained person's documents, and (7) whether police exhibited threatening behavior or physical contact that would suggest to a reasonable person that he or she was not free to leave. U.S.C.A. Const.Amend. 4.*** Ferris v. State, 355 Md. 356, 735 A.2d 491 (1999)

Mason:

Prolongation of detention for ***25 minutes*** until drug-sniffing K-9 dog arrived on scene during traffic stop for running stop sign was unreasonable under Fourth Amendment; traffic stop was made during narcotics investigation involving local and state police, warning that officer issued consisted of 22 words and five checkmarks, ***and police team had checked license and registration with police dispatcher before traffic stop In determining the reasonableness of a period of detention during a traffic stop,*** at least two critical findings of fact must be made; one involves measuring the duration of the detention, and the other involves determining how ***diligently the stopping officer worked in processing the traffic warning. U.S.C.A. Const.Amend. 4.***

In appealing trial court's decision to suppress evidence from traffic stop that involved unreasonably long detention in prosecution for drug-related offenses***, state failed to preserve for appellate review*** its claim that state and local police, during their narcotics investigation, had reasonable, articulable suspicion to make Terry stop of defendant's vehicle; claim was not raised in trial court. U.S.C.A. Const.Amend. 4.

In short, "the Supreme Court has made it clear that the detention of the person 'must be temporary and last no longer than is necessary to effectuate the purpose of the stop.' " Ferris v. State of Maryland, 355 Md. 356, 369, 735 A.2d 491 (1999). However, it should be noted that "[i]n determining whether a police officer has exceeded the temporal scope of a lawful stop, the focus will *419 not be on the length of time an average stop should ordinarily take nor will it be exclusively on a determination ... of whether a traffic stop was literally 'completed.' " Charity, 132 Md.App. at 617, 753 A.2d 556. The State has the burden of proving that the stop was justified by an apparent violation of a traffic law, and that the detention during which the secondary motivation is fulfilled is not so substantial as to constitute a second, unjustified, detention of the suspect. Id.; see also, Whitehead v. State of Maryland, 116 Md.App. 497, 502, 698 A.2d 1115 (1997); Snow v. State of Maryland, 84 Md.App. 243, 578 A.2d 816 (1990); Ferris v. State of Maryland, 355 Md. 356, 735 A.2d 491 (1999). **Tully did Mason. Companion Case at suppression, nextels, radio transmissions** State v. Mason, 173 Md. App. 414, 418-19, 919 A.2d 752, 754 (2007)

Whitehead:

On Sunday, September 12, 1994, appellant Cedrick Whitehead was driving south on Interstate 95 when Trooper Bernard Donovan, who was working a K–9 shift that evening, stopped him for driving 72 miles per hour in a 55 mile per hour zone. In response to Trooper Donovan's requests, Whitehead gave his name and date of birth and produced his car registration, but stated ***he did not have his driver's license with him.*** Apparently, because he did not have his driver's license in possession***, Trooper Donovan ordered Whitehead out of the car, but told the passenger Damon Schenck to remain in *499 the front seat. Trooper Donovan asked Whitehead where he was coming from, and Whitehead replied New Jersey, where he had driven the previous Saturday, and was returning to Baltimore. Trooper Donovan went back to Schenck and asked him the same question. Schenck replied that they had gone to New Jersey the previous Sunday. He also asked them separately whom they had visited and received different responses: Whitehead said he had visited with friends, and Schenck said his grandmother. Trooper Donovan contacted his barrack by radio to run a check for outstanding warrants and to see if the automobile had been reported stolen, as well as to determine whether Whitehead had a valid driver's permit.Trooper Donovan testified at a suppression hearing that he became suspicious of Whitehead because of the conflicting responses. While awaiting a report on his request for information, he ordered appellant into the police cruiser, where he handed him a consent to search form which, according to his testimony, he uses "[as] basically a tool ... to judge the person's reaction to, you know, whether I am going to search for contraband or not." According to Trooper Donovan, Whitehead became nervous, began to stutter, and refused to sign the form. During this time, a report came over the police radio that appellant's driving privileges were in order, he was not wanted on any outstanding warrants, and the car he was driving was not stolen.*** Trooper Donovan***, nevertheless, detained both Whitehead and***

Schenck while he conducted a K–9 scan of the car. The dog alerted to the driver's door, and Trooper Donovan found crack cocaine in a backpack behind the driver's seat. According to the trooper's testimony, the entire process lasted approximately five minutes.
Officer's detention of driver and passenger after officer's stop of vehicle for traffic violation was unlawful **in that detention was for purpose of determining whether officer could acquire sufficient probable cause or waiver that would permit him to search car for illegal narcotics.** Whitehead v. State, 116 Md. App. 497, 498-99, 698 A.2d 1115, 1116 (1997)

Miles: (Unreported)

1) although a State Trooper held appellant and his vehicle for ***about 15 minutes after the purpose of the traffic stop had been fulfilled,*** the additional period of detention was nevertheless lawful given the fact that, at the time the purpose of the traffic stop had been fulfilled, the officers had a right to detain appellant while they waited for a drug-sniffing dog to arrive and scan appellant's vehicle for drugs because the police, during that additional period of detention, had a reasonable articulable suspicion that appellant possessed illegal drugs. Miles v. State, No. 1456 SEPT.TERM 2014, 2015 WL 5969682, at *1 (Md. Ct. Spec. App. Sept. 15, 2015)

Types of Searches/Seizures:
Consent Search:
See Ferris Ferris:

In determining whether particular encounter was seizure within meaning of Fourth Amendment prohibition on unreasonable searches and seizures or a consensual encounter, court must apply totality-of-the circumstances approach, with no single factor dictating whether a seizure has occurred. U.S.C.A. Const.Amend. 4. Factors that are probative of whether a reasonable person would have felt free to leave, as would show whether particular encounter was seizure within meaning of Fourth Amendment or a consensual encounter, include: (1) time and place of encounter, (2) number of officers present and whether they were uniformed, (3) whether police removed person to different location or isolated him or her from others, (4) whether person was informed that he or she was free to leave, (5) whether police indicated that person was suspected of a crime, (6) whether police retained person's documents, and (7) whether police exhibited threatening behavior or physical contact that would suggest to a reasonable person that he or she was not free to leave. U.S.C.A. Const.Amend. 4. Ferris v. State, 355 Md. 356, 735 A.2d 491 (1999)

Funkhouser:

No. 0085, Sept. Term, 2001.Sept. 27, 2001.Defendant moved to suppress cocaine seized from his person during a traffic stop. The Circuit Court, Anne Arundel County, Eugene M. Lerner, J., granted the motion. State appealed. The Court of Special Appeals, Charles E. Moylan, Jr., J. (Retired, Specially Assigned), held that: (1) traffic stop of defendant was not justified; (2) *a*nd (3) search of defendant's fanny pack did not fall within automobile exception to search warrant requirement, nor was it justified as a search incident to lawful arrest. ***"I do mind"…in relation to defendant's testimony held to be the facts due to the defendant being the appellee-important difference on appellate review…*** State v. Funkhouser, 140 Md. App. 696, 782 A.2d 387 (2001)

Green:

Driver was convicted in the Circuit Court, Queen Ann's County, John W. Sause, Jr., J., of possession of marijuana with intent to distribute and possession of cocaine. Driver appealed. The Court of Special Appeals, Hollander, J., 145 Md.App. 360, 802 A.2d 1130, vacated and remanded. Certiorari was granted. The Court of Appeals, Battaglia, J., held that: ***(1) driver voluntarily consented to search of his car after completion of traffic stop, and (2) as a matter of first impression, consent to search car remained valid despite delay of fifteen to twenty minutes while sheriff's deputy awaited backup to assist in search.***
Driver voluntarily consented to search of his car after sheriff's deputy issued warning citation, returned license and registration, completed the traffic stop, and informed driver that he was free to go before the deputy requested consent while driver was in car***; the fact that the deputy called for back-up as a safety measure to assist the search did not suddenly transform the consensual encounter into a seizure, the deputy asked the driver to step out of the car and then engaged in a casual conversation with him as they waited for the additional officer, and a reasonable person in the driver's position would have felt free to terminate the encounter and decline the request. U.S.C.A. Const.Amend. 4.*** State v. Green, 375 Md. 595, 826 A.2d 486 (2003)

Graham:

Failure of police officer to inform defendant that he was free to leave, either before or after asking defendant for permission to try his keys in door of car against which he had been leaning at time officer arrived, weighed against finding that defendant's consent was voluntary, where police also ordered or asked defendant to change his position during search. U.S.C.A. Const.Amend. 4 Defendant's ***disclaimer of ownership*** of, or any interest in, automobile against which he had been leaning at time officer arrived ***did not deprive defendant of standing to object*** to officer's subsequent search of automobile, ***where disclaimer did not amount to abandonment and automobile did in fact belong to***

***defendant. U.S.C.A. Const.Amend. 4.*Tip, patdown, keys, "consent" to try keys in the car, money on floor, PC Carroll Search of entire car…** Graham v. State, 146 Md. App. 327, 807 A.2d 75 (2002)

Whitman:

Representations that an issuance of a warrant would be practically automatic for the search of trunk of vehicle constituted inherently coercive circumstances rendering consent to search trunk involuntary. Whitman vs. State, 25 Md. App. 428 (1975).

Dog Alerts: (not a search)

Controlled Substances Odor Detection; Use of Dogs When a qualified dog signals to its handler that narcotics are in a vehicle, ***that is ipso facto probable cause to justify a warrantless search of the automobile under the automobile exception to the search warrant requirement. U.S.C.A. Const.Amend. 4.*** State v. Funkhouser, 140 Md. App. 696, 782 A.2d 387 (2001)

Ofori:

Held that:1 officer had probable cause to believe that defendant had committed traffic violations, and thus was justified in conducting traffic stop;2 record supported finding that defendant was arrested immediately after he was removed from his vehicle and before search of the vehicle took place;3 drug dog's positive "alert" in the area of driver's door of vehicle provided probable cause to arrest defendant, and thus officers could search vehicle as incident to arrest;4 assuming that the 24–minute period of detention between the initiation ***of traffic stop and the canine "alert" of the vehicle was the only Fourth Amendment basis on which canine "alert" to vehicle could rest, length of detention was unreasonable;5 officer had reasonable suspicion minutes into traffic stop that vehicle and its occupants were involved in a possible violation of the narcotics laws, and thus was justified in conducting stop independent than traffic stop;6 officer did not exceed the permissible scope of Terry-stop for drugs by detaining vehicle for 17 minutes before canine unit arrived and gave positive "alert." Suppression ruling vacated; case remanded for trial.***
Assuming that ***the 24–minute period of detention*** between the initiation of traffic stop of defendant's vehicle and the canine "alert" of the vehicle was the only Fourth Amendment basis on which canine "alert" to vehicle could rest, length of detention was ***unreasonable*****; while officer insisted that he could not properly let defendant go until he had been correctly identified, inference could have been drawn from the evidence that officer's delay in processing the stop was nothing but a stalling tactic to get the canine unit on the scene. U.S.C.A. Const.Amend. 4.**

Officer had reasonable suspicion minutes into traffic stop that vehicle and its occupants were involved in a possible violation of the narcotics laws, and thus was justified in conducting stop independent of traffic stop; officer testified that ***the illegal tint of the windows of the vehicle was***, to his trained eye, one indication of possible narcotics trafficking, and officer testified that as he stood at the driver's window he detected ***a very strong odor of air fresheners***, which he knew to be indicative of a masking agent for controlled dangerous substances. U.S.C.A. Const.Amend. 4. State v. Ofori, 170 Md. App. 211, 906 A.2d 1089 (2006)

Passengers and Constructive Possession:

Wallace:

***… held that a positive canine scan to contraband in a vehicle does not, without more, establish probable cause to search all passengers of that vehicle. "*Caution"** State v. Wallace, 372 Md. 137, 812 A.2d 291 (2002)

Ray:

Where contraband is in a location that is accessible to all of a vehicle's passengers, law enforcement officers may reasonably believe that the passengers have knowledge of, and exercise dominion and control over the contraband. Ray v. State, 206 Md. App. 309, 47 A.3d 1113 (2012) aff'd, 435 Md. 1, 76 A.3d 1143 (2013)

Stokeling:

Holdings: The Court of Special Appeals, Deborah S. Eyler, J., held that:***1 alert of officer's drug-sniffing dog gave police probable cause to conduct warrantless search of automobile, in which defendant was a passenger, for illegal drugs;2 officer had reasonable suspicion to believe that defendant was armed and dangerous, so as to justify warrantless Terry pat-down;3 officer had probable cause to arrest defendant for drug possession, so as to justify conducting warrantless search of defendant's person incident to arrest; and 4 police could reasonably delay warrantless search of defendant's person in removing him to nearby police station.*** Led to strip search… Stokeling v. State, 189 Md. App. 653, 985 A.2d 175 (2009)

Whitehead: VA

VIRGINIA: The Supreme Court, Cynthia D. Kinser, J., ***held that a police officer lacked probable cause to arrest defendant and, thus, to search him after a drug-detection dog alerted to the vehicle in which he was a passenger.*** Reversed and dismissed.
Police officer lacked probable cause to arrest defendant and, thus, to search him after a drug-detection dog alerted to the vehicle in which he was a passenger, even though searches of the vehicle, the driver, and the other two occupants did not reveal any drugs, and the state argued that the dog's alert indicated that contraband was present somewhere and that, through a process of elimination, the somewhere had to be on defendant's person; nothing indicated that defendant and the other occupants were involved in any common enterprise involving criminal activity or that defendant was individually involved in criminal activity, and the dog could have alerted to a lingering odor of drugs that were no longer present. U.S.C.A. Const.Amend. 4.
Whitehead v. Com., 278 Va. 300, 683 S.E.2d 299 (2009)

Constructive Possession:

Pringle:

Police officer had probable cause to believe that defendant, who was the front-seat passenger in vehicle, committed the crime of possession of cocaine, either solely or jointly with other occupants of vehicle, and therefore defendant's arrest did not contravene the Fourth and Fourteenth Amendments, where defendant was one of three men riding in the vehicle at 3:16 a.m., $763 of rolled-up cash was found in the glove compartment directly in front of defendant, ***five plastic glassine baggies of cocaine were behind the back-seat armrest and accessible to all three vehicle occupants, and, upon questioning, the three men failed to offer any information with respect to the ownership of the cocaine or the money. U.S.C.A. Const.Amends. 4*** Maryland v. Pringle, 540 U.S. 366, 124 S. Ct. 795, 157 L. Ed. 2d 769 (2003)

White:

-held that circumstantial evidence upon which the state's case rested was insufficient as a matter of law to show, beyond a reasonable doubt, that defendant, who was front seat passenger, exercised dominion or control over the ***cocaine found inside the pots and pans box in the trunk of co-defendant's automobile, and as such, defendant's drug convictions could not stand.*** White v. State, 363 Md. 150, 767 A.2d 855 (2001)

Smith:

Sufficient evidence supported conviction of defendant, who was driver of rented vehicle, for knowingly transporting a handgun; although gun was found in trunk of car under jacket belonging to one of two passengers also in car, defendant was in possession and

control of vehicle at time of traffic stop which led to handgun being found in trunk, defendant had right to grant and deny access to trunk of car, and knowledge of contents of vehicle could be imputed to defendant as driver of vehicle. Code 1957, Art. 27, § 36B(b). State v. Smith, 374 Md. 527, 823 A.2d 664 (2003)

Probable Cause Search of Vehicle based upon hidden compartments:

Nathan:

1) officers had reasonable suspicion for investigative detention of defendant driver of conversion van and defendant owner-passenger, after initial traffic stop, and (2) ***as a matter of first impression, driver's and passenger's suspicious behavior, combined with officer's observation of hidden ceiling, provided probable cause for warrantless search of conversion van, including dismantling of hidden compartment created by false ceiling.***

2) Officer had probable cause for warrantless search of conversion van, including dismantling of hidden compartment created by false ceiling, during investigative detention of driver and passenger following traffic stop; driver was unable to produce identification, driver and passenger showed signs of extreme nervousness, driver gave evasive answers regarding his travel plans, driver and passenger gave inconsistent versions of trip itinerary and purpose, odor of air freshener from inside the van was "overwhelming," height of ceiling was lower than normal, ceiling's new and taut fabric would not normally be found in 11-year-old van, and there were other indications of false hydraulic compartment containing contraband, similar to compartment officer found in a conversion van four weeks earlier. U.S.C.A. Const.Amend. 4. Nathan v. State, 370 Md. 648, 805 A.2d 1086 (2002)

Terry Search or Frisk inside of Vehicle:

McDowell:

…Law enforcement officer who made a traffic stop had a reasonable suspicion that a gym bag in defendant's vehicle might have contained a weapon and, thus, was justified in examining the gym bag to determine whether it contained a weapon; officer was alone and had stopped a vehicle containing two men late at night in a rural area, both men appeared nervous, defendant not only had no identification but appeared to be "out of it," officer saw defendant contorting in what appeared to him to be an unusual and suspicious manner, consistent with reaching for a weapon, officer approached and saw that defendant was reaching into the gym bag, defendant gave an improbable, inconsistent answer when asked what he was looking for, and the gym bag

was large enough to contain a weapon. U.S.C.A. Const.Amend. 4. McDowell v. State, 407 Md. 327, 965 A.2d 877 (2009)

… a law enforcement officer had a reasonable suspicion that a gym bag in defendant's vehicle might have contained a weapon and, thus, was justified in examining the gym bag to determine whether it contained a weapon, but; 2 the state did not meet its burden of showing that the officer was justified in conducting the search of the gym bag for weapons by opening the gym bag or demanding that defendant open the gym bag. ***(i.e. if he had patted the bag down during "Terry Frisk" of vehicle, and testified that he immediately recognized that it could be a weapon…then different result***) McDowell v. State, 407 Md. 327, 965 A.2d 877 (2009)

Miles: unreported

1) although a State Trooper held appellant and his vehicle for about 15 minutes after the purpose of the traffic stop had been fulfilled, the additional period of detention was nevertheless lawful given the fact that, at the time the purpose of the traffic stop had been fulfilled, the officers had a right to detain appellant while they waited for a drug-sniffing dog to arrive and scan appellant's vehicle for drugs because the police, during that additional period of detention, had a reasonable articulable suspicion that appellant possessed illegal drugs. -black bag disappears, defendant shows interest in bag, nervousness, and furtive movements Miles v. State, No. 1456 SEPT.TERM 2014, 2015 WL 5969682, at *1 (Md. Ct. Spec. App. Sept. 15, 2015)

Parameters of Probable Cause Search at scene:

Automobile Interior:

Chimel:

held that warrantless search of defendant's entire house, incident to defendant's proper arrest in house on burglary charge, ***was unreasonable as extending beyond defendant's person and area from which he might have obtained either weapon or something that could have been used as evidence against him. Chimel v. California, 395 U.S. 752, 89 S. Ct. 2034, 23 L. Ed. 2d 685 (1969)***

Belton:

1) when a policeman has made a lawful ***custodial arrest of the occupants of an automobile he may, as a contemporaneous incident of that arrest, search the passenger compartment of the vehicle and may also examine the contents of any container found within the passenger compartment and such "container", i. e., an object capable of***

holding another object, may be searched whether it is open or closed, and (2) where defendant, an automobile occupant, was subject of lawful custodial arrest on charge of possessing marijuana, search of defendant's jacket, which was found inside passenger compartment immediately following arrest, was incident to lawful custodial arrest, notwithstanding that officer unzipped pockets and discovered cocaine. New York v. Belton, 453 U.S. 454, 101 S. Ct. 2860, 69 L. Ed. 2d 768 (1981)

Byndloss:

Once the police have probable cause to search a lawfully stopped vehicle, they may conduct a warrantless search of any container found inside that may contain the contraband. U.S.C.A. Const.Amend. 4 Byndloss v. State, 391 Md. 462, 893 A.2d 1119 (2006)

Gant:

the limitation to a search incident to arrest, ***that it may only include the arrestee's person and the area within his immediate control, that is the area from within which he might gain possession of a weapon or destructible evidence, defines the boundaries of this exception to the warrant requirement and ensures that the scope of a search incident to arrest is commensurate with its purposes of protecting arresting officers and safeguarding any evidence of the offense of arrest that an arrestee might conceal or destroy. U.S.C.A. Const.Amend. 4.***

Where there is no possibility that an arrestee could reach into the area that law enforcement officers seek to search, both justifications for the search-incident-to-arrest exception to the warrant requirement, namely protecting arresting officers and safeguarding any evidence of the offense of arrest that an arrestee might conceal or destroy, are absent, and the exception does not apply. U.S.C.A. Const.Amend. 4.

Search incident to arrest exception to warrant requirement did not apply to search of defendant's vehicle following his arrest for driving with a suspended license, where defendant and two other ***suspects were handcuffed and secured in separate patrol cars before the officers searched defendant's car; police could not reasonably have believed either that defendant could have accessed his car at the time of the search or that evidence of the offense for which he was arrested might have been found therein as the officers could not have expected to find evidence of Gant's offense—driving on a suspended license—in the passenger compartment of his car. Gant, 556 U.S. at 344, 129 S.Ct. 1710.*** Arizona v. Gant, 556 U.S. 332, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009)

But see -Scribner:

Police officers, who intended to arrest suspect pursuant to arrest warrant for charge of ***bwere entitled to conduct warrantless search of automobile***, in which suspect had been

passenger, following suspect's arrest; suspect was arrested on open warrant ***and also for possession of crack cocaine,*** which was found on suspect's person during post-arrest search, and officers reasonably could have believed that automobile contained evidence of possession offense. U.S.C.A. Const.Amend. 4. *What if no CC had been found…* Scribner v. State, 219 Md. App. 91, 98 A.3d 1084 cert. denied, 441 Md. 63, 105 A.3d 490 (2014)

But See, Briscoe:

Good faith exception to exclusionary rule applied to allow admission of evidence obtained by police in warrantless search of vehicle's locked glove compartment following arrest of driver; although such search was not a valid search incident to arrest under United States Supreme Court decision issued after defendant's arrest and trial, police officers acted in objectively reasonable reliance on appellate precedent then binding in Maryland, which had held that such searches were valid searches incident to arrest. U.S.C.A. Const.Amend. 4. Briscoe v. State, 422 Md. 384, 30 A.3d 870 (2011) Several cases like this, but should be moot…

Inventory on impound/inevitable discovery:

Thompson:

held that even if there was no probable cause to arrest defendant, it was reasonable for police to seize the vehicle that defendant was driving, and handgun would have inevitably been discovered during the subsequent lawful inventory search of the vehicle. Thompson v. State, 192 Md. App. 653, 995 A.2d 1030 (2010)

Sellman:

Inevitable discovery doctrine did not apply to search of closed nylon bag in trunk of motorist's vehicle, following motorist's arrest for traffic violations, where there was no evidence that county had ***standard inventory search policy,*** which was necessary for valid inventory search for which search warrant would not be required; it could not be said that if search had not occurred until vehicle was towed to impound lot, such search would have been conducted pursuant to a standard inventory search policy. U.S.C.A. Const.Amend. 4. Sellman v. State, 152 Md. App. 1, 828 A.2d 803 (2003)

Removal of Driver and Passengers

Mimms:

1) where police officers on routine patrol observed defendant driving an automobile with an expired license plate and lawfully stopped vehicle for purpose of issuing a traffic summons, order of one of officers that ***defendant get out of automobile was reasonable and thus permissible under Fourth Amendment, notwithstanding that officers had no reason to suspect foul play from defendant at time of the stop since there had been nothing unusual or suspicious about his behavior,*** and (2***) bulge in jacket of defendant automobile operator, who had been lawfully ordered out of automobile following stop for traffic violation, permitted officer to conclude that defendant was armed and thus posed a serious and present danger to safety of officer thus justifying "pat-down" search of defendant whereby weapon was discovered.***

Pennsylvania v. Mimms, 434 U.S. 106, 98 S. Ct. 330, 54 L. Ed. 2d 331 (1977)

Wilson:

Held: ***An officer making a traffic stop may order passengers to get out of the car pending completion of the stop.*** Statements by the Court in Michigan v. Long, 463 U.S. 1032, 1047–1048, 103 S.Ct. 3469, 3480, 77 L.Ed.2d 1201 (Mimms "held that police may order persons out of an automobile during a [traffic] stop" (emphasis added)), and by Justice Powell in Rakas v. Illinois, 439 U.S. 128, 155, n. 4, 99 S.Ct. 421, 436, n. 4, 58 L.Ed.2d 387 (Mimms held "that passengers ... have no Fourth Amendment right not to be ordered from their vehicle, once a proper stop is made" (emphasis added)), do not constitute binding precedent, since the former statement was dictum, and the latter was contained in a concurrence***. Nevertheless, the Mimms rule applies to passengers as well as to drivers***

Maryland v. Wilson, 519 U.S. 408, 117 S. Ct. 882, 883, 137 L. Ed. 2d 41 (1997)

Terry Frisk of Passenger(s) Arrest on PC and Contemporaneous Arrest/SIA:

Dickerson: Plain feel, Plain Smell

(1) police may seize nonthreatening contraband detected through ***the sense of touch*** during protective patdown search so long as the search stays within the bounds marked by Terry, and (2) search of defendant's jacket ***exceeded lawful bounds marked by Terry when officer determined that the lump was contraband only after squeezing, sliding and otherwise manipulating the contents of the defendant's pocket, which officer already knew contained no weapon.***

If police officer lawfully pats down a suspect's outer clothing and feels an object whose contour or mass ***makes its identity immediately apparent***, there has been no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons; if the object is contraband, its warrantless seizure would be justified by the same practical considerations that inhere in the plain view context. U.S.C.A. Const.Amend. 4.

Minnesota v. Dickerson, 508 U.S. 366, 113 S. Ct. 2130, 124 L. Ed. 2d 334 (1993)

Epps:

Assuming arguendo that parties had argued reasonableness of warrantless search under Terry stop-and-frisk analysis, and that police officers conducting stop had reasonable suspicion that defendant might be armed, ***order that defendant lift his shirt exceeded permissible scope of Terry pat-down frisk of outer clothing for weapons; pat-down would not have permitted recovery of plastic baggie that was protruding from waistline of defendant's pants, as it was not hard object that could have been mistaken for weapon. U.S.C.A. Const.Amend. 4.***
Epps v. State, 193 Md. App. 687, 1 A.3d 488 (2010)
Wilson:
-Officer possessed two reasons for stop 1) traffic infraction, and 2) reasonable suspicion based upon tip by informant.
-4 minutes, dog has alerted.
-Officer sees bulge, reaches out and feels bulge, and says it was immediately apparent the bulge was drugs.
Plain feel …
-and ***contemporaneous arrest***….grabbing bag out of pocket and seeing drugs immediately preceded arrest.
-officer did not manipulate…
Wilson vs. State, 150 Md. App. 658 (2002)

Conboy:
pre-arrest search of defendant's pocket where he kept key to the vehicle was a search incident to a lawful arrest, and 2 defendant's statement after state trooper told him that the key fit the ignition was not the product of custodial interrogation.
As long as police have probable cause to arrest before they search the arrestee, it is not particularly important that the search precede the arrest, rather than vice versa. U.S.C.A. Const.Amend. 4.
(Note: Conboy involve in auto accident, leaves scene, returns to scene, clearly drunk, gives false name…)
Conboy v. State, 155 Md. App. 353, 843 A.2d 216 (2004)
Contrast Funkhouser: although dicta:
Warrantless search of defendant's fanny pack, which was seized from defendant's waist during ***traffic stop after defendant had exited his automobile at police detective's request, was not justifiable as a search incident to lawful arrest; no decision to arrest defendant had been made at time of search, and thus seizure and search of fanny pack was no mere incident of an arrest already in motion, rather, it was finding of suspected drugs in fanny pack that was the precipitating agent for defendant's arrest. U.S.C.A. Const.Amend. 4.***
For purposes of a search incident to a lawful arrest, because of the potential exigencies of a police-citizen confrontation, the process of (1) disarming the arrestee, and (2) preempting destructible evidence may proceed simultaneously with the act of arresting or may even precede it by a moment or two; this departure from more routine sequencing does not destroy the search's character as an aspect or incident of the arrest it merely supports and accompanies. U.S.C.A. Const.Amend. 4.

An arrest that is made on the basis of what a search recovers will never be constitutional no matter how instantaneously it may follow the search. U.S.C.A. Const.Amend. 4.

Note: The decision related to "contemporaneous arrest appears to be dicta…"

When we do not have express findings of fact by the hearing judge to which to defer, we are bound to take as true that version of the facts most favorable to the prevailing party i
Also note the appeals courts' irritation at having had a trial judge rule in defendant's favor…

State v. Funkhouser, 140 Md. App. 696, 704, 782 A.2d 387, 392 (2001)
NOT AN AUTO CASE…BUT…
-search of defendant's pocket was impermissible and thus stolen watch taken therefrom was not admissible against defendant; (2) gold chain and wad of money taken from victim and Police officer's search of defendant's pockets during frisk violated defendant's Fourth Amendment rights and thus, jewelry taken from robbery victim and found in defendant's pocket was inadmissible; police officer -went directly to defendant's pocket without first detecting something in pocket through frisk of outside of clothing. U.S.C.A. Const.Amend. 4.
-gold chain and wad of money taken from victim and found on codefendant were admissible;

Search of defendant's pockets could not be justified as search incident to lawful arrest; no probable cause existed for defendant's arrest until fruits of search were examined and robbery victim identified watch taken from defendant's pocket as one that had been stolen from him several minutes earlier. U.S.C.A. Const.Amend. 4. **(Anderson walks)**
Gold neck chain stolen from victim was properly admitted against defendant in robbery trial; defendant was wearing chain openly about his neck, and upon arrival, victim immediately identified defendant as one of his assailants and clearly visible gold chain as his stolen property.
-Search of defendant's pockets which revealed wad of money was contemporaneous with arrest and thus, money was admissible in robbery trial; defendant's pockets were searched after victim identified defendant and gold chain around his neck as victim's stolen property. U.S.C.A. Const.Amend. 4.
(Brooks does not walk..)
At the most fundamental level, the exception, by its very name as well as by its Raison d'être, is "search incident to arrest" and not "arrest incident to search." Although the *481 precise sequence between the incidental search and the arrest is not of critical importance, the cause-and-effect relationship is. In the routine search incident situation, the arrest will ordinarily take place first and, within a few seconds or a fraction of a minute thereafter, the search incident to that arrest will follow. (Citing Chimel v. California)
Anderson v. State, 78 Md. App. 471, 480-81, 553 A.2d 1296, 1301 (1989)

See Anderson v. State ***and Brooks*** v. State 78 Md. App. 471 (1989)

ARREST ISSUES:

Chase:

Arrest…

For Fourth Amendment purposes, there are three levels of interaction between the police and citizens: the most intrusive encounter is **an arrest**, which requires probable cause to believe that a person has committed or is committing a crime; the second category is ***the investigatory stop or detention, known commonly as a Terry stop,*** an encounter considered less intrusive than a formal custodial arrest and one which must be supported by reasonable suspicion that a person has committed or is about to commit a crime and permits an officer to stop and briefly detain an individual; the third contact is considered the least intrusive police-citizen contact,***(ACCOSTING)*** and one which involves no restraint of liberty and elicits an individual's voluntary cooperation with non-coercive police contact. U.S.C.A. Const.Amend. 4.

Particular cases Encounter between defendant and police officers in hotel parking lot remained ongoing Terry investigation, and was not converted into arrest requiring probable cause, even though defendant ***had been removed from vehicle, handcuffed, read his Miranda rights, and questioned, and handcuffs were not removed even after brief pat down revealed no weapons;*** investigatory stop occurred in area associated with drug trafficking, officer testified that defendant's and associate's behavior in parking side by side in otherwise empty lot and meeting in defendant's vehicle was suspicious, that defendant and associate made furtive movements, and that officers asked defendant and associate to exit vehicle for safety, and ***reading Miranda rights was not dispositive of "arrest.***

"We noticed, as we were approaching the vehicle, the driver specifically, as well as the passenger, they were moving, looks like they were moving things around there, reaching under the seat. The passenger immediately put his hands in his pocket. At that point, for the safety of myself and Detective Young, they were requested to exit the vehicle and we put them in handcuffs just to make sure they didn't have any weapons and detaining them. They were not free to leave. The, the reason for the handcuffs were solely based on the safety of everyone involved, based on the furtive movements that we observed inside the vehicle as we were approaching the vehicle. Appellant and the driver of the Lexus, Michael DeLillo, III, were patted down and read their rights under Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). The pat down revealed no weapons. DeLillo stated that he was at the hotel to meet some unidentified individual named "Phil" to watch an Orioles game. Appellant indicated that he was going to meet his cousin at the Maryland Live Casino. During this conversation, appellant was "very irate," and claimed "that he had done nothing wrong." On cross-examination, Detective Melnyk reaffirmed that both individuals were being **261 detained and were not free to leave at this time.At this point, approximately 6:52 p.m., Detective Melnyk contacted police dispatch to request that a K–9 unit respond to the scene. The K–9 arrived within minutes, and at 7:00

p.m., the dog alerted on the passenger side door of the Jeep. Appellant was then placed under arrest and was searched incident to the arrest. Police recovered some currency and a Days Inn room key, but no drugs were found on his person or in his Jeep. *638 DeLillo was also arrested and when he was searched, police recovered fourteen grams of cocaine, valued at around $700 to $900. DeLillo later spoke to police and, in a written statement, confirmed that he was in the parking lot for the sole purpose of obtaining 3.5 grams of cocaine. He brought $345 to make that purchase, but appellant gave him 14 grams of cocaine instead. Both appellant's and DeLillo's cell phones were also seized incident to their arrest. DeLillo's phone contained text messages indicating that he was obtaining quantities of "girl." Detective Melnyk testified, based on his training, knowledge and experience, that "girl," referred to cocaine powder. Some of the text messages were with "Fat Boy," which police determined was appellant's nickname. Once the police confirmed that the room key found on appellant's person was for a room at the Days Inn, they applied for, and obtained, a search warrant for that room.
Chase v. State, 224 Md. App. 631, 637-38, 121 A.3d 257, 260-61 (2015) U.S.C.A. Const.Amend. 4.
OforI:
Record supported finding that defendant stopped for traffic violations was arrested immediately after he was removed from his vehicle and before search of the vehicle took place, where at time defendant was removed from the vehicle, he was handcuffed, had his keys taken from him, and was frisked for weapons. U.S.C.A. Const.Amend. 4.
State v. Ofori, 170 Md. App. 211, 906 A.2d 1089 (2006)47 (2009)
(what is the difference above????)

Belote:
Neither police officer's objective conduct nor his subjective intent manifested an intention to effect a custodial arrest of defendant, and thus, officer's search of defendant was not incident to a custodial arrest and the marijuana seized from defendant's pockets had to be suppressed, where officer approached defendant, smelled marijuana, conducted a Terry frisk, and searched defendant's pockets, ***which revealed marijuana, but instead of taking defendant into custody and immediately transporting him to police station, officer let defendant go and waited more than two months to take defendant into custody***
Belote v. State, 411 Md. 104, 981 A.2d 12

Briscoe:
search was not a valid inventory search; 2 inevitable discovery doctrine did not apply to allow admission of evidence obtained in search; but 3 good faith exception to exclusionary rule applied to allow admission of evidence.
The State argues that, although the search was not proper under Gant, Petitioner is not entitled to suppression of the handgun, by operation of the ***"good-faith" principles announced in United States v. Leon, 468 U.S. 897, 922, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984).*** This is so,

the State argues, because Officer Bormanshinov acted in objectively reasonable reliance on appellate precedent then-binding in Maryland, namely, Belton.
We therefore hold that, before Gant, binding appellate precedent in Maryland, namely Belton, dictated that searches incident to arrest of recent occupants of vehicles included searches of all containers, whether locked or unlocked, within the passenger areas of the vehicles. ***Officer Bormanshinov acted in objectively reasonable reliance on that authority when *410 he searched the locked glove compartment. It follows then, that the good-faith rule of Davis applies, and the suppression court correctly denied the motion to suppress the handgun found there.***
Briscoe v. State, 422 Md. 384, 409-10, 30 A.3d 870, 884 (2011)

Constructive Possession:
Pringle:
Police officer had probable cause to believe that defendant, who was the front-seat passenger in vehicle, committed the crime of possession of cocaine, either solely or jointly with other occupants of vehicle, and therefore defendant's arrest did not contravene the Fourth and Fourteenth Amendments, where defendant was one of three men riding in the vehicle at 3:16 a.m., $763 of rolled-up cash was found in the glove compartment directly in front of defendant, five plastic glassine baggies of cocaine ***were behind the back-seat armrest and accessible to all three vehicle occupants, and, upon questioning, the three men failed to offer any information with respect to the ownership of the cocaine or the money. U.S.C.A. Const.Amends. 4***
Maryland v. Pringle, 540 U.S. 366, 124 S. Ct. 795, 157 L. Ed. 2d 769 (2003)

The Marijuana Issue, if any exists:
Wilson:
The odor of burnt marijuana emanating from the passenger compartment of vehicle, by itself, established probable cause to search vehicle's trunk under the automobile exception to warrant requirement of Fourth Amendment; marijuana and other illegal drugs, by their very nature, could be stored almost anywhere within vehicle, location-specific principle that probable cause must be tailored to specific compartments and containers within an automobile did not apply when officers had only probable cause to believe that contraband was located somewhere within vehicle, and odor of burnt marijuana provided probable cause to believe that additional marijuana was present elsewhere in vehicle. U.S.C.A. Const.Amend. 4.
Wilson v. State, 174 Md. App. 434, 921 A.2d 881 (2007) –Note Prior to MD Law decriminalizing M.

But See Massachusetts cases related to Automobile Stops:
Cruz:

Odor of burnt marijuana coming from validly stopped vehicle did not support probable cause that a criminal amount of contraband, i.e., one ounce or more, was present in vehicle, and therefore did not justify under automobile exception to warrant requirement an exit order to defendant, a passenger, in order to facilitate search of vehicle. M.G.L.A. Const. Pt. 1, Art. 14; M.G.L.A. c. 94C, § 32L et seq.
Com. v. Cruz, 459 Mass. 459, 945 N.E.2d 899 (2011)
Overmyer:
Odor of burnt marijuana alone does not constitute probable cause to believe that a vehicle contains a criminal amount of contraband or specific evidence of a crime, such that the automobile exception to the warrant requirement may be invoked. U.S.C.A. Const.Amend. 4.
held that strong or very strong odor of unburnt marijuana emanating from defendant's vehicle, standing alone, did not provide probable cause for police officers to search defendant's automobile.
Com. v. Overmyer, 469 Mass. 16, 11 N.E.3d 1054 (2014)
Daniel:
Police officer did not have probable cause to conduct warrantless search of vehicle following traffic stop in which he smelled odor of freshly burned marijuana and driver of vehicle gave officer two small bags of marijuana, since possession of less than an ounce of marijuana had been decriminalized; absent articulable facts supporting a belief that either occupant of the vehicle possessed a criminal amount of marijuana, search was not justified by the need to search for contraband.
Com. v. Daniel, 464 Mass. 746, 985 N.E.2d 843 (2013)

ID of Passengers and Wanted Checks:
Byndloss:
Police may conduct checks of **driver's licenses**, vehicle registrations and warrant statuses during a traffic stop. U.S.C.A. Const.Amend. 4.
Byndloss v. State, 391 Md. 462, 893 A.2d 1119 (2006)
Invalid Warrant, License, or Registration Information:
McCain:
-***Invalid Warrants Police officers' reliance on vehicle registration information received from a mobile workstation computer database when stopping vehicle was reasonable, and that reliance was sufficient, without regard to the records' ultimate accuracy, to insulate evidence of handgun found in search of vehicle following arrest and defendant's inculpatory statement from the operation of the exclusionary rule; police department had no control over registration records and Motor Vehicle Administration (MVA) had no interest in maintaining inaccurate or outdated records, and the occasional discrepancy encountered by police officers in the MVA database was far removed from the reckless, or grossly negligent conduct or recurring or systemic negligence necessary to trigger imposition of the exclusionary rule. U.S.C.A. Const.Amend. 4.***

Arresting officers' reliance upon erroneous information in records maintained by a third party must be reasonable in order for good faith exception to exclusionary rule to apply. U.S.C.A. Const.Amend. 4.
McCain v. State, 194 Md. App. 252, 4 A.3d 53 (2010)
Weigman:
One has no right to use force to resist unlawful arrest effectuated pursuant to facially valid warrant; in that circumstance, arrestee must submit and challenge legality of arrest in subsequent judicial proceeding.
Wiegmann v. State, 118 Md. App. 317, 702 A.2d 928 (1997) aff'd, 350 Md. 585, 714 A.2d 841 (1998)
Ott:
State failed to establish that delay of seven days over weekend and holiday in removing outstanding arrest warrant from police computer records after warrant was satisfied by defendant was reasonable, thus precluding application of Leon good faith exception to exclusionary rule to defendant's illegal arrest on outdated warrant, and (2) defendant had legitimate interest in being free from illegal seizure of his person, and thus was entitled to have suppressed contraband seized from car incident to arrest, without regard to whether defendant had legitimate expectation of privacy in companion's car.
The record is devoid of evidence, or, for that matter, any attempt to introduce evidence, tending to ***establish the amount of time it reasonably would, or should, have taken to clear the computer of executed warrants***. The Court of Special Appeals held as a matter of law, reasoning from cases upholding arrests based on similar outdated information, that a "net" delay of four days in clearing a computer of outdated information is not sufficient to amount to police misconduct or negligence implicating the application of the exclusionary rule.
"collective knowledge/collective ignorance" rule
Ott v. State, 325 Md. 206, 222, 600 A.2d 111, 119 (19 No. 338.April 5, 1973.
Collins:
Prosecution wherein defendant was found guilty in the Criminal Court of Baltimore County, Paul A. Dorf, J., of possession of heroin. Defendant appealed. The Court of Special Appeals, Orth, C. J., held that where the actual basis for the complainant's conclusion in the complaint for arrest warrant was information from an unnamed informant with other operative facts omitted***, without facts to show credibility of the informant or reliability of his information, the complaint did not support the finding of probable cause by the issuing magistrate and the arrest under the warrant violated constitutional rights under the Fourth and Fourteenth Amendments, and where the arrest warrant was invalid, evidence secured as incident to the arrest should have been excluded.***
Collins v. State, 17 Md. App. 376, 302 A.2d 693 (1973)92) D/C charging Documents…?

Strip Searches:
Holdings: The Court of Special Appeals, Deborah S. Eyler, J., held that:1 alert of officer's drug-sniffing dog gave ***police probable cause to conduct warrantless search of automobile***,

in which defendant was a passenger, for illegal drugs;2 officer ***had reasonable suspicion to believe that defendant was armed and dangerous, so as to justify warrantless Terry pat-down***;3 ***officer had probable cause to arrest defendant for drug possession, so as to justify conducting warrantless search of defendant's person incident to arrest;*** and4 police could ***reasonably delay warrantless search*** of defendant's person in removing him to nearby police station.
(Valid Terry Frisk discovered large bulge/ dog had hit on car).
Stokeling v. State, 189 Md. App. 653, 985 A.2d 175 (2009)
Nieves:
Police officers did not have reasonable, articulable suspicion that defendant was carrying weapons or contraband at time of arrest for minor traffic violations, and thus strip search of defendant at police station conducted incident to arrest was unreasonable under Fourth Amendment, even though defendant had prior drug arrests and, at time of arrest, had been driving truck of female who had history of drug involvement and had been reported missing; minor traffic violations, including driving without license, were unrelated to drugs or violence, circumstances surrounding female could not be imputed to defendant, and defendant appeared calm and relaxed during initial encounter with officers. U.S.C.A. Const.Amend. 4.
State v. Nieves, 383 Md. 573, 861 A.2d 62 (2004)
Harding:
An excess of punctilious modality will not make up for a lack of substantive justification for a strip search. U.S.C.A. Const.Amend. 4.
Ordinarily, the justification for a medical intrusion into the human body requires a judicially issued warrant or court order; as a recognized exception to the warrant requirement, ***however, exigent circumstances by virtue of the imminent disappearance of highly evanescent evidence will serve to forgive the warrant requirement. U.S.C.A. Const.Amend. 4.***
Starting with a good search incident, all that is required is particularized suspicion that drugs may be hidden on or in the body of the suspect, and with that, a strip search, so far as its justification is concerned, is reasonable. U.S.C.A. Const.Amend. 4.
State v. Harding, 196 Md. App. 384, 9 A.3d 547 (2010)

Paulino:
police officers' search of defendant incident to his arrest was a strip search and a visual body cavity search, and2 officers' search of defendant***, which involved spreading cheeks of his buttocks to inspect his anal cavity, was unreasonable.***
A "strip search," though an umbrella term, generally refers to an inspection of a naked individual, without any scrutiny of the subject's body cavities. A "visual body cavity search" extends to a visual inspection of the anal and genital areas. A "manual body cavity search" includes some degree of touching or probing of body cavities.
Paulino v. State, 399 Md. 341, 352, 924 A.2d 308, 315 (2007) (search in an open air car wash)
Moore:

Fact that defendant was handcuffed when transported to police precinct for purpose of conducting a strip search pursuant to a search warrant did not necessitate a finding that he was placed under arrest.
Strip search that became a visual body cavity search when defendant was told to "turn around and bend over and spread his ... butt cheeks" was reasonable, where ***search warrant*** authorized a search of a known drug dealer's person for illegal drugs and associated paraphernalia, it was well known to law enforcement community that drug traffickers often secreted drugs in body cavities, defendant was in a private room of police precinct and observed only by two male officers, and search was progressive, beginning with a search of defendant's outer garments, moving on to a strip search, and then to a visual body cavity search when the drugs were not found in the previous search efforts
Moore v. State, 195 Md. App. 695, 7 A.3d 617 (2010)
Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted. (REASONABLENESS)
Bell v. Wolfish, 441 U.S. 520, 559, 99 S. Ct. 1861, 1884, 60 L. Ed. 2d 447 (1979)

Cell Phone Incident to Arrest:
Sinclair:
Police officer's limited and immediate search of defendant's cellular telephone was a valid search incident to arrest; search was conducted within minutes at the arrest scene and officer did not explore and read the call history or text messages stored on the cell phone but merely opened the cell and immediately saw a screen saver and two photographs that provided evidence directly related to the case which officer was investigating. U.S.C.A. Const.Amend. 4.

Sinclair v. State, 214 Md. App. 309, 76 A.3d 442 (2013) cert. granted, 439 Md. 327, 96 A.3d 143 (2014) and aff'd, 444 Md. 16, 118 A.3d 872 (2015)
Chase:
Substantial basis existed to conclude search warrant for defendant's hotel room was supported by probable cause, based on recovery of hotel room key from defendant's person during search incident to arrest following drug-sniffing dog's alert at defendant's vehicle in hotel parking lot***, cell phone text messages between defendant and associate regarding obtaining quantities of cocaine powder, cocaine recovered from associate during search incident to arrest, and associate's implication of defendant in narcotics distribution. U.S.C.A. Const.Amend. 4.***

Chase v. State, 224 Md. App. 631, 121 A.3d 257 (2015)
Riley:
-interest in protecting officers' safety did not justify dispensing with warrant requirement for searches of cell phone data, and 2 interest in preventing destruction of evidence did not justify dispensing with warrant requirement for searches of cell phone data.

Under search incident to arrest exception to warrant requirement, proposed rule restricting scope of police officers' warrantless searches of cell phones to those areas of phone in which officers reasonably believed that information relevant to crime of arrest, arrestee's identity, or officer safety would be discovered would impose no meaningful constraints on officers, since those categories would sweep in great deal of information, and officers would not always be able to discern in advance what information would be found where. U.S.C.A. Const.Amend. 4.
Riley v. California, 134 S. Ct. 2473, 189 L. Ed. 2d 430 (2014)
Riley v. California, 134 S. Ct. 2473, 189 L. Ed. 2d 430 (2014)
GPS:
at time of search, binding appellate precedent in Maryland authorized the GPS tracking of a vehicle on public roads, and thus, detectives acted in objectively reasonable reliance on that authority when they conducted their GPS tracking of defendant's vehicle, and thus, the good-faith exception to the exclusionary rule applied.
Kelly v. State, 436 Md. 406, 82 A.3d 205 (2013) cert. denied, 135 S. Ct. 401, 190 L. Ed. 2d 289 (2014)
held that attachment of Global–Positioning–System (GPS) tracking device to vehicle, and subsequent use of that device to monitor vehicle's movements on public streets, **was search within meaning of Fourth Amendment.**
United States v. Jones, 132 S. Ct. 945, 181 L. Ed. 2d 911 (2012)

Official Ten Code Listing:

10-0 Caution
10-1 Unable to copy — change location
10-2 Signal good
10-3 Stop transmitting
10-4 Acknowledgement (OK)
10-5 Relay
10-6 Busy — stand by unless urgent
10-7 Out of service
10-8 In service
10-9 Repeat
10-10 Fight in progress
10-11 Dog case
10-12 Stand by (stop)
10-13 Weather — road report
10-14 Prowler report
10-15 Civil disturbance
10-16 Domestic disturbance
10-17 Meet complainant
10-18 Quickly
10-19 Return to …
10-20 Location
10-21 Call … by telephone
10-22 Disregard
10-23 Arrived at scene
10-24 Assignment completed
10-25 Report in person (meet) …
10-26 Detaining subject, expedite
10-27 Drivers license information
10-28 Vehicle registration information
10-29 Check for wanted
10-30 Unnecessary use of radio
10-31 Crime in progress
10-32 Man with gun
10-33 Emergency
10-34 Riot
10-35 Major crime alert
10-36 Correct time
10-37 (Investigate) suspicious vehicle
10-38 Stopping suspicious vehicle
10-39 Urgent — use light, siren
10-40 Silent run — no light, siren
10-41 Beginning tour of duty
10-42 Ending tour of duty
10-43 Information
10-44 Permission to leave … for …
10-45 Animal carcass at …
10-46 Assist motorist
10-47 Emergency road repairs at …
10-48 Traffic standard repair at …
10-49 Traffic light out at …
10-50 Accident (fatal, personal injury, property damage
10-51 Wrecker needed
10-52 Ambulance needed
10-53 Road blocked at …
10-54 Livestock on highway
10-55 Suspected DUI
10-56 Intoxicated pedestrian
10-57 Hit and run (fatal, personal injury, property damage)
10-58 Direct traffic
10-59 Convoy or escort
10-60 Squad in vicinity
10-61 Isolate self for message

10-62 Reply to message
10-63 Prepare to make written copy
10-64 Message for local delivery assignment
10-65 Net message
10-66 Message cancellation
10-67 Clear for net message
10-68 Dispatch information
10-69 Message received
10-70 Fire
10-71 Advise nature of fire
10-72 Report progress on fire
10-73 Smoke report
10-74 Negative
10-75 In contact with …
10-76 En route …
10-77 ETA (estimated time of arrival)
10-78 Need assistance
10-79 Notify coroner
10-80 Chase in progress
10-81 Breathalyzer
10-82 Reserve lodging
10-83 Work school xing at …
10-84 If meeting … advise ETA
10-85 Delayed due to …
10-86 Officer/operator on duty
10-87 Pick up/distribute checks
10-88 Present telephone number of …
10-89 Bomb threat
10-90 Bank alarm at …
10-91 Pick up prisoner/subject
10-92 Improperly parked vehicle
10-93 Blockade
10-94 Drag racing
10-95 Prisoner/subject in custody
10-96 Mental subject
10-97 Check (test) signal
10-98 Prison/jail break indicated
10-99 Wanted/stolen

-Evidence-

-video from police cruiser
-evidence that has been seized
-Radio Transmissions
-Dispatch personnel reports/dispatcher testimony
-(nextel issue-police issued phone records)-State vs. Mason
-MSP 130 (Padilla)
-Chain of Custody who seized/ and where.
-warning citations
-arrest warrants
-Discovery issues with informants/tipsters

Table of Authorities

New York v. Belton, 453 U.S. 454 (1981)
Ott v. State 325 Md. 206 (1973)
Padilla v. State, 180 Md. App. 210 (2008)
Paulino v. State, 399 Md. 341, (2007)
Pennsylvania v. Mimms, 434 U.S. 106 (1977)
Ray v. State, 206 Md. App. 309 (2012); Aff'd, 435 Md. 1 (2013)
Riley v. California, 134 S. Ct. 2473 (2014)
Rowe v. State, 363 Md. 424 (2001)
Scribner v. State, 219 Md. App. 91 (cert denied) (2014)
Sellman v. State, 152 Md. App. 1 (2003)
Sinclair v. State 214 Md. App. 309 (2014), 444 Md. 16 (2015)
Smith v. State, 182 Md. App. 444 (2008)
Smith v. State, 214 Md. App. 195 (2013)
State v. Green, 375 Md. 595 (2003)
State v. Mason, 173 Md. App. 414 (2007)
State v. Funkhouser, 140 Md. App. 696 (2001)
State v. Harding 196 Md. App. 384 (2010)
State v. Nieves, 383 Md. 573 (2004)
State v. Ofori, 170 Md. App. 211, (2006)
State v. Smith, 374 Md. 527 (2003)
State v. Wallace, 372 Md. 137 (2002)
Stokeling v. State, 189 Md. App. 653 (2009)
Thompson v. State, 192 Md. App. 653 (2010)
Turkes v. State, 199 Md. App. 96 (2011)
United States v. jones, 132 S. Ct. 945 (2012)
United States v. Salvucci, 448 U.S. 83
Wiegmann v. State, 118 Md. App. 317 (1997)
White v. State, 363 Md. 150 (2001)
Whitehead v. Commonwealth, 278 Va. 300 (2009)
Whitehead v. State, 116 Md. App. 497, (1997)
Whitman v. State, 25 Md App. 428 (1975)
Wilkes v. State, 364 Md. 554, (2001)
Wilson v. State, 150 Md. App. 658 (2002)
Wilson v. State, 174 Md. App. 434 (2007)