



LEGAL UPDATE

WINTER 2023



FAST CARS AND CASE LAW

You have spoken and the Con Law Cadre has listened. This legal update is going to focus on vehicles and what we as officers can do with vehicles and their occupants. This legal update will provide a handy vehicle search grid, case law regarding vehicles, and hopefully answer your pressing vehicle questions.

VEHICLE SEARCH REFRESHER GRID

Exception to Search Warrant Requirement	Description
Consent Search	<ul style="list-style-type: none"> Consent must be voluntary Subject can limit scope and terminate search at any point General consent includes unlocked containers MPD- Must have reasonable suspicion and must be documented in report
Gant Search	<ul style="list-style-type: none"> Search incident to arrest 2 Prong Test: Arrestee has access to passenger compartment at moment of search OR police reasonably believe the passenger compartment might contain evidence of the offense for which the arrest is being made Limited to passenger compartment- does NOT include the trunk
Carroll Doctrine	<ul style="list-style-type: none"> Probably Cause search based on exigent nature of vehicle Can search anywhere the item could be located Includes the trunk May include a passenger's belongings that are in the vehicle
Inventory Search	<ul style="list-style-type: none"> Articles in the arrested subject's vehicle may be inventoried as routine procedure if the vehicle is impounded 2 prong test- Standardized practice and good faith Rarely done at MPD

-Summary by PO Wetjen

CONCEALED CARRY IN A VEHICLE

State v. Grandberry, WI 29, 380 Wis. 2d 541 (2018)

FACTS

Milwaukee Police conducted a traffic stop on Brian Grandberry. During the course of the investigation, officers asked Grandberry if he had any weapons in the vehicle. Grandberry advised that he had a handgun in the glove compartment. Grandberry first claimed that he had a CCW permit (but not on him), and then admitted he had taken a CCW class but did not have a permit. Without a permit and with the gun within reach and concealed from view, Grandberry was arrested and charged with Carrying a Concealed Weapon. Grandberry argued his conduct was lawful because the Safe Transport Statute (§167.31) allows citizens to carry unloaded, uncased handguns in their car.

QUESTION

Does compliance with the Safe Transport Statute (STS) preclude a conviction for a violation of CCW?

RULING

The Court held that the two statutes (STS and CCW) are not in conflict because for two statutes to be in conflict, it must be impossible to comply with both. Here, while Grandberry was in compliance with STS, he was not in compliance with CCW. The Court reasoned:

1. A handgun in the glovebox is readily accessible to the driver, satisfying the criteria of "going armed."
2. A glove compartment hides the firearm, satisfying the criteria of "concealed."

The Court said that whether a handgun is within reach so as to constitute "going armed" will be determined on a case-by-case analysis, looking at such factors as the location of the dangerous weapon, the location of the vehicle occupants, the vehicle's size, and the vehicle occupant's ability to reach the dangerous weapon while in the vehicle. Thus, a vehicle occupant needs a CCW permit to legally transport a firearm or place the loaded handgun out of reach.

TAKEAWAY

Although there is no blanket prohibition on the transport of firearms in vehicles, in the absence of a CCW permit, they cannot be concealed and within the reach, grasp, or lunge of an occupant. A handgun on the dashboard is generally not considered "concealed" because it can be easily observed by someone walking outside of the vehicle. A handgun located almost anywhere else in the vehicle, even if readily visible from the window (such as during a vehicle contact) is generally "concealed."



-Summary by Sgt. Sherrick

MOVING DETAINED INDIVIDUALS FROM A SCENE

There are many scenarios in which an officer might consider moving a suspect from the original stop location or crime scene. But what about situations where the suspect is not under arrest but merely detained? Within its express terms, § 968.24 authorizes officers to move a suspect "short distances" during the course of an investigative detention. Police may move a suspect within the general vicinity of the stop to continue their investigation without converting what is otherwise an investigative detention into a constructive arrest. Determining the legality of moving a suspect from one location to another requires a two-part inquiry: (1) was the suspect moved within the "vicinity," and (2) was the purpose reasonable for moving the suspect within that vicinity. *State v. Quartana*, 213 Wis. 2d 440 (2017).

The Courts have held that a detention will ordinarily become a de facto arrest if the detainee was transported to a police station or some other place. But, an exception to this rule exists if officers can articulate good reasons that moving the detainee was warranted, such as hostile crowds, inclement weather/hazardous conditions, or separating several detained individuals. Therefore, if you move a detained suspect from a scene, you **must** write a detailed report articulating the specific reasons why you moved the detained suspect. It was a darky and stormy night...

-Summary by PO M. Johnson and PO Wetjen

Q1: Up to how many miles are police allowed to move a detained subject from the location of a stop?

Q

A

VEHICLE SEARCHES AND OMVWI ARRESTS

FACTS

On August 30, 2017, at approximately 11:17 pm, an officer observed Mose Coffee operating a vehicle without a front license plate. The officer initiated a stop of the vehicle, but Coffee continued to drive into a parking lot, parking at an angle and very close to another parked vehicle. Once stopped, Coffee immediately got out of his vehicle. The officer noted Coffee's speech was slurred, his eyes were watery and bloodshot, and there was an odor of intoxicants coming from either Coffee's person or the vehicle. Based on these observations, the officer asked Coffee to perform field sobriety tests. The officer realized he had met Coffee a few weeks prior- Coffee had been very quiet during their first meeting but was now very talkative. Coffee did not perform field sobriety tests to satisfaction, was arrested, and was secured in the back of a squad.

The officer told his backup that Coffee was arrested for OMVWI and instructed them to search the passenger compartment of Coffee's vehicle. The officers testified they were looking for "any substance in the vehicle that could impair a driver's ability to operate the motor vehicle safely." During the search, officers found a cloth bag behind the driver's seat. Inside the bag were two mason jars with flakes of suspected marijuana. After finding the mason jars, officers searched the trunk, finding found two pounds of marijuana and drug paraphernalia. Coffee was charged with Possession with Intent to Deliver THC, Possession of Drug Paraphernalia, and 2nd Offense OMVWI. Coffee moved to suppress all evidence obtained from the search.

QUESTION

Does a lawful arrest for OMVWI, in and of itself, supply a sufficient basis to search the passenger compartment of a vehicle?

RULING

The Wisconsin Supreme Court held that a lawful arrest for OWI, in and of itself, does not supply a sufficient basis to search the passenger compartment of a vehicle or its containers under a *Gant* search of a vehicle incident to arrest. Interpreting *Gant*, the Court adopted a reasonableness approach. Under the reasonableness approach, reasonable suspicion is the quantum of evidence needed to uphold a search. A search of a vehicle following an arrest may be done only when the officer reasonably suspects that evidence of the crime of arrest may be found in the vehicle.

The Court held the totality of the circumstances objectively demonstrated that officers had reasonable suspicion that Coffee's car, and the bag in the car, might contain evidence of the OWI. The Court listed the following factors in support of officers having reasonable suspicion:

- The odor of intoxicants coming from either Coffee's person or the vehicle
- Coffee was coming from a friend's house, making it more likely that he brought alcohol to the house and retained some of it
- Coffee didn't pull over immediately, which could indicate he was hesitant to pull over because he knew that there was something in his vehicle that he should not have
- Coffee's careless parking and hasty exit from his car could indicate that he was trying to distance himself from something inside the car

- Coffee was unusually talkative, which could indicate that he was nervous because he had something to hide
- Coffee was intoxicated (.14 BAC via PBT) and it is not illogical to assume that someone who is intoxicated has alcohol nearby.

Thus, the Court held officers had reasonable suspicion to search Coffee's vehicle as officers clearly articulated why they believed Coffee's vehicle contained evidence of OMVWI.

TAKEAWAY

- Officers may no longer automatically or categorically search vehicles incident to OWI arrests.
- Officers must articulate reasonable suspicion to believe that the vehicle may contain evidence of the crime of arrest before lawfully searching a vehicle.
- Vehicle searches conducted incident to arrest will be evaluated on an objective, case-by-case basis, considering the totality of the circumstances.
- If officers conduct vehicle searches incident to arrest, they must articulate specific facts that lead them to believe that there is evidence of the crime of arrest in the vehicle in a report.
- What specific facts will constitute reasonable suspicion will be evaluated on a case-by-case basis.

CONSIDERATIONS

- Officers should be prepared to **thoroughly** document in their reports the facts relied upon that led them to believe that the vehicle may contain evidence of the OWI. It may be helpful if an officer is able to articulate that based on their prior experience.
- If an officer has reasonable suspicion for a drugged driving OWI, the officer may be allowed to search in a small space or container inside the vehicle where drugs may be found (but where it is unlikely alcohol will be found). If an officer suspect a person is impaired by drugs, or a combination of alcohol and drugs, the officer needs to articulate why they believe the driver is impaired by drugs in order to justify searching small spaces/containers where drugs might be found.
- The Plain View Doctrine remains alive and well, meaning that any evidence that officers see in plain view during the stop/arrest can be relied upon to justify a search of the vehicle. Additionally, the Automobile Exception (Carroll Doctrine) is still alive and well, meaning that if an officer has probable cause to believe the vehicle contains evidence of a crime, they may search the whole vehicle, including the trunk.

-Summary by Sgt. Becker



Q2: What are the four citations an officer may write on private property?



Q3: True or False- It is legal to tow a boat or a motor home with a person in the boat or motor home while it is being towed.



FURTIVE MOVEMENT AND THE FOURTH AMENDMENT

In October 2019, an officer stopped a vehicle driven by Melanie Loper for a cracked tail lamp and loud muffler and, while making the stop, observed that the registration on Loper's vehicle was expired. While approaching the vehicle and during the initial contact with Loper, the officer observed Loper to be nervous and "moving around" within his vehicle. The officer went back to her squad car to perform a license check and ran Loper's identifying information. The officer learned that Loper did not have a valid driver's license and had a warrant out of Winnebago County. While conducting the DATA check, the officer observed Loper was still "moving around quite a bit" in his vehicle, prompting the officer to contact him a second time and instruct Loper to remain still. After awaiting back up and confirming the warrant, the officer contacted Loper a third time and directed him out of his vehicle. As Loper was exiting his vehicle, the officer observed "an orange syringe cap and a crumpled sandwich-type bag on the driver's seat where Loper had been sitting," items, which, based on her training and experience, the officer knew to be associated with illicit drug use. The officers on scene arrested Loper on his outstanding warrant and then searched his vehicle, ultimately locating a syringe in the driver's door loaded with methamphetamine. Loper was subsequently charged with possession of methamphetamine and operating without a license. Loper moved to suppress the evidence seized from his vehicle, arguing that the arresting officer did not have probable cause to conduct a warrantless search of his vehicle.

The Court of Appeals affirmed the Circuit Court's decision denying Loper's motion to suppress. The Court specifically referred to facts, such as Loper being nervous and making furtive movements after the initial contact with the officer, as well as the presence of the syringe cap and crumpled sandwich-type bag on the seat where Loper had been sitting after he exited the vehicle. The Court held that it was "reasonable for the officer to connect Loper's nervousness and furtive movement" with the drug-related items she observed on Loper's seat, noting that a reasonable officer could infer the furtive movement was Loper attempting to hide the paraphernalia after the officer's initial contact. This inference was also particularly reasonable as the officer had already obtained Loper's identifying information by this point in the stop. The Court further held that it was reasonable for the officer to believe that given the presence of the syringe cap and crumpled bag, other drug-related contraband would likely be found in the vehicle. The totality of circumstances gave rise for probable cause to search.

During a traffic stop, a driver's furtive movement is a valid consideration in determining whether or not you have probable cause to search the vehicle. Loper reinforced this principle, which had been previously established in *State v. Johnson* (2007) and *State v. Nimmer* (2022). However, as Wisconsin courts have recognized several "innocent explanations" for a driver's furtive movement (i.e., reaching for registration in glove box, leaning over to retrieve a wallet in a back pocket, etc.), detailing the driver's movements and timing of those movements as specifically as possible during the course of a traffic stop is crucial to support a finding of probable cause to search (should you reach that point in your investigation). As with anything, the more documentation that paints a picture of the totality of circumstances, the greater the likelihood our actions will withstand legal scrutiny.

-Summary by PO La Porta



FRISK

VEHICLE FRISKS- A REFRESHER



- A limited, protective search for concealed weapons or dangerous instruments

REASONABLE SUSPICION

- Specific and articulable facts that would lead a reasonable officer to suspect that they or another person is in danger of physical injury from a person

WHEN TO FRISK- MPD STOP AND FRISK SOP

- A police officer may frisk any person who the officer has stopped when the officer reasonably suspects the person is carrying a concealed weapon or dangerous instrument. The frisk may be conducted at any time during the stop if reasonable suspicion develops.

FRISK FACTORS

- Time of day, nature of underlying offense, attitude/demeanor of subject, state of intoxication, known weapons history, number of subjects compared to officer

FRISKING A VEHICLE

- If an officer possess reasonable suspicion that a vehicle driver or passenger is armed, the frisk may be extended to the vehicle under the same standard as frisking a person.
- This frisk is a protective search and is limited to places in the vehicle's passenger compartment that could contain a weapons- think lunge/reach area of vehicle.
- A frisk will generally occur early on in the contact, but a frisk can occur anytime that reasonable suspicion of danger develops.
- Requesting a K9 to sniff a vehicle, and whether the K9 indicates on the vehicle or not, **does not** automatically justify a vehicle frisk. An officer must still be able to provide specific and articulable facts to justify a vehicle frisk- the mere presence of a K9 alone does not provide this justification.

-Summary by PO Wetjen

ANSWERS

Q1: 4 miles. The temporary detention of a subject for questioning must be in the vicinity of the initial stop. It may, for example, be out of the rain, but not at the station six miles away. The movement should NEVER exceed 4 miles from the original stop site.

A Q2: Officers may only write private property citations for OMVWI, Reckless Driving, Hit and Run, and Driving Over a Fire Hose.

Q3: False. A motor vehicle towing any mobile home or boat on a trailer on a highway shall not have any person in such mobile home or boat. §346.94(8).



QUESTIONS OR FEEDBACK ABOUT THE LEGAL UPDATE? PLEASE EMAIL PDCONLAW WITH ANY QUESTIONS, CONCERNS, OR IDEAS FOR FUTURE TRAINING TOPICS.

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