

# Warrantless Searches

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## Objectives

- Review the legal rules
- Discuss emerging issues
- Evaluate fact patterns



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## Two Types of Warrantless “Searches”

- Actions that are not “searches” at all
  - No reasonable expectation of privacy
  - The Fourth Amendment does not apply
- Searches that fall within an exception to the warrant requirement



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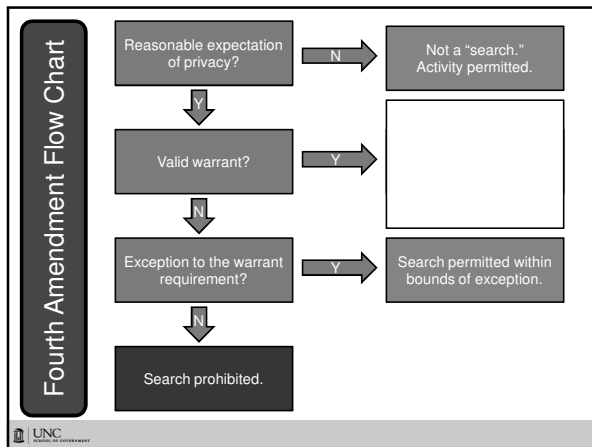
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### Actions That Are Not “Searches”

- Fourth Amendment prohibits unreasonable “searches”
- A “search” means a governmental intrusion on a “reasonable expectation of privacy”
  - Subjective component
  - Objective component

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### Open Fields

- **Curtilage:** The area “directly and intimately connected with the [home] and in proximity” to it.
  - *State v. Courtright*, 60 N.C. App. 247 (1983)
- **Open fields:** Anything outside the curtilage.
- **No REP in Open Fields.** “[A]n open field is not . . . entitled to Fourth Amendment privacy protection”
  - *State v. Nance*, 149 N.C. App. 734 (2002)

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## Common Entraceways

- “The absence of a closed or blocked gate . . . creates an invitation to the public . . . Thus, we will not extend [the defendant’s] expectation of privacy to his driveway, walkway or front door area.”
  - United States v. Lakoskey, 462 F.3d 965 (8<sup>th</sup> Cir. 2006)
- Determinations can be fact-intensive
- Has this doctrine gone too far?



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## Plain View

- “[W]hen a[n] officer is able to detect something by . . . his senses while lawfully present at the vantage point where those senses are used,” it is not a Fourth Amendment search.
  - Wayne R. LaFave, Search and Seizure § 2.2.
- Enhancing the senses
- Beyond enhancing the senses



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## Abandoned Property and Garbage

- “Abandoned property is not subject to Fourth Amendment protection.”
  - United States v. Pitts, 322 F.3d 449 (7<sup>th</sup> Cir.2003)
- When is real property abandoned?
- When is personal property abandoned?
  - Discarded property
  - Denial of ownership



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## Exceptions to the Warrant Requirement

- “Warrantless searches are presumptively unreasonable.”
  - United States v. Karo, 468 U.S. 705 (1984)
- “[E]xceptions to the warrant requirement are few in number and carefully delineated.”
  - Welsh v. Wisconsin, 466 US 740 (1984)



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## Consent

- “Another exception to the warrant requirement is a search which follows . . . voluntary consent . . . [T]he essence of this exception is a waiver of the constitutional right to privacy.”
  - United States v. Stone, 471 F.2d 170 (7<sup>th</sup> Cir. 1972)
- Who may consent?
- Validity of consent
- Scope of consent



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## Exigent Circumstances

- “[T]he exigent circumstances exception . . . may apply . . . where there is a compelling need for official action and no time to secure a warrant.”
  - State v. Phillips, 151 N.C. App. 185 (2002)
- Requires probable cause plus exigency
- When does exigency dissipate?
- Emerging issue: officer-created exigency



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## Vehicles

- Exception is justified because of “the pervasive schemes of regulation, which necessarily lead to reduced expectations of privacy, and the exigencies attendant to ready mobility.”
  - California v. Carney, 471 U.S. 386 (1985)
- Can be searched on PC alone
- Scope is limited by the PC
  - But not by locked containers



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## Searches Incident to Arrest

- Justified by officer safety and need to prevent the destruction of evidence
- Requires a valid custodial arrest
  - But search may precede arrest
- Extends to “grab space”
  - Gant and vehicles
- Emerging issues
  - Gant and personal effects
  - Digital devices



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## Terry Frisks

- “[A] reasonable search for weapons [is permitted] for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual.”
  - Terry v. Ohio, 392 U.S. 1 (1968)
- Requires valid stop and reasonable suspicion
- Scope and plain feel



Emerging issue: Arizona v. Johnson

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## Other Exceptions

- Probation searches
- Border searches
  - Emerging issue: laptops
- Impoundment/inventory searches
- Checkpoints and other “special needs” searches



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## Learn More

- Robert L. Farb, *Arrest, Search and Investigation in North Carolina* (3<sup>rd</sup> ed. 2003)
- Wayne R. LaFave, *Search and Seizure* (4<sup>th</sup> ed. 2004)
- North Carolina Criminal Law Blog, [sogweb.sog.unc.edu/blogs/ncclaw/](http://sogweb.sog.unc.edu/blogs/ncclaw/)



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