



Wilmington Police Department

Directive: 5.26 Warrantless Searches

CALEA Standards: 1.2.4



I. Purpose

The purpose of this directive is to advise Officers of the Wilmington Police Department regarding basic search principles and exceptions to the search warrant requirement and to inform them of their duty to know the specifics of these rules.

II. Definitions

- A. **Reasonable suspicion:** facts and circumstances that would leave a **reasonable, prudent, and trained law enforcement officer** to believe that a crime either has been committed, is about to be committed, or is being committed. When making traffic stops and investigative stops, it will be critical for the officers to understand the meaning of reasonable suspicion. The facts and circumstances should be noted, especially in the cases of arrests, so that the officers will be able to testify as to what their reasonable suspicion was prior to the traffic/investigative stop. The totality of the circumstances - the whole picture - must be taken into account. Based upon that whole picture, the detaining Officer must have a particularized and objective basis for suspecting the particular person stopped of criminal activity.
- B. **Probable Cause:** facts and circumstances that would leave a **reasonable prudent person** to believe that a crime either has been committed, or is about to be committed, or is being committed, and that the defendant committed it, and/or that fruits of the crime are probably located in a location.
- C. **Chattel:** an item of personal moveable property (purses, backpacks, suitcases, etc.)
- D. **Frisk:** a pat down of the outer clothing for weapons. **A frisk does not mean reaching into pockets or manipulating objects that are felt.** In order for an officer to seize an object that is felt during a frisk, the identity of that object must be immediately apparent to the officer.

III. Issues and Procedures

Officers of the Wilmington Police Department may conduct searches incident to arrest, with a search warrant, by voluntary consent, or pursuant to one of the exceptions listed in this directive. All searches will be in accordance with the US Constitution, North Carolina Constitution, and North Carolina General Statute. Since State and Federal courts are constantly changing the landscape and requirements of searches and seizures, it will be the responsibility of the individual officer to stay abreast of any changes to laws, requirements, or exceptions relating to search and seizure. Every year the

officers will attend a legal update class given by a certified instructor. The instructor will keep the officers abreast of any legal requirements that may have changed over the past year.

Search Warrants

A search warrant is a court order and process directing a law enforcement officer to search designated premises, vehicles, or persons for the purpose of seizing designated items and accounting for any items so obtained to the court that issued the warrant.

Search Warrants are covered in-depth in WPD Directive 7.10 Search Warrants & Raids.

Current exceptions to the search warrant requirement:

A. Search Incident to Lawful arrest: A lawful arrest alone authorizes a search of the person of the arrestee and the area within his immediate control (area within immediate control is defined as: area from which he/she could obtain a weapon or destructible evidence). A search beyond the limits of this rule must be independently justified in order to be reasonable under the 4th Amendment. Reasonable suspicion that another person is present who poses a threat to the officer will support a cursory walk-through "protective sweep" of premises to search places where a co-suspect could be located. **(Note: search incident to lawful arrest does not apply to vehicles. Officer will need a "reasonable belief" that evidence of the crime the person was arrested for will be located in the vehicle"**

B. Temporary Seizure or Investigative Detention (Terry Stop): With **reasonable suspicion** that a person has committed, is committing, or is about to commit a crime, the person **may be briefly seized** for investigation. **With reasonable suspicion to believe the person is armed, a frisk of the person to locate a weapon and the seizure of the weapon, if found, is also authorized.** If the person seized is the occupant of a vehicle, with reasonable suspicion, a limited search of the vehicle for weapons is authorized. With reasonable suspicion, a chattel may be seized for investigations (a warrant may be required to search inside the chattel.) No search for evidence is authorized by this doctrine and the length and scope of the detention must be reasonable.

During a lawful frisk for weapons (within the narrow bounds approved in *Terry v. Ohio*, if it is immediately apparent (probable cause) that an item which is felt is contraband, the item may be seized.

C. Detention While Executing or Obtaining Warrants: During the execution of a search (warrant) upon the premises, occupants may be detained on the premises but no search of those persons is permitted

unless separately justified under other 4th Amendment rules. Where probable cause exists to obtain a search warrant, a seizure of the premises or item, in some cases, may be permissible until a warrant can be obtained. It is important to note, that although you may limit movement into and out of a building/structure/home while a search warrant is being obtained, it will be in most cases, unconstitutional for you to enter that home without the warrant.

D. Consent: It is reasonable to search **with the voluntary consent** of a person having authority to give consent or when the facts surrounding the consent would lead a reasonable police officer to believe that the person has such authority. Only those areas which reasonably appear to be within the scope of the consent given may be searched. **The consent to search must be voluntarily given; that is not through coercion or intimidation.** The person giving the consent to search must have the authority to do so. The scope of the search must be actually performed within the scope of the consent that was given. The following are some things to keep in mind when conducting a consent search:

1. The consent will be positive.
2. Silence by the individual who has authority to give consent does not indicate consent.
3. The person being asked for consent may not be coerced in any manner.
4. The person being asked for consent may withdraw consent at any time during the search and the search will stop.
5. Whenever practical, officers requesting consent will obtain a written waiver from the person in lawful possession of the premises or object to be searched. This written waiver is commonly known as Consent to Search Form.

E. Plain View, Open View, and Plain Smell: When an officer, lawfully engaged in 4th Amendment conduct (a search or a seizure), comes across contraband (or other evidence), it may be seized if it is in plain view. "Plain view" means the officer seeing the item has probable cause to believe it is subject to seizure. Though the seizure of an item of contraband in plain view is lawful, no search is justified under this doctrine without a warrant or some recognized warrant exception. In order to use the "Plain View Doctrine", an officer must be legally in a place where the plain view of the contraband occurred. Canine sniffs are included, however; only include areas where the persons affected have no "reasonable expectation of privacy". Police may utilize canines to sniff the air surrounding buildings, packages, and vehicles, as the affected person has no reasonable expectation of privacy in that air.

F. Inventory: When a container (a vehicle or other item capable of containing other items within it) is lawfully seized and is to be retained for some period of time by the government, a search of the item to

inventory it may be permissible if conducted for reasons other than to find evidence of crime and if conducted under a policy that makes such inventories a part of routine procedure. Eventually when the officers do find contraband or evidence, they may seize it during the course of their routine inventory. However, if you store several cars, and only inventory a vehicle of a suspected drug dealer, the courts will view this inventory as a "fishing expedition", and the fruits of your inventory will be "fruit of the poisonous tree", and excluded at trial.

- G. Exigency:** When a warrant would normally be required for a given search or seizure, and when probable cause to obtain a warrant exists, but where, due to exigent circumstances (an emergency situation) it is not possible to obtain a warrant, the search or seizure may be made without one. The essential question in determining whether exigent circumstances justified a warrantless entry is whether law enforcement agents were confronted by an 'urgent need' to render aid or take action.

Example of exigency: Police knock on a door, a man answers the door with a knife in his hand, and officers see overturned furniture, the suspect acted strangely. Officers make entry to the residence over the objections of the knife wielding man, fearing that they have interrupted some sort of struggle or assault, and that an injured person may be inside.

- H. Vehicle Exception:** When there is probable cause to search a vehicle that is mobile or readily capable of being made so, it may be searched without a warrant. This is due both to the inherent mobility of vehicles and because the level of privacy in a vehicle is less than in a home. The vehicle exception also applies when probable cause exists to search a particular container contained in a vehicle but not to search the vehicle itself. The scope of a warrantless search of a vehicle is as broad as that which could have been authorized by warrant. You must develop probable cause to the same extent necessary to obtain a search warrant. Once that probable cause is obtained, a warrantless search of a vehicle is legal under the auspices of the Carroll Doctrine. Some of the things to consider are:

1. Is the vehicle in motion or at least mobile when seized; and
2. Is there probable cause to believe it contains contraband or evidence of a crime; and
3. Taking time to obtain a warrant will delay in the search, permitting the vehicle to be moved and possibly preventing the search.

- I. Motor home/Mobile Home:** Officer may conduct warrantless searches of mobile/motor homes if they fall under the movable vehicle exception requirement (that is, they are mobile and capable of being driven on the road). A mobile/motor home meets the vehicle

exception requirements when the vehicle is moving or readily mobile by the turn of a switch key. The determinant is whether it is a vehicle rather than a home. Factors to consider are:

1. Location.
2. Is it readily mobile?
3. Is it elevated on blocks?
4. Is the vehicle licensed?
5. Is the vehicle connected to utilities? (i.e., electricity, sewer, water).
6. Is there convenient access to a public road?

- J. Crime Scenes:** During the initial response to a call for service, there is no requirement for a search warrant where a crime has occurred and the crime scene has been secured for the purpose of processing the scene for evidence. However, when the crime scene search will be intensive and time consuming and when evidence may be obtained to be used against an owner/occupant of the crime scene, it is beneficial to obtain a search warrant early in the process.

Once police have completed processing a crime scene and relinquished control of it, the location is again subject to all constitutional protections against unreasonable searches and seizures.

- K. Hot Pursuit:** If an officer is pursuing a person and has probable cause to believe that he/she has just committed a crime, officer may search the structure or premises into which the officer has pursued the person if necessary to:

1. Protect his or her safety;
2. Protect the safety of the public; or
3. Prevent an escape.

Hot pursuit searches occur prior to arrest. Authority is limited. Once the suspect has been apprehended, the search will immediately cease.

- L. Abandoned Property:** Officers may, without a warrant, search and seize property that he/she has good reason to believe has been abandoned.

- M. Open Fields:** An officer may enter and search any unoccupied or undeveloped area

IV. Conclusion

While there are other various exceptions to the search warrant requirement, the above listed are the major exceptions that police officers are confronted with on a daily basis. While it is sometimes difficult for officers to maintain a repertoire of current Constitutional trends, it is important to make the efforts to obtain the knowledge base. If Officers have questions in regards to the

constitutionality of a specific set of details, ask your supervisor for clarification. If supervisors aren't sure of guidelines for a specific set of facts, you should consult with the police attorney.