

Topic:  
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## SEARCHES OF VEHICLES

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Although the same general rules apply to searches of vehicles as apply to searches of any other places, vehicle searches merit special attention both because they are frequent and because courts tend to look at them from a different slant. The United States Supreme Court has said, "[F]or the purposes of the Fourth Amendment there is a constitutional difference between houses and cars" [Chambers v. Maroney, 399 U.S. 42, 52 (1970)].

This memorandum reviews the law governing searches and other intrusions into vehicles. It starts from the view that any search, to be legal, must be based on circumstances recognized by the law as creating a justification for search that overcomes the usual rule that a person's privacy is protected against search. Thus, the lefthand column in the chart that begins on page 2 contains a shorthand statement of each of a number of justifications for searching a vehicle. The righthand column then contains a brief statement of how extensive a search based on that justification may be. Keep in mind that this list is intended only to outline the law. For a fuller explanation of each justification and for citations to cases and statutes that establish each justification, see the notes that follow the chart.

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Circumstances Providing  
Justification for Search of Vehicle

Extent of Search

- |  |   |
|--|---|
| 1. (a) probable cause, and (b) search warrant describing vehicle   | as cause indicates  |
| 2. (a) probable cause, and (b) emergency, and (c) object of search is something other than liquor or liquor-making equipment | as cause indicates  |
| 3. (a) absolute personal knowledge of presence of liquor or liquor-making equipment and emergency                            | as cause indicates  |
| 4. (a) probable cause to search mobile vehicle and (b) subsequent impoundment of vehicle                                     | as cause indicates  |
| 5. (a) warrant to search premises, and (b) presence of vehicle closely connected with with premises                          | any place in auto where object described in warrant might reasonably be found   |
| 6. impoundment of vehicle for forfeiture proceedings   | any place in auto where evidence relating to offense for which vehicle may be forfeited might be found                                      |
| 7. arrest of occupant of vehicle (search incident to arrest)   | at the time of the arrest, anywhere in vehicle that was within arrestee's grabbing distance at instant of arrest or during arrest procedure |
| 8. (a) impoundment of vehicle, and (b) existence of routine procedure for safeguarding impounded vehicle and its contents    | as procedure reasonably requires for purpose of safeguarding  |
| 9. presence of vehicle in circumstances requiring determination of who owns it or whether it is stolen                       | as necessary for determination  |
| 10. (a) reasonable possibility of involvement in a riot by person in charge of vehicle, and (b) immediate proximity to riot  | inspection as necessary to determine if weapons present   |
| 11. violation by person in charge of vehicle of curfew imposed in response to a riot   | inspection as necessary to determine whether weapons present  |
| 12. (a) riot or municipality with state of emergency, and (b) special warrant  | inspection at entry points to riot area or municipality as necessary to determine whether weapons present                                   |
| 13. operation of motor vehicle on highways of the state  | inspection as necessary to determine whether operated in compliance with motor vehicle law  |
| 14. consent by person in control of vehicle  | as authorized by consent  |
| 15. abandonment of vehicle   | no limits   |
| 16. presence of vehicle where it is visible from public place or other place observer is entitled to be (plain view)         | whatever visual inspection is possible from that place  |

## NOTES:

1. Search with warrant.

As with searches of other property, the search with a warrant is the preferred justification for searching a vehicle [Chambers v. Maroney, 399 U.S. 42 (1970)].

2. Emergency search.

When taking time to get a warrant would frustrate the purpose of the search, a warrantless vehicle search is legal if there is probable cause [Carroll v. United States, 267 U.S. 132 (1925); Chambers v. Maroney, 399 U.S. 42 (1970); State v. Ketchie, 286 N.C. 387 (1973)]. But the fact that it is a vehicle that is to be searched does not mean that an emergency (or exigent circumstances, as it is sometimes called) automatically exists. If there is no real danger that the vehicle will disappear, a warrant must be obtained [Coolidge v. New Hampshire, 403 U.S. 443 (1971)]. The circumstances necessary to make this kind of search for liquor or liquor-making equipment are more demanding (see following note).

3. Emergency search for liquor.

A North Carolina statute specifically provides that to make a warrantless emergency search of a vehicle for liquor or liquor-making equipment, the officer must have absolute personal knowledge of its presence [G.S. 18A-21(c)]. "Absolute personal knowledge" requires that the officer observe the presence of the liquor or equipment through one of his five senses [State v. Godette, 188 N.C. 497 (1924)]. But remember that if a warrant is used, only simple probable cause is needed.

4. Probable cause search after impoundment.

One instance in which a vehicle may be searched without a warrant even when there is time to obtain one occurs when the car is impounded following the driver's arrest [Chambers v. Maroney, 399 U.S. 42 (1971)]; State v. Ratliff, 281 N.C. 397 (1972)]. This exception probably applies only when the probable cause existed at the time of arrest, and not when it arose after the car was impounded.

5. Search of vehicle at premises described in warrant.

A number of North Carolina cases uphold the search of a vehicle at premises being searched under a warrant even though the car is not mentioned in the warrant [State v. Reid, 286 N.C. 323 (1974); State v. Bell, 24 N.C. App. 430 (1975); State v. Logan, 27 N.C. App. 150 (1975)]. The safe way to interpret these cases is that the car may be searched if it is on the curtilage of the house, if it is in possession of one of the residents, and if the object of the search might be expected to be hidden there.

6. Impoundment for forfeiture.

When an auto is being held for forfeiture, it may be searched without a warrant for evidence relating to the crime on account of which it may

be forfeited [Cooper v. California, 386 U.S. 58 (1967)]. In North Carolina, four types of offenses may justify forfeiture: prearranged racing [G.S. 20-141.3 (g)]; transporting liquor or liquor-making equipment (G.S. 18A-21); concealing or transporting a controlled substance or material for its manufacture (G.S. 90-112); and fish and game violation (G.S. 113-137).

7. Search of auto incident to arrest.

Although the idea behind Chimel v. California [395 U.S. 752 (1969)] suggests otherwise, the likely application of the Chimel rule to searches of automobiles is that any part of the automobile that was within the arrestee's reach during the arrest process may be searched at substantially the same time as the arrest, even though the arrestee can no longer reach that place [Daygee v. State, 514 P. 2d 1159 (Alaska 1973)].

8. Routine safeguarding of impounded car.

Supreme Court cases recognize that an officer may carry out inspections of impounded cars to safeguard them and their contents [Harris v. U.S., 390 U.S. 234 (1968); State v. All, 17 N.C. App. 284 (1973)] and to protect dangerous contents of a car from falling into the hands of vandals [Cady v. Dombrowski, 413 U.S. 433 (1973)]. Both cases suggest the importance of being able to show that protection, and not a fishing expedition for evidence, was the reason for intruding into the car. The best way to show this, of course, is to have departmental policy prescribing a routine procedure. See, for example, College of Law, Arizona State University, Model Rules: Searches, Seizures, and Inventories of Motor Vehicles (1974); District of Columbia Metropolitan Police Department, General Order No. 23, Series 1971 (June 8, 1971).

9. Identification of auto in suspicious or illegal circumstances.

No North Carolina case law has developed on this point, but cases from other jurisdictions suggest that an officer may, when he finds a car in circumstances that suggest that it has been stolen, look it over to the extent necessary to check out that possibility, including looking inside to see whether it has been tampered with [People v. Gale, 511 P.2d 1204 (Cal. 1973)]. An officer also may, when necessary, look for indications of ownership in order to get in touch with the owner of an unoccupied car that is impeding traffic [People v. Grubb, 408 P.2d 100 (Cal. 1966)].

10. Inspection of car in area of riot.

North Carolina statutes specifically authorize law enforcement officers to "inspect [for dangerous weapons or substances] the contents of any personal belongings" of a person who he has "reasonable grounds to believe . . . may become involved in an existing riot. . . when the person is close enough to such riot that he could become immediately involved in the riot" [G.S. 14-288.10(a)]. Although there is some room for doubt, the "personal belongings" would seem to include the automobile the person has at the time.

11. Inspection of vehicle driven by curfew violator.

The statutes also authorize the inspection of "any personal belongings" in possession of a person found violating a curfew imposed because of a state

of emergency [G.S. 14-288.10(b)]. Again, this would seem to include vehicles. Note that this inspection is authorized without regard to whether the person is arrested for the curfew violation. It is possible to inspect first and then decide whether to cite the person or to let him go.

12. Inspection of vehicle with riot roadblock warrant.

A North Carolina statute provides for special warrants used to justify the inspection for weapons and dangerous substances of all vehicles either entering a municipality where a state of emergency has been declared or approaching in the immediate vicinity of an existing riot (G.S. 14-288.11). Only a judge may issue the warrant; the applicant must be specifically authorized to seek the warrant by the head of his agency.

13. Inspection for motor vehicle violations.

A North Carolina statute grants a very broad authority for a law enforcement officer "to stop any motor vehicle upon the highways of the State for the purpose of determining whether the same is being operated in violation of any of the provisions of this article [Article 3, the Motor Vehicle Act of 1937, which includes registration and title requirements, size and weight requirements, and rules of the road]" (G.S. 20-183). The statute does not specifically mention any inspection once the car is stopped, but the power should be implied from the statute. The North Carolina Supreme Court has stated that this statute is valid [State v. Allen, 282 N.C. 503 (1973)], but similar provisions have been found unconstitutionally broad in other states [see Commonwealth v. Swanger, 307 A.2d 875 (Pa. (1973))]. Note that a similar provision for inspecting vehicles in G.S. 20-49(4) applies only when the officer has "reasonable belief that any vehicle is being operated in violation" of a law regulating the operation of vehicles.

14. Consent by possessor of vehicle.

The problems of consent to search a vehicle are essentially the same as those of consent to search any other property. A particular point to watch out for: although North Carolina law specifies that consent to search a vehicle must be given by "the registered owner of a vehicle to be searched or by the person in apparent control of its operation and contents at the time the consent is given" (G.S. 15A-222), this should not be taken to mean that the registered owner or operator could give consent if he was not entitled to consent under general rules determining who may give consent. On the other hand, consent is not required from a mere passenger who is not in control of the vehicle in order to search the vehicle [State v. Grant, 279 N.C. 337 (1971)].

15. Abandonment of vehicle.

Once an auto is truly abandoned, like any other property, it may be searched as much as desired. But the mere fact that North Carolina law classifies a vehicle as "abandoned" for purposes of towing does not mean that the vehicle may be searched as an abandoned vehicle; if the situation is such that there is a reasonable chance that the owner will try to get it back, then the vehicle cannot be searched as abandoned. It might, however, be subject to search if some other justification existed, such as those discussed in points 2, 8, 9, and 16.

16. Plain view.

Observations of a vehicle and its contents are legal whenever the officer making the observation does so without any greater intrusion than he is otherwise entitled to, whether he sees its contents while outside a car involved in an accident [State v. Wolfe, 28 N.C. App. 464 (1975)]; while leaning into a car, with the driver's permission, to check the registration [State v. Allen, 282 N.C. 503 (1973)], or in any other circumstances when he is legally in a position to see some of the contents of the vehicle. And neither the use of a flashlight [State v. Craddock, 272 N.C. 160 (1967)] nor the use of binoculars [U.S. v. Minton 488 F.2d 37 (4th Cir. 1973)] prevents the discovery of evidence from being regarded as a "plain-view discovery." Once the plain-view discovery has been made, the discovered evidence may be removed when the vehicle is on a public place, even if the evidence is a part of the vehicle [State v. Virgil, 276 N.C. 217 (1969)] or the vehicle itself was an instrumentality of a crime [Cardwell v. Lewis, 417 U.S. 583 (1974)].