Research Memorandum #76: Search and Seizure

State v. Purgis, 269 Maj. 3d 511 (20XX-5): "An arrest in a home encroaches on many of the same interests as would a search of that same home. Cognizant of the value our Constitution places on the security of one's home from government intrusion, we hold that all arrests of defendants in their homes require arrest warrants, unless consent is obtained, or true exigency exists (e.g., specific evidence demonstrating a risk of flight, destruction of evidence, danger to police or the community, etc.). We find no such exigencies to excuse the police from obtaining a warrant to arrest the murder suspect in this case."

State v. West, 269 Maj. 3d 523 (20XX-5): "Because of the sanctity of the home, the circumstances in which the need for an arrest warrant can be excused for 'exigency' should be few in number and carefully delineated. No such exigency exists here where police have made a warrantless nighttime entry into the defendant's home to arrest him for driving while intoxicated, a misdemeanor."

State v. Lex, 272 Maj. 3d 115 (20XX-4): "The purpose of the exclusionary rule in this state has always been to deter illegal police conduct, not to protect the 'integrity' of the courts by denying the use of ill-gotten evidence. That being so, there seems little to gain in suppressing the products of a search warrant under which police acted believing in reasonable good faith it was valid. The case would be different if the police initially applying for the warrant had intentionally or recklessly provided the issuing magistrate with false information, or if no 'reasonable' police officer could have believed that there was 'probable cause' to support the search."

State v. Shenk, 143 Maj. App. 2d 75 (20XX-30): "The only issue in a consent search is whether the consent was 'voluntary' under the 'totality of circumstances.' The burden is on the prosecution to demonstrate that the consent was not the product of coercion, express or implied."

State v. Brempo, 198 Maj. 2d 703 (20XX-27): "Here police told defendant's 66-year-old grandmother that they had a warrant to search the house. As a result, the grandmother 'consented' to the police entry. In fact, no evidence that any such warrant existed was ever produced. The government now seeks to justify the search of defendant's home, which led to discovery of the murder weapon, as consensual. However, where law enforcement claims authority to search a home under a warrant, where they announce to the occupant that the occupant has no right to resist, such a situation is filled with coercion – albeit colorably lawful coercion. Where there is coercion, there cannot be consent."

State v. Ham, 270 Maj. App. 2d 112 (20XX-21): "In response to the police request to search appellant's car, he asked if they had a warrant. Officer Biff responded, 'I can get one,' and appellant replied 'OK. You can search.' We fund no legal infirmity in a consent following the threat to get a warrant."

State v. Bozi, 271 Maj. App. 2d 777 (20XX-21): "We find the consent to search the First Avenue apartment valid. While police did say they would attempt to get a warrant if Appellant did not consent, it is significant to us that Appellant was not in custody, there was no discourtesy, abuse, threat, ruse, or force, and police did not say, 'You might as well consent, we can get a warrant quickly.'"

Rust v. Warden, 277 Maj. App. 2d 23 (20XX-20): "Petitioner attacks his alleged consent to search the trunk of his car on two grounds. First, he claims that the police statement that they 'would' get a warrant if he refused to consent runs afoul of *State v. Brempo,* 198 Maj. 2d 703 (20XX-27). We disagree. This case is plainly distinguishable from the 'claim of authority' in *Brempo.* Second, he claims he did not have the capacity to consent. While the record indicates that he was 'upset and quite nervous' when arrested, by the time of giving his consent to search at the police station he had 'calmed down so as to reasonably appear rational' and thus was capable of understanding the decision to consent."

State v. Hart, 200 Maj. 2d 951 (20XX-26): "Where, as here, 4-5 police officers came to appellant's home at 1:45 A.M., dragged him out of bed, and made his wife leave the room, there

is no free and specific consent, but rather a mere 'submission to authority.'

. . . Further, the nighttime entry into Appellant's home in violation of 'knock-notice' requirements itself involves an illegal assertion of authority by police, thereby tainting any consent which follows."

Tex v. Warden, 17 Maj. App. 3d 601 (20XX-18): "Seeing the heroin in defendant's glove compartment when defendant opened the compartment to remove his car registration allowed the officer to make a 'plain view' seizure of the contraband without benefit of a warrant. The only requirements for such a plain view seizure are (1) the officer was standing in a place where she had a legal right to be when she saw the article in question; (2) there was 'probable cause' to associate the item with criminal activity."

A. Sneld, "A Discourse on 'Probable Cause,'" 6 Jamner L. Rev. 312, 313 (20XX-14): "The concept of 'Probable Cause' runs throughout our criminal procedure, with some confusion regarding the difference between Probable Cause to search as opposed to arrest. In both instances, the standard refers to whether a 'reasonable man' must be 'strongly suspicious.' The difference lies in what this man must be suspicious of. In a search, the 'reasonable man' must be strongly suspicious that a particular thing associated with criminal activity is in a particular place at a particular time. In the area of arrest, the suspicion focuses on whether a particular person is associated with a particular crime."

Long v. Superior Court, 93 Maj. App. 3d 816 (20XX-14): "Police entered defendant's car to search for weapons; when they stopped her car on 'reasonable suspicion' of a traffic violation, she could produce no license or registration, and they saw a large hunting knife on the floor. In the course of this cursory, self-protective search of the passenger compartment, police discovered the baggie of marijuana which is the subject of this writ. Our Supreme Court has already approved temporary detentions of persons and autos when there is 'reasonable suspicion' of criminal activity, *State v. Sykes*, 202 Maj. 2d 121 (20XX-26), and has also approved the pat-down (i.e., 'frisk') of persons so detained for weapons when there is reason to believe the safety of the detaining officer or others is involved. Extending this 'pat-down' rationale to self-protective searches for weapons of the passenger compartments of automobiles which have been temporarily detained seems eminently reasonable to us. Accordingly, we find the officers' conduct lawful, and deny the writ."

State v. Chums, 201 Maj. 2d 191 (20XX-26): "Police arrested defendant in his home and subsequently searched the entire home, finding numerous incriminating items of evidence. The government now seeks to justify the search as 'incident to arrest.' We cannot accept their characterization. Our Constitution requires that all searches be conducted only upon probable cause and with a warrant. The warrant is only to be dispensed with under 'closely circumscribed exigencies' (cit. omitted). An arrest involves such exigencies since the suspect may try to assault the arresting officer or to destroy evidence. These risks, however, plainly justify only the search of the area within the suspect's immediate control or 'wing span.' "

State v. Muncie, 268 Maj. 3d 1003 (20XX-5): "After a murder, police searched the suspect's apartment without a warrant. The Court of Appeals upheld the search finding the need for a warrant obviated by what it called 'the murder scene exception.' We reverse. All agree there was ample 'probable cause.' Yet a warrant can be excused only for true exigency, expressed in closely circumscribed exceptions (*State v. Chums*, 201 Maj. 2d 191 (20XX-26)), not general categories such as 'murder scene' as was attempted here."

Brakes v. Warden, 254 Maj. App. 2d 216 (20XX-23): "Here an illegal search of Petitioner's apartment produced information which led to the buried body. Normally, we would order the evidence suppressed and require a new trial. However, the government opposes suppression, claiming that 'routine police procedures' would have led to discovery of the body without aid of the illegally seized evidence. We agree that the government should have a hearing where it will have the burden to establish a 'reasonable probability' that the body would have been discovered without aid of the illegality and that, therefore, the discovery was 'inevitable.'

This comports with other jurisdictions which have considered this issue and held that when the illegal police act merely contributes to the discovery of evidence which would have been acquired lawfully through 'routine police practices,' there is no taint from the illegality (cit. omitted)."