

301 SEARCH AND SEIZURE 1/11

Lakeville Police Department Order #301

General Order- Search and Seizure

Date: 06/15 Personnel: Sworn Personnel Issued by: Chief of Police

Policy: Our policy is to conduct any searches and seizures in accordance with Constitutional, State, and case law.

Order 301: The primary basis for restrictions on searches and seizures is the Fourth Amendment to the United States Constitution. State and case law also relate to these issues. All officers are responsible for this information.

a. Searches and Seizures

General Guidelines: The primary basis for restricting searches and seizures by police officers is the Fourth Amendment to the United States Constitution. State statutes and case law may also restrict an officer's ability to conduct a valid search and seizure. Where no search warrant exists the state must argue that the defendant did not have a constitutional right to assert or that an exception to the search warrant requirement exists. A general rule which must be remembered is, "a search of a person, place or thing cannot be conducted without first obtaining a valid search warrant," except for the following limited exceptions:

- Stop and Frisk
- Search Incident to Arrest
- Inventory Search of Vehicle
- Items found in plain view
- Hot pursuit
- Consent
- Moveable Vehicles
- Exigent circumstances
- Abandoned property
- Open fields

Searches may be conducted to:

- protect self or others from harm;
- discover contraband or evidence of a crime;
- account for items which the police department has in custody and is responsible for.

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A suspect has a constitutional right to object to a search and seizure if: 1.) police conduct exists, and 2.) the suspect has a reasonable expectation of privacy over the location searched.

- “Police conduct” will exist if the officer participated, requested or acquiesced in the search;
- A suspect will have a “reasonable expectation of privacy” if the suspect has a “possessory interest” in the area to be searched;
- “Reasonable expectation of privacy” is based upon right to possession, not right to own (i.e. landlord/tenant);
- “Reasonable expectation of privacy” does not include those areas normally open to the public or third parties, such as:
 - Driveways, sidewalks, porches, etc.
 - “Open Fields Doctrine” - an individual has no reasonable expectation of privacy over those areas not within the “curtilage” of one’s residence.
 - “Curtilage” - is determined by examining such factors as distance from the residence, existence of any enclosures, what area is used for and effort the individual has taken to protect the area from access by third parties.
 - Abandoned property must be clearly abandoned before it may be seized without a search warrant (i.e. curbside garbage:
 - Abandonment must not be the direct result of police conduct. Michigan v. Chestnut 108 S. Ct. 1975 (1988).
 - Abandonment cannot occur while suspect is in police custody.
- Canine Searches: It is our policy to be proactive in the utilization of our canine unit to the fullest extent of its training, whenever possible, to search for illicit drugs.

Note: The standard for determining custody in Minnesota is whether a reasonable person in the suspect’s shoes would have concluded that he or she was not free to go.

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b. Limited Exceptions to Search Warrant

Stop and Frisk (Terry v. Ohio)

Limited intrusion upon the person is allowed when the police officer has reasonable and articulable suspicion to believe that criminal activity is occurring (basis for the “stop”), and the individual may be armed or dangerous to the officer or others (basis for the “frisk”). The police officer must be able to spell out in great detail, specifically, which facts when taken together with reasonable inferences warrant the intrusion. There must be a separate set of reasons to justify the frisk, even after a legitimate stop. The search must be limited to a brief pat down of the outer clothing for weapons. Once the officer feels something he/she believes may be a weapons, the officer may reach in or have the suspect carefully remove the object believed to be a weapon. An officer may frisk a motorist or a passenger of a motor vehicle as well as a pedestrian.

“Frisk” is limited to a brief pat down of the outer clothing for weapons.

- If an object may be a weapon the officer may reach in and remove it;
- A “frisk” is not having the suspect empty their pockets or purse;
- An officer may not remove clothing (i.e. hat) to conduct a “frisk.” (State v. Crook 485 N.W. 2d 726 (Minn. Ct. App. 1992).

Incident to Arrest

An officer may conduct a full search of the person being arrested, to locate:

- Any concealed weapons;
- Any contraband or evidence of a crime to prevent its concealment or destruction.

The search should be extended from the area where the person arrested could reach or gain control of any weapons or evidence. The search must be conducted at the time and place of the arrest. If no arrest is considered or allowed under the circumstances then the officer is limited to the stop and frisk rule.

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Plain View

An officer may seize items of contraband or evidence of a crime which are in plain view. The officer must be in the area under proper authority (i.e. there must be present a valid entry). The officer must also have probable cause to believe the item(s) seized are contraband or evidence of crime at the time they are observed. If the officer leaves the area of observation and subsequently develops probable cause to believe the item is contraband or evidence, a search warrant is required unless other lawful authority exists to return to the observation area. This rule does not authorize an entry or a search, only a seizure. There must be separate authority to validate the entry.

Hot Pursuit

An officer may enter a home or dwelling without a warrant in hot pursuit to apprehend a suspect. These circumstances must be more than what is required to stop a motor vehicle because it is a home that is being entered. In order to justify a search and seizure under "hot pursuit," a serious offense such as a crime of violence, as defined in MSS 624.712 Subd 5, or other crime representing a threat to the safety of the public, whether individually or collectively, must have occurred or been attempted. In addition, the following factors must apply:

- Officers must have probable cause to believe that the crime has just occurred;
- There is a strong reason to believe the suspect is at the search location and;
- There is a substantial likelihood the suspect will escape if not apprehended immediately.

The scope of the search may be as broad as reasonably necessary to prevent the danger that the suspect at large may resist and escape. Officers should use as little force as necessary to enter the premises.

Consent

A search of a person's home or motor vehicle may be conducted if the person voluntarily consents. Prior to executing a consent search, the consent should be documented by either written or electronic means. The consent must be unequivocal.

- Consent may be given by anyone with equal right to possession of the area to be searched;

- A parent may give consent to search child's bedroom and effects;
- A landlord may not give consent to search a tenant's residence as a tenant has superior right to possession under lease agreement;
- A tenant on the premises has a right to object to a warrantless search of a residence even though an absent co-tenant consented to the search;
- Consent must be voluntary based upon a "totality of the circumstances" including suspect's age, suspect's intelligence, suspect's statements, statements of officers, physical surroundings, etc.
- The fact that property was handed over without verbal protest does not establish that the transfer was voluntary;
- The scope of the search is limited to the scope of the consent;
- Officers may by implication expand the scope of the search by telling a suspect what they are searching for;
- Search must stop when consent has been revoked.

Cell Phones/Electronic Devices

Officers shall either obtain a search warrant or consent to examine the contents of a cell phone or other personal electronic device when the officer comes into possession of the item(s) through the lawful performance of their duty. Found or recovered property may be examined to the extent of identifying the proper owner. An exception to this policy is exigent circumstances.

Search of a Motor Vehicle

A search warrant must be obtained to conduct a search of a motor vehicle, when the search is preplanned or the vehicle is not movable (the vehicle does not appear to be movable or easily rendered movable by minor repairs, that the vehicle is on private property or the officer concludes that there is adequate time to obtain a search warrant before the vehicle is moved, or sizable items removed).

Motor Vehicle Exceptions

Movable Vehicle Exception: The officer must have probable cause to believe the vehicle contains contraband or evidence of a crime and there exists a danger that the vehicle could be moved by the suspect or third party. The vehicle can be removed to the police station to conduct a search if there is legitimate basis for the search in the first place. A search may be conducted of every part of the

vehicle including containers inside the vehicle. The officer shall use keys whenever possible, and will open a locked trunk or glove compartment by means of a key rather than by force.

If keys are not available, instructions will be obtained from a supervisor as the method to be used in opening the locked trunk or glove compartment. The scope of a motor vehicle search does not cover persons or containers removed by the person prior to the search.

- Incident to Arrest: When a motor vehicle is included in the area under control of the person being arrested, an officer may search that area for weapons or evidence. Generally such a search is limited to the passenger compartment of the vehicle.
- Stop and Frisk: Persons within a motor vehicle may be searched if there are specific facts that exist that indicate to the officer that criminal activity is occurring and the individual may be armed or dangerous to the officer or others.
- Plain View: Items of contraband or evidence of a crime in plain view in a vehicle may be seized. This is consistent with general plain view rule.
- Consent Search: A police officer may search an automobile or dwelling after receiving consent from the person having control over the same.

c. Seizure and Impoundment of Motor Vehicle

A motor vehicle is seized or impounded when officers take custody of it and either remove it to a police facility or arrange for it to be moved to a storage facility. An inventory is a process by which items of property in a seized vehicle are listed and secured for the owner's protection.

When a Lakeville Police Officer, by his/her authority, has the city-contracted towing service tow a vehicle, the officer will complete a Lakeville Police Department Vehicle Report and provide the towing service an electronic version of this report form.

A vehicle coming into custody of the Lakeville Police Department will fall under the following categories, for the purpose of these guidelines:

- Instrumentality of an offense;
- Prisoner's property;
- Traffic impoundment;
- Other non-criminal impoundment.

Instrumentality of an Offense: When an officer has probable cause to believe that a vehicle has been stolen or used in the crime or is otherwise connected with a crime, he/she shall take the vehicle into custody. All vehicles seized as an instrumentality of an offense shall be thoroughly inventoried as soon as practical, unless such an inventory may damage or destroy evidence.

Prisoner's Property: When a person is arrested in a vehicle which he/she owns, or has been authorized to use, and the vehicle is not otherwise subject to seizure, the officer may take the vehicle into custody. If taken into custody, a complete inventory shall be completed. If left on the street this vehicle must not be a traffic hazard. It should be locked and legally parked. The owner of the vehicle must be willing to take full responsibility for the vehicle if left unattended. If the facts of the situation are that the vehicle must be towed off the roadway it should be done so within a reasonable length of time.

Traffic Impoundment: When a police officer reasonably believes that a vehicle, abandoned in the roadway, constitutes a serious traffic hazard to other vehicles traveling on the roadway, the officer shall make every attempt to contact the registered owner of the vehicle to request that the vehicle be removed within a reasonable amount of time. If the officer is unable to contact the registered owner and the vehicle is such a hazard as to be a serious traffic impairment, the officer shall remove the vehicle for the sole purpose of having that vehicle transported to an impound lot and completely inventory the vehicle.

Non-Criminal Impoundment: An officer may take into custody a vehicle that he/she has reason to believe is part of an estate of a deceased person or the property of an impaired person, or the property of a person who has been taken to the hospital or

because it is property turned over to the police department at the scene of an accident, fire or disaster. The purpose of taking the

vehicle into custody shall be to have it transported to an impound lot so as to safeguard the vehicle and its contents for the owner, therefore, a complete inventory shall be conducted.

Procedures for Inventory Search: It is the policy of the Lakeville Police Department to conduct a comprehensive and thorough inventory search of every vehicle impounded, as soon as practicable, in order to safeguard the owner's property and prevent potential liability concerns.

Whenever an officer of the Lakeville Police Department is authorized to conduct an inventory search of a vehicle, he/she shall document all items of value and contraband that are located within the following areas:

- Passenger compartment;
- Glove compartment
- Trunk (whether or not locked; officers will not forcibly open a trunk without keys for inventory purposes);
- Engine compartment, and any other area of the vehicle where valuables may be located; whether plainly visible or concealed.

All containers such as boxes, suitcases, etc.; found within the vehicle shall be opened and inventoried, even if locked, if they can be opened without damage.

Property which is easily portable, and of value, and the owner wishes to retain in his/her possession, shall be given to him/her by the officer if practicable giving due consideration to the safety needs of attending officers. The remaining items after the inventory is completed shall remain in the vehicle.

All contraband located within the vehicle during the inventory search will be handled as evidence and placed into the property room for disposition of the case or to be destroyed.

Others Removing Vehicles: If practical, the officer may ask the owner/driver of the vehicle if there is anyone who can respond to the location of the vehicle within a reasonable period of time to take possession of the vehicle rather than having it towed. Any motor

vehicle without insurance or registration can only be towed by a legally equipped tow truck.

Police Hold on Vehicles: An officer may, at his/her discretion and with reasonable cause, place a police hold on a vehicle the officer is impounding, thereby preventing the removal of this vehicle from the impound lot or other place of confinement without the written permission of the officer or a supervisor. Any such police hold must be noted on the vehicle report and reason for such hold shall be entered on this report at the time of impoundment, or other accompanying report on file at the Lakeville Police Department. Any such police hold shall be only until the lawful restriction is satisfied.

d. Exigent Circumstances

Emergency Situations: An officer may enter an area without a search warrant in an emergency to prevent injury or render aid. The necessity of saving lives or preventing injury justifies what would otherwise be an illegal entry. However, the officer's search is limited to the purpose of the entry and must stop once the emergency no longer exists.

Searches to Prevent the Destruction of Evidence: An officer may enter an area without a search warrant to prevent the destruction of evidence provided there is probable cause to believe the evidence is present in the area and there exists a strong probability the evidence will be destroyed or moved while a search warrant is being obtained. That the evidence may be easily destroyed (i.e. drugs) is not enough to justify a warrantless search. The officer must have information to believe the suspect or third party will destroy or move the evidence if the search is not conducted immediately. Officers may not intentionally create the exigent circumstances justifying a warrantless entry.

Securing an Area prior to Search: In doubtful cases, it is strongly recommended that a search warrant be obtained prior to conducting a search and officers "secure" the area to be searched until the search warrant is executed.

When securing an area officers may:

- Conduct a brief search of the area to locate anyone who may put officers at risk or destroy the evidence;

- Remove or detain those individuals who may put officer at risk or destroy evidence;
- Physically secure the location prior to the arrival of the search warrant;
- If possible, officers should “secure” an area from the outside to prevent any allegations of a search being conducted prior to the arrival of the search warrant;

e. Abandoned Property

Officers may search and seize items which by their location have been obviously abandoned. Garbage may be deemed abandoned if it has been placed in a position for collection (i.e. curbside). However, the abandonment must not be caused by illegal police conduct.

f. Open Fields

Officers may enter and seize items in plain view from areas outside the “curtilage” of an individual’s residence. In making such a determination, officers should consider the distance between the residence or business and the area to be examined, the existence of any enclosures (i.e. fences), what the area is used for, and what measures have been taken to protect the area from public view.

g. Search Warrants - Utilization of Uniformed Personnel

In order to help ensure the proper identification of the officers, along with the purpose and intent of the search warrant, initial contact or entry shall be made by uniformed officers acting under the control and direction of the issuing authority of the search warrant.

h. Summary

A good rule to remember is that a search is presumed to be invalid if conducted without a warrant. Otherwise, the burden of proof is on the officer to prove why an exception was necessary.