



SEARCH INCIDENT TO ARREST

Question: Can an officer conduct a search incident to arrest of a person when the person is cited and released at the scene?

Answer: No. Search incident to arrest requires a **custodial arrest**, which means a person is transported somewhere, not just cited and released.

Case Law:

United States v. Robinson 414 U.S. 218 (1973) – US Supreme Court:

“A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; *that intrusion being lawful*, a search incident to the arrest requires no additional justification.”

“... the danger to an officer is far greater in the case of the extended exposure which follows the taking of a suspect into custody and transporting him to the police station than in the case of the relatively fleeting contact resulting from the typical *Terry*-type stop.”

“...we hold that, in the case of a lawful custodial arrest, a full search of the person is ... an exception to the warrant requirement of the Fourth Amendment...”

United States v. Edwards (1974) 415 U.S. 800 (1974) – US Supreme Court:

A search incident to arrest “has traditionally been justified by the reasonableness of searching for weapons, instruments of escape, and evidence of crime when a person is taken into official custody and lawfully detained.”

Knowles v. Iowa 525 U.S. 113 (1998) – US Supreme Court:

Knowles was stopped for speeding. Iowa law authorized police either to take into custody anyone committing a traffic violation or to issue a citation. The officer chose to issue Knowles a citation in lieu of arrest. He then searched Knowles’s car, found drugs, and arrested him.

“The threat to officer safety from issuing a traffic citation ... is a good deal less than in the case of a custodial arrest. ...while the concern for officer safety in this context may justify the ‘minimal’ additional intrusion of ordering a driver and passengers out of the car, it does not by itself justify the often considerably greater intrusion attending a full field-type search.”



TRAINING OUTLINE

Virginia v. Moore 553 U.S. (2008) – US Supreme Court:

Rather than issuing the summons required by Virginia law, police arrested Moore for the misdemeanor of driving on a suspended license. A search incident to the arrest yielded crack cocaine, and Moore was tried on drug charges.

“We conclude that warrantless arrests for crimes committed in the presence of an arresting officer are reasonable under the Constitution, and that while States are free to regulate such arrests however they desire, state restrictions do not alter the Fourth Amendment’s protections.”

“A search enables officers to safeguard evidence, and, most critically, to ensure their safety during ‘the extended exposure which follows the taking of a suspect into custody and transporting him to the police station.’ Officers issuing citations do not face the same danger, and we therefore held in *Knowles v. Iowa* . . . that they do not have the same authority to search.”

People v. Macabeo 384 P. 3d 4th 1189 (2016) – California Supreme Court:

Macabeo was stopped for rolling through a stop sign on his bicycle. Officers searched his phone where they located pictures of underaged girls. Officers then arrested him.

In addressing the search incident to arrest argument, the California Supreme Court concluded there is no justification for a routine search of the arrestee unless the decision had been made to take him somewhere (e.g., jail, a police station, a hospital, or a juvenile’s home).

“There is no exception for a search incident to citation.”

For anyone wanting further analysis of search incident to arrest, the Office of the Alameda County District Attorney published a lengthy paper here:

https://le.alcoda.org/publications/point_of_view/files/SITA.pdf