1	Life Long Learning
	Vehicle Contacts
	Traffic Stops
2	Vehicle Contacts
	• Traffic Stops
	• Description Disconnection of Description and Description of the second
	Have your Drivers License, Registration and Proof of Insurance ready.
3	Vehicle Contacts
	• Where do you put your hands?
	•
	Do you need to provide your cell phone number?
4	Vehicle Contacts
5	Vehicle Contacts
	Types of Vehicle Contacts
	Offset left (Driver and Passenger side approach)
	Inline (typically a Passenger side approach)
	Angle Left (Driver or Passenger side approach)
	• Non-Approach
	High Risk – Will not be discussing today.
6	Vehicle Contacts – Inline – Passenger Approach
7	Vehicle Contact – Offset Left
8	Vehicle Contacts – Offset Left
9	Vehicle Contacts – Offset Left
10	Vehicle Contacts – Offset Left
11	Vehicle Contacts – Angle Left
12	Traffic Stops and Police Discretion
13	Discretion – What is it?
14	Police Discretion
	Police are required to do some things
	 establish probable cause before making an arrest or a traffic stop
	•arrest a person with an outstanding warrant
	Police are prohibited from doing some things
	•using force to punish a suspect
	•taking bribes
	Most police work falls in betweenwho gets a ticket and who just gets a warning? Do we make a
	physical arrest or write a misdemeanor citation? Which cars do we ask/decide to search? Suppose an officer always wrote speeding tickets at 15 mph over the limitexcept for little old
	Suppose an emice dividys where speculing tickers at 13 mbh evel the mille except for inthe thu

ladies, who got a warning. How would it be detected? Who would complain? Not the little old ladies!

15 Traffic Stops

State V. Smith (January 2018)

Facts:

The police observed a vehicle in a high crime area and ran its plates. This check revealed that the registered owner, Amber Smith, had a suspended license. The police could not ascertain the gender of the driver, but effected the stop..

After making the stop the police approached the car but before making contact with the driver, noticed that the driver was not Amber Smith, but a man. Nevertheless, the police continued and asked for the man's driver's license. The police also asked the defendant to roll down his window, but he claimed that he could not do so. The police then asked the defendant to get out of the car and the defendant claimed that his doors were stuck. The police officer then went to the passenger side and opened the door.

16 Traffic Stops

State V. Smith (January 2018)

The Defendant's Argument:

The defendant argued that the police made an unlawful contact, because the reasonable suspicion for the stop had dissipated before contact was made with the driver. The defendant further argued that the police made an unlawful search when they opened the passenger door.

17 Traffic Stops

State V. Smith (January 2018)

The Court's Holding:

The Wisconsin Supreme Court held that the police, if they make a lawful stop, are entitled to make contact with the driver, even if the reasonable suspicion that prompted the stop had dissipated. And the court held that part of the contact includes asking for the driver's driving license and running a check. Moreover, the court opined that since the police have the right to a face to face dealing with the driver and can command the driver to exit the vehicle, it follows that they can open the door if the driver can't or won't do so. Thus, the court held that the police discovery of the defendant's intoxicated state was lawfully obtained

18 Traffic Stops

State V. Smith (January 2018)

Key Points:

- The police are entitled to a face to face contact with anyone they lawfully stop. The police are similarly entitled to ask for the driver's license and to check it out.
- This entitlement is not compromised by the fact that the original reasonable suspicion had dissipated before the contact.
- The police can open the door to make the face to face contact but should not do so unless after being asked to exit the vehicle or to roll down the window, the defendant refuses to do so or claims to be unable to comply with the command

19 Traffic Stops

State V Brown

Issue:

The police stopped a vehicle for an alleged violation of Wisconsin Statute 347.13(1) -tail lamp violation. Specifically the police noted that one of the tail light bulbs was burned out. The statute requires the taillights to be in good working order and to emit a red light plainly visible from a distance of 500 feet. The police made the stop reasoning that a burnt out bulb means the tail lamp was not in good working order. The court rejected this notion, opining that good working order means that the light is clearly visible from 500 feet, even if one the bulbs were burnt out.

20 Traffic Stops

State V Brown

Key to Case:

The key to the case is what is meant by the term "good working order". The high court determined that the phrase "good working order" does not mean perfect working order- rather it means that the lamp, whatever its defects, fulfils its statutory requirement of emitting a light clearly visible for a distance 500 feet to the rear. Since that was the case here, the stop was deemed improper.

21 Traffic Stops

State V Brown

Key Distinction:

The reason this case went the way it did, is because of the murky nature of the phrase "good working order". Some statutes are clearer cut. For example, 347.07(2) (b) prohibits any color of light other than red being emitted from the rear; the statute is clear. Therefore, if an officer notes white light coming from the rear they can make a lawful stop regardless of visibility of 500 feet

22 Vehicle Searches

Arizona V Gant

Introduction:

This case dramatically changes the Search Incident to Arrest Doctrine as it relates to searching into the passenger compartments of automobiles. The United States Supreme Court rejects the automatic application of the doctrine when the arrested subject is already in custody and handcuffed. Their rationale is that the subject no longer poses a threat and no longer is in a position to conceal evidence. The Court reasoned that they are not reversing the doctrine as first enunciated in New York v. Belton (453 U.S. 454 (1981) but merely clarifying it.

Whatever the Court's protestations, the bottom line is that Arizona v. Gant reverses the way Wisconsin has interpreted and applied the S.I.A. doctrine as it relates to searching the vehicles of arrested defendants. Under the new *Gant* rule a police officer may perform a search incident arrest of the defendant's vehicle if one of two factors is present:

- The arrestee is within reaching distance of the vehicle's passenger compartment at the time of the search.
- The police have "reason to believe" that the vehicle contains evidence supporting the arrest

23 Vehicl	e Searches
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Arizona V Gant

Facts:

The police received an anonymous tip that a particular residence was being used to sell drugs. The police went to the residence and made contact with Gant who told the police that he expected the home owner to return later in the day. The officer left the residence and did a records check on Gant which revealed that Gant's drivers license had been suspended and there was an outstanding warrant for Gant's arrest for driving with a suspended license.

When the officers returned to the residence in the evening they found a man near the back of the house and a woman in a car parked in front of the home. After a third officer arrived they arrested the man for providing a false name and arrested the woman for possessing drug paraphernalia. Both of the arrested persons were handcuffed and secured in separate squads. When Gant arrived at the scene they arrested him and handcuffed him pursuant to the warrant. Two more officers arrived and eventually there were five officers at the scene and three defendants, including Gant, handcuffed and placed in separate police squads. Then the police did a search incident to arrest of Gant's vehicle and found a gun and cocaine.

24 Vehicle Searches

Arizona V Gant

The Defendant's Argument:

Gant argued that the evidence against him should be suppressed since the police should not have conducted a search incident to arrest of his vehicle when he was already handcuffed and placed in a police squad.

The State's Argument:

The state argued that the search was totally permissible as police have been trained for 28 years to conduct such searches incident to arrest and state courts around the country have allowed such searches even when the defendant is handcuffed and placed in the squad prior to the search. The state presented evidence to the court as to how this doctrine had been taught in police academies throughout the country and that 42 states (including Wisconsin) had allowed for a Belton search of vehicle after a defendant had been handcuffed and neutralized.

25 Vehicle Searches

Arizona V Gant

The United States Supreme Court Holding:

In a 5-4 decision the United States Supreme Court agreed with Gant and held that the search incident to arrest doctrine of automobiles is not an automatic police entitlement and should only be applied when a defendant is still in a position to lunge into the passenger compartment or when the officer reasonably believes that the vehicle has evidence supporting the arrest.

26 Traffic Stops as an Investigative Tool

Whren v. U.S. (1996)

- Permits pretextual traffic stops
- Means traffic stops can be used for drug investigations

Whren v. U.S. says that the officer's intent is irrelevant. As long as the officer has probable cause to stop the car for a traffic or equipment violation (including registration), he or she can stop the careven if the officer's real motivation is to investigate something else. If you follow someone long enough, just about everybody will commit some driving error

27 Vehicle Contacts and K-9's

Huff v. Reichert US 7th Circuit Court of Appeals March 10, 2014

Issue:

Though a civil case, this case looks at important police issues such as length of detention, frisks, and dog sniffing during a traffic stop. The opinion ruled against law enforcement and provides some clear direction as to what is proper and improper during a traffic detention. The case involved an Illinois police officer, but since the opinion is from our 7th Circuit it has some precedential value.

28 Vehicle Contacts and K-9's

Huff v. Reichert US 7th Circuit Court of Appeals March 10, 2014

Facts:

After attending a Star Trek convention in St. Louis, subjects were returning to their home in Ohio. The vehicle was stopped in Illinois because the police had observed a minor traffic infraction. The officer asked Huff for his driver's license, insurance and registration.

The officer asked Huff about his criminal history and Huff advised that he had been arrested around twenty years earlier. The officer did a records check and found out that Huff had been arrested for battery and for marijuana cultivation in 2001.

The officer told Huff that he was going to let him go with a warning. The officer then asked to speak to Huff's passenger, as the passenger seemed nervous.

The officer then told Huff that the police had some problems with motorists in the area carrying drugs and guns in their vehicles. Huff denied having any of these items and when the officer asked Huff if he could search the vehicle Huff responded by saying that he would just like to go on his way.

The officer then asked if his canine could sniff around the vehicle and Huff said OK but wondered what was going on since he had only been stopped for swerving and he didn't think he swerved. Huff then asked if he was free to go and the police officer said, "not in the car".

29 Vehicle Contacts and K-9's

Facts Continued

Next the officer did a pat-down of Huff and his passenger.

Then the dog started to sniff the vehicle as the officer commanded, "Show me where it's at. Find it." The officer later admitted that he had been trained not to use these commands during a dog sniff. The dog alerted and the officer said he was going to search the vehicle and Huff said, "Do what you gotta do."

The officer did not find anything and 50 minutes after the original stop and 34 minutes after giving Huff a warning ticket, the police told Huff that he was free to go.

30 Vehicle Contacts and K-9's

Huff v. Reichert US 7th Circuit Court of Appeals March 10, 2014

The Defendant's Argument:

The defendant sued law enforcement for violating his 4th amendment rights. He raised many complaints concerning the extent of his seizure during a routine traffic stop.

The Police Argument:

The officers argued that they have immunity from law suit when performing their discretionary functions.

31 Vehicle Contacts and K-9's

Huff v. Reichert US 7th Circuit Court of Appeals March 10, 2014

The Court of Appeals Holding:

While recognizing that the police have qualified immunity for their discretionary decisions, this immunity does not shield them from provable constitutional violations. The court held that there were legitimate issues raised by the defendant;

- 1) Extending a traffic stop 34 minutes to accommodate a non-reasonable suspicion investigation is problematic unless the extended contact can be couched as a consensual encounter.
- 2) The frisk was potentially problematic because there was a legitimate issue of consent and also there was little to suggest that law enforcement should be concerned that Huff was armed and or otherwise dangerous.
- 3) There were questions about the reliability of the dog sniff since the police violated their command protocol. Accordingly, the court of appeals held that Huff had the right to pursue his claims against law enforcement and the police in this case had no immunity.

32 Vehicle Contacts and K-9's

Huff v. Reichert US 7th Circuit Court of Appeals March 10, 2014

Note:

While a civil case, this fact pattern raises several relevant issues to law enforcement. Among them are the following:

- 1. If the police engage in a frisk more than twenty minutes after a stop, they need to explain what occurred during the stop that changed the dynamic so as to make them suddenly feel threatened.
- 2. The duration of an investigative detention must be related to the reason for the stop. If the police develop reasonable suspicion of an offense different than the one that triggered the stop, then an extension can be justified. However, if they are merely "going fishing," they must first clearly end the traffic stop and then set up the further contact as a consensual encounter.
- 3. Departing from the established protocol in conducting a dog sniff can impact on the reliability of the sniff.

33 Vehicle Contacts and

K-9's

State V. Branovan

Issue:

This contains an interesting discussion as to when a traffic stop is unduly delayed to accommodate a non-reasonable suspicion dog sniff.

34 Vehicle Contacts and K-9's

State V. Branovan

Facts:

In this case a police officer observed a driver and a passenger, not wearing a seatbelt. Before making the stop the officer notified his canine officer and asked him to respond, because he thought the driver was wearing a hat with a marijuana leaf on it. The officer made the traffic stop and while he stayed on task processing the traffic stop, the K-9 officer arrived. While waiting for information about the driver, the stopping officer talked to the K-9 officer, and while the stopping officer remained on task, the sniff was performed and evidence was found.

35 Vehicle Contacts and K-9"s

State V. Branovan

The Defendant's Argument:

The defendant argued that the evidence should have been suppressed since he was seized, by the use of the squad's overhead lights, before the police had the perquisite of reasonable suspicion for a traffic stop.

36 Vehicle Contacts and K-9's

State V. Branovan

The Court's Holding:

The court held the dog sniff did not impermissibly extend the traffic stop. The court reasoned that most of the delay was before there was any attempt to make the traffic stop. Two important aspects of this case:

- Any delays to get a K-9 officer involved, prior to the seizure are of no importance in a 4th amendment analysis.
- Talking to a canine officer while legitimately waiting for information in pursuit of a traffic stop, does not amount to an unlawful extension of the traffic stop

37 Vehicle Contacts and K-9's

State V. Branovan

Caution:

This case does not change the basic premise that it is very difficult to perform a canine sniff during a routine traffic stop, without reasonable suspicion, that does not unlawfully extend the stop.

38 Traffic Stops as an Investigative Tool

Other relevant cases:

U.S. Supreme Court Cases

- Pennsylvania v. Mimms (1977)
 - Police can routinely order the driver out of the vehicle.
- Maryland v. Wilson (1997)
 - Police can order passengers out of a car, regardless of whether the officer thinks they are dangerous.
- Wyoming v. Houghton (1999)
 - In a search incident to arrest of the driver, even an uninvolved passenger's purse left in the car

may be searched.

39 Traffic Stops as an Investigative Tool

State v. Jennifer Matejka

Legal Issue Involved:

Does a consent search of a vehicle allow an officer to search a jacket found in the vehicle which does not belong to the consenting party?

The Wisconsin Supreme Court answered this question: Yes

40 Traffic Stops as an Investigative Tool

State v. Jennifer Matejka

Facts:

The police lawfully stopped a van for having no front license plate. As the officer approached the van he noted that there were several passengers covered with blankets and pillows on the back floor of the van. The officer also noted during the stop that the driver was leaning over as if he was either trying to hide or retrieve something. The officer asked all the occupants to get out of the van and eventually received consent from the driver to search the van.

The officer called for back up and then advised all of the vehicle's occupants that he was going to conduct a consent search of the van. As the search began the back-up officer advised that the passengers were cold and wanted their jackets. The searching officer retrieved the jackets from the back seat area of the van and searched all of them. In the jacket owned by the defendant Matejka the officer found drugs and contraband

41 Traffic Stops as an Investigative Tool

State v. Jennifer Matejka

Defendant's Argument:

The defendant sought suppression of the evidence arguing that a consent search of a vehicle does not extend to a search of personal property found in the vehicle, which clearly does not belong to the consenting party. So, since the driver who consented was not the owner of the jacket the defendant argued the police would need separate consent from the jacket owner before searching it.

The Holding:

The court upheld the search. It held that consent to search a car extends to all items found in the car regardless of ownership.

42 Traffic Stops as an Investigative Tool

State v. Jennifer Matejka

Caution:

While this is a favorable ruling for the police and clarifies a previously unresolved issue it should be noted that two factors present in this case were critical to the ruling. These factors are:

- The defendant was aware that the police were searching the van and leaving the jacket in the van during the search shows an abandonment of any expectation of privacy in the jacket.
- The item searched, a jacket, is not a particularly private one and the ruling might have been different if the officer had searched a purse or a briefcase, which clearly belonged to someone other than the consenting party.
- Nevertheless this case provides an excellent precedent for the notion that a consent search of a

vehicle extends to all items found in the vehicle, regardless of ownership, unless the item is of a very private nature and clearly does not belong to the consenting party.

43 State Law – Constructive Possession

Possession

- The most common drug charge, especially in arrests made under local drug laws, involves possession of a controlled substance. Generally, for a possession conviction, the government (usually in the form of a district attorney) must prove that the accused person:
 - · knowingly and intentionally possessed a controlled substance,
 - without a valid prescription, and
 - In a quantity sufficient for person use or sale.

44 State Laws – Constructive Possession

A possession charge can be based on actual or "constructive" possession of a controlled substance. Constructive possession means that even if the defendant doesn't actually have the drugs on their person (in a pocket, for example), a possession charge is still possible if the defendant had access to and control over the place where the drugs were found (a locker, for example).

This is important note because, unlike OWI laws, the government does not have to actually prove that someone is using a controlled substance in order to charge them with possession. The theory of constructive possession is often used when illegal drugs are found in a car during a traffic stop.

45 Vehicle Contacts - Conclusion

- Keep your hands on the steering wheel and have your information ready.
- Search Incident to Arrest from a vehicle is if the driver is not in custody yet Officers be careful.
- Extension of the traffic stop K-9's.
- Searching items in the vehicle what are the facts of the situation.
- Constructive Possession Be careful who you hang with. WI St Statutes
- Officers can identify drivers no matter who the vehicle is registered to State V. Smith Case.
- Equipment can be in "good working" order (bulbs) State V. Brown

46 Vehicle Contacts - Conclusion

- Types of Traffic Stops:
 - In-line
 - Off-Set Left
 - Angle Left
 - Non-Approach

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47 Officer Down Memorial Page

• National Map