

TRAFFIC STOPS AND MOTOR VEHICLE SEARCHES

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CITIZEN ENCOUNTERS WITH POLICE

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Courts have divided police-citizen encounters into three tiers:

- (1) Arrests---require probable cause
- (2) Terry stops---require reasonable suspicion
- (3) Consensual encounters

People v. Luedemann, 222 Ill. 2d 530 (2006)

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FOURTH AMENDMENT

The Fourth Amendment to the U.S. Constitution prohibits unreasonable searches and seizures.

A temporary detention of an individual during a vehicle stop constitutes a "seizure" within the meaning of the Fourth Amendment, even if the stop is brief and for a limited purpose. Whren v. United States.

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As a seizure, a traffic stop by police is subject to the "reasonableness" requirement of the Fourth Amendment.

TRAFFIC STOPS

The usual traffic stop is more analogous to a Terry investigative stop than to a formal arrest. People v. Jones, 215 Ill. 2d 261 (2005).

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Terry Stop: Law enforcement officer may briefly detain a person for questioning if the officer reasonably believes that the person has committed, or is about to commit a crime. Terry v. Ohio, 392 U.S.1 (1968)

A Terry investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop. Florida v. Rover, 460 U.S.491 (1983).

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LEGAL BASIS FOR TRAFFIC STOPS

Police may stop a vehicle if the officer has **probable cause** or **reasonable suspicion** that a person in the vehicle has committed or is committing an offense.

The first inquiry to be made is whether there was a legal basis for the stop.

The officer could be wrong.

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EXAMPLES OF IMPROPER TRAFFIC STOPS

Driving with turn signal on without turning. Not an offense unless used as a "do pass" signal or vehicle is parked or disabled. People v. Haywood, 407 Ill. App. 3d 540 (2d Dist. 2011).

Tires touching lane lines. Not improper lane usage for the tires to touch, but not cross lane lines. People Mueller, 2018 IL App (2d) 170863.

Left turns. Some officers believe motorists turning left onto street with more than one lane must turn into left most lane. Not true. Driver turning left can turn into any lane. People v. Walker, 2018 IL App (4th) 170877.

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Obstructed Windshield (Objects hanging from rear view mirror). Effective 1-1-24, 625 ILCS 5/12-503 (c-5) was amended to provide that no driver shall be stopped for having something hanging from the mirror.

Police Officer's Good Faith Mistake That Traffic Violation Was Committed

Fourth Amendment is not violated where police officer pulls over a vehicle based on objectively reasonable, but mistaken belief that traffic laws prohibit motorist's conduct. Hein v. North Carolina, 474 U.S. 54 (2014).

But Court said officer can gain no Fourth Amendment advantage through sloppy study of the laws he is duty bound to enforce.

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Good Faith Mistake.

People v. Gayton, 2015 IL App 116223. Trailer hitch obstructed view of license plate did not violate vehicle code, but statute was ambiguous.

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Other Lawful Reasons for a Traffic Stop

Driver known to have suspended driver's license.

Police justified in stopping vehicle to see if owner, who was suspended, was driving. People v. Barnes, 152 Ill. App. 3d 1004 (4th Dist. 1987).

Police can run computer check on vehicle's registration to see if the vehicle is properly registered and if owner has valid license. People v. Barnes, 152 Ill. App. 3d 1004 (4th Dist. 1987).

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Tip from citizen informant if sufficient indicia of reliability.

Factors in Determining Indicia of Reliability: whether information was independently corroborated, whether informant gave their name, witnessed offense, or offered to sign complaint.

Reason to believe an occupant of vehicle has outstanding warrant.

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PERMISSIBLE DURATION OF TRAFFIC STOP

Tolerable duration of traffic stop is determined by the seizure’s “mission,” which is to address the traffic violation that warranted the stop. Rodriguez v. United States, 135 S. Ct. 1609 (2015) citing Illinois v. Caballes, 543 U.S. 405 (2005).

Authority of police to seize the motorist ends with completion of the mission.

Besides writing ticket, officer’s mission includes checking driver’s license, check for outstanding warrants against driver, inspecting vehicle’s registration and proof of insurance. Rodriguez.

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Warrant Checks on Passengers

A warrant check of a passenger violates the Fourth Amendment if it extends duration of the stop. People v. Bass, 2021 IL 125434, People v. Roberson, 367 Ill. App. 3d 193 (4th Dist. 2006).

These cases involved passenger as the defendant, but same logic would apply to driver.

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On-scene investigation into other crimes detours from the mission of the traffic stop. Rodriguez v. United States.

Questioning that is unrelated to the traffic stop and not based on reasonable suspicion violates the Fourth Amendment if it prolongs the duration of the stop. People v. Harris, 228 Ill. 2d 222 (2008).

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In determining reasonable duration for the stop, it is appropriate to examine whether officer diligently pursued the investigation.

This means officer may not stall during traffic stop for drug dog to arrive.

If officer questions or seeks consent to search vehicle after stop has terminated, this may be a second seizure that violates Fourth Amendment.

Return of license to driver is an indication that the stop has terminated.

Retention of license by officer is an indication that driver is not free to leave.

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WHEN IS A DRIVER SEIZED?

Seizure occurs when reasonable person would believe they are not free to leave. U.S. v. Mendenhall, 446 U.S. 544 (1980).

Factors determining whether reasonable person would feel free to leave:

- (1) Threatening presence of a number of officers;
- (2) Display of a weapon;
- (3) Physical touch of defendant; and
- (4) Language or tone suggesting compliance with officer's request is compelled.

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ACTIONS BY OFFICER THAT MIGHT PROLONG TRAFFIC STOP

Requesting consent to search vehicle.

Questioning occupants about contents of vehicle (guns or drugs)

Conducting a dog sniff

Warrant check on passengers

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Dog Sniff

Under Caballes, a dog sniff does not violate the Fourth Amendment unless it prolongs the stop.

Evidence obtained by police as the result of prolonging the stop is subject to being suppressed.

(See page 6 of handout for cases where evidence was suppressed because police prolonged the stop beyond what was reasonably necessary to complete the mission of the stop)

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PARKED CARS

Determination of whether person is seized is different when person is in a parked car, bus, or similar seated location.

Seizure does not occur by officer approaching a person to ask questions. People v. Gherna, 203 Ill. 2d 165 (2003).

In determining whether person in parked car or bus has been seized, court considers whether a reasonable person would believe they were not free to decline the police requests or terminate the encounter. Not "free to leave" test established in Meneshall

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Fruit of the Poisonous Tree

If there is no lawful basis for the traffic stop, or if the officer prolonged the stop beyond what is reasonably necessary to complete the mission of the stop, the defendant's Fourth Amendment rights have been violated and the evidence obtained as the result of that violation is subject to being suppressed. People v. Brownlee, 186 Ill. 2d 501 (1999).

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**DRIVERS AND PASSENGERS
SEARCH AND SEIZURE**

“Out of the car”

If police stop a vehicle, driver and all passengers are deemed to be seized and all can challenge the constitutionality of the stop. Brendlin v. California, 551 U.S. 249 (2007).

Officer can order driver to get out of the car. Pennsylvania v. Mimms, 434 U.S. 106 (1977).

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Passengers may be required to exit the vehicle by the officer. Rodriguez v. U.S., Maryland v. Wilson, 519 U.S. 408 (1997).

Passengers may be ordered to remain in the vehicle. People v. Boyd, 298 Ill. App. 1118 (4th Dist, 1998).

Passengers may be ordered to remain at the scene of the stop until the traffic stop is concluded. People v. Brownlee, 186 Ill.2d 501 (1999).

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Minor Traffic Violations

Stopping vehicle for minor traffic violation does not, by itself, justify search of the occupants or vehicle. People v. Jones, 215 Ill. 2d 261 (2005).

Protective Search of Driver and Passengers for Weapons

Officer may conduct patdown search of driver and passengers if he or she has a reasonable suspicion that they may be armed. Arizona v. Johnson, 555 U.S. 323 (2009).

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VEHICLE SEARCHES

Protective Search of Vehicles for Weapons

Even for stop for minor traffic violation, police can conduct a protective search of the vehicle for weapons if they have reasonable belief that weapons may be in the vehicle. Michigan v. Long, 463 U.S. 1032 (1983), People v. Colvar, 2012 IL 111835.

Scope of search is limited to places where a weapon could be placed.

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Warrantless Searches of Vehicles

Warrantless searches are per se unreasonable subject to a few specifically established and well defined exceptions. Schneckloth v. Bustamonte, 412 U.S. 218 (1973).

Exceptions: Motor Vehicle Searches, Search Incident to Arrest, Consent Searches, Plain View, Inventory Searches, and Community Caretaking.

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Motor Vehicle Search-Carroll Doctrine

Carroll v. United States, 267 U.S. 132 (1925): The U.S. Supreme Court created the Motor Vehicle Exception to the Fourth Amendment warrant requirement.

Under this exception, police may search a vehicle without a warrant if they have **probable cause** to believe the vehicle contains evidence of a crime.

These searches are commonly referred to as "Probable Cause Searches."

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Scope of Motor Vehicle Search: Scope of the search includes closed containers found within the vehicle.

Officers may rely on their training and experience in determining whether there is probable cause to search the vehicle.

Probable cause is more than reasonable suspicion, but less than proof beyond a reasonable doubt.

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COMMON OBSERVATIONS BY POLICE THAT CAN LEAD TO PROBABLE CAUSE

Drug Paraphernalia

The court in People v. Jones found that a "one hitter" box found in plain view on the driver established probable cause to believe that evidence of a crime could be found in the vehicle.

The court recognized a "one hitter" to be drug paraphernalia as it is commonly used to store drugs and other paraphernalia.

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Odor of Cannabis

Two different odors of Cannabis: (odor of raw cannabis, and (2) odor of burnt cannabis.

Illinois courts have long held that the odor of cannabis, raw or burnt, coming from the inside of a vehicle establishes, by itself, probable cause to believe the vehicle contains cannabis. People v. Stout, 106 Ill. 2d 77 (1985).

Corroborating evidence is not required where a trained and experienced police officer detects the odor of cannabis emanating from the vehicle.

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Legalization of Cannabis has not changed Illinois Law.

Recreational amounts of cannabis legalized in Illinois in 2020

People v. Hill—held Stout still the law

People v. Rowell—held Stout still the law

People v. Stribling—held Stout no longer applicable (Probably wrong)

People v. Molina—held Stout still the law (currently on appeal to Il Sup Ct)

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Dog Sniffs

The United States Supreme Court held in Illinois v. Caballes, 543 U.S. 405 (2005), that a dog sniff of a vehicle to detect the presence of illegal drugs does not violate the Fourth Amendment unless the dog sniff prolongs the time unreasonably necessary to complete the mission of the traffic stop.

Practice Tip: Check the video taken by the officer's body worn camera, which has a running time on the recording, to see how long the traffic stop took and whether any of that time was spent on police action not related to the stop.

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Citizen Informants

Reasonable suspicion to stop a vehicle may be based on information obtained from a citizen informant so long as the information possesses sufficient indicia of reliability. People v. Miller, 2014 IL App (2d) 120873.

Factors in Determining Reliability: Same as informant tip as probable cause to stop the vehicle.

See also People v. Shafer, 372 Ill. App. 3d 1044 (4th Dist. 2007) for additional factors to consider. (Handout p. 13)

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Location of the Vehicle Search

If police have probable cause to search a vehicle, at the scene of the traffic stop, they can also remove the vehicle to the station to be searched. Chambers v. Maroney, 399 U.S. 42 (1970).

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Vehicles Located Within the Curtilage of the Home

Motor Vehicle Exception to the Fourth Amendment warrant requirement does not extend to vehicles located within the curtilage of the home. Collins v. Virginia, 138 S. Ct. 1633 (2018).

See Handout for facts in Collins.

Curtilage: an area adjacent to the home and to which the activity of home life extends. Must be some attempt to keep the area private.

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Searches Incident to Arrest

The law is well settled that Police can search a person who has been arrested.

United States Supreme Court narrowed the scope of a search incident to arrest in Chimel v. California, 395 U.S. 752 (1969), to the arrestee's person and the area within his immediate reach.

Arizona v. Gant, 556 U.S. 332 (2009) brought about a major change in the nature and scope of the search of a vehicle incident to arrest of an occupant.

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Under Arizona v. Gant, police may conduct a search incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest.

If police search the interior of the vehicle incident to arrest after the driver and any occupants have been secured, typically by handcuffs and placing them in a squad car, the evidence obtained by the search is subject to being suppressed.

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Decision in Arizona v. Gant does not effect a great number of searches.

Majority of vehicle searches following a traffic stop are based on probable cause.

Common Searches Incident to Arrest: Driver arrested for Driving While License Suspended or driver has an outstanding warrant.

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Plain View

During a Terry investigative stop, police may seize an object without a warrant if the encounter meets the requirements of the plain view exception:

- (1) Officers are lawfully in a position from which they view the object;
- (2) The incriminating character of the object is immediately apparent; and
- (3) The officers have a lawful right of access to the object.

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Closed Containers Seized in Plain View

Closed containers seized in plain view may not be searched (opened) without a warrant or one of the other exceptions to a search warrant apply. People v. Jones, citing Horton v. California, 496 U.S. 128 (1990).

This prohibition does not apply where the contents of the container are a foregone conclusion such as where the container is not closed, is in a transparent container, or where its distinctive configuration proclaims its contents.

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CONSENT SEARCHES

Search conducted without a warrant, but with the defendant's consent does not violate the Fourth Amendment. Schneckloth v. Bustamonte, 412 US. 218 (1973), Illinois v. Rodriguez, 497 U.S. 177 (1990).

Consent must be voluntary. People v. Anthony, 198 Ill. 2d 194 (2001).

Consent must be received, not extracted "by explicit or implied means, by implied threat or covert force, Schneckloth, 412 U.S. at 228.

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At a hearing on a Motion To Suppress Evidence based on an involuntary consent, State has the burden of proving the consent was voluntary. People v. White, 117 Ill.2d 194 (1987).

Most consents to search are given to the police verbally.

Defendant may give consent to search by nonverbal conduct, but mere acquiescence to apparent authority is not necessarily consent. People v. Anthony.

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In cases of nonverbal conduct, the defendant's intention to surrender this valuable constitutional right should be unmistakably clear. People v. Anthony.

People v. Anthony: When asked for consent, defendant "assumed the position" of an arrestee and put his hands on top of his head. NOT CONSENT

People v. Raibley: When asked for consent to search, defendant "shrugged," NOT CONSENT

Court said: " it was not the defendant's responsibility to protest an illegal search or seizure; it was the police's responsibility to refrain from a search or seizure until defendant gave his clear voluntary consent.

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People v. Banta: Officer testified that when he asked defendant for consent to search, "he did not tell me no." NOT CONSENT

People v. Terry, 379 Ill. App. 3d288 (4th Dist. 2008) CONSENT FOUND

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PAROLE SEARCHES

Illinois Unified Code of Corrections sets out the mandatory conditions of Parole or Mandatory Supervised Release.

730 ILCS 5/3-3-7

(a) The conditions of parole or mandatory supervised release shall be such as the Prisoner Review Board deems necessary to assist the subject in leading a law-abiding life. The conditions of every parole and mandatory supervised release are that the subject:

(10) Consent to a search of his or her person, property, or residence under his or her control.

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People v. Wilson, 228 Ill. 2d 35 (2008): Fourth Amendment does not prohibit a police officer from conducting a suspicionless search of a parolee pursuant to 720 ILCS 5/3-3-7. The court cited Samson v. California, 547 U.S. 843 (2006) that made the same ruling based on a California statute very similar to 730 ILCS 5/3-3-7.

The court in Wilson did not address searches conducted prior to the officer's knowledge that the defendant was on parole.

See other cases in Handout following Wilson.

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INVENTORY SEARCHES

Three Requirements for Valid Inventory Search:

- (1) Impound of vehicle must be lawful;
- (2) Purpose must be to protect owner's property and to protect police from claims of lost, stolen or vandalized property and to guard police from danger; and
- (3) Search must be conducted in good faith pursuant to reasonable standardized police procedures and not as a pretext for an investigatory search. South Dakota v. Opperman, 428 U.S. 364 (1976).

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People v. Hundley, 156 Ill. 2d 135 (1993): Illinois State Police General Order containing procedures for inventory searches was an adequate standardized police procedure.

People v. Smith, 2023 IL App (3d) 230060: Court said the impoundment or seizure of a vehicle is separate and distinct from the inventory or search of that vehicle. Both must be constitutionally reasonable.

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Passenger's Standing To Challenge Inventory Search

No standing to challenge search of vehicle.

Do have standing to challenge search of property found in vehicle
People v. Young, 363 Ill. App. 3d 268 (3d Dist. 2006).

State Police policy was to tow vehicle if no occupants had a license. Officer did not inquire of passengers if any of them had a license and towed vehicle. Defendant was a passenger who had a license. Court ruled officer should have asked, and affirmed the suppression of evidence found during search of passenger's property.

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Practice Tip: Get a copy of the inventory and tow policy of the police agency, municipality, county or state unit of government employing the police officer if written policy exists (policy does not have to be in writing).
Check the officer's tow sheet to see stated basis for the tow.

Other significant Illinois Inventory Search Cases

- People v. Partin
- People v. Mason
- People v. Clark

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COMMUNITY CARETAKING

The community caretaking exception to the search warrant requirement was first set out in Cady v. Dombrowski, 413 U.S. 433 (1973).

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Community Caretaking is a different form of police-citizen contact than:

1. Arrest
2. Terry stop
3. Consensual Contact

Purpose is not to investigate a crime. People v. Luedemann, citing Cady v. Dombrowsky, 413 U.S. 433 (1973).

Purpose of contact is protection of public.

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People v. Ursini, 245 Ill. App. 3d 480 (2d Dist. 1993): Pursuant to Community Caretaking, police have authority to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience.

People v. Mason, 403 Ill. App. 3d 1048 (3d Dist. 2010): Court upheld towing of vehicle after arrest of driver where the vehicle was uninsured and Illinois law prohibits operation of an uninsured vehicle on a public highway.

People v. Dittmer, 2011 IL APP (2d) 091112: Checking well being of motorists along the road is legitimate caretaking function.

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Motions To Suppress Evidence

Appropriate method of challenging the admissibility of evidence obtained by police in violation of defendant's constitutional rights is filing of a Motion To Suppress Evidence.

Illinois has codified procedure for Motions To Suppress in 725 ILCS 5/114-12(a)-(e).

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The Motion shall be in writing and state facts showing wherein the search and seizure were unlawful. The judge shall receive evidence on any issue of fact necessary to determine the Motion and the burden of proving that the search and seizure were unlawful shall be on the defendant. 724 ILCS 5/112-12(b).

Very little case law regarding Motions To Suppress.

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People v. Miller, 345 Ill. App. 3d 836 (4th dist. 2004) describes shifting burden at hearing on Motion To Suppress.

"On motion to suppress evidence, the defendant has the burden of proving the search and seizure were unlawful. 725 ILCS 5/114-12(b). However, once the defendant makes a prima facie showing of an illegal search and seizure, the burden shifts to the State to produce evidence justifying the intrusion. People v. Miller citing People v. Ortiz, 317 Ill. App. 3d 212 (2000).

See People v. Smith, 2023 II App (3d) 230060

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Prima facie case is different for warrantless arrest of person than for warrantless search.

Arrest of person requires probable cause.

Temporary detention of person requires reasonable suspicion.

Two Illinois cases hold defendant would have to present evidence that he was not doing anything unusual. People v. Talley, People v. Liekis.

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Warrantless searches are presumptively unreasonable'

Defendant need only prove police did not have a warrant to search him or his property.

When to file Motion To Suppress:

724 ILCS 5/114-12(c) provides:

(c) The motion shall be made before trial unless opportunity therefor did not exist or the defendant was not aware of the grounds to the motion.

See also People v. Flatt, 82 Ill. 2d 250 (1980)

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