

## *From Behind the Badge*

***I recently read an article where a man was charged with Carrying a Concealed Weapon. A gun was found in his car 'after a search incident to arrest.' The man was supposedly stopped for running a red light. Do officers have the right to search for weapons during traffic violations? And what does 'search incident to arrest' really mean?***

***- Linda B.***

Dear Linda:

Throughout my entire law enforcement career, I have tried, albeit fruitlessly at times, to answer inquiries without using legalese or by saying "*it depends.*" However, the answer to your first question truly is – '*it depends.*' The 4<sup>th</sup> Amendment (US Constitution) protects us from 'unreasonable' searches and seizures. Persons lawfully taken into physical custody may be searched. However, several variables must be considered. Did the arrest occur during a traffic stop? Was a driver or passenger arrested? Was the suspect located inside a residence? What type of evidence was being sought? What type of crime had been committed?

Location, criminal offense and other variables will ultimately determine what can and what cannot be searched '***incident to arrest.***' The phrase itself, by all accounts, is criminal justice jargon for searching specific areas associated with physical arrest. For example - a local judge issues a warrant for Mr. Perpetrator. It seems that Mr. Perpetrator failed to appear in court after being cited for Fishing Without a License. Officer Jones sees Mr. Perpetrator walking downtown on a sunny afternoon. Knowing the warrant is on file and valid, Jones makes the physical arrest. Jones is allowed, by law, to fully search Mr. Perpetrator's exterior clothing (all pockets, inside shoes, under hats, etc.) to ensure he does not possess a weapon or other contraband. During the search, Officer Jones locates a small bag of what later tests positive for the presence of THC (a substance found in marijuana). Jones found the drugs '*search incident to arrest*' and may charge Mr. Perpetrator with Possession of Marijuana. Even though Mr. Perpetrator was stopped and arrested for a non-drug related offense, Officer Jones can still search and charge for the possession of drugs. The marijuana, in this case, was found '***search incident to arrest.***'

Example number two. Officer Jones stops Mr. Perpetrator for, let's say, running a red light. A computerized search reveals that Mr. Perpetrator is driving without a license, a misdemeanor for which physical arrest is possible and made. Officer Jones may now fully search (1) Mr. Perpetrator as described above AND (2) interior portions of the vehicle. While looking under the driver's seat, Jones finds a concealed 9mm pistol. Even though the initial traffic stop and subsequent arrest were precipitated by non-weapon offenses, Officer Jones may still search the vehicle and charge Mr. Perpetrator with Carrying a Concealed Weapon. The pistol, in this case, was found '***search incident to arrest.***'

## PAGE 2

Let's toss in one small variable to both examples above. A locked brief case was present - carried by or seen inside the car driven by Mr. Perpetrator. Can Officer Jones open and search inside the brief case search incident to arrest? *It depends.*

The Garner Police Department would like to wish everyone a safe and pleasant Thanksgiving Holiday.

*From Behind the Badge* is a bi-monthly editorial written by Garner Police Officers in response to questions posed by citizens. To submit questions, contact the (Times/News at:??) or Garner Police Public Information Officer Jon Blum at: 919.773.6077; [jblum@ci.garner.nc.us](mailto:jblum@ci.garner.nc.us)

