

Searches Incident to Misdemeanor Arrests

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Many of the arrest reports, which come across a prosecutor's desk, begin with a stop for a traffic violation. Stopping a vehicle for something as minor as a burned out license plate light may lead to the discovery of contraband or other illegal activity. Contraband is often found because of observing an item in plain view, a search based upon probable cause, a consent search, or as part of an inventory search pursuant to your department's impound policy. Sometimes, however, officers discover evidence during a search incident to arrest. These types of searches have been the subjects of numerous challenges, particularly when the underlying offense is something less than a felony.

Minnesota courts often closely scrutinize evidence seized incident to arrest, to determine if the search was warranted. This is because, even though Minnesota Statute §629.34 gives officers the power to arrest a person for a misdemeanor committed in their presence, the Minnesota Rules of Criminal Procedure limit an officer's discretion to make a misdemeanor arrest. Under Rule 6.01, an arrest is allowed only when it reasonably appears to the officer that the arrest is necessary to:

- 1) prevent bodily harm to the accused or another;
- 2) to prevent further criminal conduct; or
- 3) there is a substantial likelihood that the accused will fail to respond to the citation.

For example, an officer stops a person for driving with a revoked license and decides to simply issue the defendant a citation and tow his or her vehicle. With nothing more, a search of the vehicle incident to arrest is not justified.¹

With this in mind, the following are some suggestions and considerations to keep in mind when determining if you can arrest on a misdemeanor.

- Consider if an arrest is necessary to prevent bodily harm to the accused or another.
 - Does the nature of the offense (e.g.: assault, order for protection violation, driving while intoxicated) justify an arrest?
 - Has the suspect assumed a hostile and threatening attitude?
- Look at the person's criminal history, to determine if an arrest is necessary to prevent further criminal conduct.
 - Is the suspect a habitual offender?
 - Does the suspect have a history of assaultive behavior?
 - Does the suspect have numerous misdemeanor driving offenses that might lead to further criminal conduct?²

¹ However, a search may be justified according to your department's inventory policy. A protective frisk of the suspect also may be justified if the officer can articulate a reason to believe the suspect might be armed and dangerous.

² See State v. Olson, No. C2-00-585, 2000 WL 1376541 (Minn. Ct. App. Sept. 26, 2000) (reversing trial court's suppression and finding custodial arrest lawful where suspect told officer his license was valid when it was suspended, suspect told officer it was his car but it registered to another person, and suspect's driving record indicated he had been suspended several times for failure to appear or pay fines.)

- Consider what the likelihood is that the suspect will respond to the citation.
 - What does the suspect's driving record look like?
 - Has the suspect listed his current address on his driving record?
 - Does the suspect's driving record show returned orders by the Commissioner of Public Safety, indicating that he has not kept his address current in the past?
 - Has the suspect been suspended for failure to appear or pay fines?
 - How sufficiently have you identified the suspect?
 - If the person does not have a picture identification, is the defendant's name and identification data from a previous arrest and booking on file?
 - Does the suspect match the physical description?
 - Does the suspect have some other form of identification?
 - Keep in mind, that the mere inability of a minor traffic violator to produce a driver's license is not a reasonable basis for an arrest or search.³
 - Does his/her criminal history show that the suspect has been convicted previously for failing to appear?
 - Do you have information that the suspect has failed to respond to citations in the past?⁴
 - Remember to check criminal history and your in-house computer system for prior contacts such as warrant arrests.

If an officer making an arrest is not able to articulate facts which would justify a misdemeanor arrest, the court will consider the arrest unlawful, and any evidence found in a search incident to the unlawful arrest will be suppressed⁵. Furthermore, your report should mention the factor(s) that made the arrest fall within one of the three exceptions allowed by Rule 6.01. This will not only help refresh your recollection later, but also may prevent a needless contested hearing and assist the prosecutor in reviewing the case for possible charges. In the final analysis, if you intend to conduct a search incident to a misdemeanor arrest, make sure that you have a sufficient basis for taking the suspect into custody and that you document the reason for the arrest in your report.

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³ However, if a driver does not produce identification and the officer has probable cause to believe the driver is providing a false name, a search of the vehicle for identification is then lawful. See State v. Bauman, 586 N.W.2d 416 (Minn. Ct. App. 1998).

⁴ See State v. Brown, 345 N.W.2d 233, 237 (Minn. 1984)(arrest lawful where officer had previously cited defendant and was aware defendant did not respond to those citations).

⁵ See State v. Varnado, 582 N.W.2d 886 (Minn. 1998)(Suppressing discovery of crack cocaine discovered during frisk of person stopped for a minor traffic violation when officers ordered her to have a seat in the back of the patrol car. Here the officers did not have a valid reason to order the suspect to sit in the back of the patrol car, which had the effect of a custodial arrest.); See also State v. Sanders, No. C2-99-1681 2000 WL 310552 (Minn. Ct. App. Mar. 28, 2000).