

# EXIGENT CIRCUMSTANCES & CONSENT SEARCHES

# Exigent Circumstances!!!

- Four basic exigent/emergency circumstances:

- 1. An immediate danger to the officers or public*
- 2. The immediate danger of escape*
- 3. Hot pursuit*
- 4. The immediate threat of evidence being destroyed*

# Fresh or Hot Pursuit

- ⦿ The courts have defined “Fresh” or “Hot” pursuit as: “...some sort of chase, though it need not be of an extended hue and cry in the public streets.”
- ⦿ RCW 10.89.050 states:  
“Fresh pursuit...shall not necessarily imply instant pursuit, but pursuit without unreasonable delay”

# Fresh or Hot Pursuit

- ⦿ The ultimate determination for the reasonableness of a fresh or hot pursuit will be judged upon the **totality of the circumstances** to include:
  - the seriousness of the offense
  - danger posed to the officer or public
- ⦿ Be prepared to explain why you did not get a warrant!

# Consent Searches

- The consent search may be applied to:
  - Persons who are lawfully detained,
  - Places (Ferrier warning applies),
  - Vehicles (Ferrier should be advised), and
  - Containers

# Consent Searches

When conducting a consent search, there is no standard of proof necessary (i.e.: reasonable suspicion, probable cause).

# Consent Searches (continued)

- Three prong test to validate a *fully informed* consent:
  - consent must be *knowingly* made
  - consent must be *intelligently* made
  - consent must be *voluntary*
  - This may include Miranda and the right to refuse.
- The burden of proof for this validation lies with the State.  
The standard is *clear and convincing evidence*, with no coercion, actual or implied.

# Consent Searches (continued)

- ◉ *Some things to consider:*
- ◉ The key to determining whether the consent was given voluntarily is the totality of the circumstances, considering all factors present to include:
  - age of the consentee (i.e.: youth)
  - intelligence of the consentee (i.e.: mentally incompetent/age/ill)
  - was the consentee advised of his rights prior to securing consent
  - was the consentee under arrest when asked



# Consent Searches (continued)

- ◉ *Who can consent to a search?*
  - The person(s) or sole owner who has exclusive possession of the premise
  - a party having equal use or possession may ordinarily give consent to the officers making the entry and/or search
    - beware of the exclusive use issue

# Consent Searches (continued)

- parent - child (yes) (depends)
- husband - wife
  - husband consents, wife not present - search is OK
  - husband consents, wife says no - no search allowed
  - husband consent, wife does not answer - no search allowed
- roommates:
  - common area - search is OK
  - exclusive areas - no search allowed
- Landlord (no) - tenant (yes)
  - you may still do a civil standby

# Consent Searches (continued)

- **principal - student (IE: lockers)**
  - School administrator must initiate based upon their policy and RCW.
  - Canine applications must not be directed.
- **employer - employee**
  - Is there exclusive control?
  - Is there joint control?
  - What is the expectation of privacy?
- **a written or actual consent is always preferred to an implied consent**
  - carry the proper forms with you at all times!

# Consent Searches (continued)

- Special warnings to be provided for private residences;
- The 3 R's **Refuse, Restrict, Revoke**
  - right to **refuse** consent
  - right to **restrict** the areas searched
  - right to **revoke** consent at any time

State v Ferrier

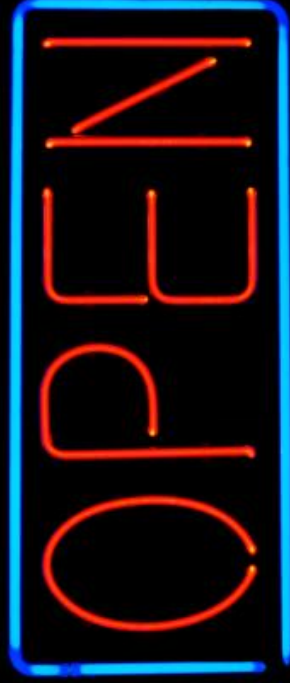
- Ferrier warnings are required when searching a residence (not people) for evidence or contraband. However most prosecutors advise police to give Ferrier warnings for consent searches of vehicles also. (check with your local prosecutor)

Plai



Vie

**W**  
already legally inside a  
private/protected area



Vie

**W**

open to anyone

Questions???

Remember “*totality of circumstances*”