

Search and Seizure of Commercial Vehicles

It's not uncommon to hear professional drivers say they don't have rights when they are in their CMV. Drivers wonder how an inspector can search in the sleeper or in their trailer without a warrant during an inspection while officers say they do not need probable cause or a warrant to search a CMV, claiming they have a legal right to search just because it is a CMV. Two things can be true at once: CMV drivers absolutely have rights, and law enforcement may not need to meet the same standards to stop or inspect a CMV as they would to search a passenger vehicle.

Stopping any motor vehicle is a seizure and looking inside the motor vehicle and its contents or the trunk, sleeper berth or trailer is a search. Well-established case law from the Supreme Court and circuit courts govern the "rules" for search and seizure-related terms you've likely heard many times before, including "reasonable suspicion" and "probable cause." Yet, law enforcement routinely enters CMVs, sleeper berths or trailers without either reasonable suspicion or probable cause, which can be difficult to understand and accept.

The article covers general legal standards of search and seizure and how these standards are altered when a CMV is stopped and inspected by a CVSA-certified inspector. There may be other types of inspections (e.g., border inspections, enforcement of oversize/overweight combinations, or inspections of livestock), which are not the topic of the article. Here, we will only discuss search and seizure as they relate to CVSA-certified inspectors and non-CVSA-certified law enforcement officers.

Before examining search and seizure involving a CMV and how these issues relate to CVSA-certified and non-certified inspectors, the article started by analyzing search and seizure under the Fourth Amendment to the Constitution of the United States:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

What does this mean? The Fourth Amendment does not protect individuals from all searches or seizures, only those that are unreasonable. This includes traffic stops. The Supreme Court has held that a "traffic stop constitutes limited seizure within the meaning of the Fourth Amendment, and so must be justified by probable cause or, at least, reasonable suspicion of unlawful conduct, based on specific and articulable facts."

Reasonable suspicion and probable cause are elusive concepts because there are no set rules that determine when an officer has either reasonable suspicion or probable cause. Yet, reasonable suspicion or probable cause are required for almost every traffic stop. It's a good idea for trucking companies and their drivers to better understand these terms and how they apply to traffic stops.

"Reasonable suspicion" is an abstract concept that cannot be reduced to a neat set of legal rules. Rather than a set of rules, the Supreme Court has adopted a "totality of the circumstances" approach, allowing officers to draw on their own experiences and specialized training to make inferences from and deductions about the cumulative information available.

When courts make a determination whether reasonable suspicion existed, they look at the totality of the circumstances to decide whether the detaining officer has a particularized and objective basis for suspecting legal wrongdoing. The prohibition against unreasonable searches and seizures is satisfied if the inspector's action is supported by reasonable suspicion to believe that criminal activity may be present.

"Probable cause" is something more than reasonable suspicion. As an example, in *Carroll v. United States*, George Carroll and John Kiro were convicted for transporting intoxicating spirits in an automobile in violation of the National Prohibition Act. In this case, the Supreme Court ruled that probable cause was met "if the facts and circumstances before the officer are such as to warrant a man of prudence and caution in believing that the offense has been committed, it is sufficient." In other words, if a trained, experienced officer believes an offense has occurred, that belief is sufficient cause for the officer to take appropriate action.

This case also established what is generally known as the "automobile exception." The Supreme Court has also held that motor vehicles are inherently mobile and may quickly move out of the jurisdiction or destroy evidence. Therefore, searching a motor vehicle without a warrant requires probable cause. Taking what is commonly referred to today as the Carroll Doctrine further, in the case of *Whren v. United States*, 517 U.S. 806 (1996), the Supreme Court held that "regardless of whether a police officer subjectively believes that the occupants of an automobile may be engaging in some other illegal behavior, a traffic stop is permissible as long as a reasonable officer in the same circumstances could have stopped the car for the suspected traffic violation."

To summarize, officers need only reasonable suspicion when stopping non-commercial motor vehicles – although they may have probable cause. Reasonable suspicion is met where the officer has a "particularized and objective basis for suspecting legal wrongdoing" through the cumulative information available. An officer establishes probable cause if a "man of prudence and caution" would believe an offense has been committed.

Here's a common occurrence to illustrate the rules for stopping a vehicle and subsequently searching that vehicle. Late on a Friday night, near a bar district, a vehicle is traveling much slower than the posted speed limit and surrounding traffic. The vehicle is observed weaving back and forth quickly and erratically across the lane with other traffic present but does not quite move out of the lane. In this example, there is no traffic violation; however, given the facts listed above, an officer trained to detect impaired drivers may reasonably believe the driver is impaired and may stop the vehicle.

Taking the example further: The officer stops the vehicle and talks to the driver. While speaking with the driver, the officer sees a plastic baggie in the cup holder containing a white crystal-like substance. The officer's training and experience lead him to conclude that the substance is methamphetamine. The officer would have probable cause a crime was being committed and cause to search the driver, the vehicle and its contents for any other methamphetamine.

The requirements for reasonable suspicion and probable cause, which an officer must have when stopping and searching a non-CMV, are significantly different when a CMV is stopped (seized) and inspected (searched) by a CVSA-certified inspector versus a non-CVSA certified officer. The Supreme Court and all circuit courts have established case law whereby CMVs are subject to a reduced expectation of privacy due to their regulatory nature and the pervasiveness of federal and state regulations governing their operation.

However, the Fourth Amendment still protects CMV operators from unreasonable searches, and any such searches must be authorized within a state's statutory CMV inspection program. Some guidance for determining if a search was reasonable can be found in cases involving two states (Kansas and Florida). In examining Kansas' CMV regulations, the 10th Circuit court held that "a regulatory inspection is not [based] on an officer's on-the-spot perception that he has an individualized suspicion that the specific individual to be seized and searched is involved in criminal activity." Rather, "an administrative search is instead premised on the individual subject to the warrantless seizure and search knowingly and voluntarily engaging in a pervasively regulated business, and on the existence of a statutory scheme that puts that individual on notice that he will be subject to administrative seizures and searches" conducted without warrants.

Similarly, in 2008, the 11th Circuit (precedent for Florida) ruled that "an administrative inspection of a closely regulated business is a well-established exception to the warrant requirement for a search." Courts use a three-part test to determine whether a warrantless inspection in a closely regulated business is reasonable:

1. There must be a "substantial" government interest in the form of regulations through which the inspection is made.
2. Warrantless inspections must be necessary to further regulatory oversight.
3. The state's inspection program, in terms of the certainty and regularity of its application, must perform the two basic functions of a warrant: a) It must advise the owner of the commercial premises that the search is being made pursuant to the law and has a properly defined scope, and b) it must limit the discretion of the inspecting officers. The first two parts of the test are satisfied by the Federal Motor Carrier Safety Administration's (FMCSA) regulations for CMVs in commerce. The regulations are intended to reduce the number of crashes and save lives; inspections are necessary to ensure compliance with the regulations.

States adopt by reference or have enacted substantially similar laws/regulations as required by FMCSA. To determine compliance with the final part of the test, two states' statutes mirror the federal definition of a certified inspector and their authority. The Kansas statute reads:

"The superintendent and members of the Kansas highway patrol are hereby authorized and directed to execute and enforce the laws of this state relating to public and private motor carriers of passengers or property, including any rules and regulations relating to such laws, and shall have the power and authority to require the driver of any motor vehicle owned or operated by any such carrier to stop and submit such vehicle to an inspection to determine compliance with such laws and rules and regulations."

Kansas Administrative Regulations adopt the federal (FMCSA) regulations by reference and require a state or local government inspector to meet the requirements of CVSA's Inspector Training and Certification and the inspector may only conduct an inspection at the level they are certified to conduct.

Florida, as another example, takes a slightly different legal path, resulting in the same framework by adopting the inspection procedures in the statute. Florida, like Kansas, requires CMVs in commerce to submit to an inspection to determine compliance with the regulations, and inspectors must be CVSA certified. If an officer is not certified to meet CVSA requirements, randomly stopping the CMV for the inspection as well as the subsequent inspection would not meet the court's test for a warrantless search and seizure.

Thus, officers who are not CVSA certified must have reasonable suspicion or probable cause to stop a CMV, just like they would any other vehicle. To search the CMV, the non-CVSA certified officer would need probable cause, a warrant or other legal exception. Let's use another common example to illustrate the rules for a CMV stopped by a CVSA-certified inspector:

An inspector observes a CMV traveling on the roadway and initiates a traffic stop to conduct an inspection. The inspector is certified to complete a CVSA Level I Inspection. The inspector enters the sleeper berth to ensure compliance with sleeper berth regulations. The CMV is carrying hazardous materials, and the inspector opens the trailer to ensure compliance with hazardous materials regulations. In this example, the inspector stopped the CMV without reasonable suspicion or probable cause, entered the sleeper berth and opened the trailer without a warrant. The CVSA-certified inspector did so to complete the inspection, which was necessary to further the regulatory scheme. The inspector's actions are legal and satisfy the Fourth Amendment.

Had the inspector found anything illegal, the evidence would be admissible because it was discovered during the inspection. If, in the same example, the inspector was only certified to complete a CVSA Level III (driver only) Inspection, the inspector would not have been legally [authorized] to check for compliance with the sleeper berth requirements or to open the trailer to ensure compliance with hazardous materials regulations.

In conclusion, stopping any vehicle is a seizure. Law enforcement officers need at least reasonable suspicion to stop any vehicle. To search a vehicle, law enforcement officers must have probable cause, a warrant or other legal exception to avoid violating the Fourth Amendment. When determining reasonable suspicion or probable cause, the courts look at the totality of the circumstance; each stop and search is fact specific. However, the normal legal requirements for search and seizure are significantly altered when a highly regulated industry – such as trucking – is involved.

Commercial motor vehicles operate in a highly regulated industry, and courts utilize a three-pronged test to determine if a stop and inspection are legal. The first two prongs are satisfied by the regulations promulgated by FMCSA and adopted or enacted by the states. That is, these regulations are necessary to reduce crashes and avoid injury and death on U.S. highways. Inspections are necessary to ensure drivers and carriers are complying with the regulations.

The final prong of the test is satisfied by state laws. Those laws give notice to carriers and drivers who are stopped and inspected by a CVSA-certified inspector, and the inspection will be no more intrusive than the inspector is certified to complete. This means the inspector may conduct a driver or vehicle inspection, only at the level for which the inspector is certified. Ultimately, CMV drivers continue to have Fourth Amendment Constitutional rights, and the inspector, while legally privileged to stop and inspect the CMV, does not have carte blanche.

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