



- Lee Burgess: Welcome to the Bar Exam Toolbox podcast. Today, we have another in our “Listen and Learn” multiple choice series, covering criminal law – search and seizure. Your Bar Exam Toolbox hosts are Alison Monahan and Lee Burgess, that’s me. We’re here to demystify the bar exam experience, so you can study effectively, stay sane, and hopefully pass and move on with your life. We’re the co-creators of the [Law School Toolbox](#), the [Bar Exam Toolbox](#), and the career-related website [CareerDicta](#). Alison also runs [The Girl’s Guide to Law School](#). If you enjoy the show, please leave a review on your favorite listening app, and check out our sister podcast, the Law School Toolbox podcast. If you have any questions, don’t hesitate to reach out to us. You can reach us via the [contact form](#) on BarExamToolbox.com, and we’d love to hear from you. And with that, let’s get started.
- Lee Burgess: Welcome back! Today we’re working through four questions on search and seizure – two in the classic MBE style, two in the new NextGen style – all on the same corner of the Fourth Amendment. This is the most rule-dense territory in criminal law: street stops, arrests, warrant exceptions, and what happens to the evidence when the police get it wrong. It’s also territory where the two exam formats ask about the same law in very different ways, and hearing that shift is exactly what this series is for. So let’s get into it.
- Lee Burgess: Let’s start with our first question – this one is about [warrant exceptions](#). And while I read the facts, try something specific – predict the exception before I get to any of the answer choices. When a fact pattern puts an arrest right next to a car search, your brain should already be sorting through which warrant exception could justify the search, because there’s usually more than one candidate, and they don’t reach the same places. See if you can name the candidates out loud as I read. Here we go:
- Lee Burgess: An officer lawfully stopped a driver for a broken taillight. A records check revealed an outstanding arrest warrant for the driver for failing to appear in court on unpaid traffic tickets, and the officer arrested him on the warrant. As the officer handcuffed him, the officer saw in plain view on the back seat a clear plastic bag containing what appeared to be illegal pills. The driver said, “That’s not all of it.” The officer placed him in the locked back seat of the patrol car. The officer then opened the trunk of the driver’s car, searched a closed duffel bag inside it, and found more drugs. The driver was charged with drug possession based in part on the drugs from the trunk. Was the search of the trunk constitutional?



- Lee Burgess: Answer A: Yes, because the officer had probable cause to believe the car contained contraband, which justified searching the entire vehicle, including the trunk.
- Lee Burgess: Answer B: Yes, because the search was a valid search incident to the driver's lawful arrest.
- Lee Burgess: Answer C: No, because once the driver was handcuffed in the patrol car, he could not reach the trunk.
- Lee Burgess: Answer D: No, because the officer needed a warrant to open the closed trunk.
- Lee Burgess: Pause here if you want to try the question before I walk through it. So, here's the predict-the-exception beat: The default rule is that a search requires a warrant – but on the bar, the warrant requirement is where the question starts, not where it ends. The action is almost always in the exceptions. And on these facts, there are two candidates – search incident to arrest and the automobile exception. They are not interchangeable. They have different triggers and crucially different reach. A search incident to arrest covers the arrestee's person automatically. For the car, it runs on two prongs, and they have different reach. Police may search the passenger compartment when the arrestee is unsecured and within reaching distance of it, or any part of the vehicle when it's reasonable to believe evidence of the crime of arrest might be found inside. So don't memorize this one as a place; memorize it as two triggers and run both against the facts. Prong one – he's handcuffed and locked in the patrol car, secured within reaching distance of nothing. Prong two – what was he arrested for? Failing to appear in court on traffic tickets? There is no such thing as evidence of a failure to appear sitting in a duffel bag. When the crime of arrest generates nothing to look for, the evidence prong has nothing to reach. Both triggers fail, so search incident is out completely, before we ever get to the trunk.
- Lee Burgess: The automobile exception is the one built for this job. If the police have probable cause to believe a vehicle contains contraband, they may search anywhere in the vehicle the contraband might be, including the trunk, including closed containers inside it. The scope of the probable cause sets the scope of the search. If the probable cause pointed only at one specific container, the search stops at that container. If it points at the car, the whole car is in play.



- Lee Burgess: So now apply that here. The officer saw the pills in plain view, and then the driver said, “That’s not all of it.” That statement matters. It’s what stretches the probable cause beyond the one visible bag to the rest of the car. There’s more contraband somewhere in this vehicle. That’s car-wide probable cause, and car-wide probable cause reaches the trunk and the duffel bag inside it.
- Lee Burgess: So let me walk through the options. Answer A says yes, because probable cause that the car contained contraband justified searching the entire vehicle, including the trunk. Well, that’s the automobile exception, stated correctly and matched to the right facts. So this is the answer.
- Lee Burgess: Answer B says yes, because it was a valid search incident to arrest. This is the trap, and it fails on both prongs. The driver was handcuffed and locked in the patrol car, secured, not within reach of anything – so the “reaching distance” prong is gone. And the “evidence” prong needs a crime of arrest that could leave evidence in the car. He was arrested on a warrant for failing to appear. The pills are evidence of drug possession, but possession isn’t what he was arrested for. The option names a real exception whose triggers just aren’t there.
- Lee Burgess: Answer C says no, because once the driver was secured, he couldn’t reach the trunk. Notice that C gets something right. That’s one of the two reasons search incident fails here. But C stops there. It treats the first exception’s failure as the end of the analysis, and it never asks whether another exception applies. Here, one did.
- Lee Burgess: Answer D says no, because the officer needed a warrant to open the closed trunk. D imports the warrant default into a situation the automobile exception was built to displace. Vehicles are inherently mobile, and that mobility is the whole justification for the exception. No warrant needed. The right answer is A.
- Lee Burgess: The transferable habit here: Warrant exceptions are an inventory, not a single gate. When one exception fails on the facts, that is not a conclusion. It’s a prompt to check the next one. The wrong answers on these exceptions are very often correct statements about the wrong exception.
- Lee Burgess: Okay, let’s move on to the second question. This one moves from cars to the street. A police officer, a pedestrian, and the moment a conversation stops being voluntary. Pay attention to the fact pattern. In a few minutes, I’m going to



show you this exact fact pattern again in the new NextGen format, and we're going to hear directly how the question shifts. So, here we go:

- Lee Burgess: Late one evening, an officer on foot patrol saw a man standing at a bus stop across the street from a closed electronics store, in a neighborhood where several break-ins had happened over the past month. The man wore a work shirt with the name of a factory a few blocks away. The officer had no report or description connecting anyone to those break-ins. The officer walked over and asked the man what he was doing. The man shrugged and started to walk away. The officer stepped in front of him, said, "Stop. Stay right there", and the man stopped. As the man turned, the officer saw the end of a pry bar sticking out of his jacket pocket, removed it, and arrested him for possession of burglary tools. Is the pry bar admissible against the man at trial?
- Lee Burgess: Answer A: No, because when the officer stepped in front of him and ordered him to stop, the officer seized him without reasonable suspicion.
- Lee Burgess: Answer B: No, because the officer lacked probable cause to detain him.
- Lee Burgess: Answer C: Yes, because the man was free to leave and the encounter was consensual.
- Lee Burgess: Answer D: Yes, because the man's presence near a closed store late at night in a neighborhood with recent break-ins gave the officer reasonable suspicion to stop him.
- Lee Burgess: Pause here if you want to try it before I walk through the answers. So, street encounters run on a three-step ladder, and every question in this area is really asking you two things: Which step are we on, and did the police have what that step requires? Step one is the consensual encounter. An officer can walk up to anyone and ask questions – no suspicion needed – because the person is free to leave. Step two is the Terry stop – a brief investigative detention – and it requires reasonable, articulable suspicion. Step three is arrest, which requires probable cause.
- Lee Burgess: So, the first question: When did this stop being consensual? The approach and the question – "What are you doing?" – that's step one, and that's fine. But then the man exercised the thing that makes step one lawful – he walked away.



And the officer stepped in front of him, ordered him to stop, and the man stopped. A seizure happens when a person submits to an officer's show of authority. Blocked path, direct command, submission – that's a seizure. We're on step two, and step two has a price – reasonable suspicion at that moment. So, the second question is: Did the officer have it? "Reasonable suspicion" means specific, articulable facts suggesting this person is involved in criminal activity. So, sort the facts into two piles: facts about the place and facts about the person. Late evening, closed store, a month of break-ins. Every one of those is about the place. Presence in a high-crime area standing alone is not reasonable suspicion. Then the facts about the person cut the other way. He's standing at a bus stop, which is a self-explanatory, innocent reason to be on that corner. And he's wearing a work shirt from a factory a few blocks away, which explains why he's in the neighborhood at all. No report, no description, nothing tying him or anyone to the break-ins.

- Lee Burgess: So let me walk through the options. Answer A says the pry bar is out because the officer seized him without reasonable suspicion. Right on both halves. The block and command was a seizure, and the suspicion cupboard was bare. Unlawful stop, and the pry bar is the fruit of it. So this is the answer.
- Lee Burgess: Answer B says no admissibility, because the officer lacked probable cause. Wrong standard. A Terry stop doesn't need probable cause; it needs reasonable suspicion. B holds the officer to the arrest standard for something that wasn't yet an arrest. If reasonable suspicion had existed, this stop would have been fine without a shred of probable cause.
- Lee Burgess: Answer C says the encounter was consensual and he was free to leave. He was, right up until he tried it. Once the officer blocked his path, commanded him to stop, and he submitted, no reasonable person would have felt free to leave. C describes step one of the ladder and ignores the fact that we climbed to step two.
- Lee Burgess: Answer D is the answer that feels right, so let's slow down on it. D stacks the atmosphere – late at night, near a closed store, break-ins in the neighborhood. Pile it up, and it sounds like specific, articulable facts. But run each fact through the filter. Is this about the person or the place? It's all place, and the question handed you two person facts that point the other way – the bus stop and the work shirt – plus the flat absence of any report or description. The only thing the man actually did was shrug and walk away. And declining a consensual



encounter is a right, not a red flag. This is not the unprovoked headlong flight that tipped [*Illinois v. Wardlow*](#) over the line. D rewards the officer's hunch instead of testing it against the standard, and testing the hunch is the entire point of the "reasonable suspicion" requirement. So here, our right answer is A.

Lee Burgess: So here's a transferable habit: When a question asks about reasonable suspicion, sort the facts into place facts and person facts before you look at the options. Suspicion has to attach to the person. If everything suspicious in the pattern is about the location, the officer has an instinct, but not a stop.

Lee Burgess: Now I'm going to show you that same fact pattern again, but in the NextGen lawyer framing. The facts don't change: same officer, same bus stop, same pry bar, same arrest. What changes is the perspective. You stop being a neutral observer scoring admissibility. You're a defense lawyer, and that man is your client. The call shifts, too. Instead of, "Is the evidence admissible?" it's, "What's your client's best argument to suppress it?" And the answer choices stop being clean "yes or no" propositions. They become arguments – the kind a real lawyer might actually pitch in a motion. Some are strong, some are plausible but not the cleanest. One misreads the record. Your job is to pick the strongest. Same law, different dressing. And after Question 3, Question 4 takes things one more step – the six-option "select two" format, where you spot the two threshold issues out of a longer list. Lawyer-framed version first. Here we go:

Lee Burgess: Late one evening, an officer on foot patrol saw your client standing at a bus stop across the street from a closed electronic store, in a neighborhood where several break-ins had happened over the past month. Your client wore a work shirt with the name of a factory a few blocks away. The officer had no report or description connecting anyone to those break-ins. The officer walked over and asked your client what he was doing. Your client shrugged and started to walk away. The officer stepped in front of him and said, "Stop. Stay right there", and your client stopped. As your client turned, the officer saw the end of a pry bar sticking out of his jacket pocket, removed it, and arrested him for possession of burglary tools. Your client has been charged, and the prosecution intends to introduce the pry bar. Your supervising attorney has asked you to identify the strongest argument for the defense's motion to suppress it. So, what is your client's best argument that the pry bar should be suppressed?



- Lee Burgess: Answer A: The officer seized your client without reasonable suspicion when the officer stepped in front of him and ordered him to stop. That was a Terry stop, and the officer had no specific, articulable facts connecting him to any crime.
- Lee Burgess: Answer B: By the time the officer blocked his path and removed the pry bar, the encounter had escalated into a full arrest, which required probable cause the officer did not have.
- Lee Burgess: Answer C: The officer questioned your client without first giving Miranda warnings.
- Lee Burgess: Answer D: The officer's pat-down exceeded the scope of a lawful frisk, because the officer had no reason to believe your client was armed and dangerous.
- Lee Burgess: Pause here if you want to try it first. So, the same facts as Question 2, the same doctrine, an investigative stop that needed reasonable suspicion and didn't have it. But your job has changed. You're not eliminating wrong rules; you're ranking arguments for a motion. And the first move on any suppression question is to ask, "What is actually being litigated here?" The prosecution wants the pry bar in. The pry bar came from the stop, so the fight is the lawfulness of the stop, and the best argument is the one that wins that fight with the smallest factual lift.
- Lee Burgess: So, let's walk through them. Answer A attacks the stop directly at its own threshold. It doesn't ask the judge to characterize the facts generously or stretch anything. The block in command was a seizure, the seizure needed reasonable suspicion, and the specific, articulable facts just aren't there. A wins at the lowest threshold with the least work. That's what "best argument" means.
- Lee Burgess: Answer B is our runner-up, and I want to give it a real minute because it's a colorable argument. A real defense lawyer might actually try this. The blocked path, the command, the officer's hands on your client's jacket argue the encounter escalated past a brief stop into a de facto arrest, which requires probable cause. It's not silly. The reason it's not the best argument is that it's doing a harder job than the motion needs. B asks the court to characterize a brief on-the-street detention as a full arrest – a heavy factual lift to reach a standard, the officer would fail. Best argument A already wins at the lower standard, without any characterizing at all. If the officer didn't even have



reasonable suspicion, you never need to prove he lacked probable cause. When two arguments both point at suppression, pick the one that wins at the lowest threshold.

Lee Burgess: Answer C reaches for Miranda, and it's the wrong tool for this motion twice over. Miranda governs custodial interrogation, and it suppresses statements – the fruits of questioning. The evidence here is physical, and it didn't come from any answer your client gave. And a brief street stop like this isn't custody for Miranda purposes anyway. C isn't a weak version of the right argument. It's an argument for a different motion.

Lee Burgess: Answer D argues the pat-down exceeded the scope of a lawful frisk. Read the record again. There was no pat-down. The pry bar was sticking out of the jacket pocket in plain view, and an officer may seize an item in plain view whose incriminating character is apparent. No frisk involved. D is a respectable-sounding defense-side argument aimed at an event that never happened.

Lee Burgess: On the new exam, some wrong answers aren't wrong on the law; they're wrong on the record. Always check the argument against what the facts actually say occurred. So, the right answer is A. And notice what just happened across these two questions. Question 2 asked whether the pry bar comes in. Question 3 asks you to argue for keeping it out. And both turned on the identical move. Sort the person facts from the place facts, and hold the stop to its threshold. The dressing changed; the law didn't.

Lee Burgess: The transferable habit on a NextGen best argument question: Identify what's actually being litigated, then pick the argument that wins that fight at the lowest threshold with the smallest factual lift. An argument that needs the court to recharacterize the record is almost never beating one that doesn't.

Lee Burgess: Alright, last question – this one is the six-option “select two” format. You're going to hear a fact pattern, and the call asks you to identify the two issues you'd research first. All six options are real doctrines, but only two are the threshold questions on these facts. The other four are real law that doesn't matter yet. So, here we go:

Lee Burgess: Your client was a passenger in a car owned and driven by a friend. An officer pulled the car over for speeding and then searched it, finding stolen merchandise in the glove compartment. Your client is now charged with



possession of stolen property, based on that merchandise. Your supervising partner has asked you to identify the two issues most important to research first in evaluating a motion to suppress the merchandise. Which two of the following issues are most likely to be threshold questions in the case?

Lee Burgess: Now, before I read the six options, let me set the scene one more time. Your client was the passenger – not the driver, and not the owner. The stop itself was for speeding. The merchandise came out of the glove compartment of the friend’s car. Six options, pick two. Here we go:

Lee Burgess: Answer A: Whether the officer’s search of the car violated the Fourth Amendment in the first place.

Lee Burgess: Answer B: Whether your client, as a passenger, has a legitimate expectation of privacy in the searched car, sufficient to give him standing to challenge the search.

Lee Burgess: Answer C: Whether the “good faith” exception applies because the officer acted in objectively reasonable good faith.

Lee Burgess: Answer D: Whether the stolen merchandise would inevitably have been discovered through lawful means.

Lee Burgess: Answer E: Whether the merchandise was also obtained through an independent, untainted source.

Lee Burgess: And answer F: Whether the connection between the stop and the discovery of the merchandise was too attenuated to require suspicion.

Lee Burgess: Pause here if you want to try it before I walk through the answer. The skill this question is testing is triage. Six real doctrines, and the format is asking you to do what a real lawyer does with a new suppression case – figure out which questions have to be answered first, because everything else depends on them. In suppression practice, there are two gates at the front of every motion. Gate one: Was there a constitutional violation at all? No violation – nothing to suppress, motion over. Gate two: Is it your client’s violation to complain about? Fourth Amendment rights are personal – that’s the standing question. A



defendant can't suppress evidence just because someone's rights were violated. They have to be his.

- Lee Burgess: So let's apply that here. The two threshold answers are A and B. Answer A – whether the stop violated the Fourth Amendment – is gate one. Notice the stop itself isn't the fight. The car was pulled over for speeding, so the stop was lawful. The fight is the search that followed and whether any exception justified rummaging through that glove compartment. If the search was lawful, the motion dies here.
- Lee Burgess: Answer B – standing – is gate two, and on these facts, it might be the sharper of the two. A passenger has standing to challenge the stop of a vehicle. The stop seizes everyone in the car. But a passenger does not have standing to challenge a search of the vehicle without showing some interest in it. Your client didn't own the car, wasn't driving it, and the merchandise came from the glove compartment of his friend's property. The stop was lawful, so the stop challenge route is closed, which means if he can't establish an expectation of privacy in the searched car, the motion may end before anyone ever litigates the search itself.
- Lee Burgess: Now, the four that are real law but not threshold. Answer C – good faith – is a real exception to the [exclusionary rule](#). But an exception to exclusion only matters once there's a violation to exclude for. It presupposes gate one. Downstream.
- Lee Burgess: Answer D – inevitable discovery – same structure. It's a doctrine that saves tainted evidence. There's nothing to save until a violation is established and a defendant with standing is complaining about it. Downstream.
- Lee Burgess: Answer E – independent source – same again. A second untainted path to the evidence matters only if the first path was tainted. Downstream.
- Lee Burgess: Answer F – attenuation – asks whether the taint of a violation has dissipated. No violation, no taint to attenuate. Downstream. So the two right answers are A and B.
- Lee Burgess: The teaching moment on this one: Every distractor in that list is a doctrine you've spent real time memorizing: good faith, inevitable discovery,



independent source, attenuation. That's exactly why they're tempting. But on a "select two" threshold question, "Find the issues that are wrong" is a dead-end strategy, because none of them are wrong. Ask instead "Which two questions answered badly end this case?" Violation and standing are the gates. Everything else on the list lives downstream of them.

Lee Burgess: I want to close with two patterns that show up in everything we just walked through. The first pattern: Warrant exceptions are an inventory, not a single gate. This comes up in Question 1, where search incident to arrest failed on both of its prongs: a secured arrestee and a crime of arrest that left nothing to search for. But the automobile exception was standing right behind it. Wrong answers in this area are very often true statements about the wrong exception. When one exception fails, run the rest of the inventory before you conclude the search was bad. And check the exception's reach. They don't all go the same places.

Lee Burgess: Pattern two: Reasonable suspicion attaches to the person, not the place. This comes up in Question 2 and 3, and it's worth saying once cleanly. Sort the facts into place facts and person facts before you judge a stop. Late hours, closed doors, a bad month in the neighborhood – atmosphere. The standing demands specific, articulable facts about this person, and declining to chat with an officer isn't one of them. So put those two habits together with the triage habit from Question 4. Violation and standing are the gates. Good faith, inevitable discovery, independent source, and attenuation all live downstream. And you're going to recognize the shape of a search-and-seizure question quickly, no matter which format the NCBE serves up.

Lee Burgess: If this kind of walkthrough is the way you learn best, that's part of what we built our RAMP program for. RAMP is our adaptive practice platform, and it now comes in three versions keyed to the exam you're actually taking: one for the NextGen UBE, one for the Legacy UBE, and one for MBE-only jurisdictions. Same engine, matched to your test. Every version lets you start with a full subject free, so you can see whether the format works for you before you commit to anything. Head to BarExamToolbox.com/what-is-ramp-bar-prep to find the version built for your exam.

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RESOURCES:

[RAMP: Adaptive Bar Exam Prep](#)

[Illinois v. Wardlow](#)

[Podcast Episode 141: Listen and Learn – The Fourth Amendment](#)

[Podcast Episode 154: Listen and Learn – The Exclusionary Rule \(Criminal Law and Procedure\)](#)

[Podcast Episode 173: Listen and Learn – Criminal Procedure: Warrant Requirements](#)

[Podcast Episode 220: Listen and Learn – Exceptions to the Warrant Requirement](#)