

Criminal Justice *in* America

EIGHTH EDITION



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Police and Law

LEARNING OBJECTIVES

- LO1 - Describe the extent of police officers' authority to stop people and to conduct searches of people, their vehicles, and other property
- LO2 - Explain how police officers seek warrants in order to conduct searches and make arrests
- LO3 - Describe situations in which police officers can examine property and conduct searches without obtaining a warrant
- LO4 - Explain the purpose of the privilege against compelled self-incrimination.
- LO5 - Define the exclusionary rule, and identify the situations in which it applies.

SEARCHES

- Miami, Florida police had received a tip that marijuana was being grown inside the home of Joelis Jardines. Detective Douglas Bartiet took a trained drug-sniffing dog to the front porch of the house. The dog indicated that he smelled an illegal drug that he was trained to detect. Based on the dog's actions, the police went to a judge and obtained a search warrant. The defense attorney argued that police officers cannot legally bring a dog to the front door of someone's home without a warrant. The prosecutor argued that no search took place.
- Did the officer undertake a “search?”

LEGAL LIMITS ON POLICE INVESTIGATIONS

- **Bill of Rights is the foundation of individual rights in society**
 - Judges seek to interpret the Constitution in ways that balance crime control and protection of individual rights

SEARCH AND SEIZURE CONCEPTS

- Fourth Amendment prohibits police officers from undertaking “unreasonable searches and seizures”
 - Search is an action by police that intrudes on people’s reasonable expectation of privacy
 - Objective standard developed by courts for determining whether a governmental intrusion constitutes a search because it interferes with individual interests normally protected by governmental examination
 - Plain view doctrine permits officers to use as evidence things that are visible to them when they are in a location they are permitted to be

SEIZURES

- Situations in which police use their authority to deprive people of their liberty and are not unreasonable under the 4th Amendment
 - One form of seizure is an arrest, which involves taking suspect into custody
 - A stop is a brief interference with person's freedom that can be measured in minutes

REASONABLE SUSPICION

- Situation in which specific articulable facts lead officers to conclude that the person may be engaging in criminal activity and necessitates further investigation that will intrude on a person's reasonable expectation of privacy
 - Officers cannot make stops on hunches
 - Courts permit officers to make many kinds of stops without reasonable suspicion, for example, at border crossing points

USE OF FORCE

- In 1974, police officers were chasing an unarmed teenager, Edward Garner, who had just committed a burglary. The police shot and killed Garner as he tried to climb a fence to escape. The Supreme Court banned the use of deadly force against an unarmed and fleeing suspect after this case, unless the suspect is a danger to the officer or others.
- Was this the right result? Can police officers, in a split second, actually know whether a suspect is armed and dangerous?

Tennessee v. Garner (1985)

- Court ruled that deadly force may not be used against an unarmed and fleeing suspect unless necessary to prevent the escape and unless the officer has probable cause to believe that the suspect poses a significant threat of death or serious injury to the officers or others

Graham v. Connor (1989)

- Supreme Court clarified rules for the police when it comes to the use of force through the establishment of the “objective reasonableness” standard, which means that the use of force should be judged from the point of view of the officer on the scene.

CONCEPT OF ARREST

- To arrest a suspect and take them into custody, the police need probable cause – showing that sufficient evidence exists to make it likely the suspect committed the crime.



WARRANTS

- **Fourth Amendment requires that:**
 - No warrants shall issue, but upon probable cause
 - Amount of reliable information indicating that it is more likely than not that evidence will be found in a specific location or that a specific person is guilty of a crime
 - Supported by Oath of affirmation
 - And particularly describing the place to be searched

AFFIDAVIT

- Requirement for oath or affirmation can be fulfilled by presentation of an affidavit, which is a written statement of fact, submitted to judicial officers to fulfill the requirements of probable cause.

Illinois v. Gates (1983)

- Court established the flexible totality of the circumstances test for determining the existence of the probable cause need for obtaining a warrant
 - Permits the judge to determine whether the available evidence is both sufficient and reliable enough to issue a warrant

WARRANTLESS SEARCHES

- Special needs beyond the normal purposes of law enforcement
- Stop and frisk on the streets
- Search incident to a lawful arrest
- Exigent circumstances
- Consent
- Automobile searches

SPECIAL NEEDS BEYOND THE NORMAL PURPOSES OF LAW ENFORCEMENT

- In certain specific contexts, law enforcement officials have a justified need to conduct warrantless searches of every individual passing through at pre-designated point
 - Examples are metal detectors at airports, searches of luggage chosen at random, sobriety checkpoints, etc.



City of Indianapolis v. Edmond (2000)

- Police department in Indianapolis began to operate vehicle checkpoints to interdict drug traffickers. They stopped a randomly selected number of vehicles at each checkpoint, the driver would be asked to produce a license and a drug sniffing dog would walk around the car. The total duration of each stop lasted 5 minutes. The Supreme Court held that these checkpoints were a violation of the 4th Amendment because the primary purpose is crime control.
- In *Sitz*, the Court allowed sobriety checkpoints because alcohol impaired driving is a public safety issue. Why wouldn't a drug impaired person, or a person carrying large quantities of drugs be a public safety hazard; thus allowable under the 4th Amendment?

STOP AND FRISK

- Police officers possess the authority to make stops and limited searches of individuals on the streets
 - In the landmark case of Terry v. Ohio (1968) the Court upheld the stop-and-frisk procedure when a police officer had good reasons to conclude that a person endangered the public by being involved in criminal activity
 - Police officers are entitled to protect themselves and others in the area by conducting a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault the officer

STOP AND FRISK

- Sometimes, however, the officer's version of events may not be persuasive.
- Since 2008, the NYPD has received national attention and come under intense public scrutiny for its stop-and-frisk policy because they claim it targets minorities. Police have, in many cases, been unsuccessful in legally articulating their version of events. However, this policy has resulted in a significant drop in crime. In what ways can officers, who believe the policy is a valuable tool, find ways around the rule of Terry?

SEARCH INCIDENT TO A LAWFUL ARREST

- *Chimel v. California* (1969) – Supreme Court decision that endorsed warrantless searches for weapons and evidence in the immediate vicinity of people who are lawfully arrested.
- *Virginia v. Moore* (2008) – Court decision that allowed for a warrantless search of automobiles upon the arrest of the driver.
 - *May, Duke, & Gueco* (2013) – Court limited the search of the passenger compartment to those within reach of the arrestee

EXIGENT CIRCUMSTANCES

- Exists when there is an immediate threat to public safety or the risk that evidence will be destroyed, officers may search, arrest, or question suspects without obtaining a warrant or following other usual rules of criminal procedure.
 - For example, when officers are in hot pursuit of a fleeing suspected felon
 - Can justify the warrantless entry into a home or other building and an accompanying search that flows from the officers' response to the urgent situation

CONSENT

- Permissible warrantless search of a person, vehicle, home, or other location based on a person with proper authority or the reasonable appearance of proper authority voluntarily granting permission for the search to take place.
 - Consent effectively absolves law enforcement officers of any risk that evidence will be excluded from use at trial or that they will be found liable in a civil lawsuit alleging a violation of Fourth Amendment rights
 - Consent searches provide a valuable investigatory tool for officers who wish to conduct warrantless searches

United States v. Drayton (2002)

- Judicial decision declaring that police officers are not required to inform people of their right to decline to be searched when police ask for consent to search.

PERMISSIBLE CONSENT SEARCHES

- Consent must be voluntary (no threats or coercion)
- Consent must be given by someone who possesses authority to give consent and thereby waive the right
- The police may not search when one resident of a dwelling is present and objects, even if another resident consents to the search of the house (*Georgia v. Randolph* (2006))

AUTOMOBILE SEARCHES

- *Carroll v. United States* (1925) provided the underlying justification for permitting warrantless searches of automobiles: in essence, because they are mobile.
- Two key questions in automobile searches:
 - When can officers stop a car?
 - How extensively can they search the vehicle?
- If you were stopped for speeding, and the officer asked if he could search your trunk, what would you say? What reasons would motivate your decision? What concerns might you have if you said “no?”

AUTOMOBILE SEARCHES

- Traffic violation does not provide an officer with the authority to search an entire vehicle (**Knowles v. Iowa (1998)**)
- Court permits inventory searches which are warrantless searches of a vehicle that has been “impounded” meaning that it is in police custody-so that police can make a record of the items contained in the vehicle

WARRANTLESS SEARCHES

TABLE 6.1 Warrantless Searches

The Supreme Court has ruled that there are circumstances when a warrant is not required.

Case	Decision
Special needs	
<i>Michigan Department of State Police v. Sitz</i> (1990)	Stopping motorists systematically at roadblocks designed for specific purposes, such as detecting drunken drivers, is permissible.
<i>City of Indianapolis v. Edmond</i> (2000)	Police traffic checkpoints cannot be justified as a generalized search for criminal evidence; they must be narrowly focused on a specific objective.
Stop and frisk	
<i>Terry v. Ohio</i> (1968)	Officers may stop and frisk suspects on the street when there is reasonable suspicion that they are armed and involved in criminal activity.
<i>Adams v. Williams</i> (1972)	Officers may rely on reports from reliable witnesses as the basis for conducting a stop-and-frisk.
<i>Illinois v. Wardlow</i> (2000)	When a person runs at the sight of police in a high-crime area, officers are justified in using the person's flight as a basis for forming reasonable suspicion to justify a stop-and-frisk.
Incident to an arrest	
<i>Chimel v. California</i> (1969)	To preserve evidence and protect the safety of the officer and the public after a lawful arrest, the arrestee and the immediate area around the arrestee may be searched for weapons and criminal evidence.
<i>United States v. Robinson</i> (1973)	A warrantless search incident to an arrest is not limited by the seriousness of the crime for which the arrestee has been taken into custody.

WARRANTLESS SEARCHES

Exigent circumstances

Warden v. Hayden (1967)

When officers are in hot pursuit of a fleeing suspect, they need not stop to seek a warrant and thereby risk permitting the suspect to get away.

Cupp v. Murphy (1973)

Officers may seize evidence to protect it if taking time to seek a warrant creates a risk of its destruction.

Consent

Bumper v. North Carolina (1968)

Officers may not tell falsehoods as a means of getting a suspect to consent to a search.

United States v. Drayton (2002)

An officer does not have to inform people of their right to refuse when he or she asks if they wish to consent to a search.

Automobiles

Carroll v. United States (1925)

Because by their nature automobiles can be easily moved, warrantless searches are permissible when reasonable suspicion of illegal activity exists.

New York v. Class (1986)

An officer may enter a vehicle to see the vehicle identification number when a car has been validly stopped pursuant to a traffic violation or other permissible justification.

California v. Acevedo (1991)

Officers may search throughout a vehicle when they believe they have probable cause to do so.

Maryland v. Wilson (1997)

During traffic stops, officers may order passengers as well as the driver to exit the vehicle, even if there is no basis for suspicion that the passengers engaged in any wrongdoing.

Knowles v. Iowa (1998)

A traffic violation by itself does not provide an officer with the authority to search an entire vehicle. There must be reasonable suspicion or probable cause before officers can extend their search beyond merely looking inside the vehicle's passenger compartment.

QUESTIONING SUSPECTS

- The Fifth Amendment privilege against compelled self-incrimination should not be viewed as simply a legal protection that seeks to assist individuals who may be guilty of crimes



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MIRANDA RULES

- The 1966 decision by the Supreme Court in *Miranda v. Arizona* said that as soon as the investigation of a crime begins to focus on a particular suspect and he or she is taken into custody, the so-called Miranda warnings must be read aloud before questioning can begin

REQUIREMENTS OF MIRANDA

- **Suspects must be told:**
 - They have the right to remain silent
 - If they decide to make a statement, it can and will be used against them in court
 - They have the right to have an attorney present during interrogation or to have an opportunity to consult with an attorney
 - If they cannot afford an attorney, the state will provide one

MIRANDA RULES

- The Miranda warnings only apply to what are called custodial interrogations
- If police officers walk up to someone on the streets and begin asking questions, there is no need to inform the person of his rights

LIMITS ON MIRANDA

- **Public Safety Exception**
 - New York v. Quarles (1984) – created the public safety exception which permits police to immediately question a suspect in custody without providing any warnings, when public safety would be jeopardized by their taking the time to supply the warnings
- **Since the 1980s the Courts have steadily limited the impact of Miranda**
 - Berghuis v. Thompkins (2010) – suspect being questioned **CANNOT** assert right to remain silent simply by remaining silent during questioning

CONSEQUENCES OF MIRANDA

- Police officers have adapted their techniques in various ways that enable them to question suspects without any impediment from the warnings.
 - Missouri v. Seibert (2004) – Court warned police officers not to try to get around Miranda warnings by questioning unwarned suspects and obtaining incriminating statements and then giving the warnings and asking the suspects to repeat their statements.
 - Should police officers be allowed to lie to suspects during questioning, claiming they have some evidence of guilt?

THE EXCLUSIONARY RULE

- Court created rule that establishes the principle that illegally obtained evidence must be excluded from trial.
 - *Wolf v. Colorado* (1949) - Court determined that the exclusionary rule was not imposed as the remedy for violations of the Fourth Amendment by state and local law enforcement
 - *Weeks v. United States* (1914) - established the rule as the remedy for improper searches by federal law enforcement officials
 - *Mapp v. Ohio* (1961) - Court applied the rule as the remedy for improper searches by state and local officials

EXCEPTIONS TO THE EXCLUSIONARY RULE

- **Good Faith Exception - United States v. Leon (1984)**
 - Exception to the exclusionary rule that permits the use of improperly obtained evidence when police officers acted in honest reliance on a defective statute, a warrant improperly issued by a magistrate, or a consent to search by someone who lacked authority to give such permission
- **Inevitable Discovery Rule - Nix v. Williams (1984)**
 - Supreme Court ruling that improperly obtained evidence can be used when it would later have been inevitably discovered by the police
- Does the exclusionary rule provide a needed benefit for our society and the justice system?