

CLASS OUTLINE: SEARCH AND SEIZURE

I. Source of Search and Seizure Law

A. Fourth Amendment to the Constitution

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.

Key: Does individual have a “reasonable expectation of privacy.”

- B. **Standing:** means having a legitimate possessory interest in the property seized, or legitimate privacy interest in the area searched, or personal liberty interest that was infringed.

Note: To challenge a search/seizure, suspect must have standing.

II. Nonsearches.

A. Plain Sight Rule

Officers can lawfully seize evidence in plain sight if

1. Officer saw it in a place s/he has right to be, and
2. Incriminating nature of evidence is immediately apparent
3. Evidence to be seized is in a place officer has lawful right to be.

B. Sensory Aids

- Uses of flashlights/binoculars/night vision devices, etc. are OK, as long as they are not used to violate a reasonable expectation of privacy.
- Drug sniffing dogs can be used. But dog's alert on property doesn't give right to search (but can provide probable cause to arrest, and if container is in possession of suspect, then it can be searched incident to arrest.)

C. Abandoned Property (Garbage)

1. Abandoned property is not protected by Fourth Amendment and can be seized without a warrant.

Note: Trash placed in a position for pickup outside the curtilage of a house is considered abandoned. Curtilage is the portion of property used for normal living activity.

D. Aerial Surveillance

1. A person who cultivates open land can reasonably expect that such activity is open to public view by people using airspace lawfully.

Note: Legal to look into fenced backyard or other parts of cartilage of house and make naked-eye observations of drugs.

III. Warrant Searches.

A. Items that can be legally searched for:

Dangerous weapons, fruits of crime, instruments of crime, contraband, suspects, victims, physical evidence.

B. Definition of Search Warrant

An order in writing, signed by a magistrate, directed to a Peace Officer, commanding the officer to search for personal property and bring it before the magistrate within a certain time.

C. Warrant includes the following:

1. Items sought
2. Locations to be searched
3. Vehicles to be searched

4. Persons to be searched
5. Statutory grounds for issuance.

D. Affidavit in Support of Warrant. (Sworn Statement of Probable Cause.)

1. Identifies officer seeking warrant
2. Items to be seized
3. Areas to be searched
4. State grounds for issuance.
5. Probable cause for affiant's belief that items sought are located in places to be searched.

E. Descriptions of Items and Places.

1. Items to be seized and places to be search must be described with sufficient detail so that officer with no knowledge of case could recognize location or items.

Note: items not named in warrant may be seized if seen in plain view during warrant execution.

F. Informants.

1. Types: Criminal (Not considered reliable), Anonymous, and Citizen.
2. Key Factors re: warrant's probable cause being based on information from informant:
 - a. Credibility
 - b. Reliability
 - c. Corroboration

G. Securing Premises Pending Warrant. (Freezing Scene)

1. Permissible after arrest of suspects within location.
2. Permissible after arrest of suspects whose confederates will destroy evidence after learning of arrest.
3. Refusal of consent to search doesn't in itself give authority to secure premises.

H. Actions during Service of Warrant.

1. Permissible to detain people on premises to prevent destruction of evidence and for officer safety. Any searches of these detainees must be based on articulable facts.
2. Use caution in detaining individuals arriving: must be connected to residence or involved in criminal activity to be detained.

I. Knock/Notice.

Purpose: To prevent potentially violent confrontation in house and provide time for the subject to respond to officers request to enter.

1. Elements:
 - a. Knock or alert people inside to your presence.
 - b. Identify yourself as a Peace Officer.
 - c. Explain your purpose and authority.
 - d. Demand entry.
 - e. Wait a reasonable period of time before entering.

IV. Stops and Frisks (Cursory or "Terry" Searches)

A. Stops.

Definition: A stop is a temporary detention of a person for an investigative purpose.

1. Stop is a "seizure" within meaning of Fourth Amendment, but is allowable because of its limited intrusion.
2. There must be a reasonable basis for stop.
3. A stop occurs when Peace Officer uses authority to compel a person to halt, remain in one place, or perform some act.

B. Patdowns/Frisks (exceptions to a Search Warrant).

Definition: A cursory search for weapons of the outer clothing of the person stopped. It is not a search for contraband.

1. Basis: To prevent danger to officer from sudden assault.
2. Justification: Officer must be able to testify to specific, articulable facts that support a reasonable belief, in light of the officer's experience, that the individual detained was armed and presently dangerous.

C. Transporting Non-arrestees.

1. Rides as Favor: Officer must tell subject they have a right to refuse, and that they may be subject to a weapons search.
2. If officer has duty to transport, officer has right to conduct a patdown.

D. Scope of Frisk.

1. Not only of outer clothing, but of any area (including vehicle) from which the individual may easily produce a weapon, if the officer reasonably suspects a weapon is located there.
2. Officer may not reach inside the clothing of suspect unless they have reasons to believe that the patdown has disclosed the presence of a weapon or contraband.
3. If contraband is immediately recognized by officer during patdown, it may be seized, but remember, the area cannot be manipulated in order to figure it out.

V. Searches Incident to Lawful Custodial Arrest

A. A full search of the person and any areas with person's immediate control is justified when made pursuant to a custodial arrest.

B. Search is justified by fact of custodial arrest, not by any specific charges.

C. Protective Sweeps. (Plain View can seize items)

1. Entire premises can be swept for additional suspects or victims when reasonable.
2. Immediately adjoining spaces can be searched for potential assailants when a suspect is lawfully arrested inside a premise.

D. Requirements for Search Incident:

1. Arrest itself must be legal.
2. Search must be contemporaneous with actual arrest.
3. Arrest must be custodial.

Note: Scope: Arm's reach rule.

Area within the arrestee's immediately control may be searched incidental to and contemporaneously with arrest.

Area of immediate control equals area from which a weapon be obtained or evidence destroyed.

Note: Permissible to search area even if suspect in custody in your vehicle.

Note: Generally, search must be same general time and general location, but if there is a reasonable police necessity that prevents, later search will be okay.

VI. Strip Searches

A. Definitions.

1. Strip search means any search that requires an officer to remove or arrange some or all of that person's clothing so as to allow a visual inspection of the underclothing, breasts, buttocks, etc.
2. Visual body cavity search means visual inspection of rectum or vagina.
3. Physical body cavity search means physical intrusion into body cavity.

B. Conditions.

1. Person must be under arrest and ultimately booked.

2. Arrest must be for weapons, controlled subst. or violence.
3. Person conducting search must be same sex.
4. Must be conducted in area of privacy.

C. **Physical Body Cavity Searches:** requires a search warrant.

VII. Blood Samples

A. **Reasonable force** can be used to obtain a blood sample from an arrestee who is refusing to provide one, if necessary to preserve “evanescent” evidence.

Warrantless Search.

1. Can be done whether arrestee is conscious or unconscious.
2. In a vehicular accident that has resulted in either property damage, injuries, and/or fatalities, a Peace Officer may, without a warrant, arrest a person involved in a traffic accident when the officer has reasonable cause to believe that such person had been driving under the influence of intoxicating liquor or drugs – Reasonable Force
 - a. Officer entitled to transport to hospital and obtain blood over objection.
 - b. Reasonable force can be used to obtain sample.
 - c. Must be taken in medically approved manner.

Key: Only justified when evidence is of dissipating nature: i.e., not DNA, etc.

VIII. Fingerprint Evidence

A. **Reasonable force** can be used to obtain fingerprints.

1. Arrestee has no legal right to refuse.
2. Officers can use reasonable force to obtain.

Note: If force shocks conscience of court or would produce nonidentifiable exemplar, correct procedure is to obtain court order.

B. **Officers** can't randomly fingerprint people.

IX. Handwriting Exemplars

A. **Examples** (exemplars) of suspect's handwriting obtained by law enforcement are admissible in court.

B. **During booking**, suspect's rights not violated by request to provide handwriting. Suspect's writing on booking forms can be used against suspect in court.

C. **Suspect's refusal** to give handwriting can be used in court as “consciousness of guilt.”

D. Impractical to force suspect to give handwriting.

X. Voice Exemplars

A. **Suspect** has no legal right (under Fifth Amendment) to refuse to give voice exemplar.

B. **Refusal** can be used against suspect.

XI. Photographs (Mug Shots)

A. **Suspect** has no legal right to refuse mug shot.

B. **Reasonable force** can be used to get mug.

Note: Field photographs of detainees without their permission are not admissible in court.

XII. Inducing Suspects to Vomit (Use of Emetics)

A. **Definition:** Emetic is a substance used to induce vomiting (like boring lectures), and must be administered in medically approved way.

B. **Can be administered** only if the following conditions met:

1. with the consent of the suspect, or
2. if ordered by doctor based on their judgment of necessity.

Note: Peace Officer can't request or order doctor to administer emetic.

- C. **No body intrusion** permissible if force necessary would “shock the conscience of the court.” Significant intrusions must be subject to independent medical determination of necessity.

XIII. Force/Compulsion to Prevent Destruction of Evidence (Drugs in mouth)

A. Rule: Reasonable force is allowed.

1. An officer can verbally command a suspect to spit out evidence from his/her mouth.
 2. When an officer has probable cause to believe suspect is swallowing evidence, officer can use reasonable force to prevent.
 3. Courts hold there are several ways
 - a. Put arm around suspect’s neck when commanding to spit. Only okay if suspect can breathe, and blood flow not substantially impaired.
- Key: Choking not allowed.

B. Officers can use reasonable force to remove object from suspect’s hand or fist.

Note: Brutal force not allowed.

Note: Document!!!

XIV. Consent Searches

A. Consent Defined: Voluntary agreement to do something proposed by another. Not by threat or promise.

Key: Must be clear, specific, and unequivocal.

B. Types:

1. Express.
2. Implied (signs, actions, and facts)

Note: Officer can tell suspect “I’ll get a warrant.”

C. Who can consent to search

1. Person with right to use or control property.
2. 3rd person can consent if:

- a. Area under their exclusive control, or
- b. They share area in common with suspect.

Examples: husband and wife, parent and child, cohabitants, others in control. (Except if there are areas of exclusive control)

Note: Apartment manager, landlord, hotel clerks, cannot. Hotel guest have right to privacy.

Note: Don’t have to advise of right to refuse.

Note: Scope of search limited to area consented to.

Note: Consent can be withdrawn at any time.

XV. Probation and Parole Searches

A. Probation Searches

Rule: This is a search made pursuant to consent given by probationer as condition of probation. Searchable probation means no Fourth Amendment rights. Must be a search condition.

Key: Searchable probationers are searchable anytime of the day or night, with or without a warrant, by any probation officer or peace officer.

Key: Only prerequisites for doing probation search are the existence of a legitimate law enforcement purpose that the search is reasonable, and that it is not for harassment.

Example: Officers go to motel at 3:30 a.m. and get key from proprietor to search probationer in his hotel room. Court may find late hour unreasonable.

Rules: Search OK without prior knowledge of search condition. Probationer doesn’t have to be present. Knock notice is required. Includes houses, vehicles, person...

B. Parole Searches

Rule: All parolees have the same standard search conditions.

Key: The rules regarding parole searches are the same as the rules regarding the searches of searchable probationers. (i.e., they are searchable any time of the day or night, with or without a warrant, by any Peace Officer.)

XVI. Lineups and Showups

A. Showup is viewing of suspect by victim or witness in the field shortly after a crime was committed. (Fresh in mind)

Note: Prior to showup there must be proper advisement to victim/witness, see below.

1. Must be short time after crime. (Next day not OK)
2. Suspect generally can't be moved to witness, unless:
 - a. suspect consents.
 - b. Suspect is under arrest.
 - c. Impractical to move vic/wit because of injury unavailability of officers, serious inconvenience to witness.
3. Restraint of suspect doesn't ruin showup.
4. Document witness' descriptions

B. Physical (Live) Lineup. ID procedure where vic/wit is asked to view individuals (usually 5) in a custody envir. [Suspect(s) has right to attorney present]

Note: Preadvisement to all procedures:

1. Keep an open mind.
2. Person who committed crime may or may not be present.
3. Don't talk to other witness or victims about ID

Never say:

1. We caught the perpetrator.
2. Vic's property was found on suspect
3. Suspect made incrim. Statements
4. Person to be observed is a suspect.

C. Photographic Lineup. ID procedure where vic/wit is asked to look at a number of photos to attempt to ID.

XVII. Exigent Circumstances Searches

A. Rule: Under EC an officer can postpone compliance with warrant requirement and enter area that suspect has reasonable expectation of privacy.

B. Examples of EC

1. A person is placing another in imminent danger
2. Medical emergencies where vic may be incapacitated.
3. Serious damage to property (burning building/gas leaks)
4. To prevent imminent escape of suspect.
5. Hot/fresh pursuit
6. Preventing imminent destruction or removal of evidence.

Note: Once emergency is gone. Warrant may be needed for further investigation.

Note: Officers can't create EC to get around warrant requirement.

Car Search Summary

Type of Search	When Permitted	Scope of Search
Search incident to arrest	(1) probable cause to arrest an occupant; (2) arrestee to be taken into custody; and (3) search contemporaneous with arrest.	Entire passenger compartment including <u>all</u> containers. Trunk may not be searched.
Probable cause search Believe there are drugs in car (see drug pipe)	Probable cause to believe evidence of a crime is located in the vehicle. Search where you stopped it or impounded it and search it.	Any place or container in the passenger compartment or trunk in which the evidence may be located.
Instrumentality search	Probable cause to believe the car was an instrumentality of a crime; e.g., the crime was committed inside the car.	Scientific testing of parts of the car or property within the car, e.g., blood testing, paint testing, examination of tire tread.
Protective search Search for other weapons. Traffic stop and you see a legal knife in glove box.	(1) driver or passenger was lawfully detained; (2) officers reasonably believed a dangerous weapon was inside the vehicle.	Any place or container in the passenger compartment in which a weapon may be located. Trunk may not be searched,
Inventory search Suspended license – tow vehicle inventory search	(1) reasonable to tow the vehicle; (2) decision to tow was based on departmental regulations or standard procedure; and (3) decision to conduct an inventory was based on departmental regulations or established routine.	Any place in the passenger compartment or trunk in which valuable or dangerous items are commonly kept. Closed containers may be searched only if authorized by departmental policy or conducted as a matter of established routine.
Consent search	(1) consent was voluntary; and (2) if someone other than the owner of the car consented to the search, it must have been reasonable for officers to believe that person had authority to consent.	Any place or thing which officers reasonably believed the consenting person authorized them to search, if the consenting person was told what types of evidence officers were seeking, the search must be limited to places and things in which such evidence may reasonably be found.