**Professor Frogge’s Review Outline for the Midterm**

**I. Overview**

1. **US Constitution, Bill of Rights, 1st 10 amendments, applies to Federal Law, US Sup Ct is arbiter**
2. **Tennessee Constitution, applies to state of TN, TN Sup Ct is arbiter**
3. **Can provide greater rights, not fewer than fed, to state citizens**
4. **Has parallel provisions**
5. **Article One Section 7 – parallels the 4th Amendment**
6. **Section 8 – parallels the 5th Amendment Due Process Clause**
7. **Section 9 – parallels the 5th Amendment Double Jeopardy Clause**
8. **Section 10 – parallels the 5th Amendment right to be charged by grand jury indictment or prosecution**
9. **Section 9 – parallels the 6th Amendment ….**
10. **….**
11. **Section 16 – parallels the 8th Amendment restriction on excessive bail or fines and prohibits cruel and unusual punishments**
12. **Pretrial release: TN everybody gets bail except capital defendants**
13. **Due Process**
14. **Substantive v. Procedural**
15. **14th Amendment: Due process clause applies to states**
16. **Incorporation**
17. **Total (all rights in BOR apply to states) rejected**
18. **Fundamental: Any right including those in the BOR, considered “fundamental,” last 100 years**
19. **Selective: 1960s to now: Duncan v. Louisiana, 6th Amendment applies to states**
20. **“Free-Standing” Due Process: DA v. Osborne, State shouldn’t tested his DNA because of fairness (rights come from a “deeper place” than BOR)**

**II. 4th Amendment: 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.”**

1. **Probable Cause: Defined: Objective test: When the facts and circumstances justify a reasonable belief that (1) A crime has been committed by the person to be arrested (2) Evidence will be found in. particular place to be searched**
2. **Agullar Spinelli: must meet 2 prongs, re: informants: basis of knowledge and veracity**
3. **Illinois v. Gates: rejected above, Totality of circumstances approach is better (Tuttle adopted Gates for TN)**
4. **Ybarra v.** **Illinois: 50 people in a bar, not enough to detain (also no reasonable suspicion for pat down)**
5. **US v.** **Di Re: Snitch singled out guilty person, court said that made pc specific and could not search passenger (who hadn’t been identified)**
6. **Maryland v. Pringle: 3 men stopped for speeding nobody claimed drugs in armrest, D later confessed. Court says enough.**
7. **Protects a person’s reasonable expectation of privacy**
8. **Katz v. US: phone booth had “reasonable expectation of privacy,” cops needed warrant. 4th protects *people* not places**
9. **California v. Greenwood: people don’t have reasonable expectation of privacy in trash**
10. **Florida v. Riley: Helicopter was in legal air space, allowed to be there. D manifested expectation of privacy, but it wasn’t reasonable (400 feet here; airplane 1000 feet from prior case).**
11. **US v. Jones: GPS unit on car is search based on trespass theory – Minimizes Katz**
12. **Florida v**. **Jardines: Police took dog on porch. Police said homes are on violate and porch is in “curtilage”**
13. **US v White:** **No warrant necessary for government informant overhearing White.**
14. **Zurcher:** **No exceptions for journalists, search was for evidence, not confined to criminals (here pictures of riot in journalist office)**
15. **Warrant Requirement: Unless an exception, warrant are required for searches and seizures; all arrest warrants and search warrants may only be issued if supported by probable cause: Judges decide whether probable cause exists to justify an arrest warrant or a search warrant.**
16. **Particularity requirement: “particularly describing the place to go searched, and the persons or things to be seized.” Purpose is to prevent “general searches.”**
17. **Validity of Warrant**
18. **Maryland v. Garrison: Cops thought 1 apartment, there were 2. Cops seized drugs from wrong one. It’s ok, reasonable mistake given facts, also they quit when they realized.**
19. **Manner of Service**
20. **Maryland v Garrison, see above**
21. **Richards v Wisconsin: WI exempted drug cases from knock and announce rule affirmed unless police have reasonable suspicion would be dangerous our futile**

**b. Truthfulness: Franks/Little: *Federal*: Motion to suppress if search warrant contains deliberately false statements or statements made with reckless disregard for truth. Defendant has burden to make a preliminary showing before she is entitled to an evidentiary hearing. If statements are deliberately false or made with reckless disregard for the truth, court should consider warrant application without the challenged statements. If application still contains probable cause, it is valid. *State*: Differs in that if statement is deliberately false warrant is invalid and evidence is suppressed even if statement is immaterial. If statement is made with reckless disregard for the truth, court should (just like federal, above) consider warrant applications without the … valid**

 **4. Exceptions to the warrant requirement.**

 **a. Probable Cause (in public):**

 **1. US v. Watson: Statute allowed postal inspectors to arrest without warrant.**

 **Cops arrested for stolen credit cards w/out warrant after sting. Arrest**

 **warrants are preferred, but not always required. Here police had pc and it**

 **was a felony. C/L allowed for misdemeanors and felonies committed in**

 **officer’s presence, felonies only not in officer’s presence.**

**2. Whren v. US: Police pull over young AA males, seems pretextual. Court says**

 **pretext is ok as long as PC present.**

**3. Atwater v. City of Lago Vista: arrest for minor offense ok for 4th if state**

 **scheme allows for it. BUT SEE TN, no search incident to citation.**

**4. Gerstein v. Pugh: When arrested without a warrant, standard is PC, and**

 **must take before magistrate timely manner**

**5. County of Riverside v. McLaughlin: 48 hrs is good. If within that, individual**

 **must prove unreasonable. More than that, state must prove bona find**

 **emergency.**

**6. Does not apply to home: Payton v NY: “Absent exigent circumstances,**

 **threshold cannot be crossed without a warrant.”**

**7. Incidentally, does not apply to curtilage.**

**Need a warrant for dog to be present to sniff a house. Florida v. Jardines.**

**B, Search incident to arrest**

1. **US v. Robinson Cops knew D was driving on suspended license, stopped, searched, heroin in cig pack. Search good for officer safety and evidence preservation. Includes “grab area.”**
2. **Grab Area defined:**
	1. **Chimel v. California: Can serve arrest warrant in a home but “grab area” is only area under immediate control. Reason for grab area is officer safety and evidence protection.**
	2. **Arizona v. Gant: Grab area is for police safety and evidence protection. Does not apply in automobile exception circumstance after arrestee is out of car and restrained.**
	3. **SIA: Does not include phones, need warrant for those:**

**Riley v. California**

 **C. Exigent Circumstance**

**1. Ky v. King: Applied exigent circumstances where police may have created the exigency, but based that on the assumption by the lower court “The exigent circumstances rule applies when the police do not create the exigency by engaging or threatening to engage in conduct that violates the Fourth Amendment. “**

**2. Mitchell v. Wisconsin: When driver is unconscious, exigent circumstances allows warrant for blood draw. Blood dissipation alone doesn’t.**

 **(Schmerber v. CA)**

**d. Automobile Exception**

**1. Carroll v. US, police can search a car without a warrant if they have**

**probable cause; created based on mobility, regulation of cars**

**2. US v. Ross: said it includes all containers, including paper bags in trunk**

**3. California v. Acevedo: where police have probable cause, reasoning behind automobile exception justifies search of containers in car where evidence could fit.**

**4. Wyoming v. Houghton: extends automobile exception to passengers belongings where the belongings could conceivably conceal object of search.**

**e. Inventory**

1. **Colorado v. Bertine: Inventory exception to warrant requirements is protects police and suspects property. Absent bad faith (and here, pursuant to policy) makes perfect sense.**

**f. Consent**

**1. Schneckloth v. Bustamonte: 6 dudes in car. Only 1 in car says “sure go ahead” and allows search. Consent must be voluntary, test for determining voluntariness is totality. Here, failure to inform right to refuse didn’t overcome other proof indicating voluntariness.**

**2. State v. Berrios: Initial stop for speeding was reasonable Terry-type stop. Placing in police car was too much. Subsequent consent thus voluntary. Not sufficiently attenuated from illegal search.**

**3. Georgia v. Randolph: Where cotenants are both present and police want to search, 1 objecting will defeat consent. Issue is apparent authority. If police reasonably believe that the person consenting has authority to consent then consent will be upheld even when the person has no such authority.**

 **g. Limited search and/or seizure:**

**1. Terry v. Ohio: Police allow for (1) stop, or “little seizure” (brief investigative stop) if police have reasonable suspicion, and (2) frisk, or “little search” if police have reasonable suspicion that suspect is armed and dangerous.**

**2. Kansas v. Glover: Reasonable suspicion is an abstract concept based on common sense: here it existed where police had uncontradicted evidence that owner of truck had a revoked/suspended license.**

**3. Florida v. JL: anonymous tipster that wasn’t very specific and not corroborated did not rise to reasonable suspicion.**

**4. Florida v. Royer: Evasive, suspicious D gave police reasonable suspicion to briefly detain, but search and seizure of D and luggage under these circumstances went too far. Must be least intrusive means necessary.**

**5. US v. Drayton: Really nice(?!) cops asking to search wasn’t a seizure. Totality, question was whether a reasonable person would’ve felt free to leave. Uniforms, positioning relevant but not dispositive. (relating to or bringing about the settlement of an issue).**

**6. Brendlin v. CA: Passengers are people too. Seizure means officer show of force or authority makes reasonable person feel not free to leave or terminate encounter.**

**7. Rodriguez v. US: Traffic stop is like Terry stop. Can’t extend past purpose of stop. Here, holding for a dog sniff too much.**

**8. State v. Berrios: initial stop for speeding was reasonable Terry-type stop. Placing in police car was too much. Subsequent consent thus involuntary.**

**9. State v. Daniel: Consensual encounter may become a seizure. Here, initial encounter: “What’s going on?” not a seizure. Subsequent asking for license not a seizure. Taking of license was a seizure based on standard articulated in 6, above.**

**h. Plain view, plain feel: If police are in or are feeling a place that are constitutionally allowed to be/feel, and if the incriminating nature of the contraband is immediately apparent, police may seize without a warrant.**

1. **Remedy: Exclusionary rule, created BY JUDGES.**

**i. Defined.**

* 1. **Can’t use illegally seized evidence in federal courts. Weeks.**
	2. **Hughes v.** **State adopted** **in Tennessee for same reasons**
	3. **Wolf v. Colorado says due process of 14th applies 4th Amendment to States, but says exclusionary rule not necessarily only way to go.**
	4. **Mapp v. Ohio reversed course, said exclusionary rule did apply to states.**
	5. **Limitations/exceptions:**
1. **Knock and Announce: Hudson v. Michigan 2006: 4th Amendment requires knock and announce (Wilson v. Arkansas 1995 but Wilson declined to determine exclusionary rule application), here, court decides that “exclusionary rule should only be applied where deterrence outweighs substantial societal costs; does not apply when it won’t deter police.”**

**Ii. Good Faith US v. Leon: Cops thought warrant was based on pc, it wasn’t (unreliable**

**CI). Applies good faith exception unless a reasonably well-trained officer would have known that the search was illegal despite the magistrate’s authorization. In making this determination, all of the circumstances – including whether the warrant application had previously been rejected by a different magistrate – may be considered. (Exclusionary rule still applies if judge was misled or was reckless as to truth, or if judge abandoned judicial role so that no reasonably well –trained officer should rely on warrant, including facial insufficiency.**

**iii. Simple Negligence: Herring v. US (2009): Police computer said warrant was active, should have been recalled. Where evidence is product of simple isolated negligence, deterrence will not outweigh substantial societal cost.**

**iv. Attenuation:**

1. **Wong Sun**
2. **Brown v. Illinois; 3 factors –(1) time, (2) intervening circumstances**

**(3) flagrancy**

**c. NY v. Harris: Ignores factors, says it wasn’t product. We must assume it is limited to facts. Specific facts are: “When police have pc to arrest, the exclusionary rule does not bar use of a statement made by D outside the home even if the statement is after an arrest made in his home without an arrest warrant.**

**d. Utah v. Strieff: Uses Brown factors to find attenuation when intervening circumstance was discovery of a warrant.**

 **v. Independent Source:**

**a. Murray v. US: The “independent source” doctrine permits the introduction of evidence initially discovered during, or as a consequence of, an unlawful search, but later obtained independently from lawful activities untainted by the initial illegality.**

 **vi. Inevitable discovery**

1. **Nix v. Williams, res ipsa loquitor (inevitable discovery)**

**Sample Essay Question:**

 **Detectives are investigating Jay for dealing drugs from his house. Detectives take their trusty dog to Jay’s house, and they notice that he has left a garbage bag on his back deck. Police take the dog on the back deck, and the dog “alerts” to the presence of illegal drugs. Police then go to the front door and knock on the door. Jay opens the door, and police ask him whether, he is, In fact, dealing drugs from his house. He says no, and slams the door. While the door is open, police can see into the kitchen where they see a digital scale on the kitchen cabinet. Based on all of the information above, the police apply for a search warrant. The judge reviewing the search warrant application denies the warrant. Is the judge correct? Why or why not?**

**The judge is incorrect because the police have PC. First, although police are allowed to search garbage left on the road because the courts have held that there is no reasonable expectation of privacy in garbage left on the road, the courts have also specifically held that taking a dog on curtilage to sniff a house is an impermissible search. Here, the police took the dog on the back deck, which was the exact behavior condemned in *Florida v. Jardines*.**

**The police then go to the front door, which, when considered separately is permissible as a “knock and talk, “ because police are doing what the general public can do by knocking on the door. So, this behavior is permissible standing alone.**

**When police see the scales, however, they have seen the drug paraphernalia. The problem for the police is that the “incriminating nature of the” scales is probably not immediately apparent, because scales have legitimate use too.**

**However, if the incriminating nature of the evidence were immediately apparent, then the exclusionary rule might still keep the evidence out, depending on how attenuated the plain view sighting was from the illegal dog sniff. To evaluate attenuation, we look at 3 factors:**

**(a) temporal proximity, (b) intervening circumstances, and (c) purpose and flagrancy of misconduct. Here, not much time elapsed and the only intervening circumstances was the new investigative tactic employed by the police. Also, nothing in the facts suggested the police behavior was particularly egregious, so it all cuts in favor of the police.**

**Tenn. Code Ann. Section 40-7-118 Citation in Lieu of Arrest**

Citation means a written order issued by peace officer requiring person accused of violating the law to appear in a designated court or government office at a specified date and time**.**

Generally, Officer ***shall*** issue a citation for misdemeanors committed in officer’s presence or when officer has taken custody of person arrested by private person for misdemeanor. If serving warrant issued by magistrate, it is in the magistrate’s discretion.

Does not apply to DUI arrests, unless defendant in hospital.

(Officer **may** issue citation for )

1) Theft

2) Bad checks

3) Revoked or suspended license – other statutes require citation unless one of the following 8 factors are present

4) Assault – officer believes reasonable likelihood that person poses risk to others

5) Prostitution – officer believes reasonable likelihood that person will engage in prostitution activities within reasonable period of time if not arrested.

6) If officer chooses custodial arrest over citation then must include reason in the warrant.

(Officer **shall not** issue citation, **must make custodial arrest**

1. Person requires medical examination or care or if person is unable to care for own safety

2. Reasonable likelihood that offense would continue or resume or that persons or property would be endangered

3. Person arrested is unable or unwilling to provide satisfactory evidence of identification

4. Person demands to be taken before magistrate or refuses to sign citation

5. So intoxicated that person poses risk to self or others

6. 1 or more outstanding arrest warrants for person

Officer **may** arrest if

(1) A reasonable likelihood exists that the arrested person will fail to appear in court; or

(2) The prosecution of the offense for which the person was arrested, or of another offense, would thereby be jeopardized

***County of Riverside v. McLaughlin 500 US 44 (1991)***

**A judicial determination of probable cause made with 48 hours of arrest is generally sufficiently prompt.**

**Facts:** Plaintiff brought a class action alleging county’s policy and practice do not comport with Gerstein v. Pugh. “Under County policy, arraignments must be conducted without unnecessary delay and, in any event, within two days of arrest. This 2–day requirement excludes from computation weekends and holidays. Thus, an individual arrested without a warrant late in the week may in some cases be held for as long as five days before receiving a probable cause determination. Over the Thanksgiving holiday, a 7–day delay is possible.”

**Issue: Did Riverside County’s policy violate McLaughlin?**

**Holding:** Probably, Court held it was state’s burden to demonstrate extraordinary circumstances. Gerstein said the states can be flexible, but that doesn’t mean they have a “blank check” with which to fashion approaches. “Taking into account the competing interests articulated in *Gerstein,* we believe that a jurisdiction that provides judicial determinations of probable cause within 48 hours of arrest will, as a general matter, comply with the promptness requirement of *Gerstein.* For this reason, such jurisdictions will be immune from systemic challenges.”

**GERSTEIN AND MCLAUGHLIN TOGETHER**

When an officer makes a warrantless arrest based upon the officer’s own determination of probable cause, a neutral and detached magistrate must review the probable cause determination to ensure that the arrest and continued detention of the person is justified.

Generally, a judicial review of probable cause within 48 hours of arrest will satisfy the requirement.

If judicial review is within the 48 hour window the burden is on the individual to show that the delay was unreasonable:

Delay for the purpose of gaining additional evidence to support

probable cause

Delay motivated by ill will toward the arrested individual

Delay for the no good reason

After 48 hours, burden shifts to the government to prove the existence of a bona fide emergency or other extraordinary circumstance to justify the delay.

Weekends don’t count as extraordinary circumstances

Consolidating pretrial proceedings doesn’t qualify as extraordinary circumstances

**WARRANT REQUIREMENT**

All arrests warrants and search warrants may only be issued if supported by probable cause.

Judges decide whether probable cause exists to justify an arrest warrant or a search warrant.

Reasonable suspicion

Probable cause

Preponderance of the evidence

Clear and convincing

Beyond a reasonable doubt

**PROBABLE CAUSE**

**Objective test:** When the facts and circumstances justify a reasonable belief that

A crime has been committed by the person to be arrested; and/or

Evidence will be found in a particular place to be searched

**PROBABLE CAUSE DEFINITION**

**PROBABLE:**

(1) A crime has been committed; AND

(2) by the person to be arrested; OR

**PROBABLE:**

(1) Evidence will be found in a particular place to be searched

Probable Cause is a practical, nontechnical concept that balances the competing needs of the people to be free from unreasonable interference with privacy and unfounded charges of crime while at the same time, allowing the government to enforce the laws in the community’s protection.

‘The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. **Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime**

Although the reviewing court will pay substantial deference to judicial determinations of probable cause, the court must still insist that the magistrate perform his ‘neutral and detached’ function and not serve merely as a rubber stamp for the police.

Although an affidavit may be based on hearsay information and need not reflect the direct personal observations of the affiant,, the magistrate must be informed of some of the underlying circumstances from which the informant concluded that the narcotics were where he claimed they were, and some of the underlying circumstances from which the officer concluded that the informant, whose identity need not be disclosed, was ‘credible’ or his information ‘reliable.‘

**Federal vs. State law for confronting misstatements in search warrant applications**

* **Federal:** Motion to suppress if search warrant contains deliberately false statements or statements made with reckless disregard for truth
* Defendant has burden to make a preliminary showing before she is entitled to an evidentiary hearing
* If statements are deliberately false or made with reckless disregard for the truth, court should consider warrant application without the challenged statements. If application still contains probable cause, it is valid
* **State:** Differs in that if statement is deliberately false, warrant is invalid and evidence is suppressed even if statement is immaterial. If statement is made with reckless disregard for the truth, court should (just like federal, above) consider warrant application without the challenged statements. If application still contains probable cause, it is valid

***SPINELLI V. UNITED STATES (1969)***

**An affidavit that lacks sufficient detail to explain why an informant is reliable and how he came to his conclusions does not provide the necessary probable cause to obtain a search warrant.**

***Spinelli*** and ***Aguilar*** were later overruled and the courts adopted the totality-of-the-circumstances approach.

Pursuant to a search warrant, FBI conducted a search and found evidence that Spinelli travelled across state lines to conduct gambling activities. Spinelli was ultimately charged, and convicted. Spinelli challenged the search, lost, appealed, lost, appeals here.

**Issue: Did the search warrant application contain sufficient probable cause?**

**No**: It is better than the affidavit in Aguilar, because it contains a confidential informant’s tip and police corroboration of the innocent parts, of it, but it still falls short. **Aguilar required (1) basis of knowledge, and (2) veracity (reliability).** A reviewing judge should first see if informant’s tip passes Aguilar. If not, then turn to the corroboration. Here, the tip is not enough. In US v. Draper, the informant, not the cops, provided lots of detail demonstrating reliability, and had been reliable in the past.

**Concurrence:** This is just like Draper. But I will vote for reversal for reasons.

**AGUILAR-SPINELLI TEST**

When a search warrant affidavit is based on informant hearsay, then the affidavit must include information from which the magistrate may independently determine that the hearsay speaker knows what he is talking about and he is believable.

1. **BASIS of KNOWLEDGE** – how does he know what he claims to know?

**2. VERACITY** – why should the magistrate believe what the informant said?

 **a. Credibility**

 **b. Reliability**

***AGUILAR V. TEXAS (1964)***

**Evidence obtained pursuant to a warrant supported only by the beliefs or suspicions of an unidentified informant is not admissible in criminal proceedings.**

**Facts:** Officers got a search warrant based on their statement that they had “received reliable information from a credible person and do believe “ that narcotics were being illegally stored on the described premises.” Narcotics were found. Aguilar convicted, appealed, lost. Appeals here.

**Issue: Was the search warrant affidavit sufficient for probable cause?**

Reversed. Although an affidavit supporting a search warrant may be based on hearsay information and need not reflect the direct personal observations of the affiant, the magistrate must be informed of some of the underlying circumstances relied on by the person providing the information and some of the underlying circumstances from which the affiant concluded that the informant, whose identity was not disclosed, was credible or his information reliable,

***ILLINOIS V. GATES***

**A warrant application satisfies the Fourth Amendment probable cause requirement so long as it establishes a substantial basis for concluding that a search will uncover evidence of wrongdoing.**

**Facts**: Bloomingdale, Ill police received a tip via anonymous letter that a couple, including the Defendant, was selling drugs. The letter gave specific details about the travel habits and drug dealing of the couple. Police investigated and corroborated many of the details. They obtained a search warrant and found drugs and guns. Gates moved to suppress, granted. Affirmed on appeal at C of A, and by Ill Sup. Ct. State appeals here

**Issue: Was the search warrant affidavit sufficient to support the warrant?**

**Yes**, reversed The two prongs of Aguilar Spinelli should not be mechanically applied with no overlap. The reliability and informant’s basis of knowledge are relevant, but probable cause must involve a review of the “totality of the circumstances.” Thus, a deficiency in one prong may be overcome by strength in the other. Probable cause is “common sense . . . practical . . .flexible . . . fluid . . . [etc.) “

**Concurrence:** (White) This should have been upheld under Aguilar Spinelli, Aguilar Spinelli requires an informant’s veracity and basis of knowledge, which may be supplied by police corroboration. Here, the tip wasn’t enough, but the police investigation was. This is like Draper, in which the police supplied the corroboration that satisfied the two-pronged test. I’m afraid “totality of the circumstances” goes too far.”

***MARYLAND V. PRINGLE (2003)***

**The presence of drugs in a car gives rise to probable cause to arrest any occupant of the car who had knowledge about the drugs and exercised dominion and control over them.**

***Maryland v. Pringle* –** The amount of evidence required to establish probably cause is much lower than the amount of evidence required to support a criminal conviction.

**Facts:** Baltimore police stopped a car for speeding. The Defendant was the front seat passenger. Police ultimately asked for permission to search the car, and the driver gave it. Police found cash and drugs in the car. Police Officer asked occupants who possessed the drugs, and said if no one confessed, all were being arrested. No one confessed and all were arrested. Pringle confessed the next day, says friends didn’t know. Later, Pringle moved to suppress, was denied. Jury convicted. He appealed, Maryland Court of Appeals reversed. State appeals here.

**Issue: Was the evidence sufficient to arrest Pringle?**

**Yes**, it is entirely reasonable to assume they all had “constructive possession.” They were all in the car and the drugs and money was in the glove box. The Defendant’s reliance on Ybarra and Di Re is misplaced, because, c’mon, it’s a car. They’re small, and this seems like drug dealing. Sometimes drug dealers travel in groups. In cars. Or something.

***UNITED STATES V. DI RE* (1948)**

**Facts:** Informant told federal investigator that he would receive counterfeit gasoline ration coupons from Buttitta at a certain place. Investigator went to the place and saw the informant in the back seat of the car holding the coupons, Buttitta in the driver’s seat and Di Re in the passenger seat. Informant said that Buttitta gave him the coupons. All arrested. Di Re challenges arrest.

**Issue: Must probable cause be specific to the individual?**

**Ruling: Yes**, any assumption that all were involved disappeared where the informant did not implicate Di Re. There was simply no evidence he was involved.

***YBARRA V. ILLINOIS (1979)***

**A person’s mere proximity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person.**

**Facts:** Police officers obtained a search warrant for a bar and the bartender. While serving the search warrant, police searched all the patrons, too. They found Ybarra’s heroin in a cigarette pack in his pocket.

**Does probable cause require individualized suspicion?**

**Ruling: Yes**, mere propinquity to others individually suspected of criminal activity does not give rise to probable cause. There must be individualized suspicion.

***STATE V. TUTTLE* (TN 2017)**

**Facts:** Davis became an informant for THP, and said that the Defendant’s son was receiving shipments of drugs. Police corroborated that Davis was involved in drug dealing and that other drug trafficking organizations were delivering drugs to someone with the defendant’s son’s nickname (“Red” or “El Rojo.”) This led to further investigation which led to a search of the defendant’s property. Trial court denied suppression, CCA reversed.

**Did the search warrant affidavit provide sufficient probable cause?**

**Yes.** Tennessee has relied on Jacumin, which was essentially the Aguilar Spinelli test. This Court decided Jacumin based on the state constitution 6 years after Gates, but found the totality test too lenient. Now we have lots of experience with Gates and think it makes a lot more sense. Common sense, etc. Jacumin is overturned. Now Tennessee is consistent with federal courts, uses the totality of the circumstances approach. Here, there was probable cause.

**Search Warrant Requirements**

1. Warrant must be signed by neutral detached magistrate or judge who has jurisdiction in the county where search will be
2. Warrant must be sworn to by affiant and establish probable cause
3. Must particularly describe the placed to be searched and the person or thing to be seized
4. TN allows warrant to be executed day or night but federal law requires day unless excepted by court
5. Knock and announce before entry required unless warrant allows “no knock” entry. Police must wait reasonable time. Reasonableness depends on on length of time it should take to answer and nature of contraband sought and whether it could be destroyed.
6. Search limited to place where named items could be
7. Police may seize item if obvious contraband (“if incriminating nature is immediately apparent” discovered by police in a place where police are allowed to be. May not seize if they need to investigate further to see if its contraband.
8. Tennessee law requires service within 5 days. Federal law requires a reasonable time

***MARYLAND V. GARRISON* (1987)**

**A search made under an otherwise valid warrant containing a mistake does not violate the Fourth Amendment if the police acted reasonably.**

The Court in ***Maryland v. Garrison*** ruled that there’s some latitude for honest mistakes, as long as the officer’s actions are reasonable.

**Facts:** Baltimore police obtained and executed a search warrant for one McWebb and his apartment, identified as the third floor of an address. When they went to serve the warrant, there were two apartments on the third floor. They searched the wrong apartment, which belonged to Garrison, and found drugs. He moved to suppress, was denied, and appealed to the MD Court of Appeals, which reversed. Maryland appeals here.

**Issue 1: Was the affidavit specific enough?**

**Issue 2: Was the warrant served correctly?**

**Issue 1: Yes,** because it was the best information the police had at the time. There is no allegation that they knew there were two apartments. We shouldn’t second guess (!)

**Issue 2: No worries**, because it was an honest mistake. Also, they quit as soon as they realized it was the wrong place.

**Dissent:** The warrant was invalid, because IT WAS THE WRONG GUY. All the police had to do was investigate. Not a reasonable mistake. Especially regarding service. There were two apartments!!!

**MARYLAND V. GARRISON**

**Purpose of the particularity requirement:**

**To prevent general searches**

#### *RICHARDS V. WISCONSIN (1997)*

**The Fourth Amendment’s reasonableness requirement incorporates the common law rule that police entering a home must knock and announce their identity and purpose before attempting forcible entry, unless exigent circumstances exist and to do so would undermine law enforcement interest.**

#### *Hudson v. Michigan* altered *Richards* and held that the 4th Amendment’s exclusionary rule doesn’t apply to a violation of the knock and announce rule.

#### Facts: Police obtained information that the Defendant, along with others, was dealing drugs from a Madison, WI hotel room. They applied for a “no knock” warrant, and were denied. They were granted a regular search warrant, however. When police arrived to serve the warrant, one of them dressed as a maintenance man and knocked on the door. The Defendant cracked the door open in response, and slammed it shut trying to jump out the window. Police arrested him and found drugs Richards moved to suppress based on the police violating the knock and announce rule. Trial Court denied the motion. WI Supreme Court affirmed, delineating a “drug dealer” exception to the knock and announce rule. Richards appeals here.

#### Issue: Did the Trial Court err in denying the suppression motion where the police did not properly knock and announce?

#### Ruling: No, but we reject Wisconsin’s blanket exception to the knock and announce rule. There are exceptions, for example, where there is indicia of dangerousness or loss of evidence, but that is a case-by-case analysis. All drug dealers aren’t dangerous, and this exception could apply to everybody. But, here we think it was reasonable to do away with the requirement, because it was reasonable to think Richards might destroy evidence based on his behavior.

**Tenn. Code Ann. Section 40-6-102**:

**GROUNDS A search warrant may be issued on any one (1) of the following grounds:**

* (1) Where the property was stolen or embezzled;
* (2) Where the property was used as the means of committing a felony;
* (3) Where the property is in the possession of any person with the intent to use it as a means of committing a public offense, or in the possession of another to whom the person may have delivered it, for the purpose of concealing it, or preventing its discovery; and
* (4) Any other ground provided by law.

**Tenn. Code Ann. Section 40-6-103**

**PROBABLE CAUSE AND AFFIDAVIT:**

A search warrant can only be issued on probable cause, supported by affidavit, naming or describing the person, and particularly describing the property, and the place to be searched

**Tenn. Code Ann. Section 40-6-104**:

**DEFINITIONS**

A search warrant is an order in writing in the name of the state, signed by a magistrate, directed to the sheriff, any constable, or any peace officer of the county, commanding the sheriff, constable or peace officer to search for personal property, and bring it before the magistrate.

**Tenn. Code Ann. Section 40-6-104**:

**COMPLAINTS AND WITNESSES; EXAMINATION**

The magistrate, before issuing the warrant, shall examine on oath the complainant and any witness the complainant may produce, and take their affidavits in writing, and cause them to be subscribed by the persons making the affidavits. The affidavits must set forth facts tending to establish the grounds of the application, or probable cause for believing the grounds exist

**Tenn. Code Ann. Section 40-6-105**:

**ISSUANCE**

The magistrate, if satisfied of the existence of the grounds of the application, or that there is probable ground to believe their existence, shall issue a search warrant signed by the magistrate, directed to the sheriff, any constable or any peace officer, commanding the sheriff, constable or peace officer immediately to search the person or place named for the property specified, and to bring it before the magistrate.

**Tenn. Code Ann. Section 40-6-106**

**FORM:**

The warrant may be substantially in the following form:

* State of Tennessee,
* County of \_\_\_\_\_\_\_\_\_\_.
* To the sheriff or any constable of the county:
* Proof by affidavit having been made before me by A. B., that (stating the particular grounds of the application; or, if the affidavits are not positive, “that there is probable cause for believing that,” stating the particular grounds of the application): You are therefore hereby commanded to make immediate search on the person of C. D. (or “in the house of E. F.,” or “in the house situated,” describing it, or any other place to be searched, with reasonable particularity, as the case may be), for the following property (describing it with reasonable particularity); and if you find the same, or any part thereof, to bring it forthwith before me at (stating the place).
* This \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_\_. L. M., Magistrate

***Franks v. Delaware (1978)***

**A search warrant must be voided and any evidence obtained by the warrant excluded from admission at trial when a defendant shows that an affidavit in support of the warrant contains an intentional or reckless false statement and when the affidavit does not support a finding of probable cause in the absence of the false statement.**

**Facts:** Police charged Franks with rape after finding evidence (clothes and a knife) at his apartment pursuant to a search warrant. Franks moved to suppress, and offered to prove the police officer lied in the search warrant affidavit. The trial court sustained the State's objection to the witnesses and denied the motion to suppress. Franks convicted. The Delaware Supreme Court affirmed

**Issue: Can a defendant challenge an officer’s sworn statement in a search warrant affidavit? How?**

Where the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment, as incorporated in the Fourteenth Amendment, requires that a hearing be held at the defendant's request. The trial court here therefore erred in refusing to examine the adequacy of petitioner's proffer of misrepresentation in the warrant affidavit.

* (a) To mandate an evidentiary hearing, the challenger's attack must be more than conclusory and must be supported by more than a mere desire to cross-examine. The allegation of deliberate falsehood or of reckless disregard must point out specifically with supporting reasons the portion of the warrant affidavit that is claimed to be false. It also must be accompanied by an offer of proof, including affidavits or sworn or otherwise reliable statements of witnesses, or a satisfactory explanation of their absence. .
* (b) If these requirements as to allegations and offer of proof are met, and if, when material that is the subject of the alleged falsity or reckless disregard is set to one side, there remains sufficient content in the warrant affidavit to support a finding of probable cause, no hearing is required, but if the remaining content is insufficient, the defendant is entitled under the Fourth and Fourteenth Amendments to a hearing.
* (c) If, after a hearing, a defendant establishes by a preponderance of the evidence that the false statement was included in the affidavit by the affiant knowingly and intentionally, or with reckless disregard for the truth, and the false statement was necessary to the finding of probable cause, then the search warrant must be voided and the fruits of the search excluded from the trial to the same extent as if probable cause was lacking on the face of the affidavit.

**State v. Little (TN 1978)**

Police obtained a search warrant for the Defendants based on an affidavit they later admitted contained false statements. The Defendants were convicted, and appealed. The Court of appeals reversed, and the State appeals here.

**Issue: Did the officer’s false statements invalidate the warrant?**

“We are in accord with U. S. v. Luna, supra, that there are two circumstances that authorize the impeachment of an affidavit sufficient on its face, (1) a false statement made with intent to deceive the Court, whether material or immaterial to the issue of probable cause, and (2) a false statement, essential to the establishment of probable cause, recklessly made. Recklessness may be established by showing that a statement was false when made and that affiant did not have reasonable grounds for believing it, at that time.” Affirmed.

***United States v. Watson 423 US 411 (1976)***

**A warrantless arrest is permitted if there is probable cause to believe the person has committed a felony.**

***United States v. Watson –*** Law enforcement officers can arrest a suspect in a public place on probable cause that the suspect has committed a felony offense.

Reliable informant (provided reliable info 5-10 times in the past) gave postal inspector stolen credit card that Watson had provided and said that Watson claimed he could get more. Postal inspector set up sting and informant met with Watson who said he had more stolen cards. Upon prearranged signal from informant that Watson had more cards, postal inspector arrested Watson and searched him and found no cards. Postal inspector provided Miranda warnings and asked to search Watson’s car. Watson said “go ahead.” A search of the car revealed two stolen cards under the floor mat. Watson was prosecuted for four counts of possessing stolen mail, two of the counts were for the two cards found in the car. Watson moved to suppress these two cards on the grounds that they were the fruits of an illegal arrest because the arrest was made without an arrest warrant (which is what the federal statute allowed for postal inspectors, among others). District Court denied, 9th Circuit Court of Appeals reversed, holding that the police had time for a warrant and that the subsequent search was involuntary.

**Issue: Was the warrantless arrest (and subsequent consent) a violation of the 4th Amendment?**

**Holding: No**, Congress said it (public arrest with probable cause) was a reasonable seizure, and common law backs that up. Under common law police could arrest without a warrant for felonies and misdemeanors committed in officer’s presence, or for felonies outside the officer’s presence. Gerstein mandates prompt judicial review

**Concurrence:** Warrant required except in a few “jealously and carefully drawn exceptional circumstances.”

**Dissent**: Exigent circumstances would have justified this arrest; History doesn’t really support “public arrest with probable cause” exception. In weighing privacy against “burdening a legitimate governmental interest,” exigent circumstances would outweigh privacy.

***United States v. Robinson 414 US 218 (1973)***

**During a lawful arrest, it is reasonable under the Fourth Amendment to search the person being arrested.**

***United States v. Robinson*** extended the search incident to arrest exception to minor offenses. It also clarified that arresting officers may open containers found during search, even without probable cause.

**Facts:** D.C. metro police officer recognized Robinson driving and knew he didn’t have a license from a stop a few days earlier. Robinson conceded police had probable cause to believe he was driving without a valid license when they stopped him. Officer made custodial arrest and searched Robinson, felt something in his coat pocket, pulled out a crumpled cigarette pack and looked inside. Also discovered 14 capsules of heroin inside. Heroin was admitted at trial where Robinson was convicted of possession of heroin. Convicted in District Court, Appeals Court reversed, holding search violated 4th Amendment. Government appeals here.

**Issue: Was the search in violation of the 4th Amendment.**

**Holding: No**, search incident to arrest is (a) reasonable, and (b) an exception to the warrant requirement, Court notes (1) Custodial arrest justifies full body search including any packages on the person. (2) Also includes the “grab area.” Reason for the rule is officer safety and need to preserve evidence for use at trial.

**Creates easy rule for law enforcement**

**Dissent:** You cant avoid a case-by-case analysis. There are three separate search issues: (1) Pat down of coat pocket (2) Removal of the unknown object from the pocket (3) Opening the cigarette package and looking inside. Terry v. Ohio might permit the pat down, but not the removal or opening.

**Advocates case-by-case analysis to thwart pretextual traffic stops as means of conducting searches**

***Gerstein v. Pugh, 420 US 103 (1975)***

**A defendant charged with a crime by information may not be detained for an extended period of time without a judicial determination of probable cause.**

**A defendant charged with a crime by information may not be detained for an extended period of time without a judicial determination of probable cause. The Fourth Amendment requires a TIMELY judicial determination of probable cause as a prerequisite to detention (and it need not be adversial).**

**Facts:** Complex facts not relevant here, but basically two Defendants charged by a prosecutor, one denied bail, and denied any meaningful judicial review for substantial amount of time.

**Issue: Are defendants charged without a warrant entitled to a timely hearing on probable cause?**

**Yes**, the decision to charge is not enough.

Maximum protection of individual rights could be assured by requiring a magistrate's review of the factual justification prior to any arrest, but such a requirement would constitute an intolerable handicap for legitimate law enforcement.

“ ‘The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.’

These adversary safeguards are not essential for the probable cause determination required by the Fourth Amendment. The sole issue is whether there is probable cause for detaining the arrested person pending further proceedings. This issue can be determined reliably without an adversary hearing. The standard is the same as that for arrest. That standard—probable cause to believe the suspect has committed a crime—traditionally has been decided by a magistrate in a nonadversary proceeding on hearsay and written testimony, and the Court has approved these informal modes of proof.

Under this practical compromise, a policeman's on-the-scene assessment of probable cause provides legal justification for arresting a person suspected of crime, and for a brief period of detention to take the administrative steps incident to arrest. Once the suspect is in custody, however, the reasons that justify dispensing with the magistrate's neutral judgment evaporate

“the Fourth Amendment requires a timely judicial determination of probable cause as a prerequisite to detention [and it need not be adversarial].”

***United States v. Robinson* 1973**

**During a lawful arrest, it is reasonable under the Fourth Amendment to search the person being arrested.**

***Schmerber v. California* 1966**

**Exigency is created when suspect is in an accident because dissipating nature of blood plus safety concerns were enough. (also, not a 5th violation to require test)**

**Whren v. United States 517 US 806 (1996)**

**Except with inventory searches and administrative inspections, when probable cause of illegal conduct exists, an officer’s true motive for searching or detaining a person does not negate the constitutionality of the search and seizure.**

***Whren v. United States –*** If officers have probable cause for any traffic infraction, stopping the car is objectively reasonable under the fourth amendment.

**Facts:** Plainclothes police patrolling high drug area see African American youths in car which was being driven suspiciously. Officers pull up to car at red light and officer approaches driver window to warn driver about traffic violations and sees two large bags of cocaine in passenger’s hands. Driver and passenger arrested and convicted of drug offenses. Defendants moved to suppress, District Court denied, Defendants convicted. Court of Appeals affirmed. Defendants appeal here.

**Issue: Was the search in violation of the fourth amendment?**

**No**, Defendants concede that traffic violation occurred, and pretextual stops are not prohibited by the 4th amendment. The stop is a seizure, but a reasonable one. Balancing not in doubt when based upon probable cause. Where there is probable cause, the officers’ subjective motivations are not relevant.

***Atwater v. City of Lago Vista, 532 US 318 (2001)***

**The Fourth Amendment does not prohibit a warrantless arrest for a minor offense.**

***Atwater –*** The Fourth Amendment permits arrests for fine-only misdemeanors, including minor traffic infractions.

**Facts:** civil rights lawsuit against city. Officer observed seatbelt violation and stopped car. Officer made custodial arrest and Atwater was booked and made bond about an hour later. Later, she pleaded no contest to seatbelt violation and paid a $50 dollar fine. TX law requires front seat passengers to wear seatbelt if car is equipped with seatbelts. Violation of the law is a misdemeanor punishable by fine only and officer has discretion whether to issue a citation or make a custodial arrest. District Court granted summary judgment for City, Court of Appeals reversed, Court of Appeals then sitting en banc reversed again, Plaintiff appealed here.

**Issue: whether 4th Amendment prohibits custodial arrest for minor offense where fine is the only punishment?**

When an officer has probable cause to believe that an individual has committed even a minor offense in his presence, he may arrest the individual, because

Too hard to implement D’s proposal in the field – officers don’t know complex punishment / penalty schemes

Many states have statutes that set rules about citation v. custodial arrest and State level rather than constitutional level is appropriate.

**Dissent:** instead of a blanket rule allowing arrest, Court should engage in balancing test weighing the serious intrusion on liberty and privacy against the degree to which it is needed for promotion of legitimate government interests.

If government punishes offense by fine only then no legitimate interest in custodial arrest

If fine-only offense then rule should be citation and exceptions created to justify escalation to custodial arrest based on legitimate reasons.

***Maryland v. King, 569 US 435 (2013)***

**When officers make an arrest for a serious offense that is supported by probable cause and bring the suspect to the station to be detained in custody, taking and analyzing a cheek swab of the arrestee’s DNA is a legitimate police booking procedure that is reasonable under the Fourth Amendment.**

***Maryland v. King*** led to the increasing collection of DNA from arrested persons. Every state now collects DNA from some or all arrestees.

**Facts:** In 2009 King arrested for menacing a group with a shotgun. Routine booking procedure required buccal swab for DNA sample. Codis hit matched DNA to 2003 rape. All 50 States required the collection of DNA from felony convicts. Like Maryland, TN requires the collection of DNA from arrestees charged with violent felonies. Tried and convicted of the rape, Court of Appeals reversed.

**Issue: Was the swabbing an unreasonable search?**

**Holding: No**, balancing test of intrusion into privacy vs. govt’s legitimate interest. Here, privacy intrusion is minute. It’s just a swab. **Govt interest is (1) identity of suspect, (2) which affects how jailers could treat him, (3) availability of the suspect (4) criminal history, which is critical to risk assessment, (5) freeing the innocent.**

**Dissent:** The primary purpose here is discovering criminal activity. That is the very thing that should be subject to fourth amendment scrutiny. Also, if evidence they seek, special needs searches are usually justified by their eventual dissipation. Not here. Indeed, it took months to test. Finally, everybody agrees they could have gotten it subject to his conviction, as opposed to this way subject to arrest only.

**Tenn. Code Ann. Section 40-35-321 (e)**

* + **(1)**  When a person is arrested on or after January 1, 2008, for the commission of a violent felony as defined in subdivision (e)(3), the person shall have a biological specimen taken for the purpose of DNA analysis to determine identification characteristics specific to the person as defined in subsection (a). After a determination by a magistrate or a grand jury that probable cause exists for the arrest, but prior to the person's release from custody, the arresting authority shall take the sample using a buccal swab collection kit for DNA testing. The biological specimen shall be collected by the arresting authority in accordance with the uniform procedures established by the Tennessee bureau of investigation, pursuant to [§ 38-6-113](https://advance.lexis.com/document/?pdmfid=1000516&crid=49816b98-608c-49da-9147-70186888907a&pddocfullpath=/shared/document/statutes-legislation/urn:contentItem:50JB-7980-R03N-T26X-00000-00&pddocid=urn:contentItem:50JB-7980-R03N-T26X-00000-00&pdcontentcomponentid=10650&pdteaserkey=sr0&ecomp=q85tk&earg=sr0&prid=298d7932-b4dd-4112-9cb3-a94367c0b3f8) and shall be forwarded by the arresting authority to the Tennessee bureau of investigation, which shall maintain the sample as provided in [§ 38-6-113](https://advance.lexis.com/document/?pdmfid=1000516&crid=49816b98-608c-49da-9147-70186888907a&pddocfullpath=/shared/document/statutes-legislation/urn:contentItem:50JB-7980-R03N-T26X-00000-00&pddocid=urn:contentItem:50JB-7980-R03N-T26X-00000-00&pdcontentcomponentid=10650&pdteaserkey=sr0&ecomp=q85tk&earg=sr0&prid=298d7932-b4dd-4112-9cb3-a94367c0b3f8). The court or magistrate shall make the provision of a specimen a condition of the person's release on bond or recognizance if bond or recognizance is granted.
	+ **(2)**  The clerk of the court in which the charges against a person described in subdivision (e)(1) are disposed of shall notify the Tennessee bureau of investigation of final disposition of the criminal proceedings. If the charge for which the sample was taken is dismissed or the defendant is acquitted at trial, then the bureau shall destroy the sample and all records of the sample; provided, that there is no other pending qualifying warrant or capias for an arrest or felony conviction that would otherwise require that the sample remain in the data

***Mitchell v. Wisconsin, 588 US \_\_\_\_\_ (2019)***

**Police may almost always obtain warrantless blood tests of an unconscious drunk-driving suspect. Exigent circumstances should justify all DUI blood draws.**

**Facts:** Police received a report that Mitchell had been driving drunk. Police found Mitchell wandering near a lake, and he appeared so impaired that he could barely stand. Police administered a breathalyzer which indicated impairment, and they arrested him, intending to obtain a more accurate breath test (or blood test) at the police station. He passed out on the way, and police took him to a local hospital. Despite his unconsciousness, police read Mitchell the implied consent allowing refusal of the blood test. When the unconscious defendant did not respond, police ordered hospital staff to draw Mitchell’s blood and test it. It registered .22, and Mitchell was charged with DUI. He filed a motion to suppress which was denied and he was convicted. The Wisconsin Supreme Court affirmed, and he appealed here.

**Issue: Was the forced blood draw of an incapacitated Defendant a violation of his 4th Amendment rights?**

 **Holding: No**, because exigent circumstances, an exception to the warrant requirement, allow the search. IN Mo. V. McNeely, we agreed that exigent circumstances do not justify a blood draw in every DUI case because the destruction of evidence alone was not compelling enough, but that the public safety concerns in Scmerber v. California were enough to push it over the line where a car accident had occurred. **Now, rule is (1) where BAC is dissipating, and (2) other health welfare or safety reason should take priority over a warrant, EC applies.**

BUT in an unusual case,” the rule would not apply – for example, if the suspect could show “that his blood would not have been drawn if police had not been seeking” blood-alcohol information, and that police didn’t have any reason to believe that they couldn’t have gotten a warrant. Because Mitchell had not had a chance to meet this standard, Alito concluded, his case would go back to the Wisconsin courts to give him a chance to do so.

**Concurrence:** Exigent circumstances should justify all DUI blood draws

**Dissent:** (Sotomayor) Police could get a warrant. Also, Wisconsin waived the issue. (Gorsuch): This wasn’t argued.

**Birchfield v. North Dakota 2016**

**BAC tests are “searches” within the meaning of the 4th Amendment. Breath tests are permissible as SIA, blood not because too invasive.**

**Missouri v. McNelly 2013**

**Blood draws cannot be justified as an exigency exception to the warrant requirement, because dissipation of blood standing alone does not outweigh the privacy concern.**

**ENTRY INTO HOME TO MAKE ARREST**

If police have an arrest warrant they may forcibly enter the home to serve it.

If police do not have an arrest warrant they may NOT enter the home to arrest a person UNLESS exigent circumstances exist.

If police arrest a person outside the home they may not enter the home to search incident to arrest or even if they have probable cause to believe evidence of a crime is inside UNLESS exigent circumstances exist.

Police may enter a home without a search warrant or arrest warrant if they have probable cause to believe evidence of a crime is inside AND exigent circumstances exist.

Police may not enter a 3rd person’s home to serve an arrest warrant unless they have a search warrant for the 3rd person’s home or exigent circumstances exist

***Payton v. New York*, 445 US 573 (1980)**

**Absent exigent circumstances, the police may not enter a person’s home to make an arrest without a warrant.**

***Peyton v. New York* –** without a warrant or an exception to the warrant requirement, such as exigent circumstances, officers may not enter a suspect’s home to make an arrest.

**Facts:** New York police had some evidence that Defendant Payton murdered a victim. Two days after the murder, six officers without a warrant forced entry into Payton’s apartment. Upon entering, they saw a shell casing in plain view that would later be admitted into evidence. In an apparently unrelated case, New York police, again without a warrant, entered a home and arrested Defendant Riddick for robberies they believed he committed years earlier. They found narcotics and paraphernalia in the home pursuant to the arrest. Both defendants convicted and affirmed by NY’s highest court.

**Issue: Can police enter a home in order to effectuate an arrest without a warrant, without exigent circumstances, when they have probable cause?**

**Holding: No**, a home is unique. “The fourth amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, the threshold may not reasonably crossed without a warrant.”

**Dissent:** Common law handled this fine. Exceptions to this bright line were felony, knock and announce, daytime, and stringent probable cause would all allay the majority’s privacy concerns.

***Chimel v. California* 395 US 752 (1969)**

**Incident to a lawful arrest, a warrantless search of the area in possession and control of the person under arrest is permissible under the Fourth Amendment.**

In ***Chimel***, the Supreme Court clarified the permissible scope of a search incident to arrest.

**Facts:** Three California Police Officers went to Defendant Chimel’s home with an arrest warrant. When they arrived, Defendant’s wife let them wait in the house for the Defendant. When he arrived, police asked to search, and he refused. They searched the entire house anyway, digging through dressers and the like, and found evidence used against him in a burglary prosecution. Charged, convicted of burglary, affirmed on appeal.

**Issue: When police serve a valid arrest warrant against a defendant in his/her home, may they search the premises subject to the arrest?**

**No**, Only the “grab area,” that is, only the area under the arrestee’s immediate control, is permissible to search absent some other reason.

 **The rationale underlying the “grab area” exception is based on two reasons (a) Officer safety, and (b) Collect evidence that otherwise D might conceal or destroy**

Also, this is getting dangerously close to a “general warrant” that forced US to fight a revolution.

**Concurrence:** I would not hesitate to rule this way, but Mapp makes this applicable to the States!

**Dissent:** It is unreasonable to require police to go get a warrant. I mean, they are already there. Also, probable cause should be enough.

***Kentucky v. King* 563 US 452 (2011)**

**The exigent circumstances exception to the Fourth Amendment's warrant requirement applies to an officer-created exigency if the exigency does not arise from the officer's unreasonable or unconstitutional conduct.**

***Kentucky v. King –*** Reasonable officer created exigencies fall within the exigent-circumstances exception to the Fourth Amendment.

**Facts:** Kentucky police participated in, and observed, a controlled buy of cocaine. The observing officer alerted other officers that the buy was complete, and officers moved in to apprehend the suspect. The suspect fled into one of two apartments. Officers smelled marijuana smoke and heard movement in one of the apartments, knocked and announced, and forcibly entered, finding King, drugs, paraphernalia, and money. (The suspect was actually in the other apartment). D was convicted, and the Kentucky Supreme Court reversed, holding that police could not benefit from an exigency they created.

**Issue: Is it legal to search based on an exigent circumstances when the exigency is created by the police themselves?**

**Holding: Yes**; the test is whether there were exigent circumstances. Not who created them. Here, the Court assumed exigency, so we will too.

**Dissent:** Now police don’t need magistrates. They can just knock, listen, and break the door down. Also, could’ve gotten a warrant.

***California v. Carney* 471 US 386 (1985)**

**Under the Fourth Amendment, a vehicle that can be readily moved and that has a reduced expectation of privacy due to its use as a licensed motor vehicle may be searched without a warrant provided probable cause exists.**

***California v. Carney –*** the automobile exception applies to warrantless searches of publicly-located, readily mobile motor homes.

**Facts:** DEA Agents were surveilling a motor home where they believed people were exchanging money for sex. They saw the Defendant Carney and a young person go into the mobile home where they stayed for over an hour. Agents stopped the young person as they left. The youth told agents they had received marijuana in exchange for sex. Agents went to the mobile home, knocked and identified themselves. Defendant Carney stepped out. One agent went in without consent or a warrant and observed drugs and paraphernalia. Agents arrested Defendant Carney and further searched the motor home finding additional marijuana. Carney was convicted at trial, but the California Supreme Court overturned finding the warrantless search illegal.

**Is a warrantless search of a motorhome permissible?**

**Yes,** where probable cause exists, pursuant to the automobile exception to the warrant requirement.

**BECAUSE:**

(1) automobiles are mobile, and thus evidence may be lost

(2) automobiles are heavily regulated, so the expectation of privacy is diminished.

**Dissent:** We have previously held that the mobility of a footlocker did not justify a warrantless search. Clearly more of an expectation of privacy here. Also, this is more like a home.

***Arizona v. Gant* 556 US 332 (2009)**

**Police may search a vehicle after a recent occupant’s arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe that crime-related evidence is located in the vehicle.**

***Arizona V. Gant*** narrowed the longstanding interpretation of *Belton* which altered police practices following the arrest of a car’s driver.

**Facts:** Defendant Gant was stopped and arrested for driving on a suspended license. Police handcuffed him and detained him in the back of a police car. While safely detained, police searched the car and found cocaine in his jacket. Arizona Supreme Court found that the search-incident-to-arrest-exception did not apply here.

**Does the grab area (search incident to arrest) apply to an automobile after the suspect is safely detained in the back seat of a police car?**

**No**. The justification for the grab area is (a) officer safety, and (b) destruction of evidence. Both of those justifications vanish where the suspect is handcuffed in the back of a police car.

***New York v. Belton*** applied the grab area rationale of the search incident to arrest exception to the automobile context. We hereby limit that exception to unsecured prisoners. Once the suspect is secured, the reason for the grab area search have mostly disappeared.

**THUS:** “[We] hold that the *Chimel* rationale authorizes police to search a vehicle incident to a recent occupant’s arrest only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search” or “when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.”

***California v. Acevedo* 500 US 565 (1991)**

**The Fourth Amendment permits warrantless searches of containers found in automobiles provided the police have probable cause that the container contains contraband.**

***California v. Acevedo*** permits warrantless searches of closed containers inside cars, as long as officers have probable cause.

An individual picked up a package known to police to contain marijuana from a FedEx store and took it to an apartment. Two hours later, Defendant Acevedo went into that apartment and left shortly thereafter carrying a package about the size of a marijuana package. Acevedo put the package in his trunk and drove away. Police stopped the car, searched it and found marijuana. Intermediate appellate court held search unreasonable, and state Supreme Court denied review.

**Does the automobile exception extend to locked containers in cars?**

**YES.** Where the police have probable cause to believe evidence or contraband is contained, they may search an automobile and all containers in it.

**Dissent:** Chadwick and Sanders had It right. Warrants should be the rule, not an exception. You can easily get a warrant for luggage after you seize it. NO reason to extend the automobile exception to the trunk. Now the law is just as anomalous, because you have to get a warrant for a briefcase in a person’s hand but not in the trunk.

#### THE PROBLEM:

####  US v. Ross said the automobile exception (US v. Carroll) (where police have probable cause) included all containers including, in that case, brown paper bags in the trunk.

####  US v. Chadwick said that police needed a warrant to search a footlocker in a train station.

####  Arkansas v. Sanders said that, pursuant to Chadwick, police need a warrant to search a footlocker in a car.

#### Thus, “[u]ntil today, this Court has drawn a curious line between the search of an automobile that coincidentally turns up a container and the search of a container that coincidentally turns up in an automobile.”

***Wyoming v. Houghton*, 526 US 295 (1999)**

**Where an officer has probable cause to search a car, he may search containers that belong to a passenger in the car if the containers could possibly contain the object of the search.**

***Wyoming v. Houghton*** shows that if a police officer conducts a warrantless search inside a car based on probable cause, the officer may search property belonging to a passenger.

**Facts:** Police stopped a car for speeding (and a bad taillight). Upon questioning the driver, police noticed a syringe in the driver’s shirt pocket, which the driver admitted was for drugs. Police then ordered the passengers, including the Defendant, out of the car. Defendant Houghton gave a false name, which the officer discovered by searching **her purse**. Upon a further search, police found drugs and paraphernalia. Defendant Houghton was convicted at trial, and the Wyoming Supreme Court reversed, holding that the search of the purse was unconstitutional.

**Does the automobile exception, (wherein police may search a car without a warrant (provided they have probable cause)) extend to a passenger’s belongings?**

**YES,** where the belongings are capable of concealing the object of the search. Here, there was probable cause to believe drugs in car. So automobile exception, based on mobility and regulation leading to diminished expectation of privacy, is the rule. Same rationale applies to passenger, because the pc follows the item, not the person. It would nto make sense to allow an exception for the driver and not the passenger.

**Concurrence:** This is only for containers, not the person.

**Dissent:** Passengers are people too, and should have constitutional protections. Here is the passenger’s purse was searched, which is like her person. Balancing is off.

***Colorado v. Bertine*, 479 US 367 (1987)**

**A police officer’s warrantless inventory search of closed containers inside an automobile, conducted pursuant to an established inventory policy, does not violate the Fourth Amendment to the U.S. Constitution.**

***Colorado v. Bertine*** held that incriminating evidence discovered in closed containers during a standardized inventory search is admissible under the Fourth Amendment.

**Facts**: Police arrested Defendant Bertine for driving under the influence. After his arrest but before the car was towed, police, acting in accordance with local procedure, searched the car to inventory the contents. They found drugs, paraphernalia, and cash. Defendant moved to suppress, trial court granted based solely on the Colorado Constitution. Colorado Supreme Court affirmed the dismissal based on US Constitution.

**Issue: Does the 4th Amendment prohibit police inventories where, as here, the police acted pursuant to a policy that allows a complete search of an automobile without probable cause following the Defendant’s arrest?**

**No.** The inventory exception to the warrant requirement is based on the police’s responsibility for the property, not on a criminal investigation. It is impermissible to act in bad faith or to investigate. Those things weren’t alleged here. We have previously recognized search of a bag as a legitimate inventory search in Lafayette.

**Concurrence:** Agreed, but only pursuant to a policy.

**Dissent:** The police had other options, but chose to inventory, at which point the policy allowed. Exceptions to the warrant requirement should be narrowly drawn. Here, the government’s interest (inventory) is weak, and the privacy interest is strong.

***Riley v. California*, 573 US 373 (2014)**

**Under the Fourth Amendment, the government may not conduct a warrantless search of the contents of a cell phone seized incident to an arrest absent exigent circumstances.**

***Riley v. California*** was lauded by digital privacy advocates as preserving the privacy of personal data on a cell phone.

Two cases that involve police searching (in various ways) cell phones following arrest.

**May the police search data on cell phones without a warrant pursuant to the search-incident-to-arrest exception to the warrant requirement?**

**NO,** Police generally need a warrant to search a cell phone.

***Terry v. Ohio* 392 US 1 (1968)**

**When an officer observes unusual conduct that reasonably leads him to assume that criminal activity is afoot and that the people he is interacting with are armed, the police officer may conduct a limited search for weapons.**

# *Terry* was the first time the Court permitted a warrantless search for less than probable cause.

A Cleveland detective observed two men (Terry and Chilton) on a street corner. They were walking back and forth pausing to stare in the same store window, which they did for a total of about 24 times. Each completion of the route was followed by a conference between the two on a corner, at one of which they were joined by a third man (Katz) who immediately departed. The detective suspected the men of casing the store. He followed them and saw them rejoin the third man a couple of blocks away in front of a store. The officer approached the three, identified himself as a policeman, and asked their names. The men "mumbled something," whereupon the detective spun Terry around, patted down his outside clothing, and found in his overcoat pocket, but was unable to remove, a pistol. The officer ordered the three into the store. He removed petitioner's overcoat, took out a revolver, and ordered the three to face the wall with their hands raised. He patted down the outer clothing of Chilton and Katz and seized a revolver from Chilton's outside overcoat pocket. He did not put his hands under the outer garments of Katz (since he discovered nothing in his pat-down which might have been a weapon), or under petitioner's or Chilton's outer garments until he felt the guns. The three were taken to the police station. Petitioner and Chilton were charged with carrying concealed weapons. The defense moved to suppress the weapons. Trial Court denied. D’s convicted. Affirmed. State Supreme Court did not hear. Appeal to SCOTUS.

**Issue: Whether it is always unreasonable for police to seize a person and subject him to a limited search for weapons unless there is probable cause for arrest?**

**(1) Is it a search or seizure at all?**

 **Yes,** it is a seizure, albeit a limited one, so the 4th Amendment is implicated.

**(2) Was it reasonable?**

 **Yes.** There was no warrant, so it should fall into an exception to be reasonable.

Court cannot find an exception, so engages in balancing individual privacy interest against government interest.

Court creates an exception allowing a brief investigatory seizure or “stop” based on “reasonable suspicion.”

**(3) What is reasonable suspicion?**

Whether officer had specific and articulable facts, which taken together with rational inferences from those facts, reasonably justify the intrusion. Would the facts available to the officer at the moment of the seizure or search allow a person of reasonable caution to believe the action taken was appropriate.

**TERRY STOP** is a time limited seizure based on reasonable suspicion of criminal activity. If it lasts too long then it becomes an arrest which must be justified by probable cause.

 **How long is too long?**

(Government interest which justifies the seizure is the prevention, investigation, detection of crime, and apprehension of criminals)

**TERRY FRISK** is a search and is allowed if reasonable suspicion to believe the person is armed and dangerous.

Allows only a search to determine if the person is armed and to reach in and disarm him. Intrusion limited to what is reasonably necessary to discover gun, knives, clubs, or other hidden instruments for the assault of the officer.

**Justified by the need to protect the officer and the nearby public.**

**PLAIN FEEL DOCTRINE –** if during the pat-down for weapons the officer feels something that is obviously contraband, the officer may seize it. Does not allow for manipulation of the object to further “search” whether it is contraband.

**Kansas v. Glover, 589 US \_\_\_\_\_ (2021)**

**When the officer lacks information negating an inference that the owner is the driver of the vehicle, the stop is reasonable. It’s a fair and reasonable assumption to make...the person driving the vehicle is likely the owner of the vehicle. This does not violate the 4th amendment.**

Police observed an individual driving a pickup truck with a certain license plate number, and knew that Glover had a revoked license and that the pickup was consistent with a pickup registered to Glover. Based on those three facts, police assumed Glover was the driver of the pickup truck and pulled him over. The police cited Glover for being a habitual traffic offender. Glover moved to suppress, which was granted. The state appellate court reversed the trial court, and the Kansas Supreme Court reversed the appellate court. State appeals here.

# **Issue: Did the police have reasonable suspicion to stop Glover where they saw someone driving Glover’s truck, they knew that Glover owned the truck and they knew that Glover’s license was suspended?**

# **Yes**, Reversed. The question is whether the known informatioi, Glover’s license is suspended, Glover owns a truck, and someone is driving the truck, leads to a permissible inference that Glover is the driver currently. SCOTUS holds that It is a reasonable inference in the absence of knowledge to the contrary. Reasonable inferences need not arise from police experience, but may arise from common experience. We find that the known facts here amount to “specific and articulable facts” which add up to reasonable suspicion. Reasonable suspicion is something less than 51%.

# **Concurrence:** (Kagan, Ginsberg): Agree with the court because of everything they said, and because the police knew that Glover was a habitual offender, meaning he is a person who often breaks traffic laws.

# **Dissent:** (Sotomayor): The state only knew one fact: the owner of the truck had a suspended license. That does not mean that the driver that day was the owner. This is a seizure, and pretty serious. So it shouldn’t be guesswork. There is no evidence in the record that it was likely to the owner driving, like a study.

**Florida v. J.L. 529 US 266 (2000)**

**An anonymous tip that a person may be carrying a gun does not justify a stop and frisk under the Fourth Amendment unless there is additional corroboration to ensure that the tip has "sufficient indicia of reliability" to create reasonable suspicion justifying a stop.**

***Florida v. J.L.*** – A mere anonymous tip that a person possesses a concealed firearm is insufficient for a ***Terry* stop** and frisk.

**Facts:** Anonymous caller reported that young black male standing at specific bus stop wearing a plaid shirt was carrying a gun. No info about how long after the tip the police responded. They saw 3 black males at bus stop, one wearing plaid shirt. Told JL to put hands on bus stop, frisked him and seized gun. Trial court suppressed, appellate court reversed, Florida Supreme Court reversed again. State appeals.

**Issue: was the seizure of the gun a violation of the 4th Amendment?**

**Yes** (affirmed). Insufficient indicia of anonymous tipster’s reliability. Anonymous tip might be sufficient for reasonable suspicion if some police corroboration exists. For example, predictions of future movements corroborated by police.

***Florida v. Royer*, 460 US 491 (1983)**

**(1) Under the Fourth Amendment, police officers cannot move a suspect to another location during a *Terry* stop without a legitimate law enforcement purpose, such as ensuring the safety and security of the officers and the suspect.
(2) Under the Fourth Amendment, a suspect's consent to a warrantless search is invalid if the suspect was illegally detained at the time it was given.**

Defendant had one way ticket paid in cash, flying under assumed name and checking bags. D was flying from Miami to NYC. Police asked for his ticket and license – noticed name discrepancies which he said was bc friend made the ticket reservation. Without returning ticket or license, asked him to come to small room off concourse. Without asking for consent, had his luggage brought to room. Without consent but with key provided by defendant, opened one bag and found weed. Police pried open the second suitcase with defendant’s consent and found more weed. Royer filed motion to suppress, it was denied, he was convicted. Florida appeals court reversed. State appeals.

**Issues:**

(1) Whether the police had specific, articulable suspicion to justify a brief seizure of Royer and his luggage? **YES**

(2) Whether the seizure exceeded the scope of a permissible Terry stop and became a full-blown 4th Amendment seizure which required probable cause? **YES.** “Terry and the cases following it did not justify the restraint to which Royer was then subjected. As a practical matter, Royer was under arrest.”

Investigative detention must be temporary and last no longer that is necessary to effectuate the purpose of the stop.

Investigative methods should be the least intrusive means reasonably available to verify or dispel the officer’s suspicion in a short period of time.

State bears burden of showing that the seizure was sufficiently limited in scope and duration.

Royer was seized when officers took his ID and ticket and moved him to the police room. Show of authority and reasonable person would not have felt free to leave. Officers had his luggage when he “consented” to the search.

Police did not use the least intrusive means to determine if Royer was engaged in criminal conduct. Could have used a drug dog on the luggage without ever detaining Royer.

Primary inquiry since this case has been on the length of time of the detention. A seizure may become illegal if it lasts too long. How long is too long?

***United States v. Drayton, 536 US 194 (2002)***

**The police may request consent to search a person, even if they have no basis for suspecting that individual of illegal activity, and the citizen is not subject to a Fourth Amendment seizure if a reasonable person would feel that he is free to leave.**

***Drayton*** – If officers speak in a nonconfrontational way, don’t display weapons, ask permission to search, the Fourth Amendment doesn’t require officers to inform passengers that they aren’t obliged to cooperate.

Three police officers boarded bus after driver departed with passengers’ tickets and one officer stood at the front, one at the back and one went row to row asking passengers about their travel plans, their luggage and for permission to search luggage or their persons. Brown and Drayton were sitting together and when asked, indicated one bag for both of them in the overhead compartment. They gave permission to search it and nothing was found. Officer noticed they wore heavy coats and baggy pants and asked permission to search Brown. Brown consented and 483 grams of cocaine was found strapped to his thighs. Drayton was asked and consented and 295 grams of cocaine was found strapped to his thighs

**Issue: Was the search and seizure reasonable?**

**Yes,** because there was no seizure, and D consented to the search. Whether a seizure has occurred is an objective test based on whether police use physical control or force so that a reasonable person would not feel free to leave or terminate the encounter with police. Here, the badge and physical positioning is relevant but not dispositive. Court finds that a reasonable person would’ve felt free to terminate the encounter based largely on officer’s testimony that others have.

***Brendlin v. California, 551 US 249 (2007)***

**The passenger of a vehicle in a traffic stop is seized within the meaning of the Fourth Amendment.**

***Brendlin v. California*** makes it clear that if a car is stopped by police, anyone in the car may challenge the stop’s constitutionality.

Brendlin was the passenger in a car illegally stopped (illegally stopped because the police had no reasonable suspicion to stop the car). Brendlin was arrested for an outstanding warrant and was searched incident to arrest. Police found drugs and paraphernalia during the search and he was convicted of the drugs and paraphernalia. California Appeals Court reversed, CA Supreme Court reversed again.

**Issue: Was the passenger “seized” pursuant to the 4th Amendment?**

Reversed. A person is seized by the police and entitled to challenge the government’s action under the 4th Amendment when the officer by means of physical force or show of authority, restrains a person’s freedom of movement. To hold otherwise would "invite police officers to stop cars with passengers regardless of probable cause or reasonable suspicion of anything illegal."

**Objective test:** whether a reasonable person would believe that he was not free to leave or whether a reasonable person would fee free to decline the officer’s request or terminate the encounter.

***Rodriguez v. United States (2015)***

**Under the Fourth Amendment, a police officer may not prolong a routine traffic stop to have a drug-sniffing dog walk around the vehicle.**

***Rodriguez*** held that a dog sniff that prolongs a traffic stop, not supported by at least reasonable suspicion, violates the Fourth Amendment.

Nebraska K-9 officer saw car drive onto highway shoulder which violates state law. Officer stopped car at 12:06 a.m. Officer questioned Rodriguez, ran his license, registration and proof of insurance, ran a record check on him and then did the same for the passenger. Officer wrote a warning ticket, returned their documents to them and then asked for permission to walk his dog around car. They declined. 7-8 minutes later at 12:33 another officer arrived and the K-9 officer walked his dog around the car and dog alerted leading to probable cause search of car revealing methamphetamine. Federal prosecution for meth. Convicted, affirmed on appeal.

**Issue: Was the search and seizure reasonable pursuant to the 4th Amendment?**

**No**. Reversed. A seizure for a traffic violation, which is more akin to a Terry Stop than a formal arrest, justifies enough time to deal with the traffic violation which normally involves running the license, the registration and proof of insurance. Probably involves running for warrants. These checks serve to make sure the laws are followed, the driver is licensed, the car is properly on the road and ensure officer safety. Dog sniff has nothing to do with any of these goals. Once the traffic stop purpose is completed the seizure should be over. Prolonging the seizure after the traffic investigation is over is unlawful unless the police have specific and articulable reasons for believing the driver is engaged in other criminal activity.

***State v. Daniel* (2000)**

Deputy saw 4 men standing around a car in an unlighted area outside a market. He drove up to the men the “see what the individuals were doing” because he thought it was peculiar to stand around in the dark (it was dusk). The Deputy asked the men “what was going on” and requested they provide identification. He then retained the identification and checked the men for outstanding warrants. The Deputy found an outstanding warrant for Daniel, handcuffed him and arrested him. The deputy asked if he had anything sharp in his pocket, and Daniel responded that he had marijuana. Daniel charged with possession of marijuana. He moved to suppress, was denied, and pled guilty with a certified question of law. Appellate court affirmed, he appeals here.

Court: reversed. Initial encounter was consensual and not a seizure. 3 of the 5 Justices agreed that asking for the license was not a seizure insofar as the officer did not demand the license and the possibility that Daniel felt inherent social pressure to comply does not affect the objective test standard. 2 Justices opined that merely asking for the license without reasonable suspicion was a seizure. **Factors:**

1. **Time, place and purpose of the encounter**
2. **Words, tone and demeanor of the officer**
3. **Threatening presence of more than one officer**
4. **Display of a weapon by the officer**
5. **Physical touching of citizen by the officer**

**Consensual encounter may become a seizure based on totality. E.G., if the police**

-Pursue one who has attempted to terminate the contact by leaving

 -Continue to question person who has expressed desire not to cooperate

 -Renew questioning of one who has already been fully questioned

 -Order person to stop and answer questions

 -Retain person’s ID or property

 -Physically retrains or blocks person’s path

 -Displays weapon during encounter

**Kinds of Citizen – Police Encounters:**

1. Arrest which requires probable cause.

2. Brief detention which requires reasonable suspicion that the person is engaged in criminal conduct.

3. Consensual encounters that require no justification

**When Has a Seizure Occurred?**

**Answer**: When an officer, by means of *physical force* or *show of authority*, has in some way restrained the liberty of a citizen.

Test for whether a seizure has occurred is **OBJECTIVE TEST BASED ON TOTALITY OF THE CIRCUMSTANCES:** Whether a reasonable person would believe that he is not free to decline the officer’s request or terminate the encounter. Does not matter what the officer or citizen subjectively believe. If in doubt, ask “AM I FREE TO LEAVE”.

***Schneckloth v. Bustamonte* (1973)**

**The court must look at the totality of the circumstances in order to determine whether consent to a warrantless search absent probable cause was freely and voluntarily given.**

***Schneckloth v. Bustamonte –*** Courts must assess the **totality of the circumstances** in deciding whether consent was voluntary.

On routine patrol, Police stopped a car for bad license plate light and headlight. There were six men in the car, including Bustamonte. Driver did not have a license. Only one passenger had a drivers license, and he claimed that his brother owned the car. The officer asked this man if he could search the car. The man said, “Sure, go ahead.” Inside the car, the officer found stolen checks. Checks were used to convict Bustamonte, and the California Appeals Court affirmed. The California Supreme Court denied review. Bustamonte filed a petition for a writ of habeas corpus, which the district court denied. The U.S. Court of Appeals for the Ninth Circuit reversed, holding that consent is not voluntary unless it is proven that the person who consented to the search knew he had the right to refuse consent. State appeals here.

**Issue: Was the search voluntary?**

Reversed. Test for determining voluntariness of consent is totality, not a bright line demanding proof that consenter knew he could refuse. Knowledge of right to refuse is one factor. Here, no proof of coercion.

***Georgia v. Randolph* (2006)**

**The police may not enter a home without a warrant to search for evidence where they obtain consent from an occupant but a co-occupant is present and objects to the search.**

***Georgia v. Randolph*** – Police officers may not rely on one co-tenant’s consent to search a residence when the other co-tenant objects.

Randolphs were husband and wife who lived in a residence together. Police came to their house in response to a domestic dispute, and Ms. Randolph told police about Mr. Randolph’s drug use. Police asked for permission to search, Mr. Randolph denied. Ms. Randolph then granted permission. Ms. Randolph led police to a room identified as her husbands. There police discovered a straw with suspected cocaine residue on it. Police called the District Attorney, who told them to halt the search and apply for a search warrant. Ms. Randolph then revoked consent, police went and got a warrant and found more evidence which was used to convict him of cocaine possession.

He moved to suppress the evidence and was denied. Georgia Court of Appeals reversed and State Supreme Court affirmed the reversal. State appeals here.

**Issue: Was the consent valid?**

Affirmed. Consent is valid when given with apparent authority or by one possessing common authority provided it is reasonable. Where a physically present cotenant objects, the consenting tenant’s consent is not powerful enough to overcome the objecting tenant’s denial.

# ***State v. Berrios* (2007)**

**Rule: Both the state and federal constitutions offer protection from unreasonable searches and seizures; the general rule is that a warrantless search or seizure is presumed unreasonable and any evidence discovered subject to suppression. See U.S. Const. amend. IV ("The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ."); Tenn. Const. art. I, § 7 ("That the people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures . . . .").**

# Police stopped Berrios for speeding, frisked him, and led him to the back seat of a patrol car. While Berrios was in the car, Police Officer looked under the hood of the car and noticed new bolts holding the fender in place. He called another Officer to bring a dog to the car. The dog alerted to the front fender area. Police drilled into the fender and found over 300 grams of cocaine. Defendant moved to suppress, trial court granted. CCA affirmed. State appeals here.

# **Issue: Was the search and seizure reasonable?**

# **Not really.** Affirmed: Initial stop was a seizure, but reasonable given the speeding. Placement in the patrol car was unreasonable and more akin to a full scale arrest, and police had no reason for the pat down. The consent was thus given while Berrios was illegally detained, and was not “sufficiently attenuated” from the illegality.

This Court has recognized three categories of police interventions with private citizens: a full scale arrest, which requires probable cause; a brief investigatory detention, requiring reasonable suspicion of wrong-doing; and a brief police-citizen encounter, requiring no objective justification.

**Wong Sun v. United States 1963**

**Although evidence obtained through illegal police conduct must be excluded at trial as it is “fruit of the poisonous tree,” the connection between the illegal police conduct and a relevant piece of evidence can become so attenuated as to dissipate the taint, and such evidence may then be admissible.**

**A confession attained as the result of an illegal arrest may not be suppressed if the connection between the statement had been so attenuated as to “dissipate the taint.”** Basically, the statement is admissible if the accused has a reasonable ability to independently come forward, and confession was not coerced. (Suspects made confessions days after the initial illegal arrest.)

# **Brown v. Illinois 1975**

**Incriminating statements made following an unlawful arrest are only admissible if the statements, in light of all relevant facts and circumstances, are “sufficiently an act of free will to purge the primary taint.”**

# **New York v. Harris (1990)**

**An unlawful arrest made without a warrant but with probable cause in a suspect’s home does not require exclusion of statements the suspect subsequently made outside the home.**

# **UTAH v. STRIEFF (2016)**

**Unconstitutionally seized evidence is admissible if lack of flagrant impropriety, lack of temporal proximity, or an intervening circumstance attenuates the chain between police misconduct and the seizure.**

# **Nix v. Williams (1984)**

**Evidence obtained in violation of the Sixth Amendment may be admitted if police would have inevitably discovered it.**

# **HUDSON v. MICHIGAN (2006)**

**The exclusionary rule does not apply to violations of the knock and announce rule.**

***Hudson*** showed that sometimes the social costs of excluding evidence outweigh the benefits.

**Constitutional Criminal Law and Procedure – Key Terms**

**1st Amendment** - Guarantees that the government will not abridge freedoms of the press, religion, and speech; the right to peacefully assemble; and the right to petition the government to remedy grievances.

**2nd Amendment** - Protects the right of citizens to keep and bear arms as well as form militias.

**4th Amendment** - An amendment to the United States Constitution that protects against unreasonable searches and seizures and mandates that warrants be based upon probable cause and that they define the scope of the search or seizure with particularity.

**5th Amendment** - An amendment added to the U.S. Constitution as part of the Bill of Rights that provides important protections from government actions, including a guarantee that no person will be required to answer for a capital crime unless first indicted by a grand jury; no one will suffer double jeopardy; no one must testify against himself or herself; no one will be deprived of life, liberty, or property without due process of law; and no property will be taken for public use without just compensation.

**6th Amendment** - Provides criminal defendants with numerous rights such as the right to a speedy and public trial, the right to cross-examine witnesses, the right to counsel, and the right to be informed of the nature and cause of action.

**8th Amendment** - Prohibits the imposition of excessive bail, excessive fines, or cruel and unusual punishments on criminal defendants.

**5th Amendment Due Process Clause** - Prohibits the federal government from depriving an individual of life, liberty, or property without due process of law. The purpose of this clause is to prevent abuse of government authority in legal proceedings. Due process also requires that the federal government use fair methods or procedures when its actions would deprive an individual of life, liberty, or property.

**6th Amendment Right to Counsel** - Right of a person accused of a crime to have the help of an attorney throughout any criminal prosecution.

**14th Amendment Due Process** **Clause** - The provision set forth at Amendment XIV, Section 1 of the United States Constitution prohibiting states from depriving any person of life, liberty, or property by means that are arbitrary or fundamentally unfair.

# **18 U.S.C. § 3144** - A federal statute allowing for the issuance of a warrant and arrest of a person if there is cause to believe he is a material witness in a criminal proceeding and that a subpoena will not be sufficient to secure his presence at trial.

# **42 U.S.C. § 1983** - Federal law that allows individuals to sue state officials for violating their constitutional rights while acting under “color” of state law.

**A Fortiori** – used to express a conclusion for which there is stronger evidence than for a previously accepted one.

**A Search Incident to Arrest** - An exception to the Fourth Amendment prohibition of unreasonable searches and seizures that allows a police officer making a lawful arrest to perform a search of a suspect or the area under the suspect’s control, without a warrant or probable cause.

**Administrative Search -** A search of property for public health and safety, rather than investigative, purposes.

**Affidavit** - A written statement of fact voluntarily provided by one who is under oath.

**Attenuate** - to reduce the force or severity, to lessen a relationship or connection between two objects

**Attenuation** - An exception to the exclusionary rule that admits evidence seized in violation of the Fourth Amendment if the chain between the police misconduct and the seizure was attenuated by the lack of flagrant impropriety or temporal proximity, or was interrupted by some intervening circumstance.

**Attenuation in Criminal Procedure** - the relationship between an illegal search and a confession may be sufficiently attenuated as to remove the confession from the protection afforded by the Fruit of the Poisonous Tree doctrine, thereby making it admissible as evidence in a criminal prosecution depending on the facts of the case.

**Bai**l – temporary release of a prisoner in exchange for security given for a person’s promised appearance at a later hearing

**Belton Search** - A search of the passenger area of a vehicle incidental to the arrest of an occupant performed to protect the officer and preserve evidence.

**Bill of Rights** - The first ten amendments to the U.S. Constitution.

**Burglary** - The crime of illegally breaking and entering a building with the purpose of committing a felony therein, often larceny.

**Case or Controversy Clause** - [US Constitution, Art. III, Sec. 2, cl. 1] States, in part, that federal courts are not permitted to hear cases where there is no actual dispute between adverse parties capable of judicial resolution.

**Comity** - The principle of respect and recognition that one political entity, such as a nation or state, accords to another, such as with respect to the operation of an entity’s laws within its territory.

**Competence** - The mental ability of a person to stand trial such that he can understand the charges against him and aid his lawyer in forming a defense.

**Constructive Possession** - The power to control an item without physical possession of it. Constructive possession can be used in criminal contexts, as when a person has power over an item and the intent to exercise control over it, or in civil cases, as when a buyer has received title to property but not yet physically occupied it.

**Curtilage** - The area immediately surrounding a home.

**Custodial Interrogation** - Questioning by law enforcement authorities of a suspect in a criminal investigation under circumstances in which the suspect is not free to terminate the questioning and leave at will or under circumstances that lead the suspect to believe that he is not free to leave at will.

**Deadly Force** - Force that an actor uses with the purpose of causing, or which he knows to create a substantial risk of causing, death or serious bodily harm.

**Declaratory Relief** - Court-issued relief in the form of a declaration of the parties’ legal rights and/or obligations in a particular situation.

**De Minimis** - Something that is too minor to be considered.

**Detain -** Stopping or holding a person briefly without making a formal arrest.

**Double Jeopardy Clause** - A portion of the Fifth Amendment to the United States Constitution incorporated in the Bill of Rights that prohibits the government from trying a person more than once for the same offense.

**Drug Trafficking** - The illegal sale or other distribution of a prohibited or regulated substance.

**Embezzlement** - The fraudulent conversion of another’s property by a person who is in a position of trust, such as an agent or employee.

**Enemy Combatant** - A person who associates with forces that are engaged in hostilities against the United States or its allies. This includes any person who commits acts or provides aid to enemy forces.

**Exclusionary Rule** - A rule that excludes or suppresses evidence in a criminal proceeding where that evidence was obtained in violation of an individual’s constitutional rights.

**Executor/Executrix** - A person responsible for managing the estate and carrying out the instructions set out by the testator in his or her will, including probating the will and distributing the estate assets according to the terms of the will.

**Exigent Circumstances Doctrine** - An exception to the warrant requirement of the Fourth Amendment allowing police to make a warrantless entry, search, or seizure in circumstances that demand immediate action, such as a threat to human safety, the likely escape of a suspect, or the likely destruction of evidence.

**Facial** - Obvious or on the surface of something.

**Federalism** - The constitutional concept that certain governmental functions should be the responsibility of the individual states and certain functions should be the responsibility of the federal government.

**Freestanding Due Process** - The concept that substantive due-process rights offer a guarantee that exists independent of the guarantees with which due-process rights are typically associated and that expands to other areas, including postconviction rights.

**Fruit of the Poisonous Tree Doctrine** - Rule barring admission of any evidence found on the basis of illegally obtained evidence.

**Fundamental Principles of Rights** - Principles and rights that are so deeply rooted and ingrained in history and tradition as to be central to U.S. notions of liberty and justice.

**General Warrant** - An unconstitutional warrant authorizing a search or seizure without naming and describing the items or individuals to be searched and seized, in violation of the Fourth Amendment.

**Hot Pursuit Doctrine** - A subset of the exigent-circumstances exception to the warrant requirement that applies if an individual who has committed a serious crime (generally a dangerous felony) flees to evade capture and enters a home or other private place, requiring immediate law enforcement action to apprehend him. Officers may enter the premises without a warrant to search for and arrest the individual, but only while they are in immediate or continuous pursuit.

**Impound** - Possession and custody of an automobile or other property by police or a court.

**Incorporation** - A doctrine through which certain substantive protections of the Constitution are applicable to states.

**Incorporation by Reference** - The doctrine by which documents separate from a contract, but referred to therein, are incorporated into the contract and read together with the contract as an integrated document.

**Inculpatory** - evidence that tends to show a person’s involvement in an act, or evidence that can establish guilt. In criminal law, the prosecution has a duty to provide all evidence to the defense, whether it favors the prosecution or the defendant’s case.

**Inculpatory Evidence** - Evidence tending to prove a defendant’s guilt of a crime.

**Independent Source Doctrine** - Evidence can be admitted at trial when it was initially obtained illegally but later obtained lawfully and independently. Evidence that is discovered legally, pursuant to a valid warrant, can be admitted at trial even when the police initially entered the premises unlawfully.

**Indicia of Reliability** - Characteristics of an anonymous crime report that entitle law enforcement officers to treat the report as credible and imply the reasonableness of a subsequent search and seizure based on the report.

**Inevitable Discovery Doctrine** - Exception to the exclusionary rule allowing illegally obtained evidence to be admitted at trial if the evidence would certainly have been found without any constitutional or statutory violation.

**Injunctive Relief** - An equitable remedy whereby the court does not order damages but instead instructs a party to do something or refrain from doing something.

**Invasion of Privacy** - The wrongful intrusion into one’s personal life, solitude, or seclusion which may give rise to an action in tort and where damages are recoverable.

**Inventory Search** - A routine search performed by police before taking a person or property into custody, performed for administrative rather than investigative purposes.

**Involuntary Confession** - An admission of guilt by a criminal suspect that would not have been offered in the absence of coercion, inducement, or deceit.

**Ipse Dixit** - Latin for "he said it himself," used to refer to a statement that has been asserted but not proven.

**Knock and Announce Principle** - The requirement that law enforcement officers knock and announce their identity and authority before entering a home to execute a warrant.

**Knock and Announce Rule** - When executing a warrant, and absent exigent circumstances, the police must knock, announce their presence, and wait a reasonable amount of time before they enter a home, giving the occupant of the home the opportunity to let the police enter without the use of force.

**Mail Fraud Statute** - A federal statute, 18 U.S.C. § 1341, making it illegal to use the mail to attempt to execute a scheme to defraud others.

**Mendenhall Test** - The test for determining whether a seizure has occurred under the Fourth Amendment is whether, in light of the surrounding circumstances, “a reasonable person would believe he was free to leave.”

**Miranda Warnings** - The notices of constitutional rights set forth in the opinion of the United States Supreme Court in *Miranda v. Arizona*, 384 U.S. 436(1966) that law enforcement authorities must provide to a suspect in a criminal investigation prior to initiation of a custodial interrogation. The suspect must be advised that the suspect has the right to remain silent, anything the suspect says may be used against the suspect, and the suspect has the right to an attorney.

**Nolo Contendere** - A plea of no contest in which the defendant neither admits nor denies the charges against him, but the immediate effect of the plea is the same as if the defendant had pleaded guilty.

**Open Fields Doctrine** - Rule articulated in *Hester v. United States*, 265 U.S. 57(1924), allowing the warrantless search of outdoor areas not included in the curtilage of a home.

**Parole** - The release of a prisoner from jail for the remainder of his sentence if certain conditions are met (e.g., regular meetings with a parole officer).

**Per Se Rule/Exception** - A rule that is applied uniformly without consideration of the specific situation or circumstance.

**Plain-view Doctrine** - An exception to the warrant requirement allowing the warrantless seizure of items if (1) it is immediately apparent that there is probable cause to believe an item is evidence of a crime, without the need for touching or further investigation, and (2) law enforcement officers are lawfully in a position to see and obtain the item.

**Plain Feel Doctrine –** if during the pat-down for weapons the officer feels something that is obviously contraband, the officer may seize it. Does not allow for manipulation of the object to further “search” whether it is contraband.

**Possession with Intent to Distribute** - The crime of possessing illegal substances with the intention of giving or selling those substances to others.

***Preventive detention*** – the practice of incarcerating accused individuals before trial on the assumption that their release would not be in the best interest of society—specifically, that they would be likely to commit additional crimes if they were released.

**Privileges or Immunities Clause -** Provision in the Fourteenth Amendment that prohibits states from making or enforcing laws that infringe on the privileges or immunities of U.S. citizens.

**Probable Cause** - A reasonable basis, amounting to more than mere suspicion, to believe that a person has committed a crime or is about to commit a crime, or that evidence relevant to a crime exists in a particular location.

**Procedural Due Process** - The Due Process clause of the United States Constitution requires that the government give an individual notice and an opportunity to be heard before depriving that individual of his life, liberty, or property.

**Reasonable Suspicion** - Generally, a quantum of proof sufficient to justify an objectively reasonable person in suspecting, but not necessarily believing, that someone has committed, is committing, or is about to commit a crime. Reasonable suspicion is usually the lowest quantum of proof that the law will recognize for any purpose. It is sufficient to justify brief investigatory detentions, but not full-blown arrests, by the police.

**Release on Recognizance** – release on your promise that you will show up for court

**Remand** - Returning a case back to the previous court, such as the trial court or the state court, for some additional action.

**Respondeat Superior** - Latin for “let the superior answer,” the doctrine that an employer is responsible for an employee’s tortious acts committed within the scope of employment.

**Right to a Jury Trial** - A constitutional right to a jury trial exists under the Sixth Amendment, in federal and state criminal trials where a defendant faces punishment of greater than six months’ imprisonment, and under the Seventh Amendment, in federal civil cases where a plaintiff seeks money damages.

**Right to Counsel** - Sixth Amendment guarantee that a defendant is entitled to be represented by an attorney during a criminal prosecution.

**Search** - The official examination of a person or property in order to find evidence of crime.

**Search and Seizure** - A law enforcement officer's search of a suspect's premises or property, followed by a seizure of incriminating evidence found during the search.

**Search Incident to Arrest** - An exception to the Fourth Amendment prohibition of unreasonable searches and seizures that allows a police officer making a lawful arrest to perform a search of a suspect or the area under the suspect’s control, without a warrant or probable cause.

**Seizure** - An intentional detention through physical restraint or show of authority that impedes a person’s freedom of movement.

**Silver Platter Doctrine** – Under the silver platter doctrine, evidence of a federal crime seized by state police in the course of an illegal search while investigating a state crime could be turned over to federal authorities and used in a federal prosecution so long as the federal agents had not participated in the illegal search but had simply received the evidence on a “silver platter.”

**Simple Battery** - A battery includes any “offensive touching” without the requirement of pain or physical injury.

**Sine qua non –** Latin: “(cause) without which not” - an essential condition; a thing that is absolutely necessary.

**Sovereign Immunity** - The principle that a government may not be sued in its own courts without its consent.

**Special Needs Doctrine** - Exception to the Fourth Amendment allowing searches without a warrant or probable cause generally for purposes other than law enforcement, like administrative inspections or drug screenings.

**Subpoena** - A formal written document directing a party to appear in court or produce documents to another party or to the court.

**Subpoena Duces Tecum** - A court order for the production and inspection of documents or other items of physical evidence.

**Substantive Due Process -** Provides that the government may not deprive a person of certain fundamental liberties.

**Sui Generis** - A thing that is unique or in a class of its own.

**Suspension Clause** - A provision of Article I, Section 9 of the United States Constitution that states that the privilege of the writ of habeas corpus may not be suspended unless public safety requires it.

**Stare Decisis** - A legal principle under which legal precedents are adhered to and predictability is garnered.

**Tennessee Constitution Section 15** – all prisoners shall be bailable

**Terry Stop** - From *Terry v. Ohio*, 392 U.S. 1 (1968), a brief seizure by law enforcement that falls short of a traditional arrest. A *Terry* stop, or investigatory stop, is lawful if officers have a reasonable suspicion that a person is engaged in criminal activity. The stop must be limited to the amount of time reasonably necessary for officers to confirm or dispel the reasonable suspicion, and officers must use the least intrusive means to confirm or dispel the suspicion. The investigatory stop is often followed by an investigatory frisk, which is a brief patdown of the person's outer clothing in search of a deadly weapon, if the circumstances would justify a reasonable person to suspect that the person poses a danger to the officers or other people. The frisk must be strictly confined to what is necessary to discover a deadly weapon; officers may not search for contraband or other evidence of a crime.

**Testamentary Capacity** - The ability of a person executing a will to understand the nature of their actions in executing the will, the nature and contents of their estate, the natural objects of their bounty, and how these factors affect the distribution of their estate.

**Totality of the Circumstances -** A factual consideration of all factors surrounding an agreement, which will have some bearing upon the issue being decided.

**Totality of the Circumstances Test** - A standard that considers all of the relevant facts and circumstances, rather than a few specific factors.

**Warrant** - An order issued by a court directing an officer to undertake a certain act (e.g., arrest or search).

**Warrant Clause** - A portion of the Fourth Amendment to the United States Constitution, incorporated in the Bill of Rights, that prohibits the search of private property in the absence of a warrant supported by sworn statements and a finding of probable cause.

**Wire Fraud Statute** - A federal statute, 18 U.S.C. § 1343, making it illegal to defraud others by means of wire or other electronic communications in interstate or foreign commerce.

**Writ of Habeas Corpus** - Enables a detainee or prisoner to challenge the legality of his detention by the government.

**Writ of Prohibition -** An order of an appellate court directing the lower court to refrain from further action in a legal matter owing to a lack of jurisdiction or the existence of procedural error.

**MIDTERM**

**5th Amendment Privilege Against Self-Incrimination** - Constitutional protection that prevents the government from compelling a person to give testimony against himself.

**Appeal of Right -** The opportunity to seek review of a lower court decision without first gaining approval of the reviewing court.

**Collateral Review (or Attack)** - A proceeding initiated in order to challenge the integrity of a previous judgment.

**Discretionary Appeal** - Review of a lower court decision that requires approval of the reviewing court.

**Independent Source Doctrine** - Evidence can be admitted at trial when it was initially obtained illegally but later obtained lawfully and independently. Evidence that is discovered legally, pursuant to a valid warrant, can be admitted at trial even when the police initially entered the premises unlawfully.

**Structural** - Error An error in a criminal trial that affects the entire framework of a trial, not just the trial process, and requires automatic reversal with no harmless-error review. Examples include a biased judge or denying the right to counsel.

**Voir Dire** - French meaning “to speak the truth,” the process by which the judge or an attorney questions a potential juror to assess the person’s suitability for sitting on the jury. Voir dire also may be used to qualify a witness as an expert during trial, or to explore certain aspects of a witness’s testimony out of the jury’s presence.

**US CONSTITUTION (BILL OF RIGHTS)**

## **First Amendment**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

## **Second Amendment**

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

## **Third Amendment**

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner; nor in time of war, but in a manner to be prescribed by law.

## **Fourth Amendment**

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.

## **Fifth Amendment**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

## **Sixth Amendment**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

## **Seventh Amendment**

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any Court of the United States, than according to the rules of common law.

## **Eighth Amendment**

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

## **Ninth Amendment**

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

## **Tenth Amendment**

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

**Rules of Law (lite edition)**

**A judicial determination of probable cause made with 48 hours of arrest is generally sufficiently prompt.**

**A defendant charged with a crime by information may not be detained for an extended period of time without a judicial determination of probable cause. The Fourth Amendment requires a TIMELY judicial determination of probable cause as a prerequisite to detention (and it need not be adversial).**

**An affidavit that lacks sufficient detail to explain why an informant is reliable and how he came to his conclusions does not provide the necessary probable cause to obtain a search warrant.**

***Spinelli*** and ***Aguilar*** were later overruled and the courts adopted the totality-of-the-circumstances approach.

**Evidence obtained pursuant to a warrant supported only by the beliefs or suspicions of an unidentified informant is not admissible in criminal proceedings.**

**A warrant application satisfies the Fourth Amendment probable cause requirement so long as it establishes a substantial basis for concluding that a search will uncover evidence of wrongdoing.**

**The presence of drugs in a car gives rise to probable cause to arrest any occupant of the car who had knowledge about the drugs and exercised dominion and control over them.**

***Maryland v. Pringle* –** The amount of evidence required to establish probably cause is much lower than the amount of evidence required to support a criminal conviction.

**A person’s mere proximity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person.**

**A search made under an otherwise valid warrant containing a mistake does not violate the Fourth Amendment if the police acted reasonably.**

The Court in ***Maryland v. Garrison*** ruled that there’s some latitude for honest mistakes, as long as the officer’s actions are reasonable.

**Purpose of the particularity requirement:**

**To prevent general searches**

**The Fourth Amendment’s reasonableness requirement incorporates the common law rule that police entering a home must knock and announce their identity and purpose before attempting forcible entry, unless exigent circumstances exist and to do so would undermine law enforcement interest.**

#### *Hudson v. Michigan* altered *Richards* and held that the 4th Amendment’s exclusionary rule doesn’t apply to a violation of the knock and announce rule.

**A search warrant must be voided and any evidence obtained by the warrant excluded from admission at trial when a defendant shows that an affidavit in support of the warrant contains an intentional or reckless false statement and when the affidavit does not support a finding of probable cause in the absence of the false statement.**

**A warrantless arrest is permitted if there is probable cause to believe the person has committed a felony.**

***United States v. Watson –*** Law enforcement officers can arrest a suspect in a public place on probable cause that the suspect has committed a felony offense.

**During a lawful arrest, it is reasonable under the Fourth Amendment to search the person being arrested.**

***United States v. Robinson*** extended the search incident to arrest exception to minor offenses. It also clarified that arresting officers may open containers found during search, even without probable cause.

**During a lawful arrest, it is reasonable under the Fourth Amendment to search the person being arrested.**

**Exigency is created when suspect is in an accident because dissipating nature of blood plus safety concerns were enough. (also, not a 5th violation to require test)**

**Except with inventory searches and administrative inspections, when probable cause of illegal conduct exists, an officer’s true motive for searching or detaining a person does not negate the constitutionality of the search and seizure.**

***Whren v. United States –*** If officers have probable cause for any traffic infraction, stopping the car is objectively reasonable under the fourth amendment.

**The Fourth Amendment does not prohibit a warrantless arrest for a minor offense.**

***Atwater –*** The Fourth Amendment permits arrests for fine-only misdemeanors, including minor traffic infractions.

**When officers make an arrest for a serious offense that is supported by probable cause and bring the suspect to the station to be detained in custody, taking and analyzing a cheek swab of the arrestee’s DNA is a legitimate police booking procedure that is reasonable under the Fourth Amendment.**

***Maryland v. King*** led to the increasing collection of DNA from arrested persons. Every state now collects DNA from some or all arrestees.

**Police may almost always obtain warrantless blood tests of an unconscious drunk-driving suspect. Exigent circumstances should justify all DUI blood draws.**

**BAC tests are “searches” within the meaning of the 4th Amendment. Breath tests are permissible as SIA, blood not because too invasive.**

**Blood draws cannot be justified as an exigency exception to the warrant requirement, because dissipation of blood standing alone does not outweigh the privacy concern.**

**Absent exigent circumstances, the police may not enter a person’s home to make an arrest without a warrant.**

***Peyton v. New York* –** without a warrant or an exception to the warrant requirement, such as exigent circumstances, officers may not enter a suspect’s home to make an arrest.

**Incident to a lawful arrest, a warrantless search of the area in possession and control of the person under arrest is permissible under the Fourth Amendment.**

In ***Chimel***, the Supreme Court clarified the permissible scope of a search incident to arrest.

**The exigent circumstances exception to the Fourth Amendment's warrant requirement applies to an officer-created exigency if the exigency does not arise from the officer's unreasonable or unconstitutional conduct.**

***Kentucky v. King –*** Reasonable officer created exigencies fall within the exigent-circumstances exception to the Fourth Amendment.

**Under the Fourth Amendment, a vehicle that can be readily moved and that has a reduced expectation of privacy due to its use as a licensed motor vehicle may be searched without a warrant provided probable cause exists.**

***California v. Carney –*** the automobile exception applies to warrantless searches of publicly-located, readily mobile motor homes.

**Police may search a vehicle after a recent occupant’s arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe that crime-related evidence is located in the vehicle.**

***Arizona V. Gant*** narrowed the longstanding interpretation of *Belton* which altered police practices following the arrest of a car’s driver.

**The Fourth Amendment permits warrantless searches of containers found in automobiles provided the police have probable cause that the container contains contraband.**

***California v. Acevedo*** permits warrantless searches of closed containers inside cars, as long as officers have probable cause.

**Where an officer has probable cause to search a car, he may search containers that belong to a passenger in the car if the containers could possibly contain the object of the search.**

***Wyoming v. Houghton*** shows that if a police officer conducts a warrantless search inside a car based on probable cause, the officer may search property belonging to a passenger.

**A police officer’s warrantless inventory search of closed containers inside an automobile, conducted pursuant to an established inventory policy, does not violate the Fourth Amendment to the U.S. Constitution.**

***Colorado v. Bertine*** held that incriminating evidence discovered in closed containers during a standardized inventory search is admissible under the Fourth Amendment.

**Under the Fourth Amendment, the government may not conduct a warrantless search of the contents of a cell phone seized incident to an arrest absent exigent circumstances.**

***Riley v. California*** was lauded by digital privacy advocates as preserving the privacy of personal data on a cell phone.

**When an officer observes unusual conduct that reasonably leads him to assume that criminal activity is afoot and that the people he is interacting with are armed, the police officer may conduct a limited search for weapons.**

# *Terry* was the first time the Court permitted a warrantless search for less than probable cause.

**When the officer lacks information negating an inference that the owner is the driver of the vehicle, the stop is reasonable. It’s a fair and reasonable assumption to make...the person driving the vehicle is likely the owner of the vehicle. This does not violate the 4th amendment.**

**An anonymous tip that a person may be carrying a gun does not justify a stop and frisk under the Fourth Amendment unless there is additional corroboration to ensure that the tip has "sufficient indicia of reliability" to create reasonable suspicion justifying a stop.**

***Florida v. J.L.*** – A mere anonymous tip that a person possesses a concealed firearm is insufficient for a ***Terry* stop** and frisk.

**(1) Under the Fourth Amendment, police officers cannot move a suspect to another location during a *Terry* stop without a legitimate law enforcement purpose, such as ensuring the safety and security of the officers and the suspect.
(2) Under the Fourth Amendment, a suspect's consent to a warrantless search is invalid if the suspect was illegally detained at the time it was given.**

**The police may request consent to search a person, even if they have no basis for suspecting that individual of illegal activity, and the citizen is not subject to a Fourth Amendment seizure if a reasonable person would feel that he is free to leave.**

***Drayton*** – If officers speak in a nonconfrontational way, don’t display weapons, ask permission to search, the Fourth Amendment doesn’t require officers to inform passengers that they aren’t obliged to cooperate.

**The passenger of a vehicle in a traffic stop is seized within the meaning of the Fourth Amendment.**

***Brendlin v. California*** makes it clear that if a car is stopped by police, anyone in the car may challenge the stop’s constitutionality.

**Under the Fourth Amendment, a police officer may not prolong a routine traffic stop to have a drug-sniffing dog walk around the vehicle.**

***Rodriguez*** held that a dog sniff that prolongs a traffic stop, not supported by at least reasonable suspicion, violates the Fourth Amendment.

**The court must look at the totality of the circumstances in order to determine whether consent to a warrantless search absent probable cause was freely and voluntarily given.**

***Schneckloth v. Bustamonte –*** Courts must assess the **totality of the circumstances** in deciding whether consent was voluntary.

**The police may not enter a home without a warrant to search for evidence where they obtain consent from an occupant but a co-occupant is present and objects to the search.**

***Georgia v. Randolph*** – Police officers may not rely on one co-tenant’s consent to search a residence when the other co-tenant objects.

**Although evidence obtained through illegal police conduct must be excluded at trial as it is “fruit of the poisonous tree,” the connection between the illegal police conduct and a relevant piece of evidence can become so attenuated as to dissipate the taint, and such evidence may then be admissible.**

**Incriminating statements made following an unlawful arrest are only admissible if the statements, in light of all relevant facts and circumstances, are “sufficiently an act of free will to purge the primary taint.”**

**An unlawful arrest made without a warrant but with probable cause in a suspect’s home does not require exclusion of statements the suspect subsequently made outside the home.**

**Unconstitutionally seized evidence is admissible if lack of flagrant impropriety, lack of temporal proximity, or an intervening circumstance attenuates the chain between police misconduct and the seizure.**

**Evidence obtained in violation of the Sixth Amendment may be admitted if police would have inevitably discovered it.**

**The exclusionary rule does not apply to violations of the knock and announce rule.**

***Hudson*** showed that sometimes the social costs of excluding evidence outweigh the benefits.

# ***State v. Berrios* (2007)**

**Rule: Both the state and federal constitutions offer protection from unreasonable searches and seizures; the general rule is that a warrantless search or seizure is presumed unreasonable and any evidence discovered subject to suppression. See U.S. Const. amend. IV ("The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ."); Tenn. Const. art. I, § 7 ("That the people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures . . . .").**

This Court has recognized three categories of police interventions with private citizens: a full scale arrest, which requires probable cause; a brief investigatory detention, requiring reasonable suspicion of wrong-doing; and a brief police-citizen encounter, requiring no objective justification.

**The Fourth Amendment prohibition against unreasonable searches and seizures of physical items extends to recordings of oral statements.**

**The warrantless search of trash left outside on the curb does not violate the Fourth Amendment, because a person has no reasonable expectation of privacy in trash left for collection in a publicly accessible place.**

**The warrantless placement of a GPS tracking device on the undercarriage of an individual’s vehicle in order to track the person’s movements on public streets constitutes an unlawful search in violation of the Fourth Amendment.**

**Using a drug-sniffing dog on a homeowner's porch to investigate the contents of the home is a search within the meaning of the Fourth Amendment.**

**The Fourth Amendment right against unreasonable searches and seizures does not protect people from their misplaced expectations of trust and therefore there is no Fourth Amendment search and seizure when the person the defendant is speaking with is secretly a government agent or an informant wearing a wire and recording what is being said.**

**It does not violate constitutional protections to issue a search warrant for the offices of a newspaper even though the object of the search could be demanded through the issuance of a subpoena duces tecum.**

**A search made under an otherwise valid warrant containing a mistake does not violate the Fourth Amendment if the police acted reasonably.**

**Where the facts and circumstances within police officers' knowledge and of which they** **had reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that intoxicating liquor is being transported in the automobile which the officers stop and search, the officers are justified in conducting the search.**

**A police search of closed containers discovered inside a vehicle during a warrantless vehicle search does not violate the Fourth Amendment when probable cause justifies a search of the containers.**

**The United States and federal officials are prohibited from executing unreasonable searches and seizures upon people.**

**It is a violation of the Due Process Clause of the Fourteenth Amendment for state actors to gather evidence through unreasonable searches and seizures, but such evidence need not be excluded from state criminal proceedings.**

**Evidence obtained through an unreasonable search and seizure in violation of the Fourth Amendment is inadmissible in state criminal proceedings.**

**Evidence obtained in reasonable, good-faith reliance on a facially valid search warrant is not subject to the Fourth Amendment's exclusionary rule, even if the warrant is later deemed defective.**

**Where police personnel act negligently, but not recklessly, and lead an officer to reasonably believe an arrest warrant exists, the evidence obtained pursuant to that unlawful arrest remains admissible.**

**The independent-source doctrine does not apply if police officers were subjectively motivated to obtain a search warrant by what they learned during an original warrantless search of the premises, even if the warrant application does not rely on information gained during the original search.**