

Police-Citizen Interactions

Fourth Amendment Search & Seizure

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Why are you here?

1. What This Presentation Is / Is Not
2. Officer Down Memorial Page (ODMP)
3. The Key Purpose of this Presentation:
 - Learn to Protect Yourself in Every Interaction with Police*
 - Know that Asserting Your Rights is not Disrespectful (if you do it right!)*

FOURTH AMENDMENT

Police Searches

When Police Request to Search:

The Answer is Easy...

The Answer is Always **NO**

NOTE: We are talking about searches

FOURTH AMENDMENT

Police Searches

The Law

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.

United States Constitution, Fourth Amendment

That the people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures...

Tennessee State Constitution, Art. I, § 7

FOURTH AMENDMENT

Police Searches

Application of the Law

The most basic constitutional rule in this area is that "searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment – subject only to a few specifically established and well-delineated exceptions." **The exceptions are "jealously and carefully drawn."**

Coolidge v. New Hampshire

United States Supreme Court (1971)

FOURTH AMENDMENT

Police Searches

When Can Police Search?

...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. Search Warrant
2. Exception

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Police Searches

Search Warrant

Exception: P-A-C-E

Plain View

Arrest

Consent

Emergency Circumstances

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Police Searches

What You Need to Know

NO Warrant

NO Exception

NO Search

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Police Seizures

What is a Seizure?

Two Common Seizures:

1. Arrest (Probable Cause)
2. Terry Stop (Reasonable Suspicion)

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Police Seizures

When Can Police Seize You?

Probable Cause

Arrest

Reasonable Suspicion

Terry Stop

Mere Suspicion

No Seizure!

FOURTH AMENDMENT

Police Seizures

Traffic Stops

Is a Traffic Stop a Seizure?

Yes! But there are two types:

1. Observation of Traffic Infraction
2. Reasonable Suspicion you Committed a Crime (e.g. DUI, which is a Terry Stop)

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Police Seizures

Traffic Stops

What do I have to do?

1. Provide Identification
2. Provide Paperwork
3. Exit the Vehicle (Officer Safety)

That's It!

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Police Seizures

Key Takeaway for Traffic Stops:

Do not provide the information that turns reasonable suspicion into probable cause!

- *Don't get it backwards!*
- Ex: Field Sobriety Tests
- Ex: Portable Breath Tests

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Police Seizures

How do I end a Traffic Stop?

One Question. Two Answers.

Am I Under Arrest?

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Police Seizures

Am I Under Arrest?

If NO: I want to leave

*What if they say you aren't under
arrest, but you aren't free to leave?*

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Police Seizures

Am I Under Arrest?

If YES: I want a lawyer

NO Answering Questions

NO Voluntary Statements

NO Searches

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Police Seizures

Traffic Stop Takeaway

One Question. Two Answers.

Am I Under Arrest?

If NO: I want to leave

If YES: I want a lawyer

Police-Citizen Interactions

Examples and Explanation

The Depths of Case Law

Fourth Amendment Exceptions: Plain View

❖ Plastic Baggie Under a Seat

"[H]e spotted a white plastic bag partially opened underneath the driver's seat. He saw that the bag contained a greenish substance... it is our opinion the evidence shows [that the incriminating nature of the object was apparent]."

❖ Pill Bottle in a Pocket

"When I touched his right jacket pocket I immediately recognized a pill bottle, in that pocket, that is used by the majority of crack dealers to hold their crack cocaine" ... "the application of these principles to the record in this case requires the finding that Officer Blackwell did not have probable cause to believe that the object he felt was contraband."

Police-Citizen Interactions

Examples and Explanation

The Depths of Case Law

Fourth Amendment Exceptions: Arrest

- ❖ **Driver Under Arrest in Patrol Car**
“Police may search the passenger compartment of a vehicle incident to a recent occupant's arrest only if it is reasonable to believe that the arrestee might access the vehicle at the time of the search or that the vehicle contains evidence of the offense of arrest.”

Arizona v. Gant, **United States Supreme Court**

Must: (1) Have Access to Vehicle; or (2) Have Potential Evidence of Arrested Offense in Vehicle

Police-Citizen Interactions

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The Depths of Case Law

Fourth Amendment Exceptions: Consent

- ❖ Can a house guest consent to a search?
“Valid consent exists if (1) the third party in fact had common authority or (2) a reasonable person, given the facts and circumstances available to the police, would have concluded “that the consenting party had authority over the premises”
- ❖ Can a hotel room guest consent to a search?
“... He had stayed there overnight, left his possessions there, and carried a key to the room. This supports a finding that [he] had joint access or control over the room, and thus had actual authority to consent.”

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Examples and Explanation

The Depths of Case Law

Fourth Amendment Exceptions: Exigency

- ❖ **What are Exigent Circumstances?**

Although not an exclusive list, the following are frequently-arising situations that have been found to be sufficiently exigent: (1) hot-pursuit, (2) to thwart escape, (3) to prevent the imminent destruction of evidence, (4) in response to an immediate risk of serious harm to the police officers or others, and (5) to render emergency aid to an injured person or to protect a person from imminent injury.

- ❖ **When You Find an Active Meth Lab**

“... the discovery of an actively operating methamphetamine laboratory, in and of itself, creates an exigent circumstance justifying immediate action without the attendant delays that accompany obtaining a search warrant.

Police-Citizen Interactions

Examples and Explanation

The Depths of Case Law

Why It All Won't Matter- And Soon

❖ The Officers *Meant* to Follow the Law

The Good Faith Exception "permits the admission of evidence obtained as a result of an officer's *reasonable and good faith reliance* on a search warrant that *he believed to be valid* but was later determined to be invalid "solely because of a *good-faith failure* to comply with the affidavit requirement [of the Tennessee Code and the Tennessee Rules of Criminal Procedure].

"A good-faith mistake is one characterized by simple, isolated oversight or inadvertence. A good-faith mistake does not include conduct that is deliberate, reckless, or grossly negligent, nor does it include multiple careless errors."

Police-Citizen Interactions

Examples and Explanation

Example: Police at the Door

- Arrive at your front door and knock, asking to speak with whoever lives there
- States his intention to search the home
- If no answer, looks through the front door to see if any illegal activity is happening
- If no answer, walks around the side of the house and looks in the side windows

Police-Citizen Interactions

Examples and Explanation

Example: Police at the Door with a Warrant

- Police arrive at your door with a warrant
- Police ask to enter the home and you let them into the living room
- Police ask to search your home
- You ask to read the warrant and the warrant says to search *the garage*

Police-Citizen Interactions

Examples and Explanation

Example: Traffic Stop with Potential for Weapons in the Car.

- Instructs driver to exit the vehicle after seeing bullets fall out of the glovebox
- Conducts a patdown
- Asks driver series of questions
- Placed in back of police vehicle while officer searches the vehicle
- Searches entirety of vehicle, including in between seats and in console

CAN POLICE DO THAT?

Examples and Explanation

Example: Calling the Drug Dog

- Pulls over vehicle for speeding
- Asks the driver where he has been and whether he has been drinking
- Instructs driver to exit the vehicle
- Calls for backup to the scene with a drug dog
 - Drug dog arrives in five minutes
 - Drug dog arrives in forty-five minutes

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The End!

Questions?

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