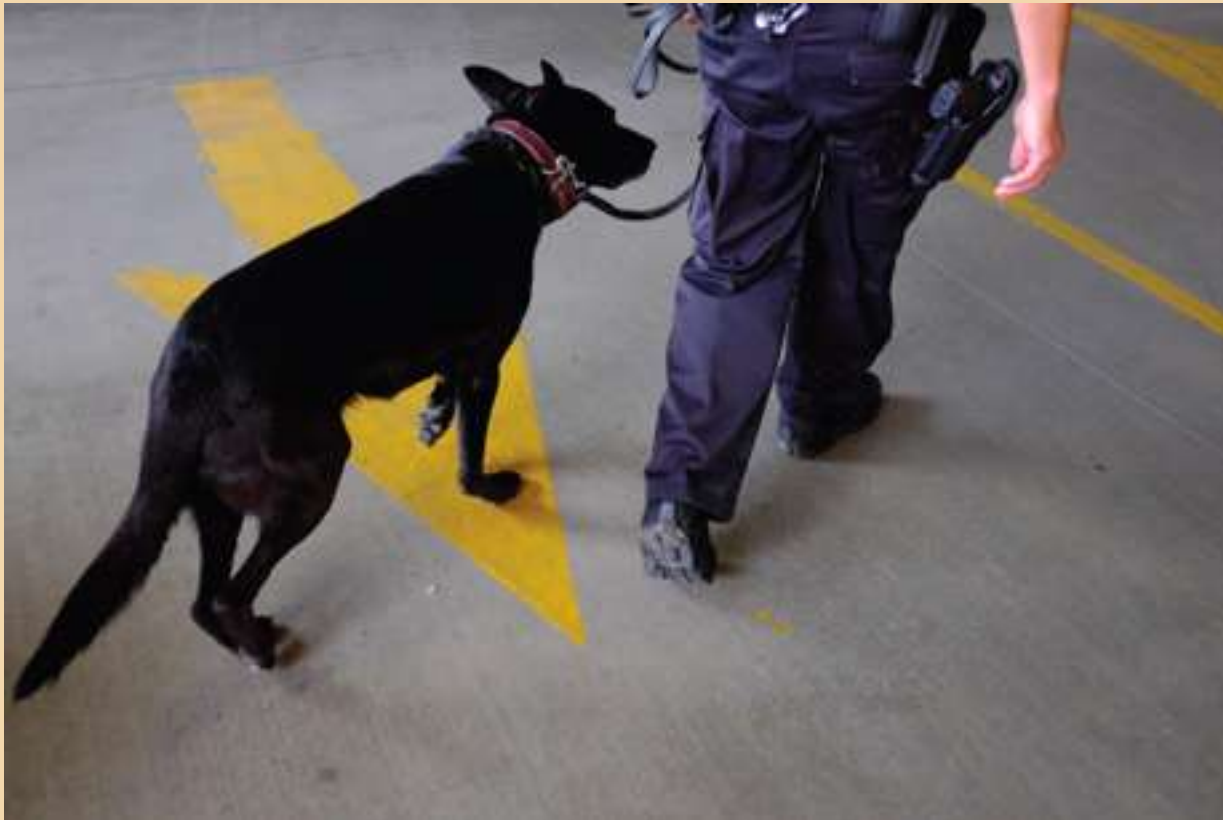


## Chapter 7

# Police and the Constitution: The Rules of Law Enforcement

# Learning Objective 1

- Outline the four major sources that may provide probable cause.



Matthew Staver/Bloomberg via Getty Images

# The Fourth Amendment

- Sources of probable cause:
  - Personal observation
  - Information
  - Evidence
  - Association

# Discussion Question: Your Observation

---

- Research the case of Jodi Arias.
  - Discuss the four sources of probable cause in this case.

# Learning Objective 2

- Explain the exclusionary rule and the exceptions to it.



Gary W. Green/Orlando Sentinel/Getty Images

# The Fourth Amendment

- The exclusionary rule
  - Prohibits the use of illegally obtained evidence in court
- The fruit of the poisoned tree:
  - Evidence obtained through illegally obtained evidence is also inadmissible.
- Exceptions to the exclusionary rule
  - “Inevitable discovery”
  - “Good faith”

# Learning Objective 3

- List the four categories of items that can be seized by use of a search warrant.

# Lawful Searches & Seizures

- Privacy
  - Reasonable expectation of privacy as established in *Katz v. United States* (1967)
  - Two-pronged test
    - Individual must prove he or she expected privacy.
    - Society must recognize expectation as reasonable.
- *United States v. Jones* (2012)
  - Important roles that time and technology play in privacy



# Lawful Searches & Seizures

- Search warrant
  - Court order that authorizes police to search a certain area.
  - Must provide probable cause
  - Must show specific information on the premises to be searched, suspects to be found and illegal activities taking place at the premises
  - Must show items to be seized
  - Issued by a neutral and nonbiased judge

# Lawful Searches & Seizures

- Seizure by use of a search warrant
  - Items resulting from the crime
  - Items that are inherently illegal for anyone to possess (with exceptions)
  - Items that can be called “evidence” of the crime
  - Items used in committing the crime

# Learning Objective 4

- Explain when searches can be made without a warrant.

## **INCIDENT TO LAWFUL ARREST**

Police officers may search the area within immediate control of a person after they have arrested him or her.

## **CONSENT**

Police officers may search a person without a warrant if that person voluntarily agrees to be searched and has the legal authority to authorize the search.

## **STOP AND FRISK**

Police officers may frisk, or "pat down," a person if they suspect that the person may be involved in criminal activity or pose a danger to those in the immediate area.

## **HOT PURSUIT**

If police officers are in "hot pursuit" or chasing a person they have probable cause to believe committed a crime, and that person enters a building, the officers may search the building without a warrant.

## **AUTOMOBILE EXCEPTION**

If police officers have probable cause to believe that an automobile contains evidence of a crime, they may, in most instances, search the vehicle without a warrant.

## **PLAIN VIEW**

If police officers are legally engaged in police work and happen to see evidence of a crime in "plain view," they may seize it without a warrant.

## **ABANDONED PROPERTY**

Any property, such as a hotel room that has been vacated or contraband that has been discarded, may be searched and seized by police officers without a warrant.

## **BORDER SEARCHES**

Law enforcement officers on border patrol do not need a warrant to search vehicles crossing the border.

# Lawful Searches & Seizures

- Search incident to arrest
  - *United States v. Robinson* (1973)
    - The need for a police officer to find and confiscate any weapons a suspect may be carrying
    - The need to protect any evidence on the subject's person from being destroyed
  - *Chimel v. California* (1969)
    - Search area within suspect's "immediate control"

# Lawful Searches & Seizures

- Searches with consent:
  - Factors considered for a valid search include:
    - The age, intelligence, and physical condition of the consenting subject
    - Any coercive behavior by the police, such as the language used to request consent
    - The length of the questioning and its location

# Lawful Searches & Seizures

- Searches of automobiles
  - *Arizona v. Gant* (2009)
    - Person being arrested is close enough to the car to grab or destroy evidence or a weapon inside the car.
    - The arresting officer reasonably believes that the car contains evidence pertinent to the same crime for which the arrest took place.

# Learning Objective 5

- Describe the plain view doctrine and indicate one of its limitations.



Ricky Carioti/The Washington Post/Getty Images

# Lawful Searches & Seizures

- Plain view doctrine
  - *Coolidge v. New Hampshire* (1971)
    - The item is positioned within the officer's view.
    - The officer is legally in a position to notice the item.
    - The discovery of the item is inadvertent.
    - The officer immediately recognizes the illegal nature of the item.



# Lawful Searches & Seizures

- Cell phones and the Fourth Amendment
  - Courts must decide if warrant is needed to track a suspect using cell phone records.
  - In 2014, the U.S. Supreme Court unanimously ruled that officers need a warrant to search the contents of a cell belonging to suspects they have just arrested.

# Learning Objective 6

- Distinguish between a stop and a frisk, and indicate the importance of the case *Terry v. Ohio*.



Mark Richards/PhotoEdit

# Stops and Frisks

- *Terry v. Ohio* (1968)
  - Established definition of “reasonable” suspicion in stop-and-frisk situations
  - “Totality of circumstances” test – An officer must have “specific and articulable facts” to make a stop

# Stops and Frisks

- Stop:
  - Takes place when an officer has reasonable suspicion that a criminal activity is about to take place
  - Investigatory stop
- Frisk:
  - A protective measure
  - Justified when the officer thinks the safety of police officers or other citizens might be endangered

# Discussion Questions:

## *Terry v. Ohio*

- Research the case of *Terry v. Ohio* and then research another case regarding a stop and frisk.
  - Justify the actions of the officer in your chosen case.
  - Give your own perspective on the validity of the stop and frisk.

# Learning Objective 7

- List the four elements that must be present for an arrest to take place.



PhotoDisc

# Arrests

- Arrest:
  - Intent to arrest
  - Authority to arrest
  - Seizure or detention
  - Understanding of the person that he/she has been arrested

# Arrests

## Mastering Concepts

### The Difference between a Stop and an Arrest



Both stops and arrests are considered seizures because both police actions involve the restriction of an individual's freedom to "walk away." Both must be justified by a showing of reasonableness as well. You should be aware, however, of the differences between a stop and an arrest. **During a stop**, police can interrogate the person and make a limited search of his or her outer clothing. If anything occurs during the stop, such as the discovery of an illegal weapon, then officers may arrest the person. **If an arrest is made**, the suspect is now under police control and is protected by the U.S. Constitution in a number of ways that will be discussed later in the chapter.

	Stop	Arrest
<b>Justification</b>	Reasonable suspicion only	Probable cause
<b>Warrant</b>	None	Required in some, but not all, situations
<b>Intent of Officer</b>	To investigate suspicious activity	To make a formal charge against the suspect
<b>Search</b>	May frisk, or "pat down," for weapons	May conduct a full search for weapons or evidence
<b>Scope of Search</b>	Outer clothing only	Area within the suspect's immediate control or "reach"



# Arrests

- Arrests with a warrant
  - Probable cause
  - Knock and announce
  - Exigent circumstances
- Arrest without a warrant
  - Offense is committed in the presence of the officer.
  - Officer has probable cause to believe a suspect has committed a crime.
  - Time lost obtaining a warrant would allow the suspect to escape/destroy evidence; officer has probable cause to make an arrest.

# Learning Objective 8

- Explain why the U.S. Supreme Court established the *Miranda* warnings.



Chris Hondros/Getty Images

# Miranda

- Fifth Amendment guarantees protection against self-incrimination.
  - Inherent coercion
  - Applies when suspect is in custody
    - Custodial interrogation

# Learning Objective 9

- Indicate situations in which a *Miranda* warning is unnecessary.

# Miranda

- *Miranda* is not required:
  - When police do not ask suspect questions that are testimonial in nature
  - When the police have not focused on a suspect and are questioning witnesses at the scene
  - When a person volunteers information before being asked
  - When the suspect has given a private statement to a friend or other acquaintance
  - During a stop and frisk, when no arrest has been made
  - During a traffic stop

# Learning Objective 10

- List the three basic types of police identification.



Daniel Kramer/The New York Times/Redux Pictures

# Identification Process

- Basic types of police identification
  - Showups
  - Photo arrays
  - Lineups
- No Sixth Amendment right to counsel at showups and arrays
- Nontestimonial evidence in booking process