

Difference between reasonable suspicion and probable cause

Law



Running header: THE RIGHTS OF THE ACCUSED The rights of the accused:
Understanding the right to trial, warrant requirements and the difference
between reasonable suspicion and probable cause Fill in Your name here
Class title here Instructors name here August 19, 2011 The rights of the
accused: Understanding the right to trial, warrant requirements and the
difference between reasonable suspicion and probable cause Abstract:
According to Article III, Section 2 of the United States Constitution the judicial
power of the federal courts is quite limited. The largest amount of judicial
power resting in the hands of the individual states as per the Constitution
itself, in quoting the Constitution itself, “ to Controversies between two or
more States;—between a State and Citizens of another State;—between
Citizens of different States;—between Citizens of the same State claiming
Lands under Grants of different States, and between a State, or the Citizens
thereof, and foreign States, Citizens or Subjects.” (Article III, 1791) However,
according to Article I, Section 8 we notice that Congress is given very broad
powers with regards to lawmaking specifically when providing for the “
common defense and general welfare of the United States” (Article I, 1791)
The purpose of the Bill of Rights was to provide a clear delineation between
those legislative and legal powers and the rights of the citizens of the United
States of America. The following paper will explore the rights of the accused
to fair trial, the difference between reasonable suspicion and probable cause
as well as naming and exploring four exceptions to the warrant requirement
as accepted by the modern legal and criminal justice world. The rights of the
accused: Understanding the right to trial, warrant requirements and the
difference between reasonable suspicion and probable cause Understanding

the Sixth Amendment: The Sixth Amendment is specifically designed to afford a fair and equitable trial to those who are being accused of a crime. By stating that the accused shall enjoy the right to a speedy trial, the original authors were attempting to avoid the long preparation period that exists in many cases where an individual may spend longer than six months awaiting trial for accusations that have not been proven yet. Additionally this amendment provides for an impartial jury of the location where the individual resides, with regards to criminal offenses. The Supreme Court decision in *Duncan v. Louisiana* ensured that every individual regardless of state of residence or type of crime, federal or local should be afforded the right to a jury trial. Prior to this point certain offenses of a criminal nature in Louisiana had no right to a jury trial, and the Supreme Court decision clarified that the 14th Amendment combined with the Sixth Amendment assured this right to all regardless of prior state law or decision. This is another area that has seen large changes since the original writing. There have been notable exceptions regarding the jury trial for infamous individuals being moved to different states for political reasons. Additionally it should be noted that in modern jury trials individuals will not face persons who are "peers" so much as individuals who generally have nothing in common with the individual themselves. Lastly the Sixth Amendment address's witness's and defense counsel; again this has changed drastically since the original authoring of this amendment. Whereas the original authors attempted to make it as clear as possible the resulting challenges and Supreme Court edicts changed the intent of the law. In *Johnson v. Zerbst* the Court announced an absolute rule requiring appointment of counsel for

federal criminal defendants. It has been debated that the original intent was to ensure that every defendant had the availability of, but not necessarily provide at state expense legal counsel. Additionally the decision in *Gideon v. Wainwright* decided that everyone should in fact have legal counsel and that if they are too poor to afford it themselves than it should be provided for them. The nature of the legal system in the United States is that it is founded on precedence and not innovated with each decision. While there are benefits to the utilization of precedence this does not mean that precedence is a beneficial approach in every case. Exceptions to the Fourth Amendment and the Warrant Requirement: There are exceptions to every rule as many of us are taught as children, in this case there are definite exceptions to the warrant requirement as outlined by the Fourth Amendment. The first exception to the warrant requirement is individual consent. " Consent to search any property must be given by the actual owner or, as set forth in *United States v. Matlock* (1974), by a person in charge of that property" (Harr, Hess, 2006. p. 219). The next exception to the warrant requirement is the plain sight or plain view requirement which generally applies to vehicles and non-residential applications, " a diminished expectation of privacy surrounds" an automobile, " a vehicle is used for transportation" and not as a residence, occupants and contents are " in plain view", and vehicles are " necessarily highly regulated by the government" (Harr, Hess, 2006. p. 232). Another exception to the rule is the exigent circumstances exception; this particular exception is one of the more tenuous as it places the entire burden of proof upon the officer who uses this exception. Unfortunately, because officer testimony is often upheld as fact regardless of counter testimony

evidence or available witness testimony this also allows for a larger possibility of officer misconduct. Therefore the Supreme Courts in various rulings have placed the following limitations on the use of this approach, "include danger of physical harm to an officer or others, danger of destruction of evidence, driving while intoxicated, hot-pursuit situations and individuals requiring rescuing" (Harr, Hess, 2006, p. 234). While this is a limiting factor, unfortunately given the allowances made for officers and disallowed in many cases to the average citizen this can still lead to police investigator misconduct. The last exception to be addressed is the incident to arrest exception; this exception has been upheld in rulings as being necessary as long as certain boundaries are not crossed. Specifically when a person is arrested in their home, "a limited search made in conjunction with an in-home arrest" (Harr, Hess, 2006. p. 228) this does not mean that entire house can be searched or that contraband that is not connected to the actual arrest can be used as evidence. In fact this exception is very specific in that it refers to officer safety, and evidence directly attached to the reason for the arrest. The difference between Reasonable Suspicion and Probable Cause: Reasonable suspicion is the suspicion generated by any reasonable and prudent person. In most legal cases the reasonable and prudent person is representative of the general public while the individual not being reasonable and prudent is the individual who acts outside of the normal boundaries as vaguely applied to the general public. Reasonable suspicion is therefore the suspicion of a criminal act being committed or having been committed that any reasonable and prudent individual would have noticed as well. Probable cause is the suspicion generated as a result of the

surrounding environment or actions and not necessarily that generated by a reasonable suspicion. For instance an example of probable cause could be watching as an individual dressed in darker non-descript clothing walks past a house, and then doubles back and quickly and furtively runs into the back yard. This would be probable cause for an officer who saw this occurs to stop and investigate with the goal of preventing a crime from occurring. The differences between reasonable suspicion and probable cause are separate but not entirely different in that there must be reasonable suspicion for there to be probable cause. Probable cause is that evidence or action that allows an officer to make an arrest whereas reasonable suspicion is that evidence or action that allows an officer to watch, detain for questioning or follow a suspected criminal. In the case Terry vs. Ohio the Supreme Court decided that the following applies to the officer on trial, " reasonable grounds to believe that petitioner was armed and dangerous, and it was necessary for the protection of him and others to take swift measures to discover the true facts and neutralize the threat of harm if it materialized" (Terry vs. Ohio, 1968). This has also been applied in cases following and is now referred to as the Terry Stop and is a procedure taught in every law enforcement academy nationwide. Conclusion: As we can see the importance for the Fourth Amendment exists primarily as a defense against the potential for the government's abuse of our rights. In many cases recently we have heard that the Fourth Amendment is being taken away, with such congressional acts as the Patriot Act and other acts of congress for many persons the Fourth Amendment has been severely limited. However, there remains Article I Section 8, which clearly allows extraordinary powers to Congress

should they deem it necessary for the defense of this nation. Additionally there are many reports surfacing even today of federal intervention at a state level with regards to law enforcement stemming directly from the added complaints of police brutality occurring. Does this reflect a growing abuse of power by law enforcement across the nation or is it simply changes in the mindset of individuals and if it is changes in the average person's mindset than does this by default change the approach taken using a reasonable suspicion given that the reasonable and prudent individual may see things differently now? Regardless understanding the Fourth Amendment and the surrounding benefits and controversy that come with it could fill books of information. Reference page: Article I, (1791). United States Constitution, Article I, Section 8. Washington D. C.: United States of America. Article III, (1791). United States Constitution, Article III, Section 2. Washington D. C.: United States of America. Harr, J. S., & Hess, K. M., (2005). Constitutional law and the criminal justice system (Third ed., pp. 219, 228, 232, 234). United States: Thomson Wadsworth. Terry vs. Ohio, (1968). Article III, Section 2. Terry v. Ohio, 392 u. s. 1 (1968) 392 u. s. 1 terry v. Ohio. Certiorari to the supreme court of Ohio. no. 67. Argued December 12, 1967. Decided June 10, 1968