

4th amendmant and probable cause



**ASSIGN
BUSTER**

In the United States, the police must, whenever practicable, obtain advance judicial approval of searches and seizures through the appropriate warrant procedure. In most instances, failure to comply with the warrant requirement can only be excused by exigent circumstances. There should be circumstances sufficient to warrant a prudent man to believe that the person stopped had committed or was committing an offense. Intrusions upon constitutionally guaranteed rights must be based on more than unarticulated hunches, and simple good faith on part of the officer is not enough.

The facts should prove reasonable inferences derived from unusual conduct. A person may assert violation of his Fourth Amendment rights in connection with search or seizure only if he can demonstrate a legitimate expectation of privacy in the area searched or items seized. To establish, for Fourth Amendment purposes, a legitimate expectation of privacy in area searched or items seized, defendants must demonstrate: (1) subjective expectation of privacy; and (2) that this expectation is one that society is prepared to recognize as objectively reasonable.

Under Fourth Amendment, police are authorized to conduct a warrantless protective pat-down of individuals they encounter in the field so long as their concerns are justified by reasonable suspicion of possible danger. Under the Fourth Amendment, police may execute warrantless searches incident to a lawful arrest, as it is reasonable for authorities to search an arrestee for weapons that might threaten their safety, or for evidence which might be destroyed.

The United States Supreme Court has explicitly determined that a person has no reasonable expectation of privacy in an automobile belonging to another. Though the passenger does not have a standing to challenge the search of car that he does not own, he can still challenge the lawfulness of his own detention when the car is stopped at a drug interdiction checkpoint, and therefore, he can seek to suppress any evidence seized as fruit of his allegedly illegal detention.

Even assuming that drug interdiction checkpoint was legal, such that the officers did not violate the passenger's Fourth Amendment rights by stopping the vehicle in which he was riding, a passenger's detention was held to be independent and separate from officers' discovery of drugs during the search of the vehicle's driver/owner consensual search of the vehicle. The stop and search of a moving automobile can be made without a warrant but, automobile or no automobile, there must be probable cause for the search.

Probable cause to search exists when there is a fair probability that contraband or evidence of a crime will be found in a particular place. Standards of "reasonable suspicion" and "probable cause," as used to evaluate constitutionality of investigative stops and searches, are not readily, or even usefully, reduced to a neat set of legal rules but rather are common sense, non-technical conceptions that deal with factual and practical considerations of everyday life on which reasonable and prudent persons, not legal technicians, act.

Standards are fluid concepts that take their substantive content from particular contexts in which standards are being assessed. The United States

Supreme Court held that brief, suspicion-less seizures at highway checkpoints for the purposes of combating drunk driving and intercepting illegal immigrants were constitutional. The Fourth Amendment requires that searches and seizures be reasonable. A search and seizure is ordinarily unreasonable in the absence of individualized suspicion of wrongdoing.

When officers have reasonable suspicion that occupants of a vehicle are engaged in criminal activity, they may briefly stop the vehicle to investigate. Police may make an investigative stop of a vehicle when they have reasonable suspicion of an ongoing crime, whether it be a felony or misdemeanor, including drunk driving in jurisdictions where that is a criminal offense. Police may also make a stop when they have reasonable suspicion of a completed felony, though not of a mere completed misdemeanor.

The court in various cases held that for purposes of determining whether an investigatory stop is justified by reasonable suspicion, the following instances may be taken in to account, as the traffic violation of failure to stay within lanes, a driver's slowing down, stiffening of posture, and failure to acknowledge a sighted law enforcement officer might well be unremarkable in one instance, such as a busy San Francisco highway, while quite unusual in another, such as a remote portion of rural southeastern Arizona. But a brief veering out of a lane of travel on a windy day does not give probable cause to the police to stop the vehicle.

In making reasonable-suspicion determinations, reviewing courts must look at the totality of the circumstances of each case to see whether the detaining officer has a particularized and objective basis for suspecting legal

wrongdoing. “Totality of the circumstances” approach to making reasonable-suspicion determinations allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person.

Although an officer’s reliance on a mere “hunch” is insufficient to justify an investigatory stop, the likelihood of criminal activity need not rise to the level required for probable cause, and it falls considerably short of satisfying a preponderance of the evidence standard. Although the concept of reasonable suspicion required to justify an investigatory stop is somewhat abstract, the United States Supreme Court has deliberately avoided reducing it to a neat set of legal rules.

In determining whether individualized suspicion is required to support a stop of a motorist’s vehicle, the United States Supreme Court considered the nature of the interests threatened and their connection to the particular law enforcement practices at issue. The Court is particularly reluctant to recognize exceptions to the general rule of individualized suspicion where governmental authorities primarily pursue their general crime control ends.

While subjective intentions on the part of police officers play no role in ordinary, probable-cause Fourth Amendment analysis, checkpoint stops may be relevant to the validity of Fourth Amendment intrusions undertaken pursuant to a general scheme without individualized suspicion. The United States Supreme Court determined that checkpoints set up for general crime

prevention, including drug interdiction, do not pass constitutional muster under the Fourth Amendment.

The United States Supreme Court noted that checkpoint cases only limited exceptions to the general rule that a seizure must be accompanied by some measure of individualized suspicion. An Anatomy of a Criminal Trial Most criminal trials follow a uniform set of procedures. The many rituals associated with modern trials have developed over centuries. America's common law heritage makes it possible for all states and the federal government to follow a largely uniform set of procedures. Assuming that the trial is carried out to completion, those procedures are as follows:

Decision on judge or jury. The defense decides whether it wants the case tried by a judge or a jury (the prosecution can't require a jury trial). Jury selection. If the trial will be held before a jury, the defense and prosecution select the jury through a question and answer process called "voir dire." In federal courts and many state courts, the judge carries out this process using questions suggested by the attorneys as well as questions that the judge comes up with on his or her own. Evidence issues.

The defense and prosecution request the court, in advance of trial, to admit or exclude certain evidence. These requests are called motions "in limine." Opening statements. The prosecution and then the defense make opening statements to the judge or jury. These statements provide an outline of the case that each side expects to prove. Because neither side wants to look foolish to the jury, the attorneys are careful to promise only what they think

they can deliver. In some cases the defense attorney reserves opening argument until the beginning of the defense case.

Prosecution case-in-chief. The prosecution presents its main case through direct examination of prosecution witnesses by the prosecutor. Cross-examination. The defense may cross-examine the prosecution witnesses. Redirect. The prosecution may re-examine its witnesses. Prosecution rests. The prosecution finishes presenting its case. Motion to dismiss (optional). The defense may move to dismiss the charges if it thinks that the prosecution has failed to produce enough evidence — even if the jury believes it — to support a guilty verdict. Denial of motion to dismiss.

Almost always, the judge denies the defense motion to dismiss. Defense case-in-chief. The defense presents its main case through direct examination of defense witnesses. Cross-examination. The prosecutor cross-examines the defense witnesses. Redirect. The defense re-examines the defense witnesses. Defense rests. The defense finishes presenting its case. Prosecution rebuttal. The prosecutor offers evidence to refute the defense case. Settling on jury instructions. The prosecution and defense get together with the judge and craft a final set of instructions that the judge will give the jury.

Prosecution closing argument. The prosecution makes its closing argument, summarizing the evidence as the prosecution sees it, and explaining why the jury should render a guilty verdict. Defense closing argument. The defense makes its closing argument, summarizing the evidence as the defense sees it, and explaining why the jury should render a not guilty verdict — or at

least a guilty verdict on a lesser charge. Prosecution rebuttal. The prosecution has the last word, if it chooses to do so, and again argues that the jury has credible evidence that supports a finding of guilty. Jury instructions.

The judge instructs the jury about what law to apply to the case and how to carry out its duties. (Some judges “ preinstruct” juries, reciting instructions before closing argument or even at the outset of trial.) Jury deliberations. The jury deliberates and tries to reach a verdict. Most states require unanimous agreement, but Oregon and Louisiana allow convictions with only 10 of 12 votes. Post-trial motions. If the jury produces a guilty verdict, the defense often makes post-trial motions requesting the judge to override the jury and either grant a new trial or acquit the defendant.

Denial of post-trial motions. Almost always, the judge denies the defense post-trial motions. Sentencing. Assuming a conviction (a verdict of “ guilty”), the judge either sentences the defendant on the spot or sets sentencing for another day. To read and printout a copy of the Form please link below.

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