ANTHONY BANDIERO, ESQ.

FLORIDA Search & Seizure Survival Guide

A FIELD GUIDE FOR LAW ENFORCEMENT

Blue to Gold

Florida Search & Seizure Survival Guide

A FIELD GUIDE FOR LAW ENFORCEMENT

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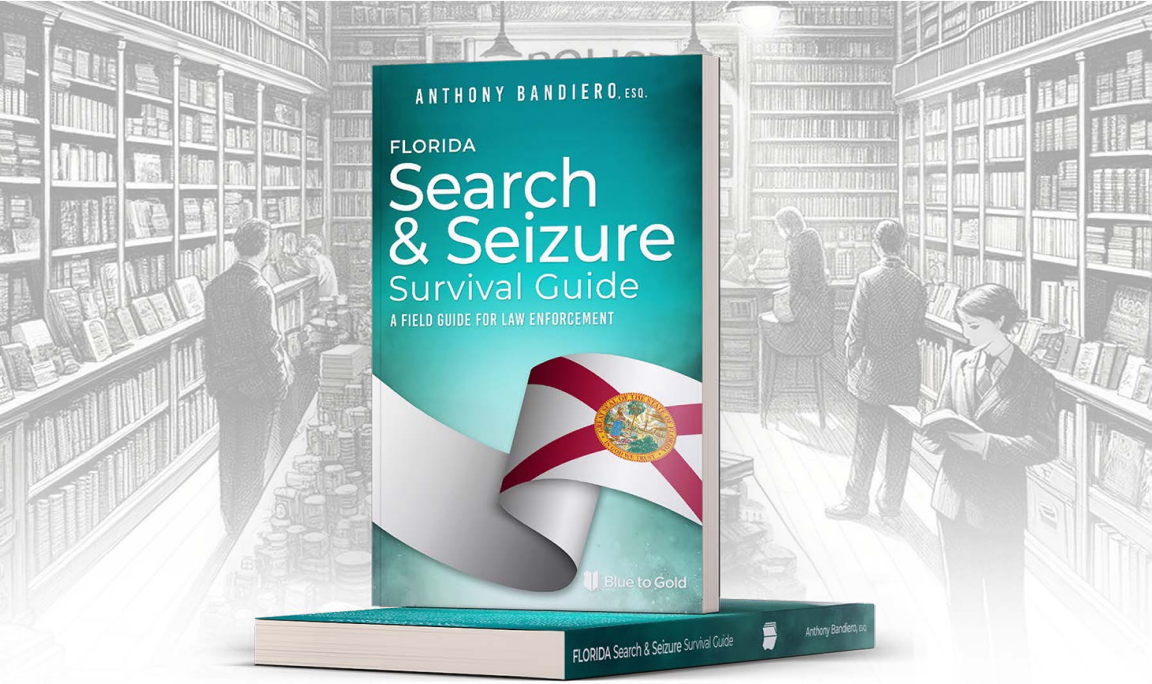
Note: This is a general overview of the classical and current United States court decisions related to search and seizure, liability, and confessions. As an overview, it should be used for a basic analysis of the general principles but not as a comprehensive presentation of the entire body of law. It is not to be used as a substitute for the opinion or advice of the appropriate legal counsel from the reader's department. To the extent possible, the information is current. However, very recent statutory and case law developments may not be covered.

Additionally, readers should be aware that all citations in this book are meant to give the reader the necessary information to find the relevant case. Case citations do not comply with court requirements and intentionally omit additional information such as pin cites, internal citations, and subsequent case developments. The citations are intended for police officers. Lawyers must conduct due diligence, read the case completely, and cite appropriately.



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— Anthony Bandiero

Overview

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We have an incredible warrior class in this
country - people in law enforcement…
and I thank God every night
we have them standing fast to protect us
from the tremendous amount of evil
that exists in the world.

— Brad Thor

Let’s Start with the Basics

Fourth Amendment

Out of all of the Bill of Rights, the Fourth Amendment is the most litigated. It is also the most important when it comes to your job as a police officer. At the core of every police action is the Fourth Amendment and you need to understand case law in order to do your job effectively and lawfully. That's what this book is all about.

Legal Standard

The Fourth Amendment is best understood in two separate parts:

Search and seizure clause:

1. The right of the people to be secure in their
2. persons, houses, papers, and effects,
3. against unreasonable searches and seizures,
4. shall not be violated, and

Search warrant clause:

1. no Warrants shall issue, but upon probable cause,
2. supported by Oath or affirmation,
3. and particularly describing the place to be searched,
4. and the persons or things to be seized.

Fifth Amendment

The Fifth Amendment is the most famous - because of Hollywood, everyone seems to know their rights. Yet, the Fifth Amendment is extremely complex. For example, how many times has a suspect complained that you didn't read them his Miranda rights after an arrest, even though you didn't interrogate him? Better yet, what if you forget to read someone his rights and he confesses? How do you fix that mistake? This book gives you these answers (Interview and Interrogation section).

Legal Standard

There are a lot of subsections to the Fifth Amendment, and you probably won't deal directly with any of them except #4, the right against self-incrimination (i.e. Miranda):

1. No person shall be held to answer for a capital, or otherwise infamous crime,
2. 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;
3. nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb;
4. nor shall be compelled in any criminal case to be a witness against himself,
5. nor be deprived of life, liberty, or property, without due process of law;
6. nor shall private property be taken for public use, without just compensation.

with the park manager. The Court said police transformed the situation into a government seizure.[67]

Consensual Encounters

[67] *Soldal v. Cook County*, 506 U.S. 56 (1992).

Consensual Encounters

The most common police encounter is the consensual one. You don't need a specific reason to speak with people and consensual encounters are a great way to continue an investigation when you have neither reasonable suspicion nor probable cause. As the Supreme Court said, "Police officers act in full accord with the law when they ask citizens for consent."[68]

Start a consensual encounter by asking a question: "Can I talk to you?" instead of giving an order, such as, "Come talk to me." Courts place a high premium on the determination that the interaction was "relaxed" and "conversational."[69] Also, your conduct during the encounter must be reasonable. Lengthy encounters full of accusatory questioning will likely be deemed an investigative detention, not a consensual encounter.

Finally, your un-communicated state of mind has zero bearing on whether the person would feel free to leave. Therefore, even if you had probable cause to arrest, this factor will not be considered as long as the suspect did not know that you intended to arrest him.

Legal Standard

A consensual encounter does not violate the Fourth Amendment when:

- A reasonable person would believe he was free to leave or otherwise terminate the encounter.[70] In other words, a reasonable person would have believed he was not detained.

[68] *United States v. Drayton*, 536 U.S. 194, 207 (2002).

[69] *United States v. Aponte*, 662 F. App'x 780, 786 (11th Cir. 2016) (Trooper "spoke in relaxed and conversational speech, he did not raise his voice, and he phrased his inquiries as requests rather than demands"); *see also United States v. Moran-Ramos*, No. 3:17-CR-52-J-20MCR, 2017 WL 9360897, at *2 (M.D. Fla. Oct. 12, 2017) (USBP Agent "never raised his voice above a conversational tone, the agents never threatened the Defendant[…], the agents never used physical force against the Defendant[…], the agents kept their firearms holstered during the conversation, and the agents never handcuffed the Defendant[.]"); *Garcia v. State*, 979 So. 2d 1189, 1193 (Fla. Dist. Ct. App. 2008) (court found consensual encounter where "exchanges were cordial and conversational"); *State v. Scott*, 786 So. 2d 606, 607 (Fla. Dist. Ct. App. 2001) (Officer's "normal conversational tone" supported the determination that interaction with motel maid theft suspect was a consensual encounter).

[70] *Florida v. Bostick*, 501 U.S. 429, 111 S. Ct. 2382 (1991).

Case Examples

Factors relevant to a determination of whether a police-citizen encounter is a consensual encounter or a Fourth Amendment "seizure" include:

(1) whether citizen's path is blocked or impeded; (2) whether identification is retained; (3) citizen's age, education and intelligence; (4) length of citizen's detention and questioning; (5) number of police officers present; (6) display of weapons; (7) any physical touching of citizen; and (8) language and tone of voice of police.[71]

Order to come over and talk is not consensual:

Suspect was observed near a closed daycare center late at night. Detective said, ""Yo, come here." The court concluded a reasonable person would not feel free to disobey that directive, given the command and the knowledge the detective was an officer in the middle of a police action in which four or five other officers were involved. The detective's words were more indicative of a command than a question; as such, the court concluded this was an investigatory stop and not a consensual encounter.[72]

Requesting to talk to a citizen, where there is no evidence to suggest the officer's manner was "coercive, oppressive, or dominating" and the officer did not "hinder or restrict the person's freedom to leave or freedom to refuse to answer", has consistently been determined to be a consensual encounter:

"Come here for a minute, can I talk to you?"[73], "Hey, come over here; I'd like to talk with you"[74], "You guys okay? What are you doing here so late?"[75], "Hey, may I talk to you for a minute"?[76] have all been determined to be initiators of a consensual encounter.

Repeating a request to speak with a subject does not convert a consensual encounter into an investigatory detention, as long as it is a request and there is no additional coercive police conduct:

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[71] *United States v. Perez*, 443 F.3d 772, 778 (11th Cir. 2006); *United States v. De La Rosa*, 922 F.2d 675, 678 (11th Cir.1991).

[72] *F.E.H., Jr. v. State*, 28 So. 3d 213, 216 (Fla. Dist. Ct. App. 2010).

[73] *Chapman v. State*, 780 So. 2d 1036, 1037 (Fla. Dist. Ct. App. 2001).

[74] *Lewis v. State*, 143 So. 3d 998, 1000 (Fla. Dist. Ct. App. 2014).

[75] *United States v. Perez*, 443 F.3d 772, 775 (11th Cir. 2006).

[76] *United States v. Cusick*, No. 8:11-CR-134-T-17TBM, 2012 WL 4194729, at *3 (M.D. Fla. Sept. 19, 2012), aff'd, 559 F. App'x 790 (11th Cir. 2014).

Officer who believed suspect was involved in a drug transaction, but lacked reasonable suspicion, asked suspect to come over to him. Suspect responded he was not doing anything wrong; when officer asked a second time, suspect walked over to him, resulting in a finding of plain view evidence. The court concluded that, as "there was nothing preventing [suspect] from continuing to walk away, no police equipment was used to intimidate [suspect], and there was only one officer who did nothing more than ask [suspect], twice, to come speak with him", a reasonable person would have felt free to ignore the officer's requests.[77] Compare these facts to the following: finding a seizure where, after subject ignored officer's first call, officer continued to call him by name, and ordered him to "hold it right there"[78]; finding a seizure where officer asked pedestrian to come speak with him and a second officer blocked the sidewalk which prevented pedestrian from continuing to walk away[79]; finding a seizure occurred when officers shined a spotlight, activated the patrol car's air horn, and repeatedly called to defendant.[80]

Suspect fit drug courier profile and police conduct was not a consensual encounter:

A suspect who fit the so-called "drug-courier profile" was approached at an airport by two detectives. Upon request, but without oral consent, the suspect produced for the detectives his airline ticket and his driver's license. The detectives, retaining the airline ticket and license, asked the suspect to accompany them to a small room approximately 40 feet away, and the suspect went with them. Without the suspect's consent, a detective retrieved the suspect's luggage from the airline and brought it to the room. When the suspect was asked if he would consent to a search of his suitcases, the suspect produced a key and unlocked one of the suitcases, in which drugs were found. Court found this was not a consensual encounter and suppressed the evidence.[81]

Even if police have probable cause, they can still seek a consensual encounter with the suspect:

Even assuming that probable cause existed at some earlier time, no violation of the Fourth Amendment will be found, as no Fourth

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[77] *State v. Albert*, 193 So. 3d 7, 11-12 (Fla. Dist. Ct. App. 2016).

[78] *Beckham v. State*, 934 So.2d 681 (Fla. 2d DCA 2006).

[79] *Young v. State*, 982 So.2d 1274, 1275 (Fla. 4th DCA 2008).

[80] *Oslin v. State*, 912 So.2d 672, 675 (Fla. 5th DCA 2005).

[81] *Florida v. Royer*, 460 U.S. 491, 103 S. Ct. 1319 (1983).

Amendment privacy interests are invaded when an officer seeks a consensual interview with a suspect.[82]

Consensual encounter and search valid after officer released driver following a traffic stop:

Where the officer stopped a vehicle to issue a traffic citation, concluded the traffic stop, indicated to the driver that she was free to leave, but then asked if the driver had drugs and whether or not the officer could search the vehicle, consent to search was voluntary.[83] Many cops call this move the "trooper two-step" – it's more than just a seductive dance move. After releasing the offender, the officer will turn towards his patrol car, stop, turn around, and in a Columbo-like manner say, "Sir, can I ask one more question before you leave..." It's a solid way to separate the stop from the consensual encounter.[84]

Violation of a state law does not equal automatic Fourth Amendment violation:

Although officers may have violated Florida state law requirements - which permit boarding a vessel for a safety inspection only if there is consent or probable cause to believe a crime is being committed - that circumstance did not require the suppression of over 100 pounds of marijuana under the Fourth Amendment.[85] The Supreme Court decided that Florida law, and not federal law or any decision of the Court, is responsible for "the untoward result in this case."[86]

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[82] *Delhall v. State*, 95 So. 3d 134 (Fla. 2012).

[83] *State v. Sosa*, 932 So.2d 582, 584 (Fla. 5th DCA 2006); *Crist v. State*, 98 So. 3d 81, 83 (Fla. Dist. Ct. App. 2012).

[84] *See United States v. Zapata*, 180 F.3d 1237, 1240 (11th Cir. 1999).

[85] *Fla. v. Casal*, 462 U.S. 637, 638–39 (1983); *see also Olmstead v. United States*, 277 U.S. 438 (1928) (holding that a violation of state law does not render evidence excludible, since the exclusionary rule operated only on evidence seized in violation of the Constitution).

[86] *Fla. v. Casal*, 462 U.S. at 637 (Burger, C.J., concurring); *see, e.g., Sherman v. State*, 419 So. 2d 375, 376 (Fla. Dist. Ct. App. 1982) ("The officers unquestionably were authorized by Section 371.58, Florida Statutes (1979), to board the motor boat once they had probable cause to believe that a violation of Chapter 371 had occurred. We consider that the marine patrol officers clearly possessed such belief since neither of the two appellants were able to produce the certificate of registration generally required of all motorboats using the waters of this state, *see* Sections 371.041 and 371.051(4), Florida Statutes (1979), or give a reason why the boat was exempt from the numbering provisions of Chapter 371. *See* Section 371.131.").

Knock and Talks

There is no Fourth Amendment violation if you try to consensually contact a person at his home. The key to knock and talks is to comply with social norms. Think about it this way - if the Girl Scouts could do it, you can too.

You must be reasonable when you contact the subject. Constant pounding on the door, for example, would likely turn the encounter into a detention if the subject knows that it's the police knocking (an objectively reasonable person would believe that police are commanding him to open the door). Additionally, waking a subject up at 4 a.m. has been viewed as a detention requiring reasonable suspicion (see below). In other words, if the Girl Scouts wouldn't do it, then it's probably unreasonable.

What about "No Trespassing" signs? You can usually ignore them because trying to have a consensual conversation with someone is not typically considered trespassing. Same goes with "No Soliciting" signs.

Legal Standard

Knock and talks are lawful when:

- The path used to reach the door does not violate curtilage and appears available for uninvited guests to use;
- If the house has multiple doors, you chose the door reasonably believed to be available for uninvited guests to make contact with an occupant;
- You used typical, non-intrusive methods to contact the occupant, including making contact during a socially-acceptable time;
- Your conversation with the occupant remained consensual; and
- When the conversation ended or was terminated, you immediately left and didn't snoop around.

Case Examples

Time of day is not the only factor a court will consider with regard to the reasonableness of a knock and talk, but it is significant:

Deputies initiated a "knock and talk" encounter in the early morning hours. Although not dispositive, the lateness of the hour "add[s] to the intimidating circumstance[s]" faced by defendants.[87]

Knock and talk at 4 a.m. held invalid:

Officers went to suspect's residence at 4 a.m. with the sole purpose to arrest him. There was no on-going crime and the probable cause was based on an offense that occurred the previous night. Court found a violation of "knock and talk" because officers exceeded social norms.[88]

Knock and talk at 1:30 a.m. held to be valid:

Knock and talk at 0130 hours was held to be valid where officers were attempting to contact the owner of a motorcycle involved in a 90mph pursuit 30 minutes prior. In so holding, the court considered that the motorcycle's engine was still hot; the motorcycle appeared to be the same involved in a nearby, recent assault and battery with a loaded firearm; the motorcycle was registered out of an adjoining city; the nearest apartment to the motorcycle was the only one that had lights illuminated; and the deputy delivered three to six raps on the door.[89]

Command to open door was not a consensual encounter:

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[87] *Hardin v. State*, 18 So. 3d 1246, 1248 (Fla. Dist. Ct. App. 2009).

[88] *United States v. Lundin*, 817 F.3d 1151 (9th Cir. 2016); *see also French v. Merrill*, 15 F.4th 116 (1st Cir. 2021) (Court found officers' conduct unlawful in going beyond a single warrantless knock-and-talk while attempting to get arrestee to come to door of his house, including four reentries onto property and attempts at a window in the early morning hours. This right was clearly established at the time of the event; thus, officers were not entitled to qualified immunity from arrestee's claim of violation of his Fourth Amendment rights; there was no implicit social license to invade the curtilage repeatedly, forcefully knock on front door and bedroom window frame, and urge arrestee to come outside, all in pursuit of a criminal investigation).

[89] *Young v. Borders*, 850 F.3d 1274, 1285–86 (11th Cir. 2017) ("Although the officers in this case positioned themselves in front of the only exit to Apartment 114 with their guns drawn, the LCSO officers did not order [residents] out of their apartment[.] [T]here is no evidence to show that [residents] even knew that the officers had their guns drawn. Further, there is no evidence presented... to show that the officers would not have permitted [residents] to stay in Apartment 114; to the contrary, the unrebutted testimony in this case is that the officers would have been required to leave if nobody answered the door. The only activity outside of the apartment that [residents] knew of was that someone had knocked on their door loudly. As discussed above, this is not such a 'show of authority' that would permit [residents] to believe they would not have been permitted to stay inside their apartment.").

Officers knocked "loudly" and continuously for approximately two minutes, "accompanied by repeated announcements that it was the police at the door". Suspect's mother opened the side door while another occupant (the mother's boyfriend) opened the front door. Court concluded officers violated the occupants' Fourth Amendment rights by ordering them from their home.[90]

Constant pressure to consent to search held unlawful:

During knock and talk officers continued to press defendant for permission to enter and search. Later consent-to-search was product of illegal detention.[91]

Officer's statement that he didn't need a warrant to talk with occupant found to have tainted consent to enter:

Officers made contact with a suspected alien at his apartment. The officers asked to enter the apartment, and the occupant asked whether they needed a warrant for that. The officers said they "didn't need a warrant to talk to him." Based on the totality of the circumstances, the consent was involuntary, since a reasonable occupant would have thought that police didn't need a warrant to enter and talk.[92]

Unless there is an express order otherwise, officers have the same right to knock and talk as a pollster or salesman:

Consensual encounters may also take place at the doorway of a home. "Absent express orders from the person in possession against any possible trespass, there is no rule of private or public conduct which makes it illegal per se, or a condemned invasion of the person's right of privacy, for anyone openly and peaceably, at high noon, to walk up the steps and knock on the front door of any man's 'castle' with the honest intent of asking questions of the occupant thereof - whether the questioner be a pollster, a salesman, or an officer of the law."[93]

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[90] *Calloway v. State*, 118 So. 3d 277, 278 (Fla. Dist. Ct. App. 2013).

[91] *Hardin v. State*, 18 So. 3d 1246, 1250 (Fla. Dist. Ct. App. 2009) ("[R]epeated requests for consent may be significant in showing that the ostensible request was in reality a demand" and when "an individual is informed of the suspicions of the police in a hectoring manner... the specter of coercion may arise.") (*citing Luna–Martinez v. State*, 984 So.2d 592, 600-01 (Fla. 2d DCA 2008)).

[92] *Orhorhaghe v. I.N.S.,* 38 F.3d 488 (9th Cir. 1994).

[93] *United States v. Tobin,* 923 F.2d 1506, 1511 (11th Cir. 1991) (*citing Davis v. United States*, 327 F.2d 301, 303 (9th Cir. 1964)).

Assuming a "tactical position"[94] does not invalidate a knock and talk where legitimate safety concerns are recognized:

Agents initiated an encounter to investigate an illegal alien's possession of a rifle. As agents approached, the defendant retreated back into his home and locked the door. The court concluded the agents' positioning themselves alongside the residence did not convert a consensual "knock and talk" into a contact implicating the Fourth Amendment.[95]

[94] *Young v. Borders*, 850 F.3d 1274, 1299 (11th Cir. 2017).

[95] *United States v. Lara-Mondragon*, 516 F. App'x 771, 773 (11th Cir. 2013).

Investigative Activities During Consensual Encounter

Just because you're engaged in a consensual encounter doesn't mean you can't investigate; however, be careful as to how you go about it. Be cool, low key, and relaxed. Make small talk and just present yourself as a curious cop versus someone looking to make an arrest (though that may be your goal).

During a consensual encounter, there are really three investigative activities in which you can engage: questioning, asking for ID, and seeking consent to search.

"[L]aw enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, and asking him if he is willing to answer some questions, [or] by putting questions to him if the person is willing to listen."[96]

Asking for ID and running a subject for warrants doesn't automatically convert an encounter into a detention.[97] Hint: return ID as soon as possible so that a reasonable person would still "feel free" to leave.[98]

Legal Standard

Questioning:

Questioning a person does not convert a consensual encounter into an investigative detention as long as:

[96] *Florida v. Royer*, 460 U.S. 491, 497 (1983).

[97] *June v. State*, 131 So. 3d 2, 4 (Fla. Dist. Ct. App. 2012).

[98] *U.S. v. Perez*, 443 F.3d 772, 778 (11th Cir. 2006) (*citing United States v. Drayton,* 536 U.S. 194, 200-01 (2002) ("If a reasonable person would feel free to terminate the encounter, then he or she has not been seized"); *see also Horne v. State*, 113 So.3d 158, 161 (Fla. 2d DCA 2013) (Retention of a defendant's driver's license when the officer asks for consent to search should be heavily factored in determining the nature of the encounter); *United States v. De La Rosa*, 922 F.2d 675, 678 (11th Cir. 1991)("Factors relevant to this inquiry include, among other things: 'whether a citizen's path is blocked or impeded; **whether identification is retained**; the suspect's age, education and intelligence; the length of the suspect's detention and questioning; the number of police officers present; the display of weapons; any physical touching of the suspect, and the language and tone of voice of the police.'") (emphasis added).

- Your questions are not overly accusatory in a manner that would make a reasonable person believe they were being detained for criminal activity.

Identification:

Asking a person for identification does not convert a consensual encounter into an investigative detention as long as:

- The identification is requested, not demanded; and
- You returned the identification as soon as practicable; otherwise, a reasonable person may no longer feel free to leave.

Consent to search:

Asking a person for consent to search does not convert the encounter into an investigative detention as long as:

- The person's consent was freely and voluntarily given;
- He has apparent authority to give consent to search the area or item; and
- You did not exceed the scope provided, expressed or implied.

Case Examples

Questioning:

At around 9:00–9:30 a.m., officer was patrolling an area where a burglary had been reported several days earlier. Officer spotted Defendant riding his bicycle. She stopped her patrol car and approached. She inquired why the defendant was in the area. Defendant stated he was visiting a friend, but was unable to tell the officer where the friend lived. Officer told the defendant there had been burglaries in the area and he should stay out of the area if he had no legitimate reason to be there. Defendant said he would and rode away. The court concluded that, as "an officer may approach a defendant on a public street and ask questions of the defendant[, this contact was] nothing more than a consensual encounter."[99]

Identification:

Defendant was riding his bicycle when officer pulled his car off to the side of the road behind defendant without activating his patrol

[99] *A.L. v. State*, 133 So. 3d 1239, 1240 (Fla. Dist. Ct. App. 2014); *see, e.g., D.T. v. State,* 87 So.3d 1235, 1238 (Fla. 4th DCA 2012). This is true even where the defendant is on a bike and stops to speak with the officer. *See State v. Davis*, 543 So.2d 375, 376 (Fla. 3d DCA 1989).

light. Officer exited his vehicle and, without ordering defendant to stop, began conversing with him. Officer asked defendant if he had identification, at which point defendant handed him his identification card; officer conducted a records check through dispatch, but handed the identification card back to defendant while officer waited for a return. The court concluded that nothing about the interaction at this point indicated it was anything more than a "mere" consensual encounter.[100]

Consent to Search:

Government has the obligation to prove consent was voluntary and not "mere acquiescence to police authority".[101] Officer approached subject loitering behind bar at 1100 hours, but did not suspect him of any criminal activity. As the officer approached, the subject stuck his hands in the top of his elastic waistband and, in response to officer's question, explained he always placed his hands down the front of his pants. When officer requested suspect pull his waistband forward so that the officer could observe the inside of his clothing, the consensual encounter became an investigatory stop; a reasonable person would not believe that they were free to leave or to disobey a uniformed officer's request to pull open their clothing in such a manner that the officer could observe the inside of their clothing.[102]

[100] *June v. State*, 131 So. 3d 2, 4 (Fla. Dist. Ct. App. 2012).

[101] *Alvarez v. State*, 515 So.2d 286, 288 (Fla. 4th DCA 1987).

[102] *Williams v. State*, 694 So. 2d 878, 879 (Fla. Dist. Ct. App. 1997).

Investigative Detentions

Specific Factors to Consider

In determining whether you have reasonable suspicion, consider the below-listed factors. If one or more of these factors exist, articulate them in your report.

Remember that courts use the "totality of the circumstances" test when determining whether you had reasonable suspicion to detain a person. Therefore, it is in your best interest to articulate as many factors as possible in your report. That way, courts have enough information to rule in your favor.

Legal Standard

Specific factors you should consider include:

- Nighttime: Activity late at night, especially in residential areas, is often more suspicious than in daytime;[147]
- High-crime area: An area's reputation for criminal activity is an appropriate factor in assessing R.S.:[148]
- Identity profiling: Race, age, religion, etc. may only be used to support R.S. if you have specific suspect attributes;
- Unprovoked flight: Flight is a significant factor in assessing R.S., and combined with another factor, like a high-crime area, may justify a detention;[149]
- Training and experience: Your training and experience is possibly one of the most important factors in assessing reasonable suspicion. For example, if you believe a suspect is lying, this can help establish R.S. or P.C.[150] Still, the key is to translate these experiences in your report. The court needs to know what you know.[151] Otherwise, what separates you from John Q Citizen? Articulate, articulate, articulate!
- Criminal profiles: Courts are cautious about giving cops authority to detain a person simply because he fits a

[147] *Grayson v. State*, 212 So. 3d 481, 484 (Fla. Dist. Ct. App. 2017).

[148] *C.E.L. v. State*, 24 So. 3d 1181, 1195 (Fla. 2009).

[149] *Illinois v. Wardlow*, 528 U.S. 119 (2000).

[150] *See Devenpeck v. Alford*, 543 U.S. 146 (2004).

[151] *Calhoun v. State*, 308 So. 3d 1110, 1113-1114 (Fla. Dist. Ct. App. 2020) ("Factors that may be considered when determining whether an officer had reasonable suspicion to justify an investigative stop include the time of day, the suspect's behavior, the manner of a vehicle's operation, and anything unusual about the situation based on the officer's experience").

"criminal profile." Therefore, use "criminal profiles" only in connection to contemporaneous facts and circumstances that would lead a reasonable officer to believe criminal activity is afoot, and don't rely on race or ethnicity characteristics unless you have intel that a specific suspect possesses those traits;[152]

- Information from reliable sources: You can use information from reliable sources. Reliable sources include fellow police officers, citizen informers not involved in criminal conduct, confidential informants if proved reliable, and so forth;[153]
- Anonymous tips: If a reliable source provides information, but they don't want to get involved or be known, they are not truly "anonymous" since you know who they are. A true anonymous tip is from someone whose identity is unknown. Before acting on anonymous tips, you need to prove the information is reliable through an independent investigation;[154]
- 9-1-1 calls: The Supreme Court has held that 9-1-1 callers are rarely "anonymous" because dispatch can trace the call and tipsters can be charged with a false report.[155] Still, whether or not you can make the stop depends on the totality of the circumstances.

Case Examples

Presence in high-crime area, by itself, is not RS:

Officers did not have reasonable suspicion to detain or search the defendant on nothing more than the defendant's proximity to a high-crime area. The defendant's presence near a "No Trespassing" sign in a high crime area carried little weight as there was no be-on-the-lookout (BOLO) report with defendant's description, defendant was not observed to have an equipment or moving violation related to his automobile, and officer did not recognize defendant as someone who had previously trespassed.[156]

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[152] *United States v. Sokolow*, 490 U.S. 1, 109 S. Ct. 1581 (1989).

[153] *Pesce v. State*, 288 So. 2d 264 (Fla. Dist. Ct. App. 1974).

[154] *Alabama v. White*, 496 U.S. 325 (1990).

[155] *See Navarette v. California*, 572 U.S. 393 (2014).

[156] *Leroy v. State*, 982 So. 2d 1250 (Fla. Dist. Ct. App. 2008); *See also Palmer v. State*, 112 So. 3d 606 (Fla. Dist. Ct. App. 2013) (Defendant's presence in front of two buildings in high-crime area with "no trespassing" signs posted did not create reasonable suspicion to detain him, even combined with his flight after officers announced their presence, as there was neither evidence defendant attempted to enter buildings, nor that either officer believed the defendant was about to attempt entry).

"Hand-to-Hand movements" in a high-crime area, without more, is not RS:

Officer observed subject and another man engaged in what appeared to be a hand-to-hand transaction, but stated he did not know what, if anything, was actually exchanged. Officer conducted a traffic stop of the vehicle, at which point the driver threw rock cocaine out of the window of his truck. The court concluded, "In those instances where no contraband was observed, the officer was deemed to have had only a 'bare' rather than a 'reasonable' suspicion that the defendant was engaged in criminal activity. Accordingly, the subsequent stop would be illegal."[157]

[157] *Messer v. State*, 609 So. 2d 164, 165 (Fla. Dist. Ct. App. 1992); *see also State v. Clark*, 605 So.2d 595 (Fla. 2d DCA 1992); *Stanton v. State*, 576 So.2d 925 (Fla. 1st DCA); *Stevenson v. State*, 565 So.2d 858 (Fla. 2d DCA 1990); *Peabody v. State*, 556 So.2d 826 (Fla. 2d DCA 1990).

Detaining a Suspect

If you have an articulable reasonable suspicion that a suspect is, was, or is about to be involved in criminal activity, you may briefly detain him in order to "maintain the status quo" and investigate.[158] Courts use the "status quo" language because it implies that you are not really doing anything to the suspect, besides taking some of his time. This distinction is important because all Fourth Amendment intrusions must be reasonable. If all you are doing is temporarily detaining a suspect, versus conducting a full search or other arrest-like behavior, then it's more likely to be considered reasonable.

Legal Standard

A suspect may be detained when:

- You can articulate facts and circumstances that would lead a reasonable officer to believe that the suspect is, was, or is about to be, involved in criminal activity;
- You use the minimal amount of force necessary to detain a cooperative suspect;
- Once the stop is made, you must diligently pursue a means of investigation that will confirm or dispel your suspicions;
- If your suspicions are dispelled, the person must be immediately released or the stop converted into a consensual encounter.

Case Examples

Long wait for K9 held reasonable under the circumstances:

A 30-minute wait for a drug dog was not unreasonable after trooper developed R.S. for narcotics and acted diligently in pursuit of his investigation.[159]

Detention of man walking behind a closed store at approximately 2030 hours did not constitute R.S.:

Officer observed two subjects walking behind a closed store at 8:30pm. Officer asked them for identification, and one provided a false name. After officer ascertained that subject's correct name and

[158] *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968).

[159] *United States v. Anguiano*, 791 F. App'x 841, 852 (11th Cir. 2019).

age, he patted both subjects down and found prescription pills, a small amount of marijuana, and a pipe. The court concluded that walking behind a closed business in the evening was insufficient to justify a reasonable suspicion of criminal activity.[160]

Detention of man with an axe at 3 a.m. reasonable:

Cops had R.S. to stop a man with an axe at 3 a.m., though no "axe crimes" were reported. "Some activity is so unusual...that it cries out for investigation."[161]

[160] *Berry v. State*, 973 So. 2d 1255, 1256 (Fla. Dist. Ct. App. 2008).

[161] *People v. Foranyic*, 64 Cal.App.4th 186 (Cal. Ct. App. 1998) ("A consensus seems to have developed that recognizes the inadvisability of wielding an ax in darkness. Nor can we ignore the long history of the ax as a weapon. While no one refers to a 'gun-murderer' or 'knife-murderer' or 'crowbar-murderer', the equivalent usage with regard to an ax is well ensconced in American usage. The ax, like the machete and the straight razor, is an implement whose unfortunate utility as a weapon sometimes overshadows its value as a tool"); *Shaw v. City of Selma*, 241 F. Supp. 3d 1253, 1271 (S.D. Ala. 2017), aff'd, 884 F.3d 1093 (11th Cir. 2018) ("[I]t is abundantly clear from the photograph that the hatchet in question was not a toy and not an implement to be trifled with. It was obviously a deadly weapon, capable of inflicting severe bodily harm or death.").

Officer Safety Detentions

The vast majority of investigative detentions occur because you believe the person detained is involved in criminal activity. However, a detention based on a concern for officer safety may also establish reasonable suspicion to support an investigatory stop.[162] These detentions are often for people connected to the target suspect, such as lookouts.

Legal Standard

A subject may be detained for officer safety when:

- You can articulate facts and circumstances that would lead a reasonable officer to believe the subject is a potential danger;
- You use the minimal amount of force necessary to detain the subject; and,
- Once a patdown is conducted and no weapons are discovered, the subject should be released or the encounter converted to a consensual one, unless the subject poses another risk, such as wanting to physically attack the officers.

Case Examples

Detention based on legitimate officer safety concerns upheld:

"Although general concern about safety won't suffice, a 'temporary detention of an individual may be justified by an officer's specific concern for his own safety.'" The court recognized that "an officer who is put in fear of his or her safety would be justified in ordering a person out of a vehicle even in the absence of reasonable suspicion [of criminal activity]", and held that in "determining whether an officer acted reasonably under the circumstances, courts must give due weight to the specific reasonable inferences which officers are entitled to draw from the facts in light of their experience[.]"[163]

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[162] *Gentles v. State*, 50 So. 3d 1192, 1197 (Fla. Dist. Ct. App. 2010).

[163] *McCray v. State*, 177 So. 3d 685 (Fla. Dist. Ct. App. 2015) (detention of defendant supported by reasonable concerns for officer safety; although officer did not have reasonable suspicion of criminal activity, defendant arrived unexpectedly at home of known drug dealers while law enforcement was serving a search warrant, the early morning hour was an unusual time for a social visit, officer observed defendant acting nervously and hiding his hand between the driver's seat and the center console of the vehicle, and when an officer asked defendant whether he possessed firearms or drugs, defendant did not respond).

Arrests

Lawful Arrest

Officers make millions of warrantless arrests every year. Though there may be additional state laws in play (e.g. cannot arrest for misdemeanor not committed in your presence), the 4th Amendment is not violated as long as you have probable cause, authority to make the arrest, and lawful access to the suspect.[229]

You are not required to obtain an arrest warrant when the suspect is located in a public place.[230] A public place is any place you have a lawful right to be.[231]

Additionally, the arrest is lawful even if the charged offense is dropped for lack of probable cause as long as there was probable cause for another offense, even if uncharged.[232]

Legal Standard

A lawful arrest has three elements:

- You must have probable cause that a crime has been committed;
- You need legal authority to make the arrest; and
- You must have lawful access to the suspect.

There are two ways to effect an arrest:

- You use any physical force with the intent to arrest; or
- You make a show of authority sufficient that a reasonable person would believe he was under arrest.

Case Examples

If the arrest is based on probable cause, arrest is constitutional:

"The standard of probable cause applies to all arrests, without the need to 'balance' the interests and circumstances involved in particular situations. If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in

[229] *Virginia v. Moore*, 553 U.S.164 (2008).
[230] *United States v. Watson*, 423 U.S. 411 (1976).
[231] *People v. Patterson*, 156 Cal. Rptr. 518 (Cal. App. 2d Dist. 1979).
[232] *Devenpeck v. Alford*, 543 U.S. 146 (2004).

his presence, he may, without violating the Fourth Amendment, arrest the offender." Note: still abide by your agency/state rules.[233]

Warrantless arrest inside private office unlawful:

It was illegal for police, without consent, exigent circumstances, or a warrant, to go past a receptionist and enter the locked office of an attorney to arrest him for selling cocaine.[234]

Probable cause existed to search based on belief that spare tire contained drugs:

A police officer had probable cause to lower spare tire on defendant's vehicle and cut it open, where the tire was hanging lower than normal, it was clean while the rim was salty and dirty, the tire had fingerprints and tool marks where the rim and tire met, the tire was a different brand and larger than the other four tires on the vehicle, the results of the "echo test" performed on the spare tire were consistent with the presence of contraband hidden therein, there were four cans of Fix-A-Flat Tire Sealant in the vehicle (which was unusual, considering the vehicle was a rental), the tire was extraordinarily heavy, and the officer had experience with drugs being transported in spare tires.[235]

Probable cause existed based on smelling "burnt" marijuana even though only "fresh" marijuana was discovered:

A police officer's testimony that he smelled the odor of burning marijuana and saw smoke coming out of the truck parked in defendant's driveway, was not required to be corroborated by physical evidence of burnt marijuana from inside the truck in order to show that the officer had probable cause to conduct the warrantless search of the truck, where the officer's failure to locate ash or burnt marijuana cigarettes inside the truck did not render his testimony inherently incredible, since officers did find over 350 grams of non-burnt marijuana inside the truck.[236]

Suspect must be physically touched or submit to your authority:

"There can be no arrest without either touching or submission." Therefore, if suspect runs away, he is not arrested until you catch him.[237]

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[233] *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001).

[234] *People v. Lee*, 186 Cal. App. 3d 743 (Cal. App. 4th Dist. 1986).

[235] *U.S. v. Lyons*, 510 F.3d 1225 (10th Cir. 2007).

[236] *Gilliam v. U.S.*, 46 A.3d 360 (D.C. 2012).

[237] *California v. Hodari D.*, 499 U.S. 621 (1991).

Entry into Home with Arrest Warrant

An arrest warrant allows an officer to not only arrest the suspect in a public place, but inside his home as well. In essence, the arrest warrant is really two warrants: a warrant to arrest the suspect and a warrant to search for the suspect at his home. However, before entering a suspect's home you must have reason to believe he is presently home and knock and announce before entering. Of course, the warrant does not authorize a search for evidence, but plain view seizures are permissible.

Make no mistake, arrest warrants are powerful tools for law enforcement officers to arrest wanted suspects. Finally, these rules apply equally to all criminal arrest warrants, whether for a misdemeanor or felony.

Legal Standard

Entry into a home based on an arrest warrant is lawful when:

- You have probable cause that this is the suspect's home, and not a third party's home (get a search warrant for third party homes);
- You have reason to believe the suspect is home;
- You knock and announce;
- If appropriate, protective sweeps are permissible; and
- You may look for the suspect in people-sized places, but not search for evidence: however, plain view seizure applies.

Case Examples

Arrest warrant allows entry into suspect's home, not third party's:

"Thus, for Fourth Amendment purposes, an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within... [but] is plainly inapplicable when the

police seek to use an arrest warrant as legal authority to enter the home of a third party to conduct a search.[238]

[238] *Steagald v. U.S.*, 451 U.S. 204, 215 (1981).

Warrantless Entry to Make Arrest

You cannot make a warrantless entry into a home to make an arrest without consent or exigency.[239] Even if the arrest was for a violent triple-murder, you would have to articulate consent or exigency before entering.

Legal Standard

A warrantless entry into a home to make an arrest may be made under five circumstances:

Consent:

- You may enter if you have consent from an occupant with apparent authority over the premises and you make known your intent to arrest the suspect.

Hot Pursuit:

- You are in hot pursuit of a suspect believed to have committed an arrestable offense and he runs into a home (a surround and call-out may also be done for officer safety purposes).

Fresh Pursuit:

- You are in fresh pursuit of the suspect after investigating a serious violent crime and quickly trace the suspect back to his home.

Suspect will Escape:

- You have probable cause that the suspect committed a serious violent crime, and you reasonably believe he will escape before obtaining a warrant.

Undercover Officer - Immediate Re-entry with Arrest Team:

- You are an undercover officer and conduct a narcotics transaction inside the home. You may leave and immediately re-enter with an arrest team when two conditions are met. First, there must be a legitimate officer safety reason why you had to leave before summoning the arrest team into the home. Second, you must articulate that an exigency exists, such as destruction or loss of evidence.

Remember, for all Uninvited Entries:

- Knock and announce rules apply; and

[239] *Payton v. New York*, 445 U.S. 573 (1980).

- You cannot search for evidence, but may make a plain view seizure.

Case Examples

Entry to make any arrest, even for murder, requires consent, exigency, or a warrant:

"To be arrested in the home involves not only the invasion attendant to all arrests but also an invasion of the sanctity of the home. This is simply too substantial an invasion to allow without a warrant, at least in the absence of exigent circumstances, even when it is accomplished under statutory authority and when probable cause is clearly present."[240]

Additional officers may enter if undercover officer is inside the residence:

An informant and undercover police officer went to defendant's residence to arrange a drug transaction. Defendant showed the pair a bag containing cocaine. The pair left the residence and returned with another agent, who was the purported purchaser. The door had been left ajar, so officers entered the residence and arrested defendant.[241]

Delayed entry unlawful without exigency:

An undercover officer was voluntarily admitted into a home to purchase illegal firearms, but he walked back outside to signal uniformed officers. Officers entered to arrest defendants within the house without obtaining arrest warrants and seized the weapons in their subsequent search of the house. The court held that the officer's re-entry without consent, in the absence of exigent circumstances, rendered the arrest and the search incident thereto unlawful.[242]

Immediate re-entry lawful to prevent destruction of evidence:

DEA agent signaled other agents after he came out of house in which defendants remained with cocaine, immediate reentry with minimum disturbance was necessary to prevent destruction of cocaine, and agents' failure to "knock and announce" did not render their actions an illegal search and seizure requiring suppression of evidence.[243]

Immediate re-entry lawful:

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[240] *United States v. Reed*, 572 F.2d 412, 423 (2d Cir. 1978).

[241] *Toubus v. Superior Court*, 114 Cal. App. 3d 378 (Cal. App. 1st Dist. 1981).

[242] *People v. Garcia*, 139 Cal. App. 3d Supp. 1 (Cal. App. Dep't Super. Ct. 1982).

[243] *United States v. Dohm*, 597 F.2d 535 (5th Cir. 1979), on reh'g, 618 F.2d 1169 (5th Cir. Fla. 1980).

Warrantless arrest of defendant in his residence upheld when defendant had consented to initial entry by police officer, during which time defendant committed crime in officer's presence, after which officer left and immediately re-entered with other officers to arrest defendant.[244]

[244] *People v. Cespedes*, 191 Cal. App. 3d 768 (Cal. App. 1st Dist. 1987).

Vehicles

General Rule

You may stop a vehicle if you have reasonable suspicion or probable cause that an offense has been, or will be, committed. It doesn't matter what you subjectively thought about the driver or passengers (unless racial profiling). What matters is objective reasonableness. However, it would be unlawful to unreasonably extend the stop while you pursue a hunch. If you develop reasonable suspicion that the occupants are involved in criminal activity, then you may diligently pursue a means of investigation that will confirm or dispel those suspicions.

Legal Standard

A vehicle may be lawfully stopped if:

- There is a community caretaking purpose;
- You have reasonable suspicion for any occupant; or
- You have probable cause for any occupant.

Note: The scope of a traffic stop is similar to an investigative detention. Therefore, the officer must diligently pursue the reason for the stop and not measurably extend the stop for reasons unrelated to the original reason for the stop unless additional reasonable suspicion or probable cause develops.

Case Examples

Stop by undercover narcotics officers for minor violation upheld:

D.C. detectives in an unmarked vehicle had a hunch that two suspects were dealing narcotics. The only violation they observed was failure to use a turn signal. The stop violated a policy that unmarked vehicles could only make stops for serious crimes. Drugs were observed in plain view. The Supreme Court held that the subjective mindset of the officers was irrelevant as long as the initial stop was legal[319] - and a violation of a department policy does not affect Fourth Amendment analysis.

[319] *Whren v. United States*, 517 U.S. 806 (1996).

Scope of Stop Similar to an Investigative Detention

The scope of a routine traffic stop is similar to an investigative detention. As one court stated, this is because "the usual traffic stop is more analogous to a so-called 'Terry stop' than to a formal arrest."[320]

It also makes sense that a DUI stop will take longer than an equipment violation. Also, a traffic stop will last longer if you're writing a ticket rather than just giving a verbal warning. Remember, as long as you're diligently working on the original reason for the stop you should be fine. However, once that reason for the stop is over, the driver must be allowed to leave.[321]

Finally, you may ask miscellaneous questions without additional reasonable suspicion, but those inquires must not measurably extend the stop.

Legal Standard

The duration of a traffic stop is determined by these factors:

- Once the stop is made, you must diligently pursue the reason for the traffic stop;
- Unrelated questioning must not prolong the stop unless additional reasonable suspicion or probable cause develops.[322]

Case Examples

Stop was not measurably extended by asking about drug possession:

Officer did not exceed the scope of the stop by inquiring if defendant had drugs or weapons in his possession even though the reasonable suspicion leading to the stop concerned a robbery. Based on the

[320] *Berkemer v. McCarty*, 468 U.S. 420 (1984).

[321] *United States v. Salzano*, 1998 U.S. App. LEXIS 17140 (10th Cir. Kan. 1998).

[322] In determining whether the extension of a stop is justified by reasonable suspicion of criminal activity, a court "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." *United States v. Arvizu*, 534 U.S. 266, 273 (2002).

driver's answers, reasonable suspicion developed for drug possession.[323]

A traffic stop can be prolonged even if done expeditiously – basically, the "measurably extend" standard established by *Arizona v. Johnson* [324] has been replaced by *Rodriguez's* "prolong" standard[325]:

A traffic stop is unlawfully prolonged when an officer, without reasonable suspicion, diverts from the original mission of the traffic stop and adds time to the stop to pursue other crimes; in other words, to unlawfully prolong, the officer must (1) conduct an unrelated inquiry aimed at investigating other crimes (2) that adds time to the stop (3) without reasonable suspicion.[326]

25-second extension of traffic stop to ask about contraband held to be unreasonable prolongation of traffic stop:

"[Do you have] any counterfeit merchandise that you are taking to your relatives over there in Augusta? And what I mean by that is—any purses? Shoes? Shirts? Any counterfeit or bootleg CDs or DVDs or anything like that? Any illegal alcohol? Any marijuana? Any cocaine? Methamphetamine? Any heroin? Any ecstasy? Nothing like that? You don't have any dead bodies in your car?"

The "mission" of this traffic stop was to address a malfunctioning turn signal and crossing the fog line; these questions extended the stop by approximately twenty-five seconds, and unlawfully prolonged the stop.[327]

When determining if reasonable suspicion existed to extend a traffic stop, the court will consider the totality of the circumstances:

Factors the court will consider include, but are not limited to, "having no proof of ownership of the vehicle, having no proof of authority to operate the vehicle, and inconsistent statements about destination." [328] Other factors include apparent dishonesty in

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[323] *Medrano v. State*, 914 P.2d 804 (Wyo.1996).

[324] *Arizona v. Johnson*, 555 U.S. 323, 325 (2009).

[325] *Rodriguez v. United States*, 575 U.S. 348, 350 (2015).

[326] *United States v. Campbell*, 26 F.4th 860, 884 (11th Cir. 2022).

[327] *Id.* at 885.

[328] *United States v. Pruitt*, 174 F.3d 1215, 1220 (11th Cir. 1999).

response to questions asked,[329] furtive movements,[330] "driving with a suspended license" and "reluctance to stop."[331]

[329] *United States v. Hunnicutt*, 135 F.3d 1345, 1349 (10th Cir. 1998).

[330] *Id.*

[331] *Pruitt*, 174 F.3d at 1220. *See also United States v. Horn*, 970 F.2d 728, 732 (10th Cir.1992); *United States v. Turner*, 928 F.2d 956, 959 (10th Cir.); *United States v. Arango*, 912 F.2d 441, 447 (10th Cir.1990); *United States v. Fernandez*, 18 F.3d 874, 879 (10th Cir.1994) (The "defining characteristic of our traffic stop jurisprudence is the defendant's lack of [some] indicia of proof to lawfully operate and possess the vehicle in question, thus giving rise to objectively reasonable suspicion that the vehicle may be stolen").

Community Caretaking Stops

You may make a traffic stop on a vehicle if you believe any of the occupants' safety or welfare is at risk. If you determine that the occupant does not need assistance, you must terminate the stop or transition the stop into a consensual encounter. Otherwise, you would need to articulate reasonable suspicion (e.g. DUI) or other criminal involvement (e.g. domestic violence).

Stranded motorists fall under this rule. It is not illegal for a vehicle to break down, so you cannot demand ID or otherwise involuntarily detain stranded motorists unless you can articulate that they are involved in criminal activity.

Remember, these are essentially "implied" consensual encounters unless you have a reasonable suspicion of criminal activity. In other words, if someone needs help there is a reason to believe they would have impliedly consented to police assistance. Once there is no more consent, the occupants must be left alone.

Legal Standard

A vehicle may be stopped if:

- You have a reason to believe one of the occupants needs police or medical assistance; and
- Once you determine that no further assistance is required, the occupant must be left alone or the encounter converted to a consensual one.

Case Examples

Community caretaking stop unreasonable based on passenger who appeared extremely drunk:

An officer observed a staggering suspect get into the passenger seat of a car. The officer wanted to make sure he was not in need of medical attention. The court held the stop unreasonable, since he was not the driver and did not appear to be in medical distress.[332]

Community caretaking stop justified based on unidentified citizens reporting boat had been involved in a collision with injuries, despite no corroborating observations by deputies:

[332] *People v. Madrid,* 168 Cal. App. 4th 1050 (Cal. App. 1st Dist. 2008).

Applying the community caretaking doctrine, the court found the deputies were justified in stopping defendant's boat in order to obtain any information from the skipper they could about the "accident, its location, and its aftermath in order both to rescue the injured and to protect the general public from dangers resulting from the damaged vessel, such as the potential for explosion, debris, and impediment to travel[.]" The court concluded that law enforcement "could reasonably believe that its interest in protecting public safety by obtaining additional information necessary to manage the aftermath of the potentially life-threatening accident outweighed [defendant's] interest in being free from arbitrary governmental interference."[333]

Vehicle traveling 45mph in a 65mph zone held to be insufficient justification for community caretaking stop:

Vehicle was not being driven at such a slow speed as to impede or block the normal flow of traffic, even if five other vehicles were following behind the vehicle; highway had two lanes in each direction, traffic was otherwise light, and vehicle's speed was not violation of state law (40mph minimum on highway)[334]. Officer did not see the car drift or weave in its lane, nor did he notice anything to indicate that there was a mechanical problem with the car or a medical problem with the driver.[335]

When officers are addressing a legitimate concern for the safety of the motoring public, the community caretaking doctrine requires a lower standard than reasonable suspicion:

A "legitimate concern for the safety of the motoring public can warrant a brief investigatory stop to determine whether a driver is ill, tired, or driving under the influence in situations less suspicious than that required for other types of criminal behavior."[336]

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[333] *Castella v. State*, 959 So. 2d 1285, 1292–93 (Fla. Dist. Ct. App. 2007) *see also Carattini v. State*, 774 So.2d 927 (Fla. 5th DCA 2001) (analyzing the greater reliability of a face-to-face report from an unidentified citizen as opposed to a phone call from an anonymous tipster).

[334] Fla. Stat. § 316.183(2) (2022).

[335] *Agreda v. State*, 152 So. 3d 114 (Fla. Dist. Ct. App. 2014).

[336] *State, Dep't of Highway Safety & Motor Vehicles v. DeShong*, 603 So.2d 1349, 1352 (Fla. 2d DCA 1992).

Reasonable Suspicion Stops

You may stop a vehicle if you have individualized reasonable suspicion that any occupant may be involved in criminal activity. Probable cause is not required.

Legal Standard

A vehicle and its occupants may be detained if:

- You can articulate facts and circumstances that would lead a reasonable officer to believe that one of the occupants is, was, or is about to be involved in criminal activity;
- Once the stop is made, you must diligently pursue a means of investigation that will confirm or dispel your suspicions;
- If your suspicions are dispelled, the occupants must be immediately released or the stop converted into a consensual encounter.

Case Examples

Missing center rearview mirror on windscreen is not reasonable suspicion for a traffic stop:

Police officer's mistaken belief that the absence of a center rearview mirror on a vehicle's windscreen violated Florida law[337] did not furnish reasonable suspicion for the officer to initiate a traffic stop of defendant's vehicle, as the side mirrors met this requirement.[338]

Terry stop conducted after officer told driver, "Sit tight":

Suspect was subjected to a Terry stop at the time the police car parked behind the car in which he sat, where three officers shined their flashlights into the car, and one officer told the suspect to "sit tight."[339]

Eight years of experience and sufficient articulation supported reasonable suspicion that defendant's tint violated statute:

Based on officer's eight years of experience enforcing the window tint statute, reasonable suspicion existed when officer could not (1)

[337] Fla. Sta. § 316.294 (2022).

[338] *Leslie v. State,* 108 So. 3d 722 (Fla. Dist. Ct. App. 2013).

[339] *U.S. v. Young,* 707 F.3d 598 (6th Cir. 2012).

see the front passenger's facial features or (2) determine the number of passengers in the back seat.[340]

[340] *United States v. Moody*, 240 F. App'x 858, 859 (11th Cir. 2007).

Homes

Warrant Requirement

A person's home is the most protected area under the Fourth Amendment. Therefore, tread lightly whenever you make a warrantless search or seizure inside a home.

Whether a particular place is deemed a "home" will depend upon whether the place provides a person with a reasonable expectation of privacy, such that he would be justified in believing that he could retreat there and be secure against government intrusion. In simple terms, where a person sleeps is usually his home.

Legal Standard

When an unlawful search and seizure occurs, only persons with "standing" may take advantage of the exclusionary rule. Generally, standing exists based on the following factors:

- The defendant has a property interest in the thing seized or the place searched;
- He has a right to exclude others from the thing seized or the place searched;
- He exhibited a subjective expectation that the item would remain free from governmental intrusion; and
- He took normal precautions to maintain privacy in the item.

Case Examples

Hotel rooms have the same protections as homes:

The rule that a warrantless entry by police into a residence is presumptively unreasonable applies whether the entry is made to search for evidence or to seize a person, and applies no less when the dwelling entered is a hotel room.[416]

A lawfully erected tent is equivalent to a home:

"The thin walls of a tent are notice of its occupant's claim to privacy unless consent to enter be asked and given. One should be free to depart a campsite for the day's adventure without fear of his expectation of privacy being violated. Whether of short- or longer-term duration, one's occupation of a tent is entitled to equivalent

[416] *Robinson v. State*, 327 So. 3d 1276 (Fla. Dist. Ct. App. 2021).

protection from unreasonable government intrusion as that afforded to homes or hotel rooms."[417]

Subject had no reasonable expectation of privacy in his campsite:

"Defendant had no authorization to camp within or otherwise occupy the public land. On at least four or five recent occasions he had been cited by officers for "illegal camping" and evicted from other campsites in the preserve. Thus, both the illegality, and defendant's awareness that he was illicitly occupying the premises without consent or permission, are undisputed. "Legitimation of expectations of privacy by law must have a source outside of the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society."[418]

Subject had reasonable expectation of privacy in tent pitched in a fenced, wooded area owned by the University of Florida, but exigency justified a warrantless entry and seizure of items therein:

Where officers were searching a wooded area near the University of Florida in response to three brutal murders, officers observed a subject flee in response to their identifying themselves. Officers thereafter located a tent and, without a warrant, opened the flaps and confirmed it was empty, and then searched a bag and found a handgun. The court ultimately concluded the officers' legitimate concern for their safety from an unapprehended individual who might be armed in the dark, heavily wooded area around the campsite "excused the officers from the requirement of obtaining a warrant."[419]

Tent over vehicle at music festival was a home:

Suspect went to a music festival and pitched a 10'x30' tent-like structure over his SUV. Suspect was later arrested for dealing drugs. Police conducted warrantless search on vehicle. Court held it was an illegal search inside "home." Tent was similar to a garage.[420]

Officer could not crouch under home's window and listen to conversation:

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[417] *People v. Hughston*, 168 Cal. App. 4th 1062 (Cal. App. 1st Dist. 2008).

[418] *People v. Nishi*, 207 Cal. App. 4th 954 (Cal. App. 1st Dist. 2012).

[419] *Rolling v. State*, 695 So. 2d 278, 294 (Fla. 1997).

[420] *People v. Hughston*, 168 Cal. App. 4th 1062 (Cal. App. 1st Dist. 2008).

An officer, unable to see inside the home from the sidewalk, crossed a ten-foot strip of grass and crouched under a window. He then heard a telephone conversation about a narcotics transaction. The court suppressed the evidence, likening the officer's behavior to that of a "police state."[421]

[421] *Lorenzana v. Superior Court,* 9 Cal.3d 626 (Cal. Sup. Ct. 1973).

Hotel Rooms, Tents, RVs, and so Forth

Generally, hotel rooms receive full Fourth Amendment protections. You cannot enter a room without consent, recognized exception, or a warrant (C.R.E.W.).

Additionally, a hotel manager may not give authorization to search a room while the occupants are gone. Again, the room is treated like a temporary home. However, once the room has been vacated, police may search anything abandoned, like trash containers.

Finally, if a person is lawfully evicted by hotel management (police should not be involved in this decision), usually due to non-payment or consuming drugs inside the room, police may assist in evicting the occupants. Remember, you cannot instantly enter the room or search for evidence. Under normal circumstances, let management provide the occupants with a reasonable amount of time to pack up and leave.

The exception is if there is legitimate exigency to immediately remove the occupants, such as damage to the premises or a violent act between the remaining occupants. Either way, tread lightly here and if you're unsure, ask a supervisor.

Legal Standard

Hotel rooms, tents, overnight guests, and so forth are protected by the Fourth Amendment when:

- Hotel rooms are considered a home for the person who rented the room and invited overnight guests;
- Tents are considered a home when lawfully erected, or if unlawfully erected, in an area where a person would have a reasonable expectation of privacy, such as an area frequented by transients;
- Recreational vehicles are considered homes whenever they are hooked up to a utility, setup in a camping configuration, or not readily mobile (e.g. side skirts, no tires, etc.).

Case Examples

Police may assist in evicting occupants:

"A defendant, justifiably evicted from his hotel room, has no reasonable expectation of privacy in the room under the Fourth Amendment and police may justifiably enter the room to assist the hotel manager in expelling the individuals in an orderly fashion."[422]

Hotel manager may not authorize search of occupant's room:

Defendant was a suspect in an armed robbery. After police officers obtained information about where the defendant was staying, they went to the hotel and received permission from a hotel clerk to enter the defendant's room, where they seized evidence without a warrant. Search held to be a violation of the Fourth Amendment.[423]

Blocking front door with foot considered a warrantless entry:

It has also been found that police blocking the door of a home with a foot constituted entry; lack of a warrant, probable cause and exigent circumstances or consent rendered any seizure unlawful.[424]

Guest did not inform hotel he was extending room, therefore abandoned:

The defendant rented a motel room for a single night, paid only for one night, and never informed the desk that he wished to stay beyond that time. After check-out time the following day, the manager entered the room, saw a weapon, and summoned the police. In upholding the police entry of that room, the court reasoned: "[W]hen the term of a guest's occupancy of a room expires, the guest loses his exclusive right to privacy in the room. The manager of a motel then has the right to enter the room and may consent to a search of the room and the seizure of the items there found."[425]

No abandonment where hotel did not strictly enforce checkout time:

Where the hotel did not strictly enforce a noon checkout and the defendant indicated that he would stay until 12:30, abandonment occurred only after the later time and therefore the police search of the room was held to be unlawful.[426]

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[422] *United States v. Molsbarger*, 551 F.3d 809 (8th Cir. N.D. 2009).

[423] *Stoner v. California*, 376 U.S. 483 (1964).

[424] *State v. Larson*, 266 Wis. 2d 236 (Ct. App. 2003).

[425] *United States v. Parizo*, 514 F.2d 52 (2d Cir.1975).

[426] *United States v. Dorais*, 241 F.3d 1124 (9th Cir. 2001).

Knock and Talks

There is no Fourth Amendment violation if you try to consensually contact a person at their home. The key to knock and talks is to comply with social norms. Think about it this way... if the Girl Scouts could do it, so could you.

You must be reasonable when you contact the subject. Incessant pounding on the door, for example, would likely turn the encounter into a detention if the subject knows that it's the police knocking (an objectively reasonable person would believe that police are commanding him to open the door). Additionally, waking a subject up at 4 a.m. has been viewed as a detention requiring reasonable suspicion (see below). Again, if the Girl Scouts wouldn't do it, then it's probably unreasonable.

What about "No Trespassing" signs? You can usually ignore them because trying to have a consensual conversation with someone is not what is typically meant by trespassing. Same goes with "No Soliciting" signs.

Legal Standard

Knock and talks are lawful when:

- The path used to reach the door does not violate curtilage and appears available for uninvited guests to use;
- If the house has multiple doors, you chose the door reasonably believed to be available for uninvited guests to make contact with an occupant;
- You did not employ extraordinary efforts to contact the occupant, including making contact during a socially-acceptable time;
- Your conversation with the occupant remained consensual; and
- When the conversation ended or was terminated, you immediately left and didn't snoop around.

Case Examples

Knock and talk at 4 a.m. held invalid:

Officers went to suspect's residence at 4 a.m. with the sole purpose of arresting him. There was no on-going crime and the probable

cause was based on an offense that occurred the previous night. Violation of knock and talk because officers exceeded social norms.[427]

Persistent knock in the middle of the night not consensual:

Officers knocked on motel room door in the middle of the night for a full three minutes in order to make the occupant answer. This conduct constituted an investigative detention, not consent.[428]

Command to open door was not a consensual encounter:

"Officers were stationed at both doors of the duplex and [an officer] had commanded [the defendant] to open the door. A reasonable person in [the defendant's] situation would have concluded that he had no choice but to acquiesce and open the door."[429]

Officer's statement that he didn't need a warrant to talk with the occupant found to have tainted consent to enter:

Officers made contact with a suspected alien at his apartment. The officers asked to enter the apartment, and the occupant asked whether they needed a warrant. The officers said they "didn't need a warrant to talk to him." Based on the totality of the circumstances, the consent was involuntary since a reasonable occupant would have thought police didn't need a warrant to enter and talk.[430]

Warrantless entry to secure gun during knock and talk was reasonable:

While conducting a knock and talk, it was reasonable for the sheriff's deputy to believe a gun may have been within reach of defendant in his camper and to fear for his safety, and exigent circumstances justified the sheriff's deputy's warrantless entry into defendant's camper to complete the arrest of defendant and subdue the security risk, where the underlying incident that brought the deputies to defendant's property to question him involved a firearm. Defendant was uncooperative, angry, and made a threat toward another person, and defendant resisted arrest and attempted to retreat behind a hanging blanket and out of view, escalating a tense situation.[431]

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[427] *United States v. Lundin*, 47 F. Supp. 3d 1003 (N.D. Cal. 2014).

[428] *United States v. Jerez*, 108 F.3d 684 (7th Cir. Wis. 1997).

[429] *United States v. Poe*, 462 F.3d 997 (8th Cir. Mo. 2006).

[430] *Orhorgaghe v. I.N.S.*, 38 F.3d 488 (9th Cir. 1994).

[431] *United States v. Council*, 860 F.3d 604 (8th Cir. 2017).

Open Fields

Open fields are those areas that don't receive any Fourth Amendment protections. Typically, these areas are literally "open fields," and there are no structures on them (like sheds). Sometimes police will commit a technical trespass in order to reach open fields and view evidence (e.g. marijuana grows). The Supreme Court has held that there is no constitutional violation because the open field itself is not a "house" or "effect" or an area where a person has a reasonable expectation of privacy.[432]

If you want to inspect something that is on private property, you may do so without a warrant as long as the property is not within the curtilage of a home. Also, just because there is a physical structure on the open field doesn't mean it's curtilage (e.g. tool shed 300 feet away from home). You cannot enter any structure unless it is abandoned, even on open fields.

Legal Standard

An area is considered an "open field" not protected by the Fourth Amendment when:

- The area is not enclosed by a building or other structure (unless the building is abandoned); and
- The area is not curtilage (discussed next).

Case Examples

The Fourth Amendment doesn't protect open fields:

"[T]he special protection accorded by the Fourth Amendment to the people in their persons, houses, papers, and effects, is not extended to the open fields. The distinction between the latter and the house is as old as the common law."[433]

[432] *Oliver v. United States,* 466 U.S. 170 (1984).

[433] *Hester v. United States,* 44 S. Ct. 445 (1924).

Businesses & Schools

Warrantless Arrest Inside Business

Generally, you may enter "public areas" of a business to make an arrest. However, you don't have an automatic right, even when you possess an arrest warrant, to enter business offices and other private areas where there is a reasonable and legitimate expectation of privacy.[522] These areas are typically private offices to which the public does not have access.

Legal Standard

A warrantless arrest inside a business is lawful when:

- You make the arrest in a public area of the business; or
- If the suspect is in a private area where he has a reasonable expectation of privacy, consent to enter is given by someone with apparent authority and the suspect does not object before entry.

Case Examples

Entry into closed portion of business unlawful:

Officers entered a casino bingo hall that was presently closed to the public. Officers saw evidence of illegal gambling. Since bingo hall was not presently accessible to the public, the court suppressed the evidence.[523]

Forced entry into private area of dental office unlawful:

Police officers, who were investigating a claim that the dentist had sexually assaulted his receptionist, could not make an unannounced forcible entry into a private area of the business without exigency.[524]

Entry into public areas does not require a warrant:

Warrant not necessary to enter reception area through unlocked door during business hours, as there was "no reasonable expectation of privacy there."[525]

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[522] *Steagald v. United States*, 451 U.S. 204 (1981).

[523] *State v. Foreman*, 662 N.E.2d 929 (Ind. 1996).

[524] *People v. Polito*, 42 Ill.App.3d 372, 355 N.E.2d 725 (1976).

[525] *United States v. Little*, 753 F.2d 1420 (9th Cir.1984).

Customer Business Records

Generally, a customer has no reasonable expectation of privacy in information kept by a third party.[526,527] Therefore, you may request access to business records. However, if access is denied, then a court order, subpoena, or search warrant is required. You cannot demand that a business hand over its records.

Legal Standard

Police may request or subpoena customer records without a warrant if:

- The company consents to provide the records; or
- You receive a subpoena for the records; and
- If the records are digital tracking data, such as cell phone location records, which would violate the suspect's reasonable expectation of privacy in his movements or activities, a search warrant is required.

Case Examples

Customer has no reasonable expectation of privacy in banking records:

"The Fourth Amendment protects against intrusions into an individual's zone of privacy. In general, a depositor has no reasonable expectation of privacy in bank records, such as checks, deposit slips, and financial statements maintained by the bank. Where an individual's Fourth Amendment rights are not implicated, obtaining the documents does not violate his or her rights, even if the documents lead to indictment."[528]

Tracking suspect through cell-site records requires a warrant or exigency:

The Government's acquisition of the cell-site records was a search within the meaning of the Fourth Amendment.[529]

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[526] *Smith v. Maryland*, 442 U.S. 735 (1979).

[527] *United States v. Miller*, 425 U.S. 435 (1976).

[528] *Marsoner v. United States* (In re Grand Jury Proceedings), 40 F.3d 959 (9th Cir. Ariz. 1994).

[529] *Carpenter v. U.S.*, 138 U.S. 2206 (2018); *Tracey v. State*, 152 So. 3d 504, 526 (Fla. 2014) (use of cell site location information emanating from a cell phone in order to track defendant in real time was a search

Personal Property

Searching Containers

If you develop probable cause that a container (package, luggage, etc.) contains evidence or contraband, you may seize it in order to apply for a search warrant.[560] Remember, the length of the detention must be reasonable and the more "intimate" the container, the more courts will scrutinize the detention.

For example, detaining a woman's purse is more intimate than seizing an undelivered UPS parcel. A nine-hour detention on the purse may be struck down as unreasonable, where a two-day detention on the parcel may not. Either way, diligently seek the warrant unless you're relying on a recognized exception to the warrant requirement.

Legal Standard

A container seized with probable cause that it contains contraband or evidence may not be searched without a warrant unless:

- Someone with apparent authority gave you consent to search; or
- The container was seized from a vehicle; or
- The container's contents were obvious under the single purpose container doctrine; or
- The container was in the suspect's possession and searched incident to arrest; or
- You conducted a legitimate inventory; or
- The container was searched under the community caretaking doctrine; or
- You had exigent circumstances.

Remember, container plus probable cause does not equal warrantless search. You need C.R.E.W — consent, recognized exception, or a warrant (C.R.E.W. is explained in first section of book).

[560] *United States v. Hernandez*, 314 F.3d 430 (9th Cir. Cal. 2002).

Single Purpose Container Doctrine

The single purpose container doctrine is an extension of the plain view doctrine. Here, an officer sees a container and knows instantly what's inside—a gun case, or a balloon containing heroin, or kilos of packaged cocaine. If officers see these items in plain view, and have lawful access, they can seize it as evidence and search the container without a warrant because there is no expectation of privacy in the container.[561]

Legal Standard

A container may be seized and searched without a warrant if:

- You were lawfully present when you observed the container;
- Even though the container's contents were not visible, based on the shape, weight, size, material, and so forth, the contents were obvious (i.e. drugs);
- These observations gave you probable cause; and
- You had lawful access to the container when it was seized.

Case Examples

Convicted felon had no privacy in a container labeled "gun case":

Defendant had no reasonable expectation of privacy in the contents of a case located in his residence and labeled as "gun case." Thus, police officers' warrantless search of the case after officers' valid entry into the residence did not violate the Fourth Amendment, where officers knew that the defendant was a convicted felon prohibited from possessing guns.[562]

A "drug bindle" is a single-purpose container:

Due to it being immediately apparent to experienced officers that a paper bindle viewed in the defendant's identification folder contained contraband, defendant did not have reasonable

[561] *Arkansas v. Sanders*, 442 U.S. 753, 766 (1979) ("[S]ome containers (for example a kit of burglar tools or a gun case) by their very nature cannot support any reasonable expectation of privacy because their contents can be inferred from their outward appearance.").

[562] *United States v. Meada*, 408 F.3d 14 (1st Cir. Mass. 2005).

expectation of privacy preventing the opening of the bindle or the field testing of it.[563]

Florida courts have indicated the "objective reasonable person standard" should apply:

A circuit split exists regarding how the determination of the single-purpose container should be made. The Ninth and Tenth Circuits have held that a determination as to whether an opaque container constitutes a single-purpose container should be made from the objective viewpoint of a reasonable person, without applying the individual, subjective background, training, and experience of the individual officer or of law enforcement officers in general. The Fourth and Seventh Circuits have held the conclusion should be made from the subjective viewpoint of the officer conducting the search, including the circumstances surrounding the search. This latter approach would be beneficial to law enforcement, as an officer would be empowered to utilize his individual experience and prior investigations in determining whether an item would qualify as a single-purpose container. Florida courts have not taken a definitive position on the matter; however, dicta indicate Florida would side with the "objective reasonable person" standard of the 9th and 10th Circuits instead of the "subjective viewpoint of the officer" standard of the 4th and 7th Circuits. [564]

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[563] *State v. Courcy*, 48 Wash. App. 326, 739 P.2d 98 (1987); *see also In Int. of P.L.R.,* 435 So. 2d 850, 853 (Fla. Dist. Ct. App. 1983), *approved sub nom. P.L.R. v. State*, 455 So. 2d 363 (Fla. 1984) ("Alternatively, the balloon could be one of those rare single-purpose containers which 'by their very nature cannot support any reasonable expectation of privacy because their contents can be inferred from their outward appearance.'" *Arkansas v. Sanders*, 442 U.S. 753, 764–765 (1979). While it is inarguable "a suitcase or a paper bag may contain an almost infinite variety of items, a balloon of this kind might be used only to transport drugs. Viewing it where he did could have given the officer a degree of certainty that is equivalent to the plain view of the heroin itself.").

[564] *Crawford v. State*, 980 So. 2d 521, 526 (Fla. Dist. Ct. App. 2007) ("In evaluating the nature of opaque containers, courts have relied on the objective viewpoint of a layperson, rather than from the subjective viewpoint of a trained law enforcement officer.").

Searching Abandoned or Lost Property

A person has no reasonable expectation of privacy in abandoned, lost, or stolen property. The courts have defined abandonment broadly for search and seizure purposes. Abandonment occurs whenever a person leaves an item where the general public (or police) would feel free to access it. It can also occur whenever a person disowns property.

When it comes to abandonment, traditional property rights don't matter (i.e. a person could legally own an item, but still "abandon" it).[565] If abandonment occurs after an illegal detention, the evidence would be tainted and inadmissible.[566]

Additionally, if the defendant stole the item, like a purse or vehicle, he would not have a reasonable expectation of privacy in that item (but may have a privacy interest in his own containers).

Legal Standard

A container is considered abandoned when:

- Based on the totality of the circumstances, a reasonable person would believe that it was intentionally abandoned; or
- Based on the totality of the circumstances, it appears that the container was inadvertently abandoned, but the container's owner would not have a reasonable expectation of privacy that a member of the general public, including a police officer, would not search it; and
- If the container was inadvertently abandoned (e.g. accidentally left at the crime scene), your scope of search was similar to what a member of the public could have done (e.g. no forensic analysis).

Case Examples

No privacy in stolen property:

"The Fourth Amendment does not protect a defendant from a warrantless search of property that he stole, because regardless of

[565] *Stoner v. California*, 376 U.S. 483 (1964).

[566] *People v. Verin*, 220 Cal. App. 3d 551 (Cal. App. 1st Dist. 1990).

whether he expects to maintain privacy in the contents of the stolen property, such an expectation is not one that 'society is prepared to accept as reasonable.'"[567]

Dropping paper bag and running equals abandonment:

Police got a tip that the defendant was selling drugs and patrolled the area. They saw defendant leaning into a car, so the officers pulled over and walked in a "semi-quick" pace towards the defendant. In response, the defendant dropped a bag full of drugs and ran. The bag was abandoned and could be searched without a warrant.[568]

Search of burglar's cell phone six days after crime was committed was reasonable:

The suspect forgot his cell phone at the crime scene. Police later searched it without a warrant, finding evidence. The court held the phone was abandoned because the "idea that a burglar may leave his cell phone at the scene of his crime, do nothing to recover the phone for six days, cancel cellular service to the phone, and then expect that law enforcement officers would not attempt to access the contents of the phone to determine who committed the burglary, is not an idea that society will accept as reasonable."[569]

Suspect threw pill bottle containing crack cocaine on the ground after ignoring officers' order to "Stop, police!"

Defendant ignored police but threw a pill bottle containing rocks of cocaine on the ground. The court declared the evidence admissible, holding, "Only when the police begin an actual physical search of a suspect does abandonment become involuntary and tainted by an illegal search and seizure."[570]

Abandonment is clearer when it occurs before the suspect was seized by police:

When the officer entered the bar, defendant dropped a crumpled cigarette package on the floor, under the table, and turned away. The officer retrieved the package, which contained illegal drugs, and arrested the defendant.[571]

Reclaiming ownership revokes abandonment:

Although defendant initially vacillated on whether he owned the bag or not, by the time the search was conducted he had claimed

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[567] *United States v. Caymen*, 404 F.3d 1196 (9th Cir. Alaska 2005).

[568] *In re Kemonte*, 223 Cal.App.3d 1507 (1990).

[569] *State v. Brown*, Opinion No. 27814 (S.C. 2018).

[570] *Curry v. State*, 570 So.2d 1071 (Fla. 5th DCA 1990).

[571] *Cooper v. State*, 806 P.2d 1136 (1991).

ownership, which police knew, and therefore had not abandoned the bag.[572]

[572] *U.S. v. Grant,* 920 F.2d 376 (6th Cir. 1990).

Technology Searches

Sensory Enhancements

Generally, you may use sensory enhancements if they are in general public use (like binoculars and flashlights). Remember, you must be reasonable, especially when you use sensory enhancements to observe inside protected areas, like a home. If not, your actions may be classified as a warrantless search requiring exigent circumstances.

Legal Standard

If sensory enhancements are used to view public areas, then:

- There are essentially no restrictions unless the enhancement captures information where a person would have a reasonable expectation of privacy (e.g. microphone that can detect two people whispering in a park).

If sensory enhancements are used to observe inside a home, then:

- The technology used must be in general public use; and
- Only enhance that which was seen with the naked eye or heard with the naked ear (e.g. binoculars used to confirm that motorcycle in garage is similar to stolen motorcycle).

Case Examples

Use of a thermal imaging device against home unreasonable search:

"We think that obtaining by sense-enhancing technology any information regarding the interior of the home that could not otherwise have been obtained without physical 'intrusion into a constitutionally protected area,' constitutes a search - at least where (as here) the technology in question is not in general public use."[576]

[576] *Kyllo v. U.S.*, 533 U.S. 27 (2001); *see also McClelland v. State*, 255 So. 3d 929, 932 (Fla. Dist. Ct. App. 2018) (a search occurs when information "could not have been obtained without the use of a 'sense-enhancing technology' that intruded into the interior of a home").

Flashlights

Generally, you may use flashlights to enhance your vision. There are two good reasons for this: First, something visible during the day should not get additional protections simply because it was concealed by darkness. Second, flashlights are in "general public use" and the public expects police officers to use them, wherever a police officer has a lawful right to be.

Still, flashlights can violate a person's reasonable expectation of privacy if the flashlight is used in an unreasonable manner. Take, for example, a police officer who is conducting a knock-and-talk. It would be unlawful to shine your high-powered LED flashlight through closed blinds in order to illuminate the inside of the home. On the other hand, if the blinds were open, then a person would lose his reasonable expectation of privacy and enhancing your view with a flashlight would be lawful.

Legal Standard

If a flashlight is used to view public areas, then:

- There are no restrictions.

If a flashlight is used to observe inside a home, then:

- You may use the flashlight to observe that which would have been observable in broad daylight. In other words, if you use a flashlight to observe something inside the home which would not have been visible in full daylight, then it likely violated an occupant's reasonable expectation of privacy; but
- This restriction does not apply when conducting an investigation with exigency (burglary, shots fired, etc.).

Case Examples

Typical use of flashlight does not violate Fourth Amendment:

Officer's use of a flashlight to illuminate interior of driver's car "trenched upon no right secured... by [the] Fourth Amendment."[577]

[577] *Texas v. Brown*, 460 U.S. 730 (1983); *see, e.g., State v. Hite*, 642 So. 2d 55, 56 (Fla. Dist. Ct. App. 1994) (use of the flashlight to illuminate partially open closet area and observe marijuana did not constitute a search or violate any constitutional principles); *McVay v. State*, 553 So.2d 331 (Fla. 4th DCA 1989) (marijuana on shelf considered in plain view when seen by officer shining flashlight into bedroom closet);

Binoculars

You may use binoculars to enhance your vision to view items or people if they are in a public place, such as parks, sidewalks or streets.[578] You may not, however, use binoculars to view items or people inside private areas that would otherwise be completely indistinguishable by the naked eye. For example, if you were investigating a jewelry heist and you saw a "gold glint" coming through the suspect's open apartment window, you may lawfully use binoculars to confirm what you saw.[579]

On the other hand, it would be unlawful to use binoculars to peer into a suspect's apartment window from 200-300 yards away to determine whether he was viewing child pornography. In this case, there was no way an officer could see any incriminating evidence with the naked eye and therefore the suspect does not lose his reasonable expectation of privacy.[580]

Legal Standard

If binoculars are used to view public areas, then:

- There are no restrictions.

If binoculars are used to observe inside a home, then:

- You may use binoculars to observe that which would have been observable with the naked eye. You only need to be able to see the item, not necessarily know what it is. However, if the item is completely hidden from view, using binoculars to view the item likely violates an occupant's reasonable expectation of privacy; but
- This restriction does not apply when conducting an investigation with exigency (hot pursuit, fresh pursuit, surround and call-out, etc.).

State v. Elbertson, 340 So.2d 1250 (Fla. 3d DCA 1976) (marijuana plants in plain view of officers shining flashlight through wooden fence at night).

[578] *United States v. Shepard*, 1995 U.S. App. LEXIS 23118 (9th Cir. Ariz. 1995).

[579] *Cooper v. Superior Court*, 118 Cal. App. 3d 499 (Cal. App. 1st Dist. 1981).

[580] *People v. Arno*, 90 Cal. App. 3d 505 (Cal. App. 2d Dist. 1979).

Case Examples

Use of binoculars from open field not a Fourth Amendment search:

"At the trial, Special Investigator Griffith testified that through binoculars, he observed the appellant, a known liquor violator, placing two large cardboard boxes (each of which contained six gallons of untaxed whiskey), into a 1961 Buick. The observations were made from a field belonging to another, about 50 yards from the appellant's house. This did not constitute an illegal search."[581]

Use of high-power telescope to see inside a hotel room was an unlawful search:

Police looked into a hotel room through the un-curtained window by means of a powerful telescope from a hilltop a quarter of a mile from the hotel, which allowed them to see a gambling sheet. There were no buildings or other locations closer to the hotel. The defendant had a reasonable expectation that no one could see into his room under these circumstances: "[I]t is inconceivable that the government can intrude so far into an individual's home that it can detect the material he is reading and still not be considered to have engaged in a search."[582]

Use of binoculars to see something in suspect's hand was not a search:

The police officer became suspicious that a drug transaction was underway. He parked his vehicle, walked back to the alleyway and, with the aid of binoculars, saw defendant display metal slugs to his companion in his upturned hand, then entered a casino abutting the alleyway. The officer followed him, and Barr was arrested for possession of a cheating device.[583]

Climbing on fellow officer's shoulders to see into a backyard was a search:

Where an officer on neighboring property climbed three-quarters of the way up a fence, braced himself on a fellow officer's shoulder, and then, using a 60-power telescope, was able to see marijuana plants in the defendant's back yard, this was a search.[584]

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[581] *United States v. Grimes*, 426 F.2d 706 (5th Cir. Ga. 1970).

[582] *United States v. Kim*, 415 F. Supp. 1252 (D. Haw. 1976); *see also State v. Barnes*, 390 So.2d 1243 (Fla. 1st DCA 1980) (obtaining evidence identifiable only through the use of a telescope constituted a search).

[583] *State v. Barr*, 98 Nev. 428, 651 P.2d 649 (1982).

[584] *State v. Kender*, 60 Haw. 301, 588 P.2d 447 (1978).

Use of binoculars to confirm type of plants protruding from greenhouse did not constitute a search:

Green foliage which appeared to be marijuana could be seen through the open door and protruding from the top of the greenhouse by an officer standing on an adjacent property. The court concluded that, if the contraband had been observed solely by the naked eye, no search would have occurred - the use of ordinary binoculars did not alter this conclusion.[585]

TECHNOLOGY SEARCHES

Night Vision Goggles

There is no particular restriction if you use night vision goggles. They fall under the same rules as flashlights. However, some prosecutors and judges may not understand this technology and may equate it with thermal imaging, which is very restricted. Therefore, articulate that night vision goggles simply amplify the ambient light and do not detect any heat signatures.

Legal Standard

If night vision goggles are used to view public areas, then:

- There are no restrictions.

If night vision goggles are used to observe inside a home, then:

- You may use the night vision goggles to observe that which would have been observable in broad daylight. In other words, if you use night vision goggles to observe something inside the home which would not have been visible in full daylight, then it likely violated an occupant's reasonable expectation of privacy; but
- This restriction does not apply when conducting an investigation with exigency (hot pursuit, fresh pursuit, surround and call-out, etc.).

Case Examples

Night vision goggles the same as a flashlight:

"It was dark the entire time he was there. While he did not use a flashlight, the deputy wore 'night vision' goggles during both this

[585] *Bernstiel v. State,* 416 So. 2d 827, 829 (Fla. Dist. Ct. App. 1982).

visit and a subsequent visit. The goggles enhanced the available light by magnifying it, allowing him to see better in the dark. The goggles merely amplify ambient light to enable one to see something that is already exposed to public view."[586]

[586] *People v. Lieng*, 190 Cal. App. 4th 1213 (Cal. App. 1st Dist. 2010).

Miscellaneous Searches & Seizures

Cause-of-Injury Searches

You're allowed to conduct a limited "medical search" of an unconscious person or someone in serious medical distress in order to determine the cause of injury (if unknown) and to ascertain his identification to help render aid.

Your search should be objectively reasonable under the circumstances. An example of a lawful search would be when a victim was found unconscious and there were no clear signs why. It would be lawful to look for a medical alert bracelet, identification, medicines, or even illegal drugs on which he may have overdosed, in order to provide that information to medical. Any contraband or evidence found in plain view could be admitted into evidence.

Legal Standard

A limited search of a suspect's backpack or purse may occur if:

- You have a reason to believe the person is in medical distress;
- Finding medications, medical-alert bracelet, or reason for overdose will assist in the medical response;
- Search of belongings is limited in scope and terminates once items are found or are not present.

Case Examples

Search of purse while driver getting x-rays unreasonable:

A driver was transported to the hospital after an accident. The officer took her purse to the hospital and looked inside for ID in order to finish his report. He found drug paraphernalia. The court found the search was not needed and suppressed the evidence.[606]

Search of locked briefcase was reasonable:

Driver was found passed out, foaming at the mouth. Officers opened two locked briefcases to look for ID or medicines. Instead, they found money from a recent bank robbery. Court upheld search as reasonable.[607]

[606] *People v. Wright*, 804 P.2d 866 (Colo.1991).

[607] *United States v. Dunavan*, 485 F.2d 201 (6th Cir.1973).

Search Warrants

Overview

There are four core requirements of a search warrant. If any of these elements are later found to be missing, the evidence discovered may be suppressed.

Legal Standard

The four requirements of a search warrant are:

- You must establish probable cause within the affidavit and cannot add information later;
- The warrant must be supported by oath or affirmation;
- You must particularly describe the people or places to be searched; and
- You must particularly describe the things to be seized.

Case Examples

Warrantless searches of home are presumptively unreasonable:

No reasonable officer could claim to be unaware of the basic rule, well established by our cases, that, absent consent or exigency, a warrantless search of the home is presumptively unconstitutional.[632]

Courts grant search warrants great deference:

An officer obtained a warrant to search a suspected gang member's house for firearms. The trial court later found that the warrant was defective. However, the Supreme Court held that because the officer acted in good faith and was not "plainly incompetent", the exclusionary rule did not apply.[633]

[632] *Groh v. Ramirez,* 540 U.S. 551 (2004).

[633] *Messerschmidt v. Millender,* 132 S. Ct. 570 (2011).

Why Get a Warrant, even if You Don't Need to?

A search warrant is given significant deferential treatment by the courts. In other words, if you take the time to obtain pre-authorization from a neutral and detached magistrate before conducting a search or seizure, the defendant will have a hard time proving that the warrant was invalid.

The defendant would usually have to prove that the officer was plainly incompetent, knowingly violated the law, or reckless with his facts,[634] and that an objectively reasonable officer would know that the warrant did not establish the necessary probable cause.

Legal Standard

For a search warrant to be invalid, the defendant would need to prove:

- The magistrate was not neutral or detached; or
- The search warrant did not particularly describe the place to be searched or the things to be seized; or
- The officer was plainly incompetent or reckless with his facts; and
- An objectively reasonable officer would know that the warrant did not establish the necessary probable cause.

Case Examples

Courts grant search warrants great deference:

An officer got a warrant to search a suspected gang member's house for firearms. The trial court later found that the warrant was defective. However, the Supreme Court held that because the officer acted in good faith and was not "plainly incompetent," the exclusionary rule did not apply.[635]

[634] *Tlapanco v. Elges*, 969 F.3d 638, 649 (6th Cir. 2020).

[635] *Messerschmidt v. Millender*, 132 S. Ct. 570 (2011).

Particularity Requirement

All search warrants must describe with particularity the places to be searched and the things or people to be seized. This ensures that officers executing the warrant know where to go, where to look, and what to seize. Otherwise, the warrant becomes more like a "general search warrant," which is forbidden by the Fourth Amendment.

Legal Standard

All search warrants must:

- Particularly describe the people or places to be searched; and
- Particularly describe the things to be seized.

Case Examples

Warrant must be described with particularity:

The uniformly-applied rule is that a search conducted pursuant to a warrant which fails to conform to the particularity requirement of the Fourth Amendment is unconstitutional. That rule is in keeping with the well-established principle that, except in certain carefully-defined classes of cases, a search of private property without proper consent is unreasonable unless it has been authorized by a valid search warrant.[636]

Facially invalid warrant will not be saved by Good Faith reliance:

The officer "contends that the search in this case was the product, at worst, of a lack of due care, and that our case law requires more than negligent behavior before depriving an official of qualified immunity." But "a warrant may be so facially deficient - i.e. in failing to particularize the place to be searched or the things to be seized - that the executing officers cannot reasonably presume it to be valid. This is such a case."[637]

[636] *Groh v. Ramirez*, 540 U.S. 551 (2004).

[637] *Id.* (where affidavit described items sought with particularity but warrant did not, the warrant was invalid and officers were denied qualified immunity; because of the particularity requirement stated in the text of the Fourth Amendment, "no reasonable officer could believe that a warrant that did not comply with that requirement was valid").

Law Enforcement Liability

Exclusionary Rule

The exclusionary rule states that evidence obtained in violation of the Fourth Amendment (and in extreme circumstances Due Process) is inadmissible in a criminal trial. The purpose of the rule "is to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable searches and seizures."[726]

The Fourth Amendment also seeks to "safeguard the privacy and security of individuals against arbitrary invasions by government officials."[727]

Before a suspect may rely on the exclusionary rule, they must have "standing" to object. In other words, the suspect must have a legitimate privacy interest in the place or thing searched or seized. Without this "skin in the game," the suspect lacks standing and the exclusionary rule will provide no relief.

Finally, even when police violate the Fourth Amendment, and the suspect has standing to object to using the evidence, there are many exclusionary rule exceptions that may come into play. If one or more applies, the evidence may still be used against the suspect. Never forget, since using an exception typically means that a Fourth Amendment violation occurred, the suspect may still be able to sue you in a 1983 lawsuit. You don't need that stress. Accordingly, use this book, get additional training, and comply with the Constitution.

Legal Standard

Evidence obtained by police may be excluded if:

- You obtained the evidence illegally, particularly in violation of the Fourth Amendment;
- Excluding evidence will serve a deterrent effect for future unlawful police conduct; and
- The evidence is primarily introduced as evidence in a criminal trial against the defendant.

[726] *United States v. Calandra*, 414 U.S. 338 (1974).

[727] *Camara v. Municipal Court*, 387 U.S. 523, 528 (1967).

Case Examples

Despite unlawful detention, evidence of assault on LEO will not be suppressed as fruit of poisonous tree:

"There are limitations to the exclusionary rule which are largely based on common sense. One such limitation is that the rule does not immunize crimes of violence committed on a peace officer, even if they are preceded by a Fourth Amendment violation."[728]

Fact that evidence is vital for a prosecution does not weigh on the exclusionary rule:

Federal prosecutors argued that if evidence was suppressed under the exclusionary rule, they would not be able to prosecute the case. The court dismissed this "necessity" argument. If there is a violation, the exclusionary rule applies no matter the consequences.[729]

Exclusionary rule doesn't apply if police rely on binding legal authority:

If police search or seize in an objectively reasonable reliance on binding court authority, which is later overruled, the exclusionary rule doesn't apply because there is no need to deter unlawful police activity.[730]

For example, where police placed a GPS-tracker on a vehicle without a warrant in reliance of then-Supreme Court precedent involving "homing beacons," tracking data should not be suppressed even though the Court later held warrantless GPS tracking offended the Fourth Amendment.[731]

The exclusionary rule does not apply to violations of state or federal statutes unless the state legislature or congress specifically required exclusion:

The Fourth Amendment is controlled by the Constitution, not by statutes. Therefore, even when police violate a statute, the result is not automatic exclusion of evidence unless the legislature intended that result.[732] Additionally, even if a violation of state law requires

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[728] *In re Richard G.*, 173 Cal. App. 4th 1252 (2009), as modified (May 20, 2009).

[729] *U.S. v. Marts*, 986 F.2d 1216 (8th Cir. 1993).

[730] *Davis v. U.S.*, 564 U.S. 229 (2011).

[731] *U.S. v. Aguiar*, 737 F.3d 251 (2d Cir. 2013).

[732] *Pa. Steel Foundry Mach. v. Sec. of Labor*, 831 F.2d 1211 (3d Cir. 1987).

suppression, that same law has no effect on federal court proceedings.[733]

[733] *U.S. v. McMurray*, 34 F.3d 1405 (8th Cir. 1994).

Exceptions to the Exclusionary Rule

The exclusionary rule states that evidence obtained as a result of an illegal search and/or seizure is inadmissible in a criminal trial. This rule is meant to deter police misconduct.[734] However, there are several exceptions.

Legal Standard

Some of the exceptions to the exclusionary rule, include:

- The defendant has no standing to object;
- Evidence can be used to impeach a defendant;
- Good faith exception;[735]
- Foreign searches;
- Forfeiture proceedings;[736]
- Inevitable discovery;[737]
- Deportation proceedings;
- Grand juries;[738]
- Civil tax proceedings.

[734] *United States v. Janis*, 428 U.S. 433 (1976).

[735] *United States v. Leon*, 468 U.S. 897 (1984).

[736] *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693 (1965).

[737] *Nix v. Williams*, 467 U.S. 431 (1984); *but see Hazelwood v. State*, 912 P.2d 1266, 1276 (Alaska Ct. App. 1996), rev'd in part on other grounds, 946 P.2d 875 (Alaska 1997) (holding that Alaska prosecutors are required to "prove exactly how" the evidence would have been discovered); *State v. Ault*, 150 Ariz. 459 (1986) (Arizona Supreme Court refused to apply the inevitable discovery exception to the exclusionary rule, holding that evidence obtained during a warrantless entry into a defendant's home will be inadmissible at trial).

[738] *United States v. Calandra*, 414 U.S. 338 (1974).

Fruit of the Poisonous Tree

The exclusionary rule forbids the admission of illegally obtained evidence. The "fruit of the poisonous tree" doctrine says that any evidence found as a consequence of the first illegal search or seizure will also be suppressed.

This can get a little confusing but remember this: all illegally obtained evidence will usually be suppressed.

Legal Standard

Derivative evidence will be excluded as evidence if:

- You discovered evidence subject to the exclusionary rule;
- That evidence led you to discover additional (i.e. derivative) evidence; and
- There are no applicable exceptions.

Case Examples

Observations after unlawful entry cannot be used:

Observations made after an unlawful, warrantless entry into a structure cannot be used to establish probable cause for later obtaining a search warrant.[739]

All evidence tainted after unlawful arrest:

Where the defendant was unlawfully arrested, evidence recovered from his person, incriminating statements, and the products of a search warrant that used all the above as part of its probable cause, were subject to being suppressed.[740]

[739] *Murray v. United States*, 487 U.S. 533 (1988).

[740] *United States v. Nora*, 765 F.3d 1049 (9th Cir. Cal. 2014).

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