ANTHONY BANDIERO, ESQ.

TENNESSEE

Search & Seizure Survival Guide

A FIELD GUIDE FOR LAW ENFORCEMENT

Blue to Gold

Tennessee Search & Seizure Survival Guide

A FIELD GUIDE FOR LAW ENFORCEMENT

Anthony Bandiero, JD, ALM
Blue To Gold Law Enforcement Training, LLC
SPOKANE, WASHINGTON

Blue to Gold, LLC
12402 N Division St #119
Spokane, WA 99218
info@bluetogold.com
www.bluetogold.com

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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 and read the case completely and cite appropriately.

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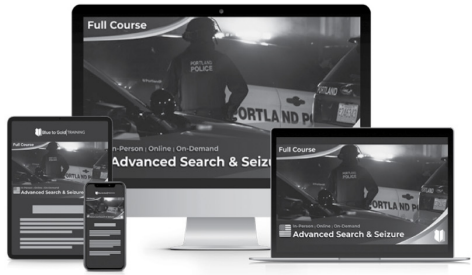

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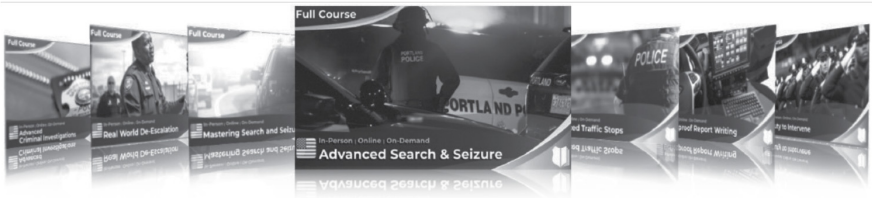

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Overview

Note about case citations:

The case names cited throughout this book are not formatted according to the Bluebook citation style, which is widely recognized in legal writing. Instead, these citations are presented in a more straightforward manner, primarily to facilitate ease of reference for readers who may wish to delve deeper into the cases themselves. This approach is adopted to enhance the accessibility of the material, especially for those who might not be familiar with the intricacies of legal citation formats. By presenting case names in a clear and direct way, the book aims to encourage readers to explore these cases further, providing a gateway to understanding the legal principles and precedents discussed more deeply.

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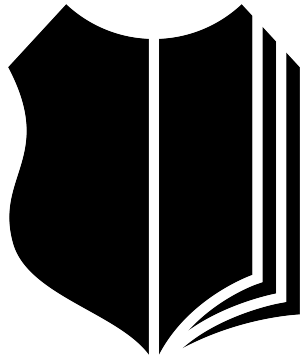
"If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself."

— James Madison, Father of the Fourth Amendment, 1788



Investigative Detentions

Specific Factors to Consider

In determining whether you have reasonable suspicion, consider the following 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:

- ☐ **Physical descriptions and clothing:** Matching descriptions and clothing will certainly help, especially specific characteristics like logos on clothing;
- ☐ **Proximity to crime scene**: The closer the better;
- ☐ **Close in time**: The sooner the detention is made after the crime the better (along with other factors);
- ☐ **Nighttime**: Activity late at night, especially in residential areas, is often more suspicious than in daytime;[1]
- ☐ **High-crime area**: An area's reputation for criminal activity is an appropriate factor in assessing R.S.;[2]
- ☐ **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;[3]
- ☐ **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.[4] Still, the key is to translate these experiences in your report. The court needs

[1] See People v. Souza, 9 Cal.4th 224 (1994)
[2] See People v. Souza, 9 Cal.4th 224 (1994)
[3] See Illinois v. Wardlow, 528 U.S. 119 (2000)
[4] Se Devenpeck v. Alford, 543 U.S. 146 (2004)

to know what you know. 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 "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;[1]
- ☐ **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;[2]
- ☐ **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;[3]
- ☐ **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.[4] Still, whether or not you can make the stop depends on the totality of the circumstances.

Tennessee Case Examples

These cases represent binding authority from Tennessee, the 6th Circuit, or U.S. Supreme Court. It's important to confirm these cases are consistent with current state law and agency policy which may be more restrictive.

Reasonable Suspicion and Anonymous Tips:

In Navarette v. California, the Supreme Court addressed the issue of whether an anonymous tip can provide law enforcement officers with reasonable suspicion to conduct a traffic stop. The Court affirmed the decision, holding that under the totality of the

[1] See U.S. v. Sokolow, 490 U.S. 1 (1989)
[2] See People v. Stanley, 18 Cal.App.5th 398 (2017)
[3] See Alabama v. White, 496 U.S. 325 (1990)
[4] See Navarette v. California, 134 S.Ct. 1683 (2014)

circumstances, the anonymous tip in this case provided sufficient indicia of reliability. The Court stated, "By reporting that she had been run off the road by a specific vehicle, the caller necessarily claimed an eyewitness basis of knowledge." This decision underscores the Court's recognition of the practical realities faced by law enforcement and the need to balance public safety concerns with Fourth Amendment protections against unreasonable searches and seizures.[1]

Reasonable Suspicion and Corroborated Anonymous Tips:

In Alabama v. White, the Supreme Court of the United States addressed the validity of an investigatory stop based on an anonymous tip. The Court held that an anonymous tip, as corroborated by independent police work, can exhibit sufficient indicia of reliability to provide reasonable suspicion for an investigatory stop. The case involved police receiving an anonymous tip about Vanessa White, predicting her departure from a specific location, the vehicle she would be driving, and her possession of cocaine. The Court stated, "Although it is a close case, we conclude that under the totality of the circumstances the anonymous tip, as corroborated, exhibited sufficient indicia of reliability to justify the investigatory stop of respondent's car." This decision underscores the Court's approach in balancing the need for law enforcement to act on reasonable suspicion against the rights of individuals against unreasonable searches and seizures.[2]

Non-binding *Case* Examples

These cases represent persuasive authority from other courts outside of Tennessee and the 6th Circuit. Though not binding, they have been selected for inclusion here because if an officer in Tennessee finds themself in a similar situation, the outcome will likely be the same, at least in federal court.

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 home in a high crime area where a search warrant was being executed carried little weight as the officers did not see the defendant flee from the home nor did they recognize him as a suspect in the investigation.[3]

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[1] Navarette v. California, 134 S.Ct. 1683 (2014)
[2] Alabama v. White, 496 U.S. 325 (1990)
[3] State v. Anderson, 415 S.C. 441 (2016)

Detaining a Suspect

If you have an articulable reasonable suspicion that a suspect is involved in criminal activity, you may briefly detain him in order to "maintain the status quo" and investigate.[1] 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're 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 has, is, or is about to be, involved in **criminal activity**;
- ☐ You use the **minimal amount of force** necessary to detain a co-operative 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.

Tennessee Case Examples

These cases represent binding authority from Tennessee, the 6th Circuit, or U.S. Supreme Court. It's important to confirm these cases are consistent with current state law and agency policy which may be more restrictive.

No Custody for Miranda Purposes During a Brief Roadside Stop:

In State v. Summers, the Court of Criminal Appeals of Tennessee held that the defendant was not in custody for Miranda purposes when he admitted to driving a truck while intoxicated during a brief roadside stop. The court found that the defendant was not in custody because he drove himself to the parking lot, was not transported by the officers, was not informed of the officer's

[1] Terry v. Ohio, 392 U.S. 1 (1968)

suspicions or that he would be detained, and was not confronted with evidence of guilt. The Court stated, "The requirements of Miranda come into play only when the defendant is in custody and is subjected to questioning or its functional equivalent."[1]

Seizure Under Tennessee Constitution:

In State v. Randolph, the Supreme Court of Tennessee held that a person was seized when an officer activated the blue lights on his patrol car and ordered him to stop, even though the person fled and did not submit to authority. The Court found that the officer lacked reasonable suspicion or probable cause to effect the seizure and suppressed the evidence obtained from the defendant. The Court stated, "Accordingly, we join those jurisdictions that have rejected the Hodari D. standard on state constitutional grounds in favor of existing state precedent."[2]

The Supreme Court Discussed the Concept of a Police Officer's Reliance on a Hunch Versus Reasonable Suspicion:

"Our evaluation of the proper balance that has to be struck in this type of case leads us to conclude that there must be a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime. The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger. And in determining whether the officer acted reasonably in such circumstances, due weight must be given, not to his inchoate and un-particularized suspicion or 'hunch,' but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience."[3]

This quote emphasizes that a police officer's actions must be based on specific and articulable facts that lead to a reasonable suspicion of criminal activity, rather than a mere hunch or un-particularized suspicion.

Non-binding Case Examples

These cases represent persuasive authority from other courts outside of Tennessee and the 6th Circuit. Though not binding, they have been selected for inclusion here because if an officer in Tennessee finds themself in a similar situation, the outcome will likely be the same, at least in federal court.

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[1] State v. Summers, 2008 WL 4613664 (2008)
[2] State v. Randolph, 74 S.W.3d 330 (2002)
[3] Terry v. Ohio, 392 U.S. 1 (1968)

Long Wait for K9 Held Reasonable Under the Circumstances:

A 31-minute wait for a drug dog was not unreasonable after trooper developed R.S. for narcotics, was denied consent, and acted diligently in pursuit of his investigation.[1]

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."[2]

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[1] U.S. v. Lyons, 486 F.3d 367 (8th Cir. 2007)
[2] People v. Forensic, 64 Cal.App.4th 186 (1998)

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 officer safety concerns is also lawful "when an individual's actions give the appearance of potential danger to the officer."[1] 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.

Tennessee Case Examples

These cases represent binding authority from Tennessee, the 6th Circuit, or U.S. Supreme Court. It's important to confirm these cases are consistent with current state law and agency policy which may be more restrictive.

Judges Should Be Cautious About Second Guessing Officer Safety:

In Ryburn v. Huff, the Supreme Court of the United States addressed the issue of officer safety and the reasonableness of police actions during a potentially volatile situation. The case involved Burbank Police officers who, after receiving a report that a student had threatened to "shoot up" a school, went to the student's home to investigate. The situation escalated when the student's mother, Mrs. Huff, abruptly ended the conversation with the officers and ran into the house after being asked about the presence of guns. The officers followed her inside, concerned for their safety and that of others. The Court held that the officers' actions were

[1] People v. Mendoza, 52 Cal.4th 1056 (2011)

reasonable under the Fourth Amendment, emphasizing the need to evaluate the reasonableness of police actions from the perspective of an officer on the scene and not with the benefit of hindsight. The Court stated, "The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving." This decision underscores the Court's recognition of the challenges faced by law enforcement officers in rapidly unfolding situations and the importance of assessing their actions based on the information available to them at the time.[1]

The Supreme Court discussed the concept of a police officer's reliance on a hunch versus reasonable suspicion:

”Our evaluation of the proper balance that has to be struck in this type of case leads us to conclude that there must be a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime. The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger. And in determining whether the officer acted reasonably in such circumstances, due weight must be given, not to his inchoate and un-particularized suspicion or 'hunch,' but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience."

Non-binding *Case* Examples

These cases represent persuasive authority from other courts outside of Tennessee and the 6th Circuit. Though not binding, they have been selected for inclusion here because if an officer in Tennessee finds themself in a similar situation, the outcome will likely be the same, at least in federal court.

Detention Based on Legitimate Officer Safety Concerns Upheld:

“A consensual encounter may turn into a lawful detention when an individual's actions give the appearance of potential danger to the officer...There is no question that ‘a perfectly reasonable apprehension of danger may arise long before the officer is possessed of adequate information to justify taking a person into custody for the purpose of prosecuting him for a crime.’”[2]

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[1] Ryburn v. Huff, 565 U.S. 469 (2012)
[2] Id.

How Long Can Detentions Last?

Whenever you detain someone for reasonable suspicion, you must diligently pursue a means of investigation that is likely to confirm or dispel the suspicion. Once your suspicion has been dispelled, the person must be allowed to go on his way.[1] At the same time, the Supreme Court has never provided a maximum duration for investigative detentions.[2] Rather, as long as you're diligently pursuing the investigation, it should not matter that the stop took ten minutes or, in an extreme case, two hours. Each investigation is unique and different. What's more, no violation occurs simply because a less intrusive investigation could have been utilized. Instead, the means chosen must be reasonable.

Finally, if you have dispelled your suspicions but still have a "hunch" you want to pursue, convert the stop into a consensual encounter or release the suspect. Failure to do so is a Fourth Amendment violation.

Legal Standard

The duration of an investigative detention is determined by these factors:

- ☐ 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.
- ☐ The detention must last no longer than **60 minutes**. Otherwise, the detention becomes a de facto arrest.

Tennessee Case Examples

These cases represent binding authority from Tennessee, the 6th Circuit, or U.S. Supreme Court. It's important to confirm these cases are consistent with current state law and agency policy which may be more restrictive.

Duration of Investigative Stops:

In the Supreme Court case United States v. Sharpe, the Court addressed the permissible duration of investigative stops, commonly known as Terry stops. The Court emphasized that a

[1] Terry v. Ohio, 392 U.S. 1 (1968)
[2] United States v. Sharpe, 470 U.S. 675 (1985)

Terry stop, valid at its inception, may become unduly intrusive on personal liberty and privacy simply by lasting too long, even if valid law enforcement objectives account for the length of the seizure. The Court stated, "The requirement that Terry stops be brief no matter what the needs of law enforcement in the particular case is buttressed by several sound pragmatic considerations." This highlights the Court's insistence on the brevity of Terry stops, regardless of the specific needs of law enforcement in a given situation. The Court underscored that adherence to the requirement of brevity in Terry stops is essential to respect the serious and constitutionally protected liberty and privacy interests implicated in such encounters.[1]

Non-binding Case Examples

These cases represent persuasive authority from other courts outside of Tennessee and the 6th Circuit. Though not binding, they have been selected for inclusion here because if an officer in Tennessee finds themself in a similar situation, the outcome will likely be the same, at least in federal court.

Extending Stop for 25 Minutes Was Reasonable:

Original stop was for erratic driving but was appropriately extended for 25 minutes to investigate trafficking due to conflicting answers, masking odor, and other circumstances.[2]

[1] United States v. Sharpe, 470 U.S. 675 (1985)
[2] People v. Russell, 81 Cal.App.4th 96 (2000)

Investigative Techniques During a Stop

If you make a stop based on reasonable suspicion, you may perform various investigative techniques as long as they are reasonably related to why you stopped the person and are minimally intrusive. The techniques may also be used to continue your investigation after the person is released, not just to build probable cause to arrest. For example, you may take the suspect's picture, or quickly take in-field fingerprints, and then release the suspect and use the photo and prints to continue your investigation.

Legal Standard

You may conduct **investigative techniques** in the field when:

- ☐ The suspect is still **lawfully detained**; and
- ☐ The technique employed is **minimally intrusive**.

You may **demand identification** if:

- ☐ The suspect is still **lawfully detained**;
- ☐ You need the identification to **pursue your investigation**;
- ☐ However, many states do not allow an arrest for only refusing to identify. Check state law.

You may capture a suspect's **fingerprints** in the field when:

- ☐ You have **reason to believe** fingerprints may have been left at the scene;
- ☐ **Minimally intrusive** means were used to recover the suspect's fingerprints; and
- ☐ The fingerprints will **aid your investigation** after the suspect is released or during the detention (e.g., mobile fingerprint reader).

Tennessee Case Examples

These cases represent binding authority from Tennessee, the 6th Circuit, or U.S. Supreme Court. It's important to confirm these cases are consistent with current state law and agency policy which may be more restrictive.

Statute Requiring People Stopped To Supply "Credible and Reliable" ID Struck Down as Vague and Gave Police Too Much Discretion:

A California statute required persons who loiter or wander on the streets to provide a "credible and reliable" identification and to account for their presence, when requested by a peace officer. The statute was struck down, among other reasons, because it vested virtually complete discretion in the hands of the police to determine whether the suspect had supplied "credible and reliable" identification.[1]

Police May Obtain Fingerprints With Reasonable Suspicion:

"There is support... that the Fourth Amendment would permit seizures for the purpose of fingerprinting, if there is a reasonable basis for believing that fingerprinting will establish or negate the suspect's connection with that crime."[2]

Non-binding *Case* Examples

These cases represent persuasive authority from other courts outside of Tennessee and the 6th Circuit. Though not binding, they have been selected for inclusion here because if an officer in Tennessee finds themself in a similar situation, the outcome will likely be the same, at least in federal court.

Officers May Open Door if They Cannot See Through Tinted Windows:

During a lawful traffic stop, where the vehicle's windows were so heavily tinted that the officer could not see inside, it is reasonable to open the vehicle's door in order to be able to observe the interior. The court adopted this proposition as a "bright-line" rule.[3]

Collective Knowledge Doctrine Applies to Terry Stops:

An Illinois state police officer had reasonable suspicion that a suspect was transporting drugs in his airplane. He passed this information on to Federal Homeland Security...who passed it on to a Wyoming officer who stopped the suspect at the airport. The court found that there was significant communication between all of the officers and that they functioned as a team. Therefore, the collective knowledge doctrine applied and the stop was lawful.[4]

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[1] Kolender v. Lawson, 461 U.S. 352 (1983)
[2] Hayes v. Florida, 105 S. Ct. 1643 (1985)
[3] U.S. v. Stanfield, 109 F.3d 976, 981 (4th Cir. 1997)
[4] United States v. Latorre, 893 F.3d 744 (10th Cir. 2018)

Identifications - in the Field

Courts are scrutinizing police identification procedures more than they have in the past. One reason is because research has shown that eyewitnesses are easily swayed by suggestive practices. For example, if police make an investigative detention on an armed robbery suspect, it would be improper to say to the victim, "We have the perpetrator, but we still need you to ID him."

You may also conduct a "show-up" between the suspect and witness under a few circumstances. Usually, these show-ups are conducted soon after the crime has occurred when police have detained a suspect (on-scene or in the vicinity).

Remember, it is vital that you stay as neutral and detached as possible when it comes to identification procedures.

Legal Standard

A suspect may be required to participate in a solo **in-field "show-up"** if:

- ☐ The procedure is not **overly suggestive** of guilt (e.g. not surrounding suspect with cops; if safe, removing handcuffs; and not telling the witness that the suspect is the perpetrator).

Tennessee Case Examples

These cases represent binding authority from Tennessee, the 6th Circuit, or U.S. Supreme Court. It's important to confirm these cases are consistent with current state law and agency policy which may be more restrictive.

In Field Show-Up Was Not Overly Suggestive:

Where victim was around assailant for about thirty minutes, and could see him under artificial lighting, described him before show-up, said "I don't think I could ever forget" (his unique appearance, and so forth), the following in field show-up was not overly suggestive.[1]

[1] Neil v. Biggers, 409 U.S. 188 (1972)

Unprovoked Flight Upon Seeing an Officer

If you are patrolling a "high crime" area and a person suddenly, and without provocation, runs upon seeing you, then these may be sufficient conditions to conduct an investigative detention in order to determine whether or not he is involved in criminal activity. Unprovoked flight, by itself, doesn't provide sufficient reason to conduct a patdown. You need to articulate something more, such as a known gang member, history of violence, or possible drug dealer (not just drug user).

Finally, this rule may also include wealthy areas where a rash of recent burglaries have occurred, or a business district when all the stores are closed. Articulate, articulate, articulate!

Legal Standard

A suspect that flees upon seeing you, may be detained if:

- ☐ You are patrolling a **high-crime area**;
- ☐ Upon seeing you or a readily-apparent police vehicle, the **suspect suddenly**, and **without provocation**;
- ☐ Engages in a **headlong flight** commensurate with evasion; and
- ☐ You use a **reasonable amount of force** necessary to detain the suspect.

Note: Unprovoked flight alone does not justify a patdown.

Tennessee Case Examples

These cases represent binding authority from Tennessee, the 6th Circuit, or U.S. Supreme Court. It's important to confirm these cases are consistent with current state law and agency policy which may be more restrictive.

Defendant's Flight and Presence in High Crime Area Not Enough To Justify Seizure:

In State of Tennessee v. Nicholson, the Court of Criminal Appeals of Tennessee examined the implications of unprovoked flight upon seeing law enforcement officers. The defendant was not initially involved in the hand-to-hand drug transactions but fled upon seeing the officers, was stopped and chased by detectives who had no reasonable suspicion or probable cause to do so, and found cocaine

on him. The court held that the defendant's flight and presence in a high crime area were not enough to justify the seizure. The Court stated, "We are not persuaded that flight, without any other particularized incriminating facts, suffices for reasonable suspicion."[1]

Unprovoked Flight Away From Police May Be Suspicious Evasive Behavior:

In the Supreme Court case Illinois v. Wardlow, the Court addressed the issue of whether unprovoked flight in a high-crime area constitutes reasonable suspicion to justify a stop under the Fourth Amendment. The Court held that while flight is not necessarily indicative of wrongdoing, it is certainly suggestive of such. Chief Justice Rehnquist, delivering the opinion of the Court, stated, "Headlong flight—wherever it occurs—is the consummate act of evasion: It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such." The Court concluded that Officer Nolan was justified in suspecting that Wardlow was involved in criminal activity, and therefore, in investigating further. This decision underscores the Court's view that the determination of reasonable suspicion must be based on commonsense judgments and inferences about human behavior.[2]

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[1] State v. Nicholson, No. M2004-00111-CCA-R3CD (2005)

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

Detentions Based on an Anonymous Tip

You may make an investigative detention based on an anonymous tip if the information has some indicia of reliability and, where appropriate, the information is independently corroborated. The courts will use the totality of the circumstances test and it is vital that you articulate all pertinent facts and circumstances in your report.

One of the best methods to corroborate information is to determine whether the tipster shared something unknown to the general public and therefore represents "inside" knowledge. For example, if a tipster shared that a red Chevy truck was going to buy drugs at a particular gas station at 1 p.m., this information is easily corroborated. If the truck shows up at the time and place stated, that is not something the general public would know.

On the other hand, if the tipster said the red Chevy truck in the Walmart parking lot is dealing drugs, you would need to know more. Any member of the public could see the truck. It doesn't predict any future conduct.[1]

Legal Standard

A suspect may be detained based an anonymous tip if:

- ☐ The tip had an **indicia of reliability**;[2] and
- ☐ The tip was **sufficiently corroborated**[3] to show that the caller had information not readily available to the general public.
- ☐ Anonymous **tips to 911 are presumed reliable** if the caller may be identified through subscriber information.[4]

Tennessee Case Examples

These cases represent binding authority from Tennessee, the 6th Circuit, or U.S. Supreme Court. It's important to confirm these cases are consistent with current state law and agency policy which may be more restrictive.

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[1] Florida v. J.L., 529 U.S. 266 (2000)
[2] Navarette v. California, 134 S. Ct. 1683 (2014)
[3] Alabama v. White, 496 U.S. 325 (1990)
[4] Navarette v. California, 134 S. Ct. 1683 (2014)

Detention Based on Anonymous Tip of Reckless Driving:

In the case of State of Tennessee v. Jerry Lee Hanning, decided by the Tennessee Supreme Court, the court addressed the legality of a detention and questioning based on an anonymous tip. The defendant, who was detained and subsequently arrested for driving under the influence after a police officer received an anonymous tip about a black "18-wheeler" being driven recklessly. The court held that the anonymous tip, which reported reckless driving and indicated a high risk of imminent injury or death, justified the brief investigatory stop. The court emphasized that the tip was timely, detailed, and quickly verified by the officer. A significant quote from the case states: "We hold that in this case the anonymous tip reporting reckless driving indicated a sufficiently high risk of imminent injury or death to members of the public to warrant immediate intervention by law enforcement officials and justified the brief investigatory stop."[1]

Reasonable Suspicion and Anonymous Tips:

In Navarette v. California, the Supreme Court addressed the issue of whether an anonymous tip can provide law enforcement officers with reasonable suspicion to conduct a traffic stop. The Court affirmed the decision, holding that under the totality of the circumstances, the anonymous tip in this case provided sufficient indicia of reliability. The Court stated, "By reporting that she had been run off the road by a specific vehicle, the caller necessarily claimed an eyewitness basis of knowledge." This decision underscores the Court's recognition of the practical realities faced by law enforcement and the need to balance public safety concerns with Fourth Amendment protections against unreasonable searches and seizures.[2]

Reasonable Suspicion and Corroborated Anonymous Tips:

In Alabama v. White, the Supreme Court of the United States addressed the validity of an investigatory stop based on an anonymous tip. The Court held that an anonymous tip, as corroborated by independent police work, can exhibit sufficient indicia of reliability to provide reasonable suspicion for an investigatory stop. The case involved police receiving an anonymous tip about Vanessa White, predicting her departure from a specific location, the vehicle she would be driving, and her possession of cocaine. The Court stated, "Although it is a close case,

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[1] State of Tenn. v. Jerry Lee Hanning, 296 S.W.3d 44 (Tenn. 2009)

[2] Navarette v. California, 134 S.Ct. 1683 (2014)

we conclude that under the totality of the circumstances the anonymous tip, as corroborated, exhibited sufficient indicia of reliability to justify the investigatory stop of respondent's car." This decision underscores the Court's approach in balancing the need for law enforcement to act on reasonable suspicion against the rights of individuals against unreasonable searches and seizures.[1]

Non-binding Case Examples

These cases represent persuasive authority from other courts outside of Tennessee and the 6th Circuit. Though not binding, they have been selected for inclusion here because if an officer in Tennessee finds themself in a similar situation, the outcome will likely be the same, at least in federal court.

Anonymous Report That 25 People Were Being Loud and Displaying Handguns Justified Terry Stop, Despite the Group Being Smaller and Quieter:

An anonymous 911 call, reporting that a group of 25 people were being loud and displaying handguns in a parking lot at a location where violent crime and drug activity were regularly reported, supported a reasonable suspicion that a crime was in progress or about to be committed and justified a Terry Stop. Even though the group at the scene was smaller and quieter than reported, and was not brandishing weapons, the nature of the call required a lower level of corroboration. Additionally, the five-minute response time could have accounted for the change in the number of people present and their activities.[2]

Generalized Tip Was Not Enough for Reasonable Suspicion Stop:

Police officers did not have a reasonable, articulable, and individualized suspicion that the suspect was engaged in criminal activity, where they only had an anonymous tip that a male matching the suspect's description was in possession of a gun. The suspect was located in a high-crime neighborhood in which a shooting had occurred over one hour earlier, and it was late at night. The suspect's failure to comply with the order to show his hands could not be considered because it occurred after the moment of the seizure, and his few steps backward were entirely consistent with a surprised reaction and even acquiescence.[3]

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[1] Alabama v. White, 496 U.S. 325 (1990)
[2] U.S. v. Williams, 731 F.3d 678 (7th Cir. 2013)
[3] U.S. v. Lowe, 791 F.3d 424 (3d Cir. 2015)

Handcuffing and Use of Force

In cases like "Terry v. Ohio" and subsequent rulings, the U.S. Supreme Court has addressed the issue of law enforcement using excessive force during investigative detentions. The Court has established that while officers have the authority to conduct stops and brief detentions based on reasonable suspicion, the use of force during these encounters must be proportionate and not excessive. The Court emphasizes that the determination of whether the force used is excessive depends on the reasonableness of the action in the context of the situation, considering factors such as the severity of the crime suspected, the threat posed by the individual, and whether the individual is actively resisting arrest or attempting to flee. The Court's rulings make it clear that an investigative detention should not escalate to the level of a de facto arrest without probable cause, and excessive force can render an otherwise lawful detention unconstitutional.

For example, if you point a firearm or use force during an investigative detention, it will likely be deemed an arrest requiring probable cause. Exceptions exist, but you need to have legitimate reasons. If you make a reasonable suspicion stop on a suspect you believe is about to pull a gun on you, then of course you get to point your firearm at them and conduct a patdown! Your safety comes first, but articulate that in your report. Similarly, if you believe a suspect is about to run, then handcuff him. Again, articulate why.

Legal Standard

If a suspect **fights** or **flees** during an investigative detention, then:

- ☐ You may use a **reasonable amount** of force to detain the suspect;
- ☐ The suspect's flight upon a lawful order to stop, or a battery upon an officer, **may be probable cause to arrest**; and
- ☐ **Deadly force cannot be used** to detain a suspect, unless the suspect poses a deadly force threat to you or others.

Handcuffing a suspect is appropriate when:

- ☐ The suspect appears to be a **flight** risk; or
- ☐ The suspect appears to be a **danger** to himself or others.
- ☐ Handcuffs are **removed** when no longer justified.

Non-binding Case Examples

These cases represent persuasive authority from other courts outside of Tennessee and the 6th Circuit. Though not binding, they have been selected for inclusion here because if an officer in Tennessee finds themself in a similar situation, the outcome will likely be the same, at least in federal court.

Frisk May Still Be Reasonable, Even if Suspect Is Handcuffed:

Where there is reasonable suspicion that a suspect is armed (thus justifying a frisk under Terry) and where the facts make it reasonable to handcuff the suspect during the investigative seizure, the fact that the suspect is handcuffed does not negate the right of the officer to conduct the frisk.[1]

Mere Handcuffing Does Not Always Indicate an Arrest:

The court stated that, "handcuffing a suspect does not necessarily dictate a finding of custody." The use of handcuffs "does not necessarily convert a Terry stop into an arrest."[2]

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[1] U.S. v. Sanders, 994 F.2d 200 (5th Cir. 1993)
[2] U.S. V. Bravo, 295 F.3d 1002 (9th Cir. 2002)

Detaining Victims or Witnesses

Generally, you cannot force a victim or witness to cooperate with your investigation. It is a "settled principle that while the police have the right to request citizens to voluntarily answer questions concerning unsolved crimes, they have no right to compel them to answer."[1]

In the case of McNabb v. United States,[2] decided by the Supreme Court of the United States, the Court addressed the issue of law enforcement practices, particularly focusing on the detention and interrogation of witnesses to a crime. The Court emphasized the importance of procedural safeguards in the criminal justice system, highlighting that legislation requiring police to demonstrate legal cause for detaining arrested persons serves as a crucial safeguard. This requirement is seen as a means to prevent abusive practices such as the 'third degree' and secret interrogations, reflecting a view of law enforcement that prioritizes fairness and respect for individual rights over brute force. The Court noted, "Legislation such as this, requiring that the police must with reasonable promptness show legal cause for detaining arrested persons [including witnesses], constitutes an important safeguard—not only in assuring protection for the innocent but also in securing conviction of the guilty by methods that commend themselves to a progressive and self-confident society." This statement underscores the Court's stance that effective law enforcement must be balanced with the protection of individual liberties and adherence to legal procedures.

If you have located an un-co-operative witness, and they are *vital* for your investigation, then identify them. Give this information to the prosecutor and let him decide whether or not the witness should be subpoenaed.

Legal Standard

A witness may be detained if:

- ☐ He is a **material witness** for your investigation;
- ☐ The detention should last no **longer than necessary** to determine his **identification** and whether he's **willing to cooperate** with your investigation;

[1] Davis v. Mississippi, 394 U.S. 721 (1969)
[2] McNabb v. United States" is 318 U.S. 332 (1943)

☐ If the witness is **un-co-operative**, **identify and release**. Contact your prosecutor and get advice on how to proceed.

Tennessee Case Examples

These cases represent binding authority from Tennessee, the 6th Circuit, or U.S. Supreme Court. It's important to confirm these cases are consistent with current state law and agency policy which may be more restrictive.

Checkpoint To Ask if They Had Information Concerning a Fatal Hit-and-Run Did Not Violate Fourth Amendment:

The checkpoint's "primary law enforcement purpose was not to determine whether a vehicle's occupants were committing a crime, but to ask vehicle occupants, as members of the public, for their help in providing information about a crime in all likelihood committed by others. The police expected the information elicited to help them apprehend, not the vehicle's occupants, but other individuals."[1]

Non-binding Case Examples

These cases represent persuasive authority from other courts outside of Tennessee and the 6th Circuit. Though not binding, they have been selected for inclusion here because if an officer in Tennessee finds themself in a similar situation, the outcome will likely be the same, at least in federal court.

Detaining Victim in Order To Continue Investigation Unreasonable:

It would be an unreasonable detention for an officer, after investigating and determining that a person was an injured victim rather than a suspect, to continue to detain him and to prevent him from being taken to a hospital. The officer required that he wait for an ambulance and would not allow others who had been trying to take him to a hospital to do so.[2]

[1] Illinois v. Lidster, 540 U.S. 419 (2004)
[2] Eubanks v. Lawson, 122 F.3d 639 (8th Cir. 1997)

Patdown for Weapons

A patdown (or "Terry frisk") is a limited search of a suspect's outer clothing for weapons. You must articulate two things before you can conduct a patdown. First, the investigative stop itself must be lawful (based on individualized reasonable suspicion). Second, you must articulate that the person is armed and dangerous.

Additionally, if you feel an object that may be a weapon, but you're not positive, you may retrieve and inspect it.

Legal Standard

A suspect may be frisked for weapons under the following circumstances:

- ☐ If the suspect is lawfully or unlawfully **armed with a weapon**, the weapon may be secured and a patdown of **outer clothing** conducted for additional weapons;
- ☐ If no weapon is visible, and you believe the suspect is **armed and dangerous**, a patdown of **outer clothing** may be conducted; or
- ☐ If the suspect was stopped for a violent crime or one involving weapons, a **patdown** may usually be conducted.

A container (i.e. purse, backpack) may be frisked for weapon if:

- ☐ You have specific and articulable facts or circumstances to believe a specific person is armed and dangerous;
- ☐ It's not safe or practicable to separate the item away from the person (articulate why);, or
- ☐ The item will be returned to the suspect to retrieve credentials, paperwork, or after detention; and
- ☐ You attempt to patdown the outside of the container, if practicable, and if not practicable articulate why in your report. If you open the container, conduct a limited cursory search for weapons only. Plain view rules apply

Tennessee Case Examples

These cases represent binding authority from Tennessee, the 6th Circuit, or U.S. Supreme Court. It's important to confirm these cases are consistent with current state law and agency policy which may be more restrictive.

Legality of Stop and Frisk Based on Defendant's Criminal History:

In the case of State v. Bridges, the Tennessee Supreme Court examined the legality of a warrantless search and seizure under the Fourth Amendment and the Tennessee State Constitution. The Court held that the officer had reasonable suspicion to stop and frisk the defendant and to believe that he was armed and dangerous based on the officer's knowledge of his criminal history and recent involvement in an armed altercation with police. The Court reasoned that once a valid investigatory stop has been made, police may patdown suspect's outer clothing if police have reasonable, particularized suspicion that suspect is armed. The purpose is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence.[1]

Reasonable Suspicion for Patdown Searches and Seizure of Contraband:

In State v. Cothran, the Tennessee Court of Criminal Appeals held that a police officer had reasonable suspicion to frisk a defendant for weapons after smelling marijuana and seeing the defendant put something in his pocket. The Court also held that the officer could seize a metal pipe from the defendant's pocket under the plain feel doctrine, as the officer had probable cause to believe the pipe was contraband based on his experience and training. The Court stated that "based on the totality of the circumstances at the time of the frisk, Officer Thompson had probable cause to believe the object he felt was contraband. Therefore, under the plain feel doctrine, as well as for the officer's safety, Officer Thompson legally seized the metal pipe."[2]

Patdowns Require the Person To Be Armed and Dangerous:

In the landmark case Terry v. Ohio, 392 U.S. 1 (1968), the Supreme Court discussed the concept of reasonable suspicion in the context of stop and frisk procedures:

"Our evaluation of the proper balance that has to be struck in this type of case leads us to conclude that there must be a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime.

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[1] State v. Bridges, 963 S.W.2d 487 (1997)

[2] State v. Cothran, 115 S.W.3d 513 (2003)

The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger. And in determining whether the officer acted reasonably in such circumstances, due weight must be given, not to his inchoate and unparticularized suspicion or 'hunch,' but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience."[1]

This excerpt emphasizes that for a stop and frisk to be lawful, the police officer must have a reasonable suspicion based on specific and articulable facts, rather than a mere hunch. The standard set is what a reasonably prudent person would believe under the same circumstances, taking into account the officer's experience and the observable facts.

Non-binding Case Examples

These cases represent persuasive authority from other courts outside of Tennessee and the 6th Circuit. Though not binding, they have been selected for inclusion here because if an officer in Tennessee finds themself in a similar situation, the outcome will likely be the same, at least in federal court.

Officer Doesn't Need To Be Certain:

"The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger."[2]

Relevant Considerations:

Relevant considerations may include: observing a visible bulge in a person's clothing that could indicate the presence of a weapon; seeing a weapon in an area the suspect controls, such as a car; "sudden movements" suggesting a potential assault or "attempts to reach for an object that was not immediately visible;" "evasive and deceptive responses" to an officer's questions about what an individual was up to; unnatural hand postures that suggest an effort to conceal a firearm; and whether the officer observes anything during an encounter with the suspect that would dispel the officer's suspicions regarding the suspect's potential involvement in a crime or likelihood of being armed.[3]

Refusal To Remove Hands Is a Factor Justifying Frisk:

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[1] Terry v. Ohio, 392 U.S. 1 (1968)
[2] Terry v. Ohio, 392 U.S. 1 (1968)
[3] Thomas v. Dillard, 818 F.3d 864 (9th Cir. Cal. 2016)

"The officers, after initiating the stop, twice ordered that [defendant] remove his hands from his pockets, which he refused to do. The report of an assault in progress, the matching description, and the additional factors that supported the stop provided the officers with reason to believe that [defendant] was armed and dangerous, and that the refusal to remove his hands was an effort to conceal a weapon.[1]

Stop in Gang-Ridden Area Helped Justify Patdown:
"[T]the area in which the incident occurred gave police officers particular reason to be concerned about the possibility of gun-related violence. The neighborhood was known as a high-crime area of the city; but more importantly, there were indications of gang activity, recent reports of shots fired, and the occurrence of a drive-by shooting with two victims two days earlier and one block away from the location where the men were discovered drinking. These specific and recent indicia of violence, including gun-related violence, increased the odds that an individual detained at this location for apparent criminal activity (even a petty offense like the one at issue here) might be armed."[2]

"Tap" by Officer To Open Hand Was a Frisk Requiring Justification:
Police officer's "tap" of the defendant's wrist to open closed hand was a frisk that constituted a search subject to the protections of the Fourth Amendment.[3]

Drug Dealing and Weapons Go Hand-in-Hand:
"Illegal drugs and guns are a lot like sharks and remoras. And just as a diver who spots a remora is well-advised to be on the lookout for sharks, an officer investigating cocaine and marijuana sales would be foolish not to worry about weapons."[4]

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[1] United States v. Simmons, 560 F.3d 98 (2d Cir. 2009)
[2] United States v. Patton, 705 F.3d 734 (7th Cir. Ill. 2013)
[3] U.S. v. Camacho, 661 F.3d 718 (1st Cir. 2011)
[4] People v. Simpson, 65 Cal. App. 4th 854 (1998)

Patdown Based on Anonymous Tips

A patdown (or "Terry frisk") is a limited search for weapons. If you receive an anonymous tip that someone is illegally carrying a weapon, you must prove that the tip is reliable. Typically, this means that the tipster has an indicia of reliability and the information is independently corroborated. See previous sections on how to do this.

Here's what to watch out for in this area: citizens boldly claiming that someone illegally possesses a weapon, without evidence, should not be used to detain people. Otherwise, a person could easily harass someone he didn't like by claiming, without proof, that someone is illegally carrying a gun. This doesn't mean the tipster has to see the gun with his own eyes. But he would need to provide you with inside information, information that the general public would not know.

For example, a tipster tells you that he overheard that John Doe is going to burglarize ABC jewelry store at two p.m., and he is armed with a gun. You look up John Doe and he's on parole for robbery. You then see John Doe walking up to ABC jewelry store at 3:30 (criminals have horrible time management). You could lawfully detain and frisk Doe based on this tip, even though the tipster never saw the gun and remained anonymous.

Legal Standard

A suspect may be frisked based an anonymous tip if:

- ☐ The call states or implies that the suspect is **engaged in criminal activity**;
- ☐ The tip indicates the suspect is **armed and dangerous**;
- ☐ The tip had an **indicia of reliability**; and
- ☐ The tip was **sufficiently corroborated** to show that the caller had information not readily available to the general public.

Tennessee Case Examples

These cases represent binding authority from Tennessee, the 6th Circuit, or U.S. Supreme Court. It's important to confirm these cases are consistent with current state law and agency policy which may be more restrictive.

Anonymous Tips and Reasonable Suspicion:

In Florida v. J.L., the Supreme Court of the United States addressed the reliability of anonymous tips in justifying police stops and frisks. The Court held that an anonymous tip claiming a person is carrying a gun, without more, is insufficient to justify a police officer's stop and frisk of that person. Justice Ginsburg, delivering the opinion of the Court, stated, "The question presented in this case is whether an anonymous tip that a person is carrying a gun is, without more, sufficient to justify a police officer's stop and frisk of that person. We hold that it is not." The Court emphasized that the reliability of an anonymous tip must be established through corroborative efforts by the police, and mere accuracy in describing a person's appearance or location does not suffice to justify a stop and frisk. The decision reaffirmed the principle that reasonable suspicion requires a certain level of reliability concerning alleged illegal activity, not just the identification of a person.[1]

[1] Fla. v. J.L., 529 U.S. 266 (2000)

Plain Feel Doctrine

Under the plain feel (or "touch") doctrine, you can seize any item that is immediately apparent as contraband or evidence if you are conducting a lawful patdown for weapons.[1] The key is to articulate how you immediately recognized the item without "manipulation." If you're unsure, you should ask the suspect what the item is.

Legal Standard

Evidence or contraband discovered during a frisk is admissible if:

- ☐ Your frisk was **lawfully conducted** and limited to weapons;
- ☐ When you felt the item, it was **immediately apparent** that the item was contraband or evidence of a crime; and
- ☐ You did not build probable cause by **manipulating** the item.

Tennessee Case Examples

These cases represent binding authority from Tennessee, the 6th Circuit, or U.S. Supreme Court. It's important to confirm these cases are consistent with current state law and agency policy which may be more restrictive.

Tennessee's Analysis of the Plain Feel Doctrine:

In the case of State v. Bridges, decided by the Tennessee Supreme Court , the Court addressed the constitutionality of a warrantless seizure of cocaine from the defendant, Ray Anthony Bridges, under the "plain feel" or "plain touch" doctrine. The case arose from an incident where Officer D.W. Blackwell, acting on a tip from a reliable informant, detained and frisked Bridges at a club, leading to the discovery and seizure of cocaine. The Court acknowledged that while the initial stop and frisk were based on reasonable suspicion, the evidence did not support the trial court's finding that the officer had probable cause to believe the object felt during the frisk was contraband. The Court emphasized the need for caution in applying the plain feel doctrine, noting its potential to justify unwarranted intrusions into personal privacy. The Court stated, "The 'plain touch' doctrine will encourage officers to investigate any lump or bulge in a person's clothing or pockets that arouses their curiosity during the course of a patdown search."[2]

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[1] Horton v. California, 496 U.S. 128 (1990)
[2] State v. Bridges, 963 S.W.2d 487 (Tenn. 1997)

Suspect Has no Reasonable Expectation of Privacy in Item Immediately Apparent as Contraband During Patdown:

"The rationale of the plain-view doctrine is that if contraband is left in open view and is observed by a police officer from a lawful vantage point, there has been no invasion of a legitimate expectation of privacy and thus no "search" within the meaning of the Fourth Amendment...The same can be said of tactile discoveries of contraband. If a police officer lawfully pats down a suspect's outer clothing and feels an object whose contour or mass makes its identity immediately apparent, there has been no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons; if the object is contraband, its warrantless seizure would be justified by the same practical considerations that inhere in the plain-view context."[1]

Non-binding Case Examples

These cases represent persuasive authority from other courts outside of Tennessee and the 6th Circuit. Though not binding, they have been selected for inclusion here because if an officer in Tennessee finds themself in a similar situation, the outcome will likely be the same, at least in federal court.

Officer Reasonably Believed "Cylindrical-Shaped" Object Was Crack Pipe:

During a patdown, "the officer felt an object which, based on its contour and mass, and based on his experience with such contraband, he correctly believed to be a crack pipe."[2]

[1] Minnesota v. Dickerson, 508 U.S. 366 (1993)
[2] Ingram v. City of Los Angeles, 418 F. Supp. 2d 1182 (C.D. Cal. 2006)

Involuntary Transportation

Typically, involuntarily transportation of a suspect back to the crime scene for identification[1] will be considered a formal arrest requiring probable cause.[2] But like all good rules, there are exceptions.

During some particularly serious investigations you may have no choice but to transport the suspect. Just like the use of firearms or handcuffs will not always convert an investigative detention into an arrest, transporting a suspect against his will doesn't always equal arrest (though it usually does, so be careful here).

In practice, involuntary transportation occurs with some frequency. Sometimes a suspect is found a couple of blocks from the crime scene and then (involuntarily) transported back for an interview or witness identification.

Remember, without consent, probable cause, or exigency, this is an arrest. If this happens, one doctrine may save the day — the collective knowledge doctrine (in this book). If another officer on-scene developed probable cause before the transportation took place, the transportation is lawful even though the transporting officer did not have his own P.C. You may still have a Miranda issue.[3] But at least you wouldn't have an illegal arrest.

Legal Standard

Police may **not involuntarily transport** a suspect away from the location where he was stopped unless:

- ☐ You have **legitimate exigent circumstances** (rare). Involuntary transportation without exigency is an arrest, requiring probable cause.

Tennessee Case Examples

These cases represent binding authority from Tennessee, the 6th Circuit, or U.S. Supreme Court. It's important to confirm these cases are consistent with current state law and agency policy which may be more restrictive.

[1] Hayes v. Florida, 470 U.S. 811 (1985)
[2] Dunaway v. New York, 442 U.S. 200 (1979)
[3] Kaupp v. Texas, 538 U.S. 626 (2003)

Custodial Seizure and the Fourth Amendment:
This case by the Court of Criminal Appeals of Tennessee held that handcuffing and transporting a defendant to the police department constituted a custodial seizure under the Fourth Amendment. The court emphasized that restraining an individual's freedom to walk away is a seizure. The court reasoned that, whenever an officer restrains the freedom of an individual to walk away, the officer has 'seized' that person for Fourth Amendment purposes. Furthermore, the defendant continued to be detained the entire time as he was not free to leave.[1]

IMoving High-Level Trafficking Suspect From Sidewalk Into Surveillance House Was Justified for Safety Concerns:
"The most compelling factor supporting a finding that Medina was arrested was the agents' transport of Medina from the street to the surveillance residence for questioning...Even so, an officer may move a suspect or use greater force against a suspect, without probable cause, if safety concerns justify such precautions."[2]

Involuntary Transportation for Questioning Unlawful:
Officers picked up suspect, took him downtown for questioning, and eventually obtained a confession. The officers contended that the suspect was just being "detained" for questioning, but the Supreme Court disagreed, ruling that the movement resulted in the arrest of the defendant—confession suppressed.[3]

Non-binding Case Examples

These cases represent persuasive authority from other courts outside of Tennessee and the 6th Circuit. Though not binding, they have been selected for inclusion here because if an officer in Tennessee finds themself in a similar situation, the outcome will likely be the same, at least in federal court.

Transport Away From "Hostile Crowd" Upheld:
A hostile crowd, in a high-crime area, gathered around detention stop. Officer's involuntary movement away from the scene upheld.[4]

Valid Transportation To Find Out What Happened to Children:
A female walked into the police station and said that she had "done something very bad" to her children. An officer then told her she was not under arrest, but that he would drive her home to find out

[1] State of Tenn. v. Larico S. Ficklin, 945 S.W.2d 102 (Tenn. 1997)

[2] United States v. Lopez-Medina, 461 F.3d 724, 740 (6th Cir. 2006)
[3] Dunaway v. New York, 442 U.S. 200 (1979)
[4] People v. Courtney, 11 Cal. App. 3d 1185 (Cal. App. 1st Dist. 1970)

what had happened. Officer discovered three of the six children were shot and killed. This was a lawful detention, not an arrest.[1]

Transport to ID Suspect Upheld in Gang Rape:
An officer investigating a brutal gang rape stopped two suspects. They did not speak English and the officer handcuffed them and transported them to the hospital for identification. The involuntary transport was reasonable under the circumstances and evidence was not suppressed.[2]

Transportation Reasonable Where There Was a Lack of Officers and a Desire To Not Leave Patrol Vehicles Unattended:
Police acted reasonably in transporting the suspect a brief distance to the scene of a reported burglary in a patrol car as part of a Terry stop, where it was reasonable to believe that the victim might be able to identify the perpetrator, and, although officers could have walked the witness to the scene, doing so would have required more officers, and might have required leaving a patrol car unattended in a high-crime area.[3]

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[1] United States v. Charley, 396 F.3d 1074 (9th Cir. Cal. 2005)
[2] In re Carlos M., 220 Cal. App. 3d 372 (1990)
[3] U.S. v. McCargo, 464 F.3d 192 (2d Cir. 2006)

Detaining People Who Publicly Record Police Officers

Generally, you have no right to stop a person from recording your public activities. Do not detain the person unless you have specific, articulable, reasonable suspicion that he is engaged in criminal activity. This is rarely the case and 99% of the time these people want to catch you doing something stupid and have it go viral on YouTube. Don't fall for it.

Additionally, if you lawfully detain a person who is recording you, and you have R.S. that he is dangerous, you can order him to put his phone away for officer safety purposes. But don't order him to stop recording unless you can articulate legitimate officer safety reason or distraction (e.g. Facebook live).

If a non-detained person is interfering with your investigation, like yelling or being too close to the scene, give him orders to quiet down or move back. But be professional and explain what you want done and why.

Legal Standard

A person may video or audio record if (think three P's):

- ☐ He is recording a **public officer**;
- ☐ In a **public place**;
- ☐ Doing his **public duties**; but
- ☐ A lawfully stopped person may be ordered to put the device away or stop recording for **legitimate safety** or **investigative purposes** (use good judgment).

Tennessee Case Examples

These cases represent binding authority from Tennessee, the 6th Circuit, or U.S. Supreme Court. It's important to confirm these cases are consistent with current state law and agency policy which may be more restrictive.

First Amendment Rights and Law Enforcement:

In the Supreme Court case City of Houston v. Hill, the Court addressed the constitutionality of a municipal ordinance that prohibited interrupting a police officer. The case arose when Raymond Wayne Hill, a resident of Houston, Texas, was arrested under a Houston ordinance for allegedly interrupting a police

officer during an investigation. Hill was acquitted in a nonjury trial, but the incident raised significant First Amendment concerns. The Supreme Court, in its decision, emphasized the importance of protecting verbal criticism and challenge directed at police officers under the First Amendment. The Court stated, "Speech is often provocative and challenging... [But it] is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest." This quote underscores the Court's recognition of the fundamental role of free speech, even in interactions with law enforcement, and the need to protect such speech from undue governmental restriction. The Court ultimately found the Houston ordinance to be unconstitutionally overbroad, affirming the judgment of the Court of Appeals. This case is a landmark decision in protecting the rights of individuals to voice their opinions and criticisms, even in the context of police activities.[1]

Law Enforcement and Retaliatory Arrests:

In the case of Nieves v. Bartlett, the Supreme Court of the United States dealt with the issue of retaliatory arrests in the context of law enforcement. The case arose from an incident at the Arctic Man festival in Alaska, where Russell Bartlett was arrested by police officers for disorderly conduct and resisting arrest. Bartlett sued the officers under 42 U.S.C. §1983, claiming they violated his First Amendment rights by arresting him in retaliation for his speech, specifically his refusal to speak with one of the officers and his intervention in another officer's discussion with a minor. The District Court initially granted summary judgment for the officers, citing the existence of probable cause for the arrest. However, the Ninth Circuit reversed this decision, holding that probable cause does not defeat a retaliatory arrest claim. The Supreme Court, in its decision, held that, "Because there was probable cause to arrest Bartlett, his retaliatory arrest claim fails as a matter of law." This decision highlights the complexity of establishing a retaliatory arrest claim, especially when probable cause for the arrest exists.[2]

Proof of retaliation and First Amendment Rights:

In Lozman v. City of Riviera Beach, the Supreme Court of the United States again addressed the complex issue of retaliatory arrest in the context of First Amendment rights. The case involved Fane Lozman, who was arrested during a city council meeting after he

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[1] City of Houston v. Hill, 482 U.S. 451 (1987)

[2] Nieves v. Bartlett, 139 S. Ct. 1715 (2019)

began speaking about corruption in the county, which was unrelated to the city. Lozman alleged that his arrest was in retaliation for his open-meetings lawsuit against the City and his prior public criticisms of city officials. The Supreme Court had to consider whether the existence of probable cause for Lozman's arrest barred his First Amendment retaliation claim under these circumstances. The Court held that the existence of probable cause does not bar a First Amendment retaliation claim under the specific circumstances of this case. Justice Kennedy, delivering the opinion of the Court, stated, "This case requires the Court to address the intersection of principles that define when arrests are lawful and principles that prohibit the government from retaliating against a person for having exercised the right to free speech." Here, Lozman found evidence that the city council wanted to suppress his speech by having him arrested, therefore his lawsuit could move forward.[1]

Non-binding Case Examples

These cases represent persuasive authority from other courts outside of Tennessee and the 6th Circuit. Though not binding, they have been selected for inclusion here because if an officer in Tennessee finds themself in a similar situation, the outcome will likely be the same, at least in federal court.

Filming a Public Officer, Doing a Public Act, in a Public Place, Is Protected:

Filming or videotaping of government officials engaged in their duties in a public place, including police officers performing their responsibilities, is protected by First Amendment.[2]

[1] Lozman v. City of Riviera Beach, 138 S. Ct. 1945 (2018)
[2] Glik v. Cunniffe, 655 F.3d 78 (1st Cir. Mass. 2011)

ABOUT THE AUTHOR

Anthony Bandiero, JD, ALM
Anthony is an attorney and retired law enforcement officer with experience as both a municipal police officer and sergeant with a state police agency. Anthony has studied constitutional law for over twenty years and has trained countless police officers around the nation in search and seizure.

View his bio at BlueToGold.com/about

TENNESSEE

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