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Search & Seizure Survival Guide

A FIELD GUIDE FOR LAW ENFORCEMENT

Blue to Gold

Vermont Search & Seizure Survival Guide

A FIELD GUIDE FOR LAW ENFORCEMENT

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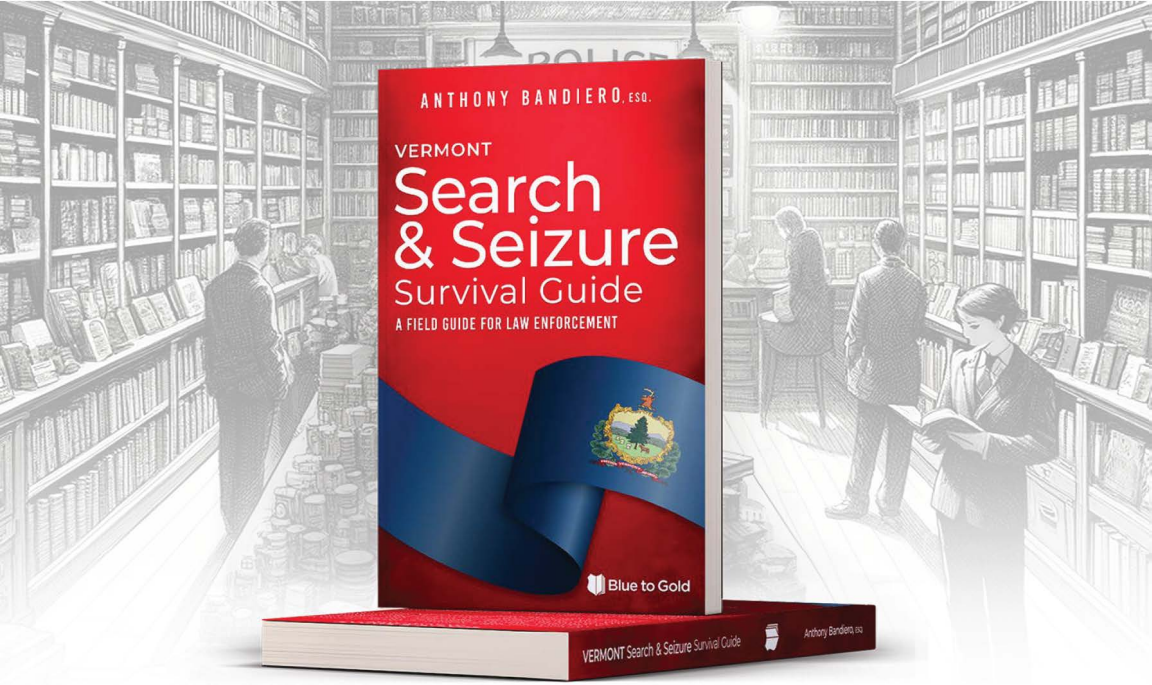
Note: This is a general overview of the classical and current United States court decisions related to search and seizure, and liability. As an overview, it should be used for a basic analysis of the general principles but not as a comprehensive presentation of the entire body of law. It is not to be 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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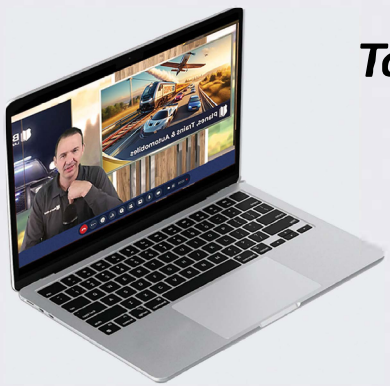

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Note about case citations:

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

Let's Start with the Basics

Fourth Amendment

The Fourth Amendment to the United States Constitution, a crucial element of the Bill of Rights, was enacted as a reaction to the colonial grievances against British practices before the American Revolution. Central to its inception were the "writs of assistance," which were broad search warrants allowing British officials to search any premises for smuggled goods without specifying the location or goods. This practice was met with significant opposition in the colonies, notably challenged by James Otis in 1761, who argued that these writs violated constitutional rights, fueling widespread discontent.

Influential legal philosophers like John Locke, advocating for natural rights and property protection, also shaped the Founding Fathers' views. Post-Revolution, with the drafting of the Constitution, there was a heightened emphasis on individual rights and limiting government power, reflecting the experiences under British rule. The Fourth Amendment, introduced as part of the Bill of Rights in 1791, was a direct response to these concerns. It aimed to safeguard citizens from unreasonable government intrusions, necessitating judicial warrants and probable cause for searches and seizures.

This amendment was a manifestation of the American values of individual rights and privacy, addressing the Anti-Federalist worries about the new Constitution's lack of civil liberties protections.

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.

Vermont Case Examples

These cases represent binding authority from Vermont, the 2nd Circuit, or U.S. Supreme Court. It's important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

The Supreme Court Emphasized the Flexible Nature of the Fourth Amendment's Reasonableness Requirement:

"The Fourth Amendment does not require that every search be made pursuant to a warrant. It prohibits only 'unreasonable searches and seizures.' The relevant test is not the reasonableness of the opportunity to procure a warrant, but the reasonableness of the seizure under all the circumstances. The test of reasonableness cannot be fixed by rules per se; each case must be decided on its own facts."[1]

The Supreme Court Clarified That the Assessment of Reasonableness Under the Fourth Amendment Is Based on Specific Case Facts:

"The reasonableness of a search is in the first instance a substantive determination to be made by the trial court from the facts and circumstances of the case and in the light of the 'fundamental criteria' laid down by the Fourth Amendment and in opinions of this Court applying that Amendment."[2]

The Supreme Court Held That the Method of an Officer's Home Entry Is a Factor in Determining the Reasonableness of a Search Under the Fourth Amendment:

"Given the longstanding common-law endorsement of the practice of announcement, we have little doubt that the Framers of the Fourth Amendment thought that the method of an officer's entry into a dwelling was among the factors to be considered in assessing the reasonableness of a search or seizure."[3]

---

[1] Coolidge v. New Hampshire, 1971 U.S. LEXIS 25 (1971)
[2] Ker v. California, 10 L. Ed. 2d 726 (1963)
[3] Wilson v. Arkansas, 115 S. Ct. 1914 (1995)

Vermont Constitution Chapter I, Section 11

The Vermont Constitution has its own search and seizure clause, practically identical in language and intent to the Fourth Amendment.

Therefore, even though many examples in this book are not from Vermont, they are based on interpretations of the Fourth Amendment that I believe are consistent with how Vermont state courts would likely interpret the law. Still, Vermont statutory law and agency policy may be stricter than case law.

Legal Standard

The Vermont Constitution's search and seizure clause is best understood in two separate parts:

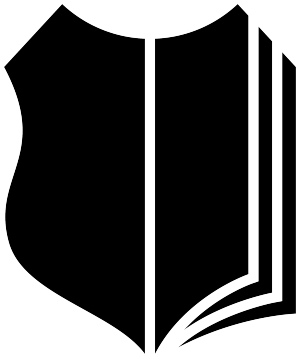
Search and seizure clause:

1. That the people have a right to hold themselves,
2. their houses, papers and possessions,
3. free from search or seizure; and

Search warrant clause:

1. therefore warrants, without oath or affirmation first made,
2. affording sufficient foundation for them,
3. and whereby any officer or messenger may be commanded or required to search suspected places,
4. or to seize any person or persons, his or their property, not particularly described,
5. are contrary to that right, and ought not to be granted.[1]

[1] Vermont Constitution (2024)



Consensual Encounters

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."[1]

Start a consensual encounter by asking a question: "Can I talk to you?" Not, "Come talk to me." 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 becomes a seizure when:[2]

- ☐ Under the **totality of the circumstances**;
- ☐ A reasonably **innocent** person;
- ☐ Believes they do not have the freedom to **terminate** the encounter or **leave**; and
- ☐ **Yields** to a show of authority or physical force.

Some factors courts consider include:

- ☐ How the initial contact was made (was an order given?)
- ☐ Use of flashing lights or sirens
- ☐ Uniform versus plain clothes
- ☐ Number of officers
- ☐ Demeanor of officer (conversational v. accusations)
- ☐ Display of weapons
- ☐ Physical touching or patdowns

[1] United States v. Drayton, 536 U.S. 194 (2002)
[2] CCDA Shanon Clowers

- ☐ Ordering person to move next to patrol car
- ☐ Blocking their vehicle
- ☐ Telling person they are free to leave
- ☐ Reading Miranda (not recommended for consensual encounters)
- ☐ Duration of the encounter
- ☐ Public versus private location
- ☐ And many others. Use common sense and talk to the person in a professional yet conversational tone.

Vermont Case Examples

These cases represent binding authority from Vermont, the 2nd Circuit, or U.S. Supreme Court. It's important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

Distinguishing Consensual Encounters From Seizures:

In United States v. Tehrani, the District Court of Vermont held that law enforcement's encounters with individuals, including aliens, were consensual and did not constitute seizures under the Fourth Amendment, at least until the individuals were asked to accompany officers to another location. The court emphasized that the encounters were non-threatening, involved no physical contact or display of weapons, and did not restrict the individuals' movements. Even when one alien protested and threatened to sue, the encounter remained consensual. The court stated, "The point of distinction between a consensual encounter and a seizure...is the point at which a reasonable person under all the circumstances would believe he was not free to walk away."[1]

Consensual Encounters Are Not Seizures:

This case clarified the boundaries of consensual encounters versus seizures under the Fourth Amendment. The Court stated, "law enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answers to such questions." This ruling emphasized that police questioning, in itself, does not constitute a seizure, and such encounters are

[1] United States v. Tehrani, 826 F. Supp. 789 (D. Vt. 1993)

considered consensual, not implicating Fourth Amendment interests.[1]

Police Can Ask People if They Are Willing To Answer Questions:

The Court reinforced the principle that police interactions with individuals in public spaces, such as streets or buses, where they ask questions or request consent to search luggage, do not violate the Fourth Amendment's prohibition of unreasonable seizures. The Court noted, "Law enforcement officers do not violate the Fourth Amendment's prohibition of unreasonable seizures merely by approaching individuals on the street or in other public places and putting questions to them if they are willing to listen." This decision further established that such interactions are considered consensual and do not implicate Fourth Amendment interests.[2]

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, without returning 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.[3]

Non-binding Case Examples

These cases represent persuasive authority from other courts outside of Vermont and the 2nd Circuit. Though not binding, they have been selected for inclusion here because if officers in Vermont find themselves in a similar situation, the outcome will likely be the same, at least in federal court.

Order To Come Over and Talk Is Not Consensual:

Suspect was observed walking in mall parking lot after stores were closed. Officer said, “Come over here, I want to talk to you.” Court held officer gave command to suspect and therefore needed reasonable suspicion. Evidence was suppressed.[4]

---

[1] Florida v. Bostick, 111 S. Ct. 2382 (1991)
[2] United States v. Drayton, 122 S. Ct. 2105 (2002)
[3] Fla. v. Royer, 460 U.S. 491 (1983)
[4] People v. Roth, 219 Cal. App. 3d 211 (Cal. App. 4th Dist. 1990)

Even if Police Have Probable Cause, They Can Still Seek a Consensual Encounter With the Suspect:

"Therefore, even assuming that probable cause existed at some earlier time, there was no violation of the Fourth Amendment...No Fourth Amendment privacy interests are invaded when an officer seeks a consensual interview with a suspect."[1]

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 he 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.[2]

Many cops call this move the "two step." 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.

Whether Someone Feels "Detained" Is Based on Objective Facts:

"The test provides that the police can be said to have seized an individual 'only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.' As the test is an objective standard—looking to a reasonable person's interpretation of the situation in question... This 'reasonable person' standard also ensures that the scope of Fourth Amendment protection does not vary with the state of mind of the particular individual being approached.'"[3]

Violation of a State Law Does Not Equal Automatic Fourth Amendment Violation:

Although the officers may have violated state law requirements in not informing the person answering the door during "knock and talk" investigation that he had a right to terminate the encounter, that circumstance did not render the consent to talk involuntary under the Fourth Amendment.[4]

---

[1] People v. Coddington, 23 Cal. 4th 529 (2000), as modified on denial of reh'g (Sep 27, 2000)
[2] U.S. v. Rivera, 906 F.2d 319 (7th Cir. 1990)
[3] State v. McKellips, 118 Nev. 465, 469 (2002)
[4] U.S. v. Cormier, 220 F.3d 1103 (9th Cir. 2000)

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. was viewed as a detention requiring reasonable suspicion (see below). In other words, if the Girl Scouts wouldn't do then it's probably unreasonable.

What about "No Trespass" signs? Trying to have a consensual conversation with someone is not typically considered trespassing. The same goes with "No Soliciting" signs. Still, there will be situations when a no-trespassing sign along with other factors will indicate to a reasonable person that no one should approach the front door and knock. Still, these rules don't apply to calls for service where there is an ongoing issue, like a domestic violence call or loud party complaint.

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**;
- ☐ When the conversation ended or was terminated, you **immediately left** and didn't snoop around.

Vermont Case Examples

These cases represent binding authority from Vermont, the 2nd Circuit, or U.S. Supreme Court. It's important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

Officer's Knock and Talk Procedure did not Violate the Fourth Amendment;

In State v. Koenig, the Supreme Court of Vermont addressed whether a state trooper's warrantless entry into a structure attached to the defendant's home for a "knock and talk" violated the Fourth Amendment. The case involved a trooper who, acting on a tip about erratic driving, went to the defendant's address, at once recognized based on the information provided by the tipster. The trooper entered the structure, which was open on one side, to access a visible entryway and observed evidence leading to a DUI arrest. The court held that the entry did not violate constitutional protections and the Fourth Amendment because the structure was open to public view and the entryway was considered a normal point of public access. The Court stated, "[a]bsent evidence of intent to exclude the public, the entryway to a person's house offers implied permission to approach and knock on the front door, and therefore, the police could utilize such a point of access for the purpose of making inquiry."[1]

Officers May Knock on the Door Reasonably Believed To Be Used by the General Public:

The U.S. Supreme Court addressed the boundaries of the "knock and talk" exception in law enforcement, particularly focusing on where officers can lawfully approach a residence without a warrant. The case revolved around whether police officers could approach a residence at a location other than the front door under the "knock and talk" exception.

The case involved Officer Carroll, who, while searching for a suspect, approached the Carmans' house and entered their deck without a warrant. The Carmans argued that this violated their Fourth Amendment rights, as the "knock and talk" exception should not apply when officers approach areas of the residence other than the front door. The District Court initially ruled in favor of Carroll, but the Third Circuit Court of Appeals reversed this decision, asserting that the "knock and talk" exception requires officers to begin their encounter at the front door.

---

[1] State v. Koenig, 202 Vt. 243 (2016)

The Supreme Court, however, reversed the Third Circuit's decision, granting qualified immunity to Officer Carroll. The Court emphasized that the "knock and talk" exception allows officers to approach a residence in the same manner as any private citizen might, which includes areas like walkways, driveways, porches, and other places where visitors could be expected to go. The Court noted, "A government official sued under §1983 is entitled to qualified immunity unless the official violated a statutory or constitutional right that was clearly established at the time of the challenged conduct."

The Court's decision highlighted the flexibility of the "knock and talk" exception, allowing law enforcement to approach different parts of a residence, not strictly limited to the front door, as long as those areas are accessible to the general public and used as common entrances. This ruling underscores the balance between law enforcement's need to perform their duties and the protection of individual privacy rights under the Fourth Amendment.[1]

Non-binding Case Examples

These cases represent persuasive authority from other courts outside of Vermont and the 2nd Circuit. Though not binding, they have been selected for inclusion here because if officers in Vermont find themselves in a similar situation, the outcome will likely be the same, at least in federal court.

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. This was a violation of knock and talk because officers exceeded social norms.[2]

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 [defendant's] situation would have concluded that he had no choice but to acquiesce and open the door."[3]

Constant Pressure To Consent To Search Held To Be Unlawful:

During a knock and talk, officers continued to press the defendant for permission to enter and search. Later consent-to-search was the product of an illegal detention.[4]

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[1] Carroll v. Carman, 135 S. Ct. 348 (2014)
[2] United States v. Lundin, 47 F. Supp. 3d 1003 (N.D. Cal. 2014)
[3] United States v. Poe, 462 F.3d 997 (8th Cir. Mo. 2006)
[4] United States v. Washington, 387 F.3d 1060 (9th Cir. Nev. 2004)

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.[1]

Unless There Is an Express Order Otherwise, Officers Have the Same Right To Knock and Talk as a Pollster or Salesman:

"One court stated more than forty years ago: '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.'"[2]

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

[2] People v. Rivera, 41 Cal. 4th 304 (2007)

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 you can engage in; 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."[1]

Asking for ID and running a subject for warrants doesn't automatically convert an encounter into a detention.[2] Hint, return ID as soon as possible so a reasonable person would still "feel free to leave."[3]

Legal Standard

Questioning

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

- ☐ 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

[1] Fla. v. Royer, 460 U.S. 491 (1983)
[2] People v. Bouser, 26 Cal. App. 4th 1280 (1994)
[3] United States v. Chan-Jimenez, 125 F.3d 1324 (9th Cir. Ariz. 1997)

- ☐ 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, express or implied.

Vermont Case Examples

These cases represent binding authority from Vermont, the 2nd Circuit, or U.S. Supreme Court. It's important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

Consensual Encounters Are Not Seizures:

This case clarified the boundaries of consensual encounters versus seizures under the Fourth Amendment. The Court stated, "law enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answers to such questions." This ruling emphasized that police questioning, in itself, does not constitute a seizure, and such encounters are considered consensual, not implicating Fourth Amendment interests.[1]

Police Can Ask People if They Are Willing To Answer Questions:

The Court reinforced the principle that police interactions with individuals in public spaces, such as streets or buses, where they ask questions or request consent to search luggage, do not violate the Fourth Amendment's prohibition of unreasonable seizures. The Court noted, "Law enforcement officers do not violate the Fourth Amendment's prohibition of unreasonable seizures merely by approaching individuals on the street or in other public places and putting questions to them if they are willing to listen." This decision

[1] Florida v. Bostick, 111 S. Ct. 2382 (1991).

further established that such interactions are considered consensual and do not implicate Fourth Amendment interests.[1]

Briefly Asking Factory Workers Questions Was Not a Seizure:

This case examined the nature of interactions between law enforcement officers and individuals, particularly in the context of questioning by officers in a factory setting. The Court's decision turned on the proposition that the interrogations by the INS were merely brief, "consensual encounters," that did not pose a threat to personal security and freedom, and thus did not amount to seizures under the Fourth Amendment.[2]

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, without returning 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.[3]

Non-binding Case Examples

These cases represent persuasive authority from other courts outside of Vermont and the 2nd Circuit. Though not binding, they have been selected for inclusion here because if officers in Vermont find themselves in a similar situation, the outcome will likely be the same, at least in federal court.

Child Illegally Questioned at School While Officer Was Present:

A child was illegally seized and questioned by a caseworker and police officer when they escorted the child off private school property, and interrogated the child for twenty minutes about intimate details of his family life and whether he was being abused. The government argued that this was a consensual encounter, but no reasonable child in that position would have believed they were free to leave.[4]

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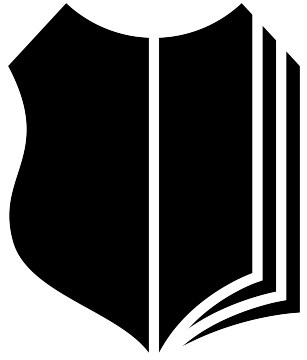
[1] United States v. Drayton, 122 S. Ct. 2105 (2002)
[2] INS v. Delgado, 104 S. Ct. 1758 (1984)
[3] Fla. v. Royer, 460 U.S. 491 (1983)
[4] Doe v. Heck, 327 F.3d 492 (7th Cir. 2003)

Note: This case may have come out differently if they did not remove the child from school grounds. Involuntary transportation usually converts an encounter into an arrest.

Consent to Search Was Involuntary After Arrest-Like Behavior: Suspect did not voluntarily consent to the search of his person, and suppression of a handgun discovered was warranted, where the suspect was in a bus shelter, was surrounded by three patrol cars and five uniformed officers, an officer's initial, accusatory question, combined with the police-dominated atmosphere, clearly communicated to the suspect that he was not free to leave or to refuse the officer's request to conduct the search. The officer never informed the suspect that he had the right to refuse the search, and the suspect never gave verbal or written consent, but instead merely surrendered to an officer's command.[1]

[1] U.S. v. Robertson, 736 F.3d 677 (4th Cir. 2013)



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

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

translate these experiences in your report. The court needs 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.

Vermont Case Examples

These cases represent binding authority from Vermont, the 2nd Circuit, or U.S. Supreme Court. It's important to confirm that 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

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[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)

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.[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]

Presence in a 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.

Vermont Case Examples

These cases represent binding authority from Vermont, the 2nd Circuit, or U.S. Supreme Court. It's important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

Reasonable Suspicion Justified Investigative Detention:

In State v. Manning, the Supreme Court of Vermont determined whether the police officer had reasonable suspicion to lawfully seize the defendant and whether the defendant was entitled to Miranda warnings during the traffic stop. The case involved an officer who observed a vehicle parked in an area known for drug activity and noticed the driver making furtive movements and hiding a prescription bottle. The officer approached Manning, who appeared nervous and had an excessive amount of cash. He handed over the prescription bottle, which contained plastic baggies and a

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

white powdery substance later identified as cocaine. The Court held that the officer had reasonable suspicion to detain the defendant based on his behavior and the context of the situation. The Court stated, “And although the mere presence of a prescription bottle is not itself objectively suspicious, courts have acknowledged that, in certain contexts, a pill bottle may add to the calculus... Moreover, the act of concealing something in the presence of a law enforcement officer weighs heavily in the calculus.”[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."[2]

Non-binding *Case* Examples

These cases represent persuasive authority from other courts outside of Vermont and the 2nd Circuit. Though not binding, they have been selected for inclusion here because if officers in Vermont find themselves in a similar situation, the outcome will likely be the same, at least in federal court.

Long Wait for K9 Held Reasonable Under the Circumstances:

A 31-minute wait for a drug dog was not unreasonable after trooper developed reasonable suspicion for narcotics, was denied consent, and acted diligently in pursuit of his investigation.[3]

Detention of Man With an Axe at 3 A.M. Was Reasonable:

Cops had reasonable suspicion 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.”[4]

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[1] State v. Manning, 200 Vt. 423 (2015)
[2] Terry v. Ohio, 392 U.S. 1 (1968)
[3] U.S. v. Lyons, 486 F.3d 367 (8th Cir. 2007)
[4] 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.

Vermont Case Examples

These cases represent binding authority from Vermont, the 2nd Circuit, or U.S. Supreme Court. It's important to confirm that 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

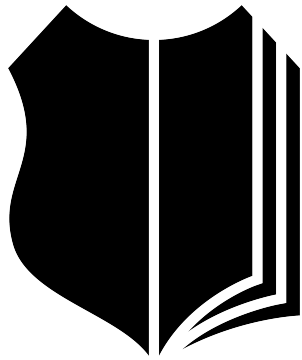
[1] People v. Mendoza, 52 Cal.4th 1056 (2011)

and that of others. The Court held that the officers' actions were 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]

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]

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



Arrests

Lawful Arrest

A lawful arrest under the Fourth Amendment of the United States Constitution is fundamentally based on the principle of "probable cause." This means that for an arrest to be considered lawful, law enforcement officers must have a reasonable basis to believe that a person has committed, is committing, or is about to commit a crime. The Fourth Amendment protects individuals from unreasonable searches and seizures, which includes arrests made without probable cause.

The determination of probable cause does not require the same level of proof necessary to convict a person of a crime. Rather, it hinges on whether the facts and circumstances within the arresting officers' knowledge, and of which they have reasonably trustworthy information, are sufficient to warrant a person of reasonable caution to believe that an offense has been or is being committed.

The Supreme Court has clarified in various rulings that the constitutionality of an arrest is not contingent on the offense for which there is probable cause being closely related to the offense stated by the arresting officer at the time of arrest. As long as there is probable cause for any crime, the arrest is considered constitutional, regardless of the specific offense cited by the officer at the time of the arrest. This approach emphasizes an objective standard based on facts and circumstances, rather than the subjective intent or understanding of the arresting officer.

Moreover, the Court has upheld that warrantless arrests in public places, when supported by probable cause, do not violate the Fourth Amendment. This means that if officers have probable cause to believe a felony has been committed, they can lawfully arrest an individual without a warrant in a public setting or anywhere the officer has a lawful right to be.[1]

In summary, a lawful arrest under the Fourth Amendment is one that is supported by probable cause, irrespective of whether the specific crime cited at the time of arrest aligns with the crime for which there is probable cause. This standard ensures a balance between the need for effective law enforcement and the protection of individual rights against arbitrary police actions.

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[1] People v. Patterson, 156 Cal. Rptr. 518 (Cal. App. 2d Dist. 1979)

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 **effectuate an arrest**:

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

Vermont Case Examples

These cases represent binding authority from Vermont, the 2nd Circuit, or U.S. Supreme Court. It's important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

Fourth Amendment and State Law:

In the case of Virginia v. Moore, the Supreme Court of the United States addressed the relationship between state law and the Fourth Amendment in the context of an arrest. The case arose when David Lee Moore was arrested by police in Virginia for driving on a suspended license, an offense for which state law did not authorize arrest but only the issuance of a citation. During the arrest, the police found cocaine on Moore, leading to drug charges. Moore argued that the evidence should be suppressed because his arrest was not authorized under state law. The Supreme Court, however, held that the Fourth Amendment's protections against unreasonable searches and seizures are not altered by state law. The Court stated, "When officers have probable cause to believe that a person has committed a crime in their presence, the Fourth Amendment permits them to make an arrest, and to search the suspect in order to safeguard evidence and ensure their own safety." This ruling underscores that the Fourth Amendment's standards are not contingent on state law, and that probable cause to believe a crime has been committed justifies an arrest and subsequent search, regardless of whether the state law would have required a less intrusive approach.[1]

[1] Virginia v. Moore, 553 U.S.164 (2008)

Warrantless Arrests in Public Places:

In United States v. Watson, the Supreme Court of the United States addressed the legality of warrantless arrests in public places under the Fourth Amendment. The case involved the arrest of Alfredo Watson by postal inspectors without a warrant at a restaurant, following an informant's tip that Watson was in possession of stolen credit cards. The Court held that a warrantless arrest in a public place, when supported by probable cause, does not violate the Fourth Amendment. The Court stated, "Under the Fourth Amendment, the people are to be 'secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, ... and no Warrants shall issue, but upon probable cause ... .' Section 3061 represents a judgment by Congress that it is reasonable under the Fourth Amendment for postal inspectors to arrest without a warrant provided they have probable cause to do so." This ruling affirmed the principle that the Fourth Amendment's protection against unreasonable searches and seizures is not infringed by a warrantless arrest in a public place if there is probable cause to believe that a felony has been committed.[1]

Probable Cause for any Offense Will Make the Arrest Constitutional:

In Devenpeck v. Alford, the Supreme Court of the United States addressed the issue of whether an arrest is lawful under the Fourth Amendment when the criminal offense for which there is probable cause to arrest is not "closely related" to the offense stated by the arresting officer at the time of arrest. The case involved Jerome Alford, who was arrested for impersonating a police officer and recording a conversation without consent, though the arresting officer cited a different reason at the time of arrest. The Court held that the constitutionality of an arrest does not depend on whether the offense for which there is probable cause is closely related to the offense stated by the arresting officer. The Court stated, "The rule that the offense establishing probable cause must be 'closely related' to, and based on the same conduct as, the offense identified by the arresting officer at the time of arrest is inconsistent with this precedent." This decision emphasizes that as long as the circumstances, viewed objectively, justify an action, the subjective intent of the arresting officer is irrelevant to the existence of probable cause. The ruling clarifies that an arrest is constitutional if

[1] United States v. Watson, 423 U.S. 411 (1976)

there is probable cause for any crime, regardless of the specific offense cited by the officer at the time of the arrest.[1]

Arrest for Even a Minor Violation Held To Be Constitutional:

The case of Atwater v. City of Lago Vista, addresses the issue of whether the Fourth Amendment forbids a warrantless arrest for a minor criminal offense, such as a misdemeanor seatbelt violation punishable only by a fine. The Supreme Court held that it does not forbid such an arrest.

In this case, Gail Atwater was driving in Lago Vista, Texas, with her two young children in the front seat, none of whom were wearing seatbelts. A police officer, observing this violation, pulled Atwater over and arrested her. Atwater and her husband filed a lawsuit under 42 U.S.C. § 1983 against the City of Lago Vista and the arresting officer, alleging a violation of her Fourth Amendment right to be free from unreasonable seizure.

The District Court initially ruled the Fourth Amendment claim meritless, and the Fifth Circuit Court of Appeals initially reversed this decision. However, upon rehearing en banc, the Fifth Circuit affirmed the District Court's summary judgment for the City. The case was then taken to the Supreme Court.

The Supreme Court, in its decision, acknowledged that while the historical practice of warrantless arrests for misdemeanors was not unequivocal, it generally did not require an arrest warrant for misdemeanors that did not involve violence or a threat of it. The Court also recognized that creating a new rule of constitutional law based on modern circumstances would require a balance between individual and societal interests. However, the Court decided against establishing a new rule that would forbid custodial arrest, even with probable cause, for minor offenses not involving jail time or a compelling need for immediate detention.

The Court held that if an officer has probable cause to believe that an individual has committed a minor criminal offense, they may arrest the offender without violating the Fourth Amendment.[2]

Note: Still abide by your agency/state rules.

Suspect Must Be Physically Touched or Submit to Your Authority:

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[1] Devenpeck v. Alford, 543 U.S. 146 (2004)

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

"There can be no arrest without either touching or submission." Therefore, if a suspect runs away, he is not arrested until you catch him.[1]

Non-binding Case Examples

These cases represent persuasive authority from other courts outside of Vermont and the 2nd Circuit. Though not binding, they have been selected for inclusion here because if officers in Vermont find themselves in a similar situation, the outcome will likely be the same, at least in federal court.

Warrantless Arrest Inside a Private Office Was 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.[2]

Probable Cause Existed To Search Based on Belief That Spare Tire Contained Drugs:

A police officer had probable cause to lower the 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 that the vehicle was a rental), the tire was extraordinarily heavy, and the officer had experience with drugs being transported in spare tires.[3]

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.[4]

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[1] California v. Hodari D., 499 U.S. 621 (1991)
[2] People v. Lee, 186 Cal. App. 3d 743 (Cal. App. 4th Dist. 1986)
[3] U.S. v. Lyons, 510 F.3d 1225 (10th Cir. 2007)
[4] Gilliam v. U.S., 46 A.3d 360 (D.C. 2012)

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 articulated, **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.**

Vermont Case Examples

These cases represent binding authority from Vermont, the 2nd Circuit, or U.S. Supreme Court. It's important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

Executing Arrest Warrants in a Third Party's Home:

In United States v. Lovelock, the Second Circuit Court of Appeals addressed whether law enforcement officers could lawfully enter a third party's home to execute an arrest warrant for someone who does not reside there. In this case, the officers had a reasonable belief that the suspect, who allegedly violated probation, resided at the attic apartment, which was the defendant's residence. The warrant listed the address as the suspect's residence, and the

suspect, as a probationer, was required to report any address changes to his probation officer. The warrant had been issued only a day before, and two other tenants informed the officers that the suspect stayed in the attic apartment. These factors justified the officers' entry to effectuate the arrest. The court emphasized that, “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.”[1]

Entry into a Home for Arrest Requires Exigency:

In Payton v. New York, the Supreme Court of the United States addressed the constitutionality of warrantless and nonconsensual entries into a suspect's home to make a routine felony arrest. The case involved Theodore Payton, who was suspected of murder, and Obie Riddick, who was suspected of armed robbery. In both instances, New York police officers entered their homes without warrants to arrest them. The Court held that the Fourth Amendment, as applied to the states through the Fourteenth Amendment, prohibits police from making a warrantless and nonconsensual entry into a suspect's home to make a routine felony arrest.

The Court distinguished between warrantless arrests in public places, which it had previously upheld, and warrantless entries into a home, emphasizing the heightened expectation of privacy within one's home. The Court stated, "The Fourth Amendment to the United States Constitution prohibits the police from making a warrantless and non-consensual entry into a suspect's home in order to make a routine felony arrest." This ruling underscored the principle that the home is afforded special protection under the Fourth Amendment, and that warrantless entries for the purpose of making arrests are generally unconstitutional unless exigent circumstances exist.[2]

Unlawful Entry Into a Home for Third-Party Arrest:

In Steagald v. U.S., the Supreme Court of the United States dealt with the issue of whether law enforcement officers can legally search for the subject of an arrest warrant in the home of a third party without obtaining a search warrant. The case arose when DEA agents, possessing an arrest warrant for Ricky Lyons, a fugitive wanted on drug charges, entered the home of Gary Steagald without a search warrant, believing Lyons was there. The Court held that under the Fourth Amendment, a law enforcement officer may not

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[1] United States v. Lovelock, 170 F.3d 339 (2d Cir. 1999)

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

legally search for the subject of an arrest warrant in the home of a third party without first obtaining a search warrant, unless there are exigent circumstances or consent.

The Court emphasized the privacy interest of the third party (Steagald) in his dwelling, stating, "the search of petitioner's home was no more reasonable from petitioner's perspective than it would have been if conducted in the absence of any warrant. Since warrantless searches of a home are impermissible absent consent or exigent circumstances, we conclude that the instant search violated the Fourth Amendment." This decision underscores the principle that the Fourth Amendment protects individuals against unreasonable searches and seizures in their homes, and that an arrest warrant for a fugitive does not justify a warrantless search of a third party's home without exigent circumstances or consent.[1]

[1] Steagald v. U.S., 451 U.S. 204 (1981)

Warrantless Entry to Make Arrest

Entering a home without a warrant to carry out an arrest is not permissible unless there is either consent or an urgent situation. This holds true regardless of the severity of the crime, such as a violent triple-murder; law enforcement must clearly establish either consent or an exigent circumstance before making such an entry.

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 intention** to arrest the suspect.

Hot Pursuit:

- ☐ You are in **hot pursuit** of a suspect believed to have committed an **arrestable offense,** you have some form of exigency, and he runs into a home (a surround and call-out may also be done for officer safety purposes). See Hot and Fresh Pursuit chapter for more information.

Fresh Pursuit:

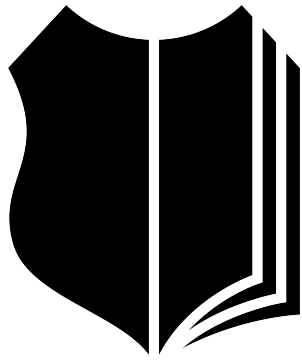
- ☐ You are in **fresh pursuit** of the suspect after investigating a **serious violent crime** and quickly **trace the suspect back to his home.** See Hot and Fresh Pursuit chapter for more information.

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; and you must re-enter as soon as it is reasonably safe to do so.



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 pursued 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.

Vermont Case Examples

These cases represent binding authority from Vermont, the 2nd Circuit, or U.S. Supreme Court. It's important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

Traffic Stops Are Based on Objective Reasonableness:

In Whren v. United States, the Supreme Court addressed the issue of whether the temporary detention of a motorist, when police have probable cause to believe a civil traffic violation has occurred, is inconsistent with the Fourth Amendment's prohibition against unreasonable seizures. The Court held that the constitutional reasonableness of traffic stops does not depend on the actual motivations of the individual officers involved. The case arose from an incident where plainclothes police officers in an unmarked car in Washington D.C. observed a truck with temporary license plates and youthful occupants, which remained stopped at an intersection

for an unusually long time. When the officers stopped the vehicle for an infraction and approached the vehicle, they observed drugs in plain view and arrested the occupants.

The Court, in its unanimous decision, emphasized that the Fourth Amendment's concern with "reasonableness" allows certain actions to be taken in certain circumstances, regardless of the subjective intent of the officers. The Court stated, "the fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action." This ruling effectively established that as long as there is objective justification for a traffic stop, such as a traffic violation, the stop is constitutionally reasonable, irrespective of an officer's subjective intent.[1]

[1] 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."

It also makes sense that a DUI stop will take longer than an equipment violation. And 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.[1]

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 **measurably extend** the stop unless additional reasonable suspicion or probable cause develops.

Vermont Case Examples

These cases represent binding authority from Vermont, the 2nd Circuit, or U.S. Supreme Court. It's important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

Scope of Traffic Stops is Similar to Terry Stops:

In the Supreme Court case Berkemer v. McCarty, the Court addressed the nature of traffic stops and their relation to Terry stops. The Court held that the typical traffic stop is more analogous to a Terry stop than to a formal arrest. This distinction is crucial in determining the applicability of Miranda rights during such stops. The Court explained, "The comparatively nonthreatening character

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

of detentions of this sort explains the absence of any suggestion in our opinions that Terry stops are subject to the dictates of Miranda. The similarly non-coercive aspect of ordinary traffic stops prompts us to hold that persons temporarily detained pursuant to such stops are not 'in custody' for the purposes of Miranda." This ruling emphasizes that the usual traffic stop, being public and often brief, does not create the same coercive environment as a formal arrest, thus not triggering the need for Miranda warnings.[1]

Non-binding Case Examples

These cases represent persuasive authority from other courts outside of Vermont and the 2nd Circuit. Though not binding, they have been selected for inclusion here because if officers in Vermont find themselves in a similar situation, the outcome will likely be the same, at least in federal court.

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 driver's answers, reasonable suspicion developed for drug possession.[2]

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

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

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's 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's a reason to believe they would have impliedly consented to police assistance. Once there's 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**.

Vermont Case Examples

These cases represent binding authority from Vermont, the 2nd Circuit, or U.S. Supreme Court. It's important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

Community Caretaking Doctrine Requires Reasonable Suspicion:

In State v. Button, the Vermont Supreme Court examined the legality of a warrantless stop under the community caretaking doctrine. The case involved an officer who stopped a vehicle parked on the shoulder of a back-country road with its engine running, despite the driver having committed no traffic violations and showing no signs of distress. The court ruled that the stop was not justified under the community caretaking exception to the Fourth Amendment's warrant requirement, emphasizing that "when a law enforcement officer's offer of help takes the form of a

constitutional seizure, the intrusion, however well-intentioned, must satisfy constitutional requirements. We have noted the danger that an expansive community caretaking doctrine presents to individuals' right to privacy and must take care not to allow the exception to 'devour the requirement of reasonable articulable suspicion.'"[1]

The Scope of Traffic Stops and Community Caretaking:

In Cady v. Dombrowski, the Supreme Court explored the boundaries of law enforcement's community caretaking functions, particularly in the context of traffic stops. The Court held that under certain circumstances, police officers could search a vehicle without a warrant. This decision was grounded in the recognition that vehicles, due to their mobility and the regulatory environment surrounding them, have a reduced expectation of privacy compared to homes.

A key aspect of the ruling was the acknowledgment that police officers often perform community caretaking functions—such as ensuring public safety and order—that do not necessarily align with the detection and investigation of crime. The Court found that the warrantless search of a vehicle, which was believed to contain a firearm, was permissible under the community caretaking exception. This decision underscored the idea that the Fourth Amendment's protection against unreasonable searches and seizures must be balanced with practical considerations related to public safety and the unique nature of automobiles.[2]

Non-binding Case Examples

These cases represent persuasive authority from other courts outside of Vermont and the 2nd Circuit. Though not binding, they have been selected for inclusion here because if officers in Vermont find themselves in a similar situation, the outcome will likely be the same, at least in federal court.

Community Caretaking Stop on a Passenger Who Appeared Extremely Drunk Was Unreasonable:

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 that the stop was unreasonable, since he was not the driver and did not appear to be in medical distress.[3]

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[1] State v. Button, 195 Vt. 65 (2013)

[2] Cady v. Dombrowski is 413 U.S. 433 (1973)

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

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 has been, is, 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.

Vermont Case Examples

These cases represent binding authority from Vermont, the 2nd Circuit, or U.S. Supreme Court. It's important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

Necessity of Reasonable Suspicion for Traffic Stops:

In State v. Sutphin, the Vermont Supreme Court held that an officer had reasonable and articulable suspicion to justify an investigatory stop of a vehicle. The case involved an officer who observed a vehicle traveling in the early morning hours at varying rates of speed and signaling to make a right turn at a location where no right turn was possible. The Court emphasized that reasonable suspicion must be more than an "inchoate and un-particularized suspicion or 'hunch,'" and found the officer's observations sufficient to meet this standard. The Court stated, "A 'reasonable and articulable suspicion' of wrongdoing is necessary for a police officer to stop a motor vehicle that is being operated on the highway"[1]

Traffic Stops and Reasonable Suspicion:

In United States v. Arvizu, the Supreme Court addressed the scope of traffic stops and the concept of reasonable suspicion. The case

[1] State v. Sutphin, 159 Vt. 9 (1992).

involved Ralph Arvizu, who was stopped by a border patrol agent while driving in a remote area of Arizona. The agent's decision to stop Arvizu was based on a combination of factors, including the behavior of Arvizu and his passengers, the type of vehicle, the location, and the time of day. The Supreme Court emphasized the importance of considering the "totality of the circumstances" in determining whether there was reasonable suspicion for a stop.

The Court criticized the approach of the Ninth Circuit Court of Appeals. The Ninth Circuit had individually evaluated and dismissed several factors considered by the border patrol agent. The Supreme Court, however, held that this "divide-and-conquer" analysis was inconsistent with the principle of considering the totality of the circumstances. The Court stated, "Although an officer's reliance on a mere 'hunch' is insufficient to justify a stop, the likelihood of criminal activity need not rise to the level required for probable cause, and it falls considerably short of satisfying a preponderance of the evidence standard."[1]

Non-binding Case Examples

These cases represent persuasive authority from other courts outside of Vermont and the 2nd Circuit. Though not binding, they have been selected for inclusion here because if officers in Vermont find themselves in a similar situation, the outcome will likely be the same, at least in federal court.

Stop of Possible Stolen Truck, Even With Different Plates, Was Reasonable:

Observation of a truck that matched the description of one that had just been stolen in a carjacking, but with a different license plate that appeared to be recently attached, and with two occupants who generally matched the suspects' description, constituted the necessary reasonable suspicion to justify the defendant's detention.[2]

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."[3]

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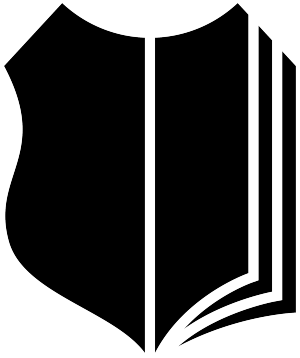
[1] United States v. Arvizu, 534 U.S. 266 (2002)
[2] United States v. Hartz, 458 F.3d 1011 (9th Cir. Wash. 2006)
[3] U.S. v. Young, 707 F.3d 598 (6th Cir. 2012)



Homes

Overview & Standing

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.

Vermont Case Examples

These cases represent binding authority from Vermont, the 2nd Circuit, or U.S. Supreme Court. It's important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

The Home Is First Among Equals:

"[W]hen it comes to the Fourth Amendment, the home is first among equals. At the Amendment's 'very core' stands 'the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.'"[1]

This statement underscores the fundamental importance of the home in the context of privacy and protection from government intrusion under the Fourth Amendment.

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[1] Fernandez v. California, 134 S. Ct. 1126 (2014)

Non-binding *Case Examples*

These cases represent persuasive authority from other courts outside of Vermont and the 2nd Circuit. Though not binding, they have been selected for inclusion here because if officers in Vermont find themselves in a similar situation, the outcome will likely be the same, at least in federal court.

Hotel Rooms Have Similar 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. It applies no less when the dwelling entered is a motel.[1]

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 protection from unreasonable government intrusion as that afforded to homes or hotel rooms."[2]

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."[3]

Tent Over Vehicle at Music Festival Was a Home:

Suspect went to a music festival and pitched a '10x30' 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.[4]

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[1] People v. Williams, 45 Cal. 3d 1268 (Cal. 1988)
[2] People v. Hughston, 168 Cal. App. 4th 1062 (Cal. App. 1st Dist. 2008)
[3] People v. Nishi, 207 Cal. App. 4th 954 (Cal. App. 1st Dist. 2012)
[4] People v. Hughston, 168 Cal. App. 4th 1062 (Cal. App. 1st Dist. 2008)

Frequent Visitor May Have Privacy Inside Friend's Home:

A frequent visitor, with free reign of the house despite the fact that he did not stay overnight, might also have standing to contest an allegedly illegal entry of a third person's home.[1]

Officer Could Not Crouch Under Home's Window and Listen to Conversation:

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 and said the officer's behavior was similar that of a "police state."[2]

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[1] People v. Stewart, 113 Cal. App. 4th 242 (Cal. App. 1st Dist. 2003)

[2] 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

The following rules apply to hotel rooms:

- ☐ Hotel rooms are **considered a home** for the person who rented the room and any invited overnight guests;
- ☐ Police should consider **standard operating procedures** before determining whether a room has been abandoned, such as grace periods or mutual understanding by occupant and hotel management (e.g. late payments accepted);
- ☐ Hotel rooms that were procured **fraudulently** (i.e. stolen credit card) are not protected under the Fourth Amendment. However, the court may want evidence that the defendant knew or should have known about the fraud.

The following rules apply to tents:

- ☐ 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.

The following rules apply to RVs:

- ☐ Recreational Vehicles are often 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.);
- ☐ Even if an RV is considered a "home" under the circumstances, they may still be searched if the officer has **probable cause and exigency** (e.g. solo park ranger with no time to go into town and procure a warrant).

Vermont Case Examples

These cases represent binding authority from Vermont, the 2nd Circuit, or U.S. Supreme Court. It's important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

Guest Did Not Inform the Hotel That He Was Extending the Room Rental; Therefore It Was 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."[1]

A Hotel Clerk Cannot Consent To Search a Rented Room:

In the case of Stoner v. California (1964), the Supreme Court addressed the issue of Fourth Amendment protections in the context of a hotel room search. The petitioner, Stoner, was convicted of armed robbery, and the conviction was largely based on evidence obtained from a warrantless search of his hotel room. The police conducted the search without Stoner's consent but with the permission of the hotel clerk. The Court held that this search was unconstitutional, stating, "Even if it be assumed that a state law might give the hotel clerk authority to consent to a search of a guest's room, it is clear that his authority to do so must be based upon something more than the mere property interest a hotelkeeper has in the room which he rents to his guests." The

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

Court emphasized that a hotel room can be treated with the same privacy expectations as a home under the Fourth Amendment.[1]

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. The search was held to be a violation of the Fourth Amendment.[2]

Non-binding *Case* Examples

These cases represent persuasive authority from other courts outside of Vermont and the 2nd Circuit. Though not binding, they have been selected for inclusion here because if officers in Vermont find themselves in a similar situation, the outcome will likely be the same, at least in federal court.

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."[3]

Blocking Front Door With a Foot Is Considered a Warrantless Entry:

It has also been found that police blocking the door of a home with a foot constituted entry. Further, that lack of a warrant, probable cause, exigent circumstances or consent rendered the seizure unlawful.[4]

Note: In my experience officers too often refuse to allow occupants to close the door in either a hotel room or home. If police prevent the door from closing they should have probable cause and some exigent circumstance (e.g. on-going nuisance or potential violence).

No Abandonment Where the Hotel Did Not Strictly Enforce Checkout Time:

Where hotel did not strictly enforce noon checkout and defendant indicated he would stay until 12:30, abandonment occurred only after the later time and therefore police search of the room was held to be unlawful.[5]

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[1] Stoner v. California, 376 U.S. 483 (1964)
[2] Id.
[3] United States v. Molsbarger, 551 F.3d 809 (8th Cir. N.D. 2009)
[4] State v. Larson, 266 Wis. 2d 236 (Ct. App. 2003)
[5] United States v. Dorais, 241 F.3d 1124 (9th Cir.2001)

Officers Violated the Fourth Amendment While Processing a Murder Scene Inside a Tent:

The defendant called police and said that he found his female companion shot dead inside their tent. Police arrived and entered the tent without a warrant and found the victim and observed other evidence in plain view. Detectives were summoned and they later entered the tent and processed the crime scene without a warrant. The court held that the police lawfully entered the tent initially under the emergency doctrine but the second warrantless entry by detectives was unlawful.[1]

Remember, if the defendant has a privacy interest in the place searched, police will need valid consent or a warrant. There is no "murder scene" exception.[2]

The Fact That Defendant Could Not Pay for Additional Nights Due to Being in Jail Doesn't Defeat Abandonment:

After an arrestee's hotel rental had expired, police obtained the manager's permission to search it. Evidence was discovered and the court held that the defendant abandoned the room even if no payment was made due to being locked up.[3]

Note: Cops could still not search closed containers belonging to the defendant. The room was abandoned, not backpacks and so forth.

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[1] Alward v. State, 112 Nev. 141 (1996)
[2] See Mincey v. Arizona, 437 U.S. 385 (1978)
[3] U.S. v. Huffhines, 967 F.2d 314 (9th Circuit 1992)

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.[1]

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 was 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).

Vermont Case Examples

These cases represent binding authority from Vermont, the 2nd Circuit, or U.S. Supreme Court. It's important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

Vermont Constitution Affords Greater Protect on Open Fields Than Federal Constitution:

In State v. Kirchoff, the Supreme Court of Vermont determined whether the warrantless search of the defendant's posted land violated the Vermont Constitution. Acting on a tip, officers conducted a warrantless search of Kirchoff's land. They observed "no trespassing" signs but proceeded to walk through the woods and marsh, discovering a marijuana patch about 100 yards from Kirchoff's house. The Court held that the warrantless search of

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

Kirchoff's land violated his right to privacy under the Vermont Constitution, stating, "A lawful possessor may claim privacy in 'open fields' under state constitutional search and seizure provision where indicia would lead a reasonable person to conclude that the area is private." The court acknowledged that the search would be permissible under the federal constitution but emphasized that the Vermont Constitution can afford greater protection.[1]

Open Fields Are Not Protected by the Fourth Amendment:

In Hester v. United States, the Supreme Court addressed the conviction of Hester for concealing distilled spirits. The key legal question was whether the evidence obtained by revenue officers, who observed Hester's actions without a warrant and on his father's land, violated the Fourth and Fifth Amendments of the U.S. Constitution.

The Court held that the special protection accorded by the Fourth Amendment to the people in their "persons, houses, papers, and effects," does not extend to open fields. The Court stated, "The only shadow of a ground for bringing up the case is drawn from the hypothesis that the examination of the vessels took place upon Hester's father's land. As to that, it is enough to say that, apart from the justification, the 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."[2]

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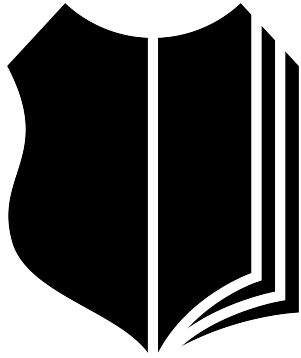
[1] State v. Kirchoff, 156 Vt. 1 (1991)

[2] Hester v. United States, 265 U.S. 57 (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. These areas are typically private offices where the public doesn't have access and the arrest warrant would have to be issued for those private offices.

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; or
- ☐ You have a **search/arrest warrant** for that location.

Vermont Case Examples

These cases represent binding authority from Vermont, the 2nd Circuit, or U.S. Supreme Court. It's important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

Police May Not Enter Third-Party Homes With Arrest Warrants:

In Steagald v. United States, the Supreme Court addressed the issue of whether law enforcement officers can legally search for the subject of an arrest warrant in the home of a third party without first obtaining a search warrant. The Court held that, absent exigent circumstances or consent, a search warrant must be obtained to search a third party's home for the subject of an arrest warrant. "While the warrant in this case may have protected [the subject of the arrest warrant] from an unreasonable seizure, it did absolutely nothing to protect [the third party's] privacy interest in being free from an unreasonable invasion and search of his home."[1]

[1] See Steagald v. United States, 451 U.S. 204 (1981)

Non-binding Case Examples

These cases represent persuasive authority from other courts outside of Vermont and the 2nd Circuit. Though not binding, they have been selected for inclusion here because if officers in Vermont find themselves in a similar situation, the outcome will likely be the same, at least in federal court.

Entry Into a Closed Portion of a Business Is 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.[1]

Forced Entry Into Private Area of Dental Office Was 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.[2]

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."[3]

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[1] State v. Foreman, 662 N.E.2d 929 (Ind. 1996)
[2] People v. Polito, 42 Ill.App.3d 372, 355 N.E.2d 725 (1976)
[3] 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. 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.
- ☐ You comply with **state law**.

Vermont Case Examples

These cases represent binding authority from Vermont, the 2nd Circuit, or U.S. Supreme Court. It's important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

Customer Has no Reasonable Expectation of Privacy in Business Records:

In United States v. Miller, the Supreme Court addressed the issue of law enforcement accessing a person's bank records without a warrant. The Court held that individuals do not have a Fourth Amendment interest in their bank records held by a bank. The Court stated, "Since no Fourth Amendment interests of the depositor are implicated here, this case is governed by the general rule that the issuance of a subpoena to a third party to obtain the records of that party does not violate the rights of a defendant, even if a criminal prosecution is contemplated at the time the subpoena is issued."[1]

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

Customer Has no Reasonable Expectation of Privacy in Telephone Records:

In Smith v. Maryland, the Supreme Court addressed the issue of whether the installation and use of a pen register by law enforcement, without a warrant, constitutes a "search" within the meaning of the Fourth Amendment. Police installed a pen register to record the numbers dialed from the telephone at the home of Michael Lee Smith, the petitioner. The court held that "there is no constitutionally protected reasonable expectation of privacy in the numbers dialed into a telephone system and hence no search within the fourth amendment is implicated by the use of a pen register installed at the central offices of the telephone company."[1]

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.[2]

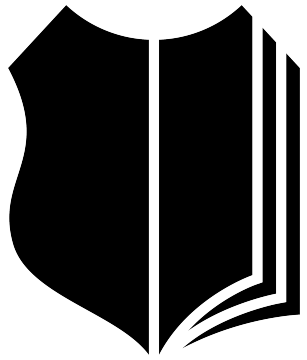
Non-binding Case Examples

These cases represent persuasive authority from other courts outside of Vermont and the 2nd Circuit. Though not binding, they have been selected for inclusion here because if officers in Vermont find themselves in a similar situation, the outcome will likely be the same, at least in federal court.

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."[3]

[1] Smith v. Md., 442 U.S. 735 (1979)
[2] Carpenter v. U.S., 138 U.S. 2206 (2018)
[3] Marsoner v. United States (In re Grand Jury Proceedings), 40 F.3d 959 (9th Cir. Ariz. 1994)



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.[1] 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 this book).

[1] 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 who 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 because there is no expectation of privacy in the container.

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** (e.g. drugs);
- ☐ These observations gave you **probable cause**; and
- ☐ You had **lawful access** to the container when it was seized.

Vermont Case Examples

These cases represent binding authority from Vermont, the 2nd Circuit, or U.S. Supreme Court. It's important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

U.S. Supreme Court Case Recognized the Single Purpose Container Doctrine:

In the Supreme Court case of Texas v. Brown, the Court discussed the single purpose container doctrine in the context of the Fourth Amendment. The case revolved around the warrantless seizure of a balloon from the interior of a car, which the officer had probable cause to believe contained illegal narcotics. The Court noted, "known that a balloon is a common container for carrying illegal narcotics, we have recognized that a law enforcement officer may rely on his training and experience to draw inferences and make deductions that might well elude an untrained person." This statement reflects the Court's acknowledgment of the practical

realities of law enforcement and the use of certain types of containers that are commonly associated with illegal activities.[1]

Non-binding Case Examples

These cases represent persuasive authority from other courts outside of Vermont and the 2nd Circuit. Though not binding, they have been selected for inclusion here because if officers in Vermont find themselves in a similar situation, the outcome will likely be the same, at least in federal court.

Convicted Felon Had no Privacy in 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.[2]

A "Drug Bindle" Is a Single-Purpose Container:

Because it was immediately apparent to experienced officers that a paper bindle viewed in the defendant's identification folder contained contraband, defendant did not have reasonable expectation of privacy which would have prevented opening of the bindle or the field testing of it.[3]

[1] Texas v. Brown, 103 S. Ct. 1535 (1983)
[2] United States v. Meada, 408 F.3d 14 (1st Cir. Mass. 2005)
[3] State v. Courcy, 48 Wash. App. 326, 739 P.2d 98 (1987)

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).[1] If abandonment occurs after an illegal detention, the evidence would be tainted and inadmissible.[2]

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 privacy 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).

[1] Stoner v. California, 376 U.S. 483 (1964)
[2] People v. Verin, 220 Cal. App. 3d 551 (Cal. App. 1st Dist. 1990)

Vermont Case Examples

These cases represent binding authority from Vermont, the 2nd Circuit, or U.S. Supreme Court. It's important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

Warrantless Search Justified by Abandonment:

In State v. Kerr, the Vermont Supreme Court considered the Fourth Amendment implications of searching a bag discarded by the defendant in a public place. The defendant dropped the bag while walking down a road, and police later searched it. The Court ruled that the defendant had abandoned the bag, thereby forfeiting any Fourth Amendment protection against its search. The Court stated, "We hold that the evidence of abandonment, showing that defendant dropped or discarded the bag in a public place where anyone might find and appropriate it, walked away from it, first towards the agent, than along the road towards his home, is sufficient in this case to justify the appropriation and warrantless search."[1]

Trash in Hotel Room Is Considered a Abandoned After Checkout:

In the case of Abel v. United States, the Supreme Court examined the actions of the FBI's search of a hotel room vacated by the petitioner, Abel, who was suspected of espionage. The Court held that the search was lawful under abandonment.[2]

Non-binding Case Examples

These cases represent persuasive authority from other courts outside of Vermont and the 2nd Circuit. Though not binding, they have been selected for inclusion here because if officers in Vermont find themselves in a similar situation, the outcome will likely be the same, at least in federal court.

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 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.'"[3]

Dropping Paper Bag and Running Equals Abandonment:

Police got a tip that the defendant was selling drugs and patrolled the area. They saw the 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 the bag full of drugs

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[1] State v. Kerr, 143 Vt. 597 (1983)
[2] Abel v. U.S., 362 U.S. 217 (1960)
[3] United States v. Caymen, 404 F.3d 1196 (9th Cir. Alaska 2005)

and ran. The bag was abandoned and could be searched without a warrant.[1]

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."[2]

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.[3]

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 ownership, which police knew, and therefore had not abandoned the bag.[4]

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[1] In re Kemonte, 223 Cal.App.3d 1507 (1990)
[2] State v. Brown, Opinion No. 27814 (S.C. 2018)
[3] Cooper v. State, 806 P.2d 1136 (1991)
[4] 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). But, 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).

Vermont Case Examples

These cases represent binding authority from Vermont, the 2nd Circuit, or U.S. Supreme Court. It's important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

Use of a Thermal Imaging Device Against a Home Is an Unreasonable Search:

In Kyllo v. United States, the Supreme Court examined the use of thermal imaging technology by law enforcement to conduct searches without a warrant. The case involved the use of a thermal imager by the Department of the Interior to detect heat emanating from the petitioner Kyllo's home, which led to the suspicion of marijuana growth. The Court stated, "Where, as here, the Government uses a device that is not in general public use, to explore details of the home that would previously have been unknowable without physical intrusion, the surveillance is a 'search' and is presumptively unreasonable without a warrant."[1]

[1] Kyllo v. U.S., 533 U.S. 27 (2001)

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 a 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 occupants reasonable expectation of privacy; but
- ☐ This restriction does not apply when conducting an investigation with **exigency** (burglary, shots fired, etc.).

Vermont Case Examples

These cases represent binding authority from Vermont, the 2nd Circuit, or U.S. Supreme Court. It's important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

Typical Use of Flashlight Does Not Violate Fourth Amendment:

In Texas v. Brown, the Supreme Court addressed the issue of law enforcement using a flashlight to aid in searches and seizures. The case involved Officer Maples shining a flashlight into the respondent Brown's car during a license check, leading to the

discovery of a suspicious balloon. The Court held that the use of a flashlight to illuminate the interior of a car during a lawful stop does not constitute a search under the Fourth Amendment. The Court stated, "The use of artificial means to illuminate a darkened area simply does not constitute a search, and thus triggers no Fourth Amendment protection."[1]

Non-binding Case Examples

These cases represent persuasive authority from other courts outside of Vermont and the 2nd Circuit. Though not binding, they have been selected for inclusion here because if officers in Vermont find themselves in a similar situation, the outcome will likely be the same, at least in federal court.

Using a Flashlight To See Inside a Car Fell Under Plain View:

Our court has held that there is no reasonable expectation of privacy in those areas of a vehicle viewable through the windows by a police officer located outside the vehicle. Thus, the seizure of suspected illegal weapons seen by illuminating the back seat of a vehicle was valid under the plain view exception to the search warrant requirement.[2]

[1] Texas v. Brown, 460 U.S. 730 (1983)

[2] State v. Spiegel, No. A-0531-14T1, (N.J. Super. Ct. App. Div. Aug. 9, 2016)

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.[1] 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.[2]

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.[3]

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.).

Non-binding Case Examples

These cases represent persuasive authority from other courts outside of Vermont and the 2nd Circuit. Though not binding, they have been selected for inclusion here because if officers in Vermont find themselves in a similar situation, the outcome will likely be the same, at least in federal court.

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[1] United States v. Shepard, 1995 U.S. App. LEXIS 23118 (9th Cir. Ariz. 1995)
[2] Cooper v. Superior Court, 118 Cal. App. 3d 499 (Cal. App. 1st Dist. 1981)
[3] People v. Arno, 90 Cal. App. 3d 505 (Cal. App. 2d Dist. 1979)

Use of Binoculars From Open Field Is 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."[1]

Use of High-Power Telescope To See Inside a Hotel Room Is an Unlawful Search:

Police made a binocular search of a hotel room through the uncurtained window by means of a powerful telescope on a hilltop a quarter of a mile from the hotel. There were no buildings or other locations closer to the hotel from which anyone could see into the hotel room. By using the telescope, the police observed a well-known gambling sheet. The court held 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."[2]

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 Barr display metal slugs to his companion in his upturned hand. The officer was no more than seventy-five feet from Barr when he saw the slugs. Barr then entered a casino abutting the alleyway. The officer followed him, and Barr was arrested for possession of a cheating device.[3]

Climbing on Fellow Officer's Shoulders To See in 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.[4]

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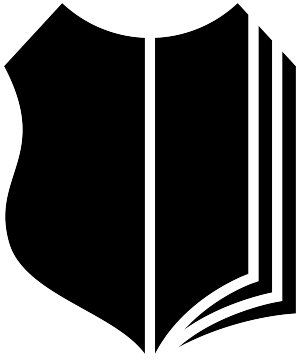
[1] United States v. Grimes, 426 F.2d 706 (5th Cir. Ga. 1970)
[2] United States v. Kim, 415 F. Supp. 1252 (D. Haw. 1976)
[3] State v. Barr, 98 Nev. 428, 651 P.2d 649 (1982)
[4] State v. Kender, 60 Haw. 301, 588 P.2d 447 (1978)



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 he may have overdosed on, 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** that 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.

Vermont Case Examples

These cases represent binding authority from Vermont, the 2nd Circuit, or U.S. Supreme Court. It's important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

The Policeman is a Jack of All Trades:

"The policeman, as a jack-of-all-emergencies, has "complex and multiple tasks to perform in addition to identifying and apprehending persons committing serious criminal offenses."

52. By default or design he is also expected to "aid individuals who are in danger of physical harm," "assist those who cannot care for themselves," and "provide other services on an emergency basis."

53. If a reasonable and good faith search is made of a person for such a purpose, then the better view is that evidence of crime discovered thereby is admissible in court."

The Supreme Court has never had occasion to rule upon this precise situation, but in Cady v. Dombrowski, 413 U.S. 433 (1973), the Court, in upholding the warrantless search of a vehicle, made specific reference to the necessity for local police to engage in "community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute."[1]

Non-binding Case Examples

These cases represent persuasive authority from other courts outside of Vermont and the 2nd Circuit. Though not binding, they have been selected for inclusion here because if officers in Vermont find themselves in a similar situation, the outcome will likely be the same, at least in federal court.

Search of Purse While Driver Was Getting X-Rays Was 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.[2]

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.[3]

[1] Search & Seizure Treatise, § 5.4(c) Search for purposes other than finding evidence.
[2] People v. Wright, 804 P.2d 866 (Colo.1991)
[3] United States v. Dunavan, 485 F.2d 201 (6th Cir.1973)

Search Warrants

Overview

The four essential elements of a search warrant, crucial for its validity, include establishing probable cause within the affidavit without adding information later, supporting the warrant with an oath or affirmation, specifically describing the people or places to be searched, and precisely detailing the items to be seized. If any of these requirements are found lacking after the fact, the evidence obtained through the search 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.

Vermont Case Examples

These cases represent binding authority from Vermont, the 2nd Circuit, or U.S. Supreme Court. It's important to confirm that these cases are consistent with current state law and agency policy which may be more restrictive.

The Warrant Must Particularly Describe What Is Sought in the Search:

In the case of Groh v. Ramirez, the Supreme Court addressed the the particularity requirement in search warrants. The case revolved around a search conducted by Jeff Groh, a Special Agent for the ATF, at the home of Joseph Ramirez and his family. Groh had obtained a warrant, but it failed to specifically describe the items to be seized, instead only detailing the description of the house. The Court held that this lack of particularity violated the Fourth Amendment, emphasizing that "a search conducted pursuant to a warrant that fails to conform to the particularity requirement of the Fourth Amendment is unconstitutional."[1]

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

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.

This is no easy task. The defendant would usually have to prove that the officer was plainly incompetent or reckless with his facts, 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**.

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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.[1]

[1] 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.

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The Warrant Must Particularly Describe What Is Sought:

In the case of Groh v. Ramirez, the Supreme Court addressed the the particularity requirement in search warrants. The case revolved around a search conducted by Jeff Groh, a Special Agent for the ATF, at the home of Joseph Ramirez and his family. Groh had obtained a warrant, but it failed to specifically describe the items to be seized, instead only detailing the description of the house.

The Court held that this lack of particularity violated the Fourth Amendment, emphasizing that "A search conducted pursuant to a warrant that fails to conform to the particularity requirement of the Fourth Amendment is unconstitutional. 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."[1]

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

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."[1]

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

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 so, the evidence may still be used against the suspect. But remember, 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. So 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.

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

Vermont Case Examples

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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.[1]

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.[2]

Non-binding Case Examples

These cases represent persuasive authority from other courts outside of Vermont and the 2nd Circuit. Though not binding, they have been selected for inclusion here because if officers in Vermont find themselves in a similar situation, the outcome will likely be the same, at least in federal court.

The 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.[3]

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.[4]

Additionally, even if a violation of state law requires suppression, that same law has no effect on federal court proceedings.[5]

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[1] Davis v. U.S., 564 U.S. 229 (2011)
[2] U.S. v. Aguiar, 737 F.3d 251 (2d Cir. 2013)
[3] U.S. v. Marts, 986 F.2d 1216 (8th Cir. 1993)
[4] Penn. Steel Foundary and Mach. Co. v. Sec. of Labor, 831 F.2d 1211 (3d Cir. 1987)
[5] 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.[1] But, 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;[2]
- ☐ Foreign searches;
- ☐ Forfeiture proceedings;[3]
- ☐ Inevitable discovery;[4]
- ☐ Deportation proceedings;
- ☐ Grand juries;[5]
- ☐ Civil tax proceedings.

[1] United States v. Janis, 428 U.S. 433 (1976)
[2] United States v. Leon, 468 U.S. 897 (1984)
[3] One 1958 Plymouth Sedan v. Pennsylvania, 380 U.S. 693 (1965)
[4] Not followed under state law: See 38.23 CCP
[5] 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**.

Vermont Case Examples

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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.[1]

Non-binding Case Examples

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All Evidence Tainted by 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.[2]

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[1] Murray v. United States, 487 U.S. 533 (1988)
[2] United States v. Nora, 765 F.3d 1049 (9th Cir. Cal. 2014)

ABOUT THE AUTHOR

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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

VERMONT

Search & Seizure
Survival Guide

Your job as an officer is almost completely controlled by the Fourth and Fifth Amendments. Therefore, you need a reference that can break down these important constitutional doctrines into easy-to-apply checklists. That's what this book does. If you need guidance in the field, pick up this book. When you get back to the station and need help articulating the legal standards for your report, pick up this book.

There are other legal references out there and I highly recommend you read them. But this book has one serious competitive advantage: it was written by a retired police officer-turned-attorney who has been in your shoes, and knows what you need to know.

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