

 Blue to Gold

Instructor Manual

Advanced Criminal Investigations

A close-up, slightly blurred image of a police badge. The badge is silver with a central seal and the word "POLICE" prominently displayed. Below it, "BICENTENNIAL" and the year "1806" are visible. The number "46" is at the bottom. The background is a dark blue with bokeh light effects.

sample

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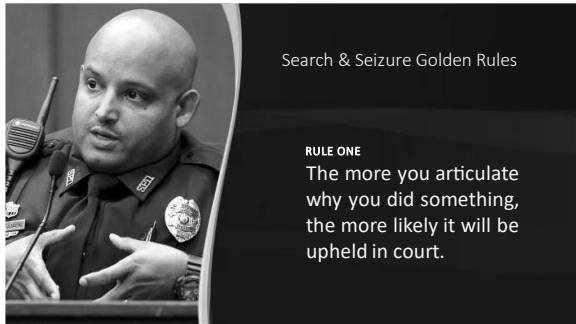
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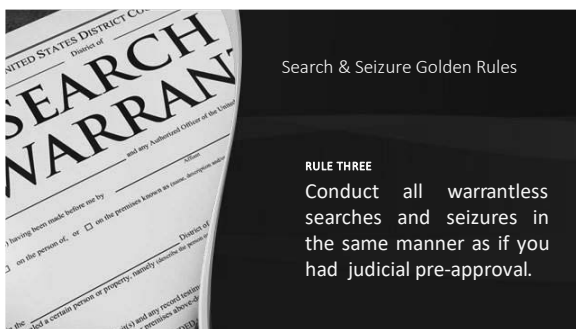
Three Golden Rules



1. **The more you articulate why you did something, the more likely it will be upheld in court.**



2. **The more serious the crime, the more reasonable your actions are likely to be viewed.**



3. **Conduct all warrantless searches and seizures in the same manner as if you had judicial pre-approval.**

Legitimate Privacy Interest



Case: U.S. v. Byrd, 138 S.Ct. 54 (2017)

Issue: Whether unauthorized driver have standing?

Training points:

In the unanimous opinion *United States v. Byrd*, the Supreme Court abrogated law in a number of circuits by holding that the driver of a rental car had standing to challenge a search even if he was not named in the rental agreement. As a general rule someone in otherwise lawful possession and control of a rental car has a reasonable expectation of privacy in it even if the rental agreement does not list him or her as an authorized driver. A breach of the rental agreement, standing alone, did not eliminate any expectation of privacy that the driver had. After all, many non-authorized drivers wind up driving, for example, when the renter is drowsy or inebriated.

Notes:

Terrence Byrd and Latasha Reed rented a car from Budget in New Jersey. The rental agreement restricted who could drive the car, but Reed did not list Byrd as an additional driver. Byrd drove the car and was stopped by police for a possible traffic infraction. Byrd was not listed as an additional driver on the rental agreement, and the police searched the car, finding heroin in the trunk. Byrd was arrested, and the case went to court.



Case: U.S. v. Cooper, 133 F.3d 1394 (1998)

Notes:

Issue: Whether the district court erred in concluding that he lacked standing to challenge the search of the rental car and the items therein?

Dwayne Cooper rented a car from Budget Rent-A-Car with a due date of January 20th, 1996. Cooper knew that Budget's policy was to extend the due date if requested by the renter over the telephone, as long as sufficient funds exist on the renter's credit card. On January 24th, Cooper was pulled over by a Florida Highway Patrol trooper for driving a rental car that was four days overdue. The trooper found a loaded firearm and drugs in the car. The car was towed and returned to Budget, and Cooper's credit card was charged for use of the car through January 25th.

Training points:

Defendant had reasonable expectation of privacy in rental car four days after rental contract expired, and had Fourth Amendment standing to challenge warrantless search of car's glove compartment during traffic stop; defendant had paid his rental bill in full, rental company had not taken any steps to repossess car, and defendant could have extended rental contract past date of search by making simple telephone call to rental company.



Case: U.S. v. Mangum, 100 F.3d 164 (1996)

Issue: Whether the scope and duration of the investigatory stop of the vehicle reasonable in which the defendant was a passenger? Also, whether the defendant lacked standing to challenge the search of the knapsack as they denied ownership of it in response to the officer's question?

Training points:

Scope and duration of investigatory stop were reasonable when, based on their corroboration of tip that defendant carried firearm in knapsack to and from work, police officers had reasonable, articulable suspicion sufficient to stop vehicle in which defendant was passenger, complete protective weapons search, and conduct reasonable further investigation of knapsack in trunk, officers performed further investigation promptly, searching knapsack after driver and defendant denied ownership, and no threats or use of force existed to convert stop into arrest.

Defendant lacked standing to challenge on Fourth Amendment grounds search of his knapsack after he denied ownership when asked if knapsack was his by police officers conducting investigatory stop of vehicle in which defendant was passenger, thereby abandoning knapsack and waiving any legitimate privacy interest in it.

Notes:

In 1994, a confidential informant told Detective Andre Williams that Kevin Mangum carried a gun in his knapsack to work at a barbershop in Washington D.C. On September 3, 1994, the police saw Mangum leaving the barbershop carrying a knapsack and putting it in the trunk of a black Nissan. The police stopped the car, searched the knapsack and found a loaded handgun. Mangum denied owning the knapsack and was convicted of firearm possession by a convicted felon.



Suspect was found under dash in parking lot of car she did not own. Cops took a report of a stolen stereo in same area that day. Suspect produced a bill of sale for car, but the new owner was a male

- State v. Codr, 782 P.2.d 442 -

Case: State v. Codr, 782 P.2.d 442

Issue: Whether cops had P.C despite defendant providing a bill of sale?

Training points:

Continued inquiry of defendant suspected of unlawful entry of vehicle, after she had produced documentation for car and explained her relationship with owner was reasonable; documents themselves did not connect defendant to car and officer was not required to accept as true her explanation of reasons she was not named in documents.

Probable cause to make arrest for unlawful entry of vehicle existed where defendant acted suspiciously in car, was unable to establish definitive connection between herself and car, failed to identify person for whom she was supposedly waiting or to provide information as to where that person was, and policeman was aware that a number of similar offenses had occurred in immediate.

Notes:

In 1987, a woman was caught by security officers in a poorly lit section of a hospital's parking structure using a flashlight to tamper with the wiring under the dash of a 1972 Cadillac with the engine running. The security officers called for assistance and asked the woman for identification when she could not prove that she was the registered owner of the car. She claimed that the purchaser named in the bill of sale was her boyfriend. Two police officers arrived later and found fresh needle marks on her arms. They arrested her for violating a city ordinance and did not find any signs of forced entry into the car.

“

“In dealing with probable cause, however, as the very name implies, we deal with **probabilities. These are not technical; they are the factual and practical considerations of everyday life on which **reasonable** and **prudent** men, not legal technicians, act.”**

- Illinois v. Gates, 462 U.S. 213 (1983) -

Case: Illinois v. Gates, 462 U.S. 213 (1983)

Issue: Whether the anonymous letter established probable cause?

Training points:

Probable-cause for warrant authorizing search of defendants' home and automobile was established by anonymous letter indicating that defendants were involved in activities in violation of state drug laws and predicting future criminal activities where major portions of the letter's predictions were corroborated by information provided to affiant by federal agents.

It is enough, for purposes of assessing probable-cause for issuance of search warrant, that corroboration of informant's tip through other sources of information reduced the chances of reckless or prevaricating tale, thus providing substantial basis for crediting the hearsay.

Notes:

In 1978, the police in Bloomingdale, Illinois received an anonymous letter stating that a couple was selling drugs and that they would be driving their car to Florida to load it with drugs. The police officer determined the couple's address and discovered that the husband had made a reservation for a flight to Florida. The DEA was notified and arranged for surveillance. The husband was seen taking the flight and leaving the next day with a woman in a car. The police obtained a search warrant based on the police officer's affidavit and the anonymous letter, and they found drugs in the couple's car trunk and home.

“

[P]robable cause “does not require the fine resolution of conflicting evidence that a reasonable-doubt or even a **preponderance standard** [more likely than not] demands.”

- Gerstein v. Pugh, 420 U.S. 103 (1975) -

Case: Gerstein v. Pugh, 420 U.S. 103 (1975)

Issue: Whether the Fourth Amendment requires a prompt judicial determination of probable cause following a warrantless arrest?

Training points:

The Court reasoned that the Fourth Amendment requires that persons be free from unreasonable seizures, and that a warrantless arrest is a seizure that must be based on probable cause. The Court further reasoned that the Fourth Amendment requires that any seizure be followed by a prompt judicial determination of its legality. The Court found that the traditional common law rule requiring a prompt judicial determination of probable cause was consistent with the Fourth Amendment, and that the delay in providing such a determination in this case was a violation of Pugh's constitutional rights.

Notes:

The case arose when the respondent, Pugh, was arrested without a warrant and detained for several days before being formally charged. Pugh challenged the detention on the grounds that he was denied a prompt judicial determination of probable cause, which he claimed was a violation of the Fourth Amendment.



“

Probable cause “merely requires that the facts available to the officer would ‘warrant a man of reasonable caution in the belief that certain items may be contraband or stolen property or useful as evidence of a crime; it does not demand any showing that such a belief be correct or **more likely true than false.**’”

- Texas v. Brown, 460 U.S. 730 (1983) -

Case: Texas v. Brown, 460 U.S. 730 (1983)

Issue: Whether an officer, relying on years of practical experience and knowledge commonly accepted, has probable cause to seize the balloon in plain view?

Training points:

“Probable cause” for search is flexible, common-sense standard, merely requiring that facts available to officer would warrant man of reasonable caution in belief that certain items may be contraband or stolen property or useful as evidence of crime, and it does not demand any showing that such belief be correct or more likely true than false, a practical, nontechnical probability that incriminating evidence is involved being all that is required, and it is not necessary that officer be possessed of near certainty as to seizable nature of items.

Notes:

In 1979, during a routine driver's license checkpoint, a police officer stopped an automobile driven by Brown and asked him for his driver's license. While doing so, the officer saw Brown withdraw his right hand from his right pants pocket with an opaque, green party balloon. The officer, aware that narcotics are often packaged in balloons like that, found several small plastic vials, quantities of loose white powder, and an open bag of party balloons. Brown was instructed to get out of the car, and the officer picked up the green balloon with powdery substance in it. After displaying it to another officer, both officers arrested Brown and discovered several plastic bags containing a green leafy substance and a large bottle of milk sugar. A police department chemist testified that the substance in the balloon seized by the officer was heroin.

“

Probable cause is more than a bare suspicion. It is a “reasonable ground for belief of guilt” but does not rise to a preponderance of the evidence or “more-likely-true-than-false” standard.

- United States v. Ortiz, 669 F.3d 439 (4th Cir. 2012) -

Case: United States v. Ortiz, 669 F.3d 439 (4th Cir. 2012)

Issue: Whether the police had P.C. that there was contraband in the vehicle?

Training points:

Probable cause to search is flexible standard that simply requires reasonable ground for belief of guilt, and more than bare suspicion.

Suspect's consent to search provides exception to Fourth Amendment's warrant and probable cause requirements, and once defendant voluntarily gives consent, search that falls within scope of that consent is constitutionally permissible.

Probable cause standard for search does not require that officer's belief satisfy preponderance of evidence standard.

Notes:

The Maryland State Police received a tip that a white Mitsubishi car suspected of carrying drugs and money was heading south on I-95. Trooper Decker stopped the vehicle, driven by Lenny Ortiz, for speeding and suspected drug trafficking. Trooper Gussoni arrived and requested to search the vehicle, but they waited until after the traffic stop was completed and Ortiz had been given a warning ticket. Ortiz consented to the search, and the officers found a hidden compartment containing six kilograms of cocaine. Ortiz was arrested. The officers searched the vehicle for signs of tampering or theft and to locate the concealed vehicle identification number.

Single Purpose Container Doctrine



Legal Rule

A single purpose container **“announces”** its contents in way that a reasonable officer knows **only contraband** inside





Case: State v Smith 306 NJ Super 370 (1996)

Issue: Whether officer had P.C. to make an arrest?

Training points:

Search and seizure of duct-taped parcels between passenger's legs after car was stopped for suspected traffic law violation was sustainable under plain view doctrine, as trooper's vantage point from passenger side of car was lawful for his observations, and his training and experience led him to reasonable belief that packages in plain view contained drugs.

Trooper had probable cause to arrest passenger for suspected contraband on his person, where trooper, who had stopped car for traffic violations and approached car from passenger side, had seen plastic bag protruding from passenger's right front pocket which appeared to contain marijuana.

Notes:

On January 14, 1994, Trooper Long was driving on Route 95 when he noticed a car with Pennsylvania license plates swerving between lanes. He stopped the car and smelled alcohol and saw a bag of marijuana in the passenger's pocket. He also found two packages wrapped in silver duct tape between the passenger's legs, which he suspected contained cocaine. Long arrested both the driver and the passenger and later found out they had purchased eight ounces of cocaine for \$3,500 with the intent to sell it. The driver was also charged with traffic violations and driving with a suspended license.



Case: People v. Green, 115 Cal. App. 3d 259, 259–60, 171 Cal. Rptr. 210 (Ct. App. 1981)

Issue: Whether the gun case had a reasonable expectation of privacy?


Training points:

The trial court correctly denied the defendant's motion to suppress evidence seized from his car, including a gun case, a loaded gun, and bullets. The police officer observed the closed gun case in plain sight and immediately recognized it as a gun case, which did not have a reasonable expectation of privacy. The officer had the right to open the case without a warrant as the loaded revolver was contraband and could be visually identified from its exterior. Therefore, the seizure of the gun case and its contents was legally and constitutionally privileged.

Notes:

On July 7, 1979, San Fernando Police Officer Burns arrested the defendant on a traffic warrant and placed him in the back of his police vehicle. As Burns walked past the defendant's parked vehicle, he noticed a black opaque case on the front seat which he recognized as a gun case. Without a search warrant or the defendant's permission, Burns opened the case and found a loaded .32 caliber revolver. The defendant and another individual in the car were arrested for unlawful carrying of a loaded firearm in a vehicle on a city street.

Reasonable Suspicion




Legal Rule

Hunches indicate a “slight possibility” of illegal activity and cannot be used to search or seize





Legal Rule

Reasonable suspicion requires a “moderate chance” of illegal activity




Legal Rule

Investigative detentions are like pre-crime detentions from Minority Report



Pro Tip

If your reasonable suspicion is so generic in that it would allow a detention of many people based on those same facts, then it's not reasonable





Police see a car parked at an apartment known as a place where many stolen vehicles have been recovered. Many of the stolen vehicles had "Texas Buyer" temp tags because they are easy to buy online. Cops see an occupied vehicle in the lot, with a Texas Buyer's tag and detain the occupants. Car is stolen.

- Based on actual case that was not prosecuted -



Held: This stop was unlawful. If upheld, it would mean police could routinely stop every car that matched those facts.



Considered jointly, these factors are insufficient to justify an investigatory stop. While they may allow certain inferences to be drawn, they describe too many individuals to create a reasonable suspicion that this particular defendant is engaged in criminal activity.

U.S. v. Hernandez-Alvarado, 891 F.2d 1414 (1989) (Different case)

Case: United States v. Hernandez-Alvarado, 891 F.2d 1414, 1418–19 (9th Cir. 1989)

Issue: Whether the factors considered jointly are sufficient to justify an investigatory stop?

Training points:

Considered jointly, these factors are insufficient to justify an investigatory stop. While they may allow certain inferences to be drawn, they describe too many individuals to create a reasonable suspicion that this particular defendant is engaged in criminal activity. For example, while the car dealership in question has been associated with drug activity, many citizens with no connection to drug trafficking also have purchased family vehicles there. Likewise, many law-abiding motorists have two-way antennas installed on their cars, live near the Mexican border, and reduce their speed on the freeway when being followed by a law enforcement vehicle. Thus, these facts in combination do not constitute reasonable suspicion.

Notes:

In 1987, Border Patrol Agents Truty and Smith pulled over defendant Hernandez-Alvarado's car on Interstate Highway 19 near Nogales, Arizona. Truty noticed the car's large trunk capacity and the suspicious behavior of the occupants, including Hernandez-Alvarado reducing his speed and not making eye contact with the agents. Truty also noticed a license plate frame from a dealership known for narcotics activity and an antenna protruding from the trunk. After checking the registration and finding connections to a neighborhood under investigation for narcotics activity, the agents found 258 pounds of marijuana in the trunk.



Police officers observed a vehicle driven by a person that was subject to a protective order. The victim was a female. There was a female passenger. A stop was made to confirm whether the passenger was the victim. Good stop?

- State v. Flanagan, No. 20-0652 (Iowa Ct. App. Oct. 6, 2021) -

Case: State v. Flanagan, No. 20-0652 (Iowa Ct. App. Oct. 6, 2021)

Issue: Whether stop was based on reasonable suspicion?

Training points:

The record shows the trooper knew (1) the registered owner of the vehicle had a protective order in force against him; (2) the protected person was a woman; (3) the driver and the registered owner were likely the same person; and (4) the passenger was a woman. But roughly half of the population is a woman. So being with someone of the same sex as a protected party, without more, was not enough for reasonable suspicion.

Notes:

Police officers observed a vehicle driven by a person that was subject to a protective order. The victim was a female. There was a female passenger. A stop was made to confirm whether the passenger was the victim.



Legal Rule

Probable cause requires a “**fair probability**” of crime committed





“

“In dealing with probable cause, however, as the very name implies, we deal with **probabilities**. These are not technical; they are the factual and practical considerations of everyday life on which **reasonable** and **prudent** men, not legal technicians, act.”

Case: Illinois v. Gates, 462 U.S. 213 (1983)

Issue: Whether the anonymous letter established probable cause?

Training points:

Probable-cause for warrant authorizing search of defendants' home and automobile was established by anonymous letter indicating that defendants were involved in activities in violation of state drug laws and predicting future criminal activities where major portions of the letter's predictions were corroborated by information provided to affiant by federal agents.

It is enough, for purposes of assessing probable-cause for issuance of search warrant, that corroboration of informant's tip through other sources of information reduced the chances of reckless or prevaricating tale, thus providing substantial basis for crediting the hearsay.

Notes:

In 1978, the police in Bloomingdale, Illinois received an anonymous letter stating that a couple was selling drugs and that they would be driving their car to Florida to load it with drugs. The police officer determined the couple's address and discovered that the husband had made a reservation for a flight to Florida. The DEA was notified and arranged for surveillance. The husband was seen taking the flight and leaving the next day with a woman in a car. The police obtained a search warrant based on the police officer's affidavit and the anonymous letter, and they found drugs in the couple's car trunk and home.



Instructor Manual

Advanced Criminal Investigations

Blue to Gold Law Enforcement Training was developed around the concept that expensive legal mistakes can be avoided by offering relevant, high-energy training that is relatable to every street officer. Our legal instructors have law enforcement experience and the ability to translate vital doctrines into ways that are easy to understand and cops “just get it.” As a result, officers become more confident in their legal decisions and don’t return to the business-as-usual method.

Please be advised that the materials contained herein are confidential and intended only for Blue to Gold instructors.

If you have received or found these materials, please notify Blue to Gold LLC immediately. We will arrange for a postage-paid return envelope to be sent to you. Your cooperation in maintaining the confidentiality of these materials is greatly appreciated.

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