

CHAPTER THREE

STUDENT OBJECTIVES FOR THIS CHAPTER:

- Understand that the exclusionary rule protects us from illegally obtained evidence being used against us in court.
- Comprehend that the Fourth Amendment protects our reasonable expectations that the things we think should be kept private will be kept private.
- Explain what constitutes a **search** for Fourth Amendment purposes and provide examples from the cases in the chapter.
- Explain what constitutes a **seizure** for Fourth Amendment purposes and provide examples from the cases in the chapter.
- Articulate the meaning of **probable cause** and the **warrant requirement**.

CHAPTER REVIEW

Reasonable Expectation of Privacy

Katz v. United States (1967)

Individuals have a reasonable expectation of privacy in phone booths because of their unique characteristics. This case developed a two-part test used to determine whether a reasonable expectation of privacy exists: 1) do *you* expect privacy in the situation, and 2) does society agree that your expectation of privacy is a reasonable one?

California v. Greenwood (1988)

Because society does not have a reasonable expectation in the privacy of garbage left outside one's home, there is no reasonable expectation of privacy in trash.

U.S. v. Place (1983)

The Supreme Court held a dog sniff of luggage in a public place did not constitute a search for Fourth Amendment purposes because there is no privacy right under such circumstances.

Bond v. U.S. (2000)

The Supreme Court ruled that a police officer's physical manipulation of a bus passenger's carry-on luggage violated the Fourth Amendment's ban against unreasonable searches because individuals and society have reasonable expectations of privacy in their luggage.

Other Expectations of Privacy

Plane View

California v. Ciraolo **(1986)**

The Supreme Court ruled that while a homeowner clearly intended to keep his backyard private when he built a fence around it, a reasonable expectation of privacy was not created because people could still see into the yard from the sky.

Non-Company Business

Dow Chemical v. U.S. **(1986)**

Photographs of an area that did not reveal intimate details do not constitute a search because there is no reasonable expectation of privacy.

City Heat

Kyllo v. U.S. (2001)

The Court held that since individuals have a reasonable expectation of privacy in their houses, thermal imaging of the contents of one's house does constitute a search.

Most of the cases in this section were decided twenty years ago, without the modern technologies that exist today. Did you know that there are satellite photos of your house, and everyone else's houses, available on google.com? Do you think the Court would arrive at the same conclusions today?

What is a Seizure?

In a 1987 case called *Arizona v. Hicks*, the Court set forth the legal test for a seizure of property: whether a meaningful interference with an individual's possession of property occurred. In terms of the seizure of people, the test is whether a person's freedom or liberty was impeded by government officials. Is it always obvious whether a person's liberty is impeded by a government official, say a police officer? To determine whether a person has been seized, the Court has developed, through the case of *U.S. v. Mendenhall*, the "free to leave" standard. This, like many other legal tests, is measured by whether a reasonable, or average, person would feel free to leave under the circumstances. If not, he or she has not been seized.

U.S. v. Mendenhall **(1980)**

The Court held that a person is "seized" only when, by physical force or a show of authority, his freedom of movement is restrained.

Why is it so important to determine whether a person has met the legal definition of being seized? If a person has been seized, then the Fourth Amendment right to be free from an unreasonable seizure has

been triggered. If the person has *not* been seized, then he or she is not protected by the Fourth Amendment.

Refer to the facts of *Mendenhall*. What were some of the facts that contributed to the Court's decision that a reasonable person in Sylvia Mendenhall's shoes would have felt free to leave? Do you agree with the Court's analysis?

Consent to Search

Florida v. Bostick (1991)

In this case, police officers asked a bus passenger whether they could search his bag. He said they could and later claimed he was unlawfully seized. The Court considered whether there is a seizure when an individual claimed he consented when he thought he had no other choice. The Court decided there was no seizure here because Bostick was not asked the questions under threat of force.

Police officers often ask individuals whether search their belongings without reason to believe the illegal

even those search items, do not know have to consent to such But what constitutes consent?

After your students read the facts of them whether they agree with analysis.

California v. Hodari D. (1991)

The Supreme Court had to decide whether a person is seized when he flees from police. Justice O'Connor wrote a majority opinion holding that Hodari D. was not seized until he was tackled by the police officer.

If someone runs from the police and ignores an officer's request to stop, is he considered "seized" for Fourth Amendment purposes when he resists the police or when he is physically restrained?

After your students have read the case excerpt for *California v. Hodari D.*, ask them what are the implications of this narrower definition of seizure. The dissenting justices seemed to worry that this narrower definition would encourage law enforcement officials to use more force.

Probable Cause and the Warrant Requirement

"No Warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." -- U.S. Constitution, Amendment IV

To begin this section, draw your students' attention once again to the text of the Fourth Amendment. Remind them there are two required elements: **probable cause** to search and a specific **warrant**. A warrant is a document containing a sworn statement by a police officer that is then reviewed and signed by an independent judicial officer. Supported by probable cause, a warrant then limits the power of the police.

This section (pp. 91-93) outline in detail what probable cause means. You may want to pose different hypothetical situations to tease out what constitutes probable cause.

The interesting thing is that the Supreme Court has ever given a precise definition of probable cause. Instead, it has chosen to judge situations on a case-by-case basis. One thing is for certain. The Court will look at all the circumstances (or the **totality of the circumstances**) in determining whether a police officer was justified in claiming there was probable cause to search.

Illinois v. Gates (1983)

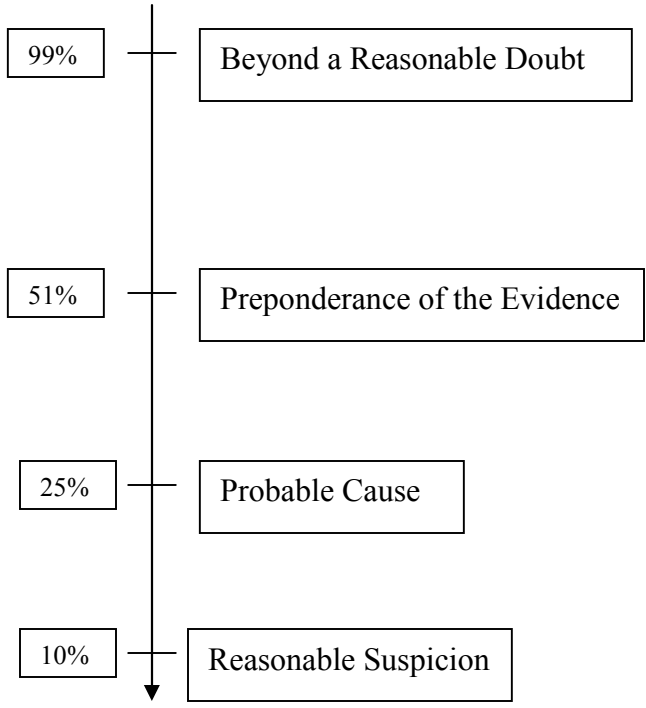
In this case, a nosy neighbor reported the suspicious activities of Sue and Lance Gates to the police. The neighbor wrote an anonymous letter accusing the couple of dealing drugs. Based on this information and after surveilling the couple, police requested and received a search warrant. The court applied a **totality of the circumstances** test and concluded there was sufficient probable cause.

GENERAL TEACHING TIPS:

- ✓ Before embarking on the Fourth Amendment, consider showing your students the movie *Minority Report* with Tom Cruise. The movie is about a cop (Cruise) in the future working in a division of the police department that arrests killers before they commit the crimes courtesy of some future viewing technology. The tables are turned on Cruise's character when he is accused of a future crime and must find out what brought it about and stop it before it can happen. This movie is an excellent way to introduce the idea of the balance between the individual's liberty in society and the government's duty to protect its citizens. Ask your students to write down their reactions to the movie, including answers to the following questions:
 1. Is there anything wrong with this approach to criminal justice?
 2. Isn't it more efficient and effective to stop crime before it occurs?

3. What are the trade-offs to this more efficient and effective approach in terms of individual liberty and the concept of "innocent until proven guilty"?
- ✓ Because it is an area in which the law is constantly developing and changing, there are three chapters dedicated to the Fourth Amendment. The authors' goal was to cover the relevant case law thoroughly, but in fact, your students will probably become bored with searches and seizures if you cover all the material in the three chapters sequentially. Consider teaching chapter 5 (School Searches) after chapter 6 or 7.
 - ✓ When teaching about the exclusionary rule (the concept that illegally obtained evidence must be excluded from trial), lead a discussion about whether there are any options for recourse when an individual's Fourth Amendment rights are violated. What are the best options?
 - ✓ Explain the four elements of a valid warrant:
 1. It is signed by a judicial officer, such as a judge or magistrate.
 2. It recounts facts and circumstances that present probable cause under a totality of circumstances.
 3. The facts are sworn to be the truth by a police officer.
 4. The facts and circumstances are particular to a specific person or place to be searched.
 - ✓ Use this scale to help students visualize what different standards of proof mean.

Highest Standard of Proof



Lowest Standard of Proof