Search and Seizure
Case Briefs

Commonwealth of Kentucky, Justice Cabinet
Department of Criminal Justice Training
Legal Section

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Fourth Amendment
to the
United States Constitution

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

Constitution
of the
Commonwealth of Kentucky

Sec. 10 Security from search and seizure – Conditions of issuance of warrant

The people shall be secure in their persons, houses, papers and possessions, from unreasonable search and seizure; and no warrant shall issue to search any place, or seize any person or thing, without describing them as nearly as may be, nor without probable cause supported by oath or affirmation.

Advisory Warning:

The Kentucky Search & Seizure Case Briefs is designed as a study and reference tool for officers in training classes. Although care has been taken to make the case briefs included as accurate as possible, official copies of cases should be consulted when possible before taking any actions which may have legal consequences.

The issues and holdings which appear in each brief are only the opinions of the compilers of the Case Briefs. They are only meant to be used for guidance in statutory and case interpretation, are not offered as legal opinions, and should not be relied upon or cited as legal authority for any actions. Always consult legal counsel when in doubt about the meaning of a statute or court decision.

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John Bad Elk v. U.S. 177 U.S. 529, 20 S. Ct. 729 (1900)

FACTS: John Bad Elk was convicted of the murder of John Kills Back at the Pine Ridge reservation in South Dakota. On March 8, 1899, Bad Elk was alleged to have fired several shots near his home. (There was no law prohibiting this action, nor was there any indication of an improper intent in the record.) Captain Gleeson, a police officer on the reservation, asked him about it, and Bad Elk admitted to firing "for fun." Gleeson told him to come by the office to "talk about it." Bad Elk did not appear at the office. Several days later, he ordered three tribal officers to find and arrest Bad Elk. No charge was ever given. They went to the home and found Bad Elk, who said he would go with them in the morning. They reported this to Gleeson, who told them to go back to the house, watch Bad Elk, and take him to the agency office in the morning.

When they returned, the followed Bad Elk on a short trip to a neighbor's home. When he returned, he asked them "What are you bothering me for?" After further discussion, it is alleged by the prosecution, Bad Elk shot and killed Officer Kills Back. Bad Elk alleged that the officers had drawn or were drawing their weapons, and that he fired in self-defense.

Bad Elk argued that the instructions given to the jury were in error, by stating that the plaintiff had no right to resist the arrest.

The lower courts upheld the conviction.

ISSUE: Was the attempted seizure (the attempted arrest) lawful?

HOLDING: No

DECISION: The Supreme Court examined a variety of sources, and found no justification for the officers to make any arrest under the circumstances, or even to have asked for a warrant, as there was no apparent violation of any law or rule on the reservation. The instructions "placed the transaction in a false light." While the court did not completely excuse the killing, it stated that the circumstances may have reduced the murder charge to a lesser degree of homicide.

Weeks v. U.S., 232 U.S. 383, 34 S.Ct. 341 (1914)

FACTS: Weeks was arrested by police, at his employer's location, on federal charges including misuse of the mails. At the same time, other officers had gone to his home, seeking entry, and were told by a neighbor where the key was hidden. They entered, searched and seized a variety of papers and items. Later that same day, the local officers, accompanied by a federal marshal, returned to the house and were admitted by a resident of the house, possibly a boarder. Again, they searched, and took away additional papers.

Weeks applied for the return of his papers and other items, before the trial, and while some were returned, others were held and used as evidence.

ISSUE: Was the search legal, and by extension, the admission of the items found permitted in the trial?

HOLDING: No

DISCUSSION: The searches were illegal, and as such, the items are inadmissible in the trial.

Silverthorne Lumber Co. v. U.S., 251 U.S. 385, 40 S.Ct. 182 (1920)

FACTS: Silverthorne (the individual who owned the company) was cited for contempt for refusing to produce books and documents before the Grand Jury.

Silverthorne had been indicted and arrested. While Silverthorne (and his father) were detained, a U.S. Marshal "without a shadow of authority," went to their company and seized all books and papers held there. The papers were seized pursuant to an invalid warrant, and a new warrant was drafted based on information in the documents seized. The Court ordered the original documents returned, and then issued a subpoena for the documents. The Silverthornes refused to produce the documents, arguing that the Court was benefiting from the original unlawful seizure, as without that seizure, they would not have been able to draft a new warrant for the materials.

ISSUE: Is it permissible for the government to benefit from an unlawful act?

HOLDING: No

DISCUSSION: The Court agreed that it "reduces the Fourth Amendment to a form

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of words" by allowing the government to use the knowledge obtained unlawfully. The Court agreed that "[I]f knowledge of them (the evidence) is gained from an independent source they may be proved like any others, but the knowledge gained by the Government's own wrong cannot be used by it in the way proposed." In other words, if the government can show it could have obtained the needed information from another source, it may be permitted to keep the evidence, but absent that proof, the evidence will be inadmissible.

Director General of Railroads v. Kastenbaum, 263 U.S. 25, 44 S.Ct. 52 (1923)

FACTS: 21 tubs of butter were stolen from a rail car in Buffalo, New York. Later that night, a trolley car collided with a horse and wagon, and the stolen tubs were recovered from the wagon. The two men in the wagon fled.

The railroad detective believed they had traced the ownership of the horse to Kastenbaum, a huckster. The detective notified the local police, who detailed two officers to accompany him to Kastenbaum house, where Kastenbaum was arrested without a warrant. After a lengthy process, the magistrate dismissed the case against Kastenbaum.

Kastenbaum horse "proved to be one of another color."

Kastenbaum sued the railroad detective for false arrest.

ISSUE: Did the officers' good faith belief in Kastenbaum guilt constitute probable cause to arrest Kastenbaum without a warrant?

HOLDING: No

DISCUSSION: The Court concluded that "the question is not whether he (the arresting officer) thought the facts sufficient to constitute probable cause, but whether the court thinks they did." The Court went on to state that "[p]robable cause is a mixed question of law and fact." The Court concluded that good faith "must be grounded on facts within knowledge of the (officer), which in the judgment of the court would make his faith reasonable."

Hester v. U.S., 265 U.S. 57, 44 S.Ct. 445 (1924)

FACTS: Revenue officers observed Hester leave his home and bring a bottle to Henderson, sitting in a car outside. Upon being challenged by the officers, both Hester and Henderson ran. Hester dropped a gallon jug, which broke, but which retained

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enough of its contents to be identifiable as moonshine whiskey. Another officer entered the house, spoke to Hester's father, who owned the house, was told there was no moonshine there, but the officer located another broken glass container that also contained moonshine.

ISSUE: Was the presence of the revenue officers on Hester's land (during the initial observation) enough to make the search and seizure of the whiskey unconstitutional?

HOLDING: No

DISCUSSION: The moonshine was first seen outside the house, in Hester's possession, and the contents of the containers were identified after the containers had been abandoned, by throwing away. Even if trespass can be argued, that does not make the search and subsequent seizure of the moonshine unconstitutional.

The Court stated that the "special protection" given to people in their "persons, houses, papers and effects," is not extended to the open fields.

Carroll v. U.S., 267 U.S. 132, 45 S.Ct. 280 (1925)

FACTS: On September 29, 1921, undercover prohibition agents met with Carroll in an apartment in Grand Rapids, for the purpose of buying illegal whiskey. Carroll left in order to get the whiskey. He returned and said that his source was not in, but that he would deliver it the next day. The proposed vehicle did not return, and the evidence disclosed no explanation for failure to do so.

On October 6, while patrolling the road leading from Detroit to Grand Rapids, the agents saw Carroll in the same Oldsmobile roadster going eastward from Grand Rapids towards Detroit. They gave pursuit, but lost the car. On December 15, again while on patrol on the same road, saw Carroll in the same Oldsmobile roadster coming from Detroit to Grand Rapids. They gave chase and stopped Carroll, searched the car, and found 68 bottles of illegal whiskey behind the upholstery, the filling of which had been removed. Carroll was arrested. In addition, the road from Detroit to Grand Rapids was heavily used to introduce illegal whiskey into the country.

The agents were not expecting to encounter Carroll at that particular time, but when they met them there they believed (the Court found the agents had probable cause) they were carrying liquor, and hence the search, seizure, and rescue.

ISSUE: Was the search of the vehicle without a warrant unlawful?

HOLDING: No.

DISCUSSION: In light of the facts, it is clear that the officers had probable cause for the search and seizure. The Court made extensive references to preceding cases and to statutes and stated that, "... recognizing a necessary difference between a search of a store, dwelling house, or other structure in respect of which a proper ... warrant may be obtained and a search of a ship, motor boat, wagon, or automobile for contraband goods, where it is not practicable to secure a warrant, because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought."

The reasoning of Carroll concerning the need to permit warrantless search "where it is not practicable to secure a warrant" suggested that a warrantless search of a car would be permissible with respect to any type of object for which a warrant to search could be obtained were there time to secure a warrant. Subsequent cases discussed the warrantless search in Carroll based on the mobility of the vehicle; the "opportunity to search is fleeting since a car is readily moveable."

The Court said that the "right to search and the validity of the seizure are not dependent on the right to arrest." In Carroll, the police had probable cause that the auto contained contraband but yet no lawful basis for taking custody of the occupants of the vehicle so as to prevent its leaving while a search warrant was sought.

Agnello v. U.S., 269 U.S. 20, 46 S. Ct. 4 (1925)

FACTS: Napolitano and Dispenza were employed as undercover agents by the federal Revenue Agents, for the purpose of narcotics investigation. On January 14, 1922, they went to Alba's home to purchase narcotics. Alba gave them some samples, and the arranged to return in a few days. Revenue agents and city police followed and remained outside. Napolitano and Dispenza were asked to go to the home of another individual, Centorino, to pick up the promised drugs, they refused. Centorino proceeded to his house, followed by some of the agents. Centorino first went to his own house, then to a grocery store owned by the Agnellos (Pace and Thomas). The Agnellos used part of the store as a residence. The Agnellos and Centorino returned to Alba's house. Agnello handed a number of small packages to Napolitano and money was paid to Alba. When the transaction was concluded, the agents rushed in and arrested all of the parties.

While this was going on, other officers went to Centorino's home, searched it and found nothing. They then searched the Agnello home and found a can of cocaine. This evidence was excluded for failure to obtain a warrant. The various defendants pointed fingers at each other, with Agnello denying knowledge that the packages he had delivered contained cocaine. The can of cocaine found at his home was

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introduced to rebut that statement , and the government allowed the introduction, despite having refused to allow the introduction of the cocaine previously.

Agnello (and others) was convicted of selling cocaine without registering with Revenue and without paying the required tax. (The sale of cocaine under those circumstances was otherwise legal at that time.)

The State argued that the cocaine was seized incident to Agnello's arrest.

ISSUE: Can search incident to arrest extend to a residence that is not where the arrest was effected?

HOLDING: No.

DISCUSSION: The Court discussed the scope of search incident to arrest. The Court concluded that searches of persons at the time of arrest "naturally and usually appertain to and attend such arrests." The Court stated that "[t]he search of a private dwelling without a warrant is in itself unreasonable and abhorrent to our laws. However, the Court limited its decision only to the arrest of Agnello, holding that the other defendants could stand, as the can of cocaine was only attributed to Agnello.

Brinegar v. U.S., 338 U.S. 160, 69 S.Ct. 1302 (1949)

FACTS: On March 3, 1947, Malsed, an investigator with the Alcohol Tax Unit (Oklahoma) and another officer, were parked on a highway in northeastern Oklahoma, about five miles from the Missouri state line. They spotted Brinegar driving past. Malsed had arrested him some months before for illegally hauling liquor in Oklahoma, a dry state, from Missouri, a wet state. In at least two other instances, he had spotted Brinegar in Joplin, Missouri, placing large quantities of liquor into his trunk, and knew Brinegar to have a reputation as a bootlegger.

As the car passed, both agents noticed that the car appeared to be "heavily loaded" and "weighted down with something," and that it increased in speed.
They gave chase, overtook the car and crowded it off the road. (The road ran between Joplin, Missouri and Vinita, Oklahoma, Brinegar's hometown.)

Upon approaching the car, Malsed asked Brinegar how much liquor he had in the car. Brinegar replied to the effect, "not much." On further questioning, Brinegar admitted to having twelve cases. Malsed testified that he saw one case in the front seat, but Brinegar testified that it was covered with a blanket. Upon searching, the agents found twelve cases under and behind the front seat. Brinegar was arrested.

Brinegar challenged the validity of the search, and the District Court found that there was no probable cause for the warrantless search.

ISSUE: Given the facts, was probable cause present for the search and subsequent arrest?

HOLDING: Yes

DISCUSSION: The Court disagreed with the lower court's finding "that the facts within the knowledge of the investigators and of which they had reasonable trustworthy information prior to the time the incriminating statements were made by Brinegar were not sufficient to lead a reasonable discreet and prudent man to believe that intoxicating liquor was being transporting in the coupe, and did not constitute probably cause for a search."

Henry v. U.S., 361 U.S. 98, 80 S. Ct. 168 (1959)

FACTS: There was a theft of whiskey at a terminal in Chicago. Two FBI agents investigating saw Henry and Pierotti walk across the street from a tavern and enter a vehicle. They had been given information that Pierotti was implicated in the theft. The agents followed the car, and saw Henry leave the car momentarily and return with several cartons, which were placed in the car. They drove off, but agents were unable to follow.

A little later, they saw the same car, back at the tavern. Again they followed the pair, and they followed the same routine. The agents could not readily identify the cartons. They stopped the car and searched it, seizing the cartons. They took the two men to the office and held them, during that time they discovered the cartons held stolen radios. Both were arrested.

Both were convicted and appealed.

ISSUE: Was their arrest lawful?

HOLDING: Yes

DISCUSSION: The Court examined the history of warrantless felony arrests based on probable cause. The Court held that evidence sufficient to establish guilt is not necessary, but that simple good faith is not enough. "Probable cause exists if the facts and circumstances known to the officer warrant a prudent man in believing that the offense has been committed. In this situation, however, the Court found insufficient evidence to "permit them (the agents) to believe that (Henry) was violating or had

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violated the law. “

Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684 (1961)

FACTS: On May 23, 1957, three Cleveland police officers arrived at Mapp's residence in that city pursuant to information that "a person [was] hiding out in the home, who was wanted for questioning in connection with a recent bombing, and that there was a large amount of policy paraphernalia being hidden in the home". Upon their arrival at the house, the officers knocked on the door and demanded entrance, but Mapp, after telephoning her attorney, refused to admit them without a search warrant.

Some three hours later, the officers (now with four additional officers) again sought entrance. When Mapp did not come to the door immediately, at least one of the several doors to the house was forcibly opened. It appears that Mapp was halfway down the stairs from the upper floor to the front door when the officers, in this highhanded manner, broke into the hall. She demanded to see the search warrant. A paper, which the officers claimed to be a warrant, was held up by one of the officers. They struggled over the document, and Mapp was restrained.

Still in handcuffs, Mapp was forcibly taken upstairs to her bedroom where the officers searched a dresser, a chest of drawers, a closet and some suitcases. They also looked into a photo album and through personal papers. The search continued to a child's bedroom, the living room, the kitchen, and a dinette. The basement of the building and a trunk found there were searched. She was eventually charged and convicted with possession of obscene materials located in that trunk. At trial, no search warrant was produced, nor was the failure to produce one explained or accounted for.

The State says that even if the search was made without authority, or otherwise unreasonably, it is not prevented from using the unconstitutionally seized evidence at trial.

ISSUE: Is evidence seized in violation of the Fourth Amendment admissible at trial?

HOLDING: No

DISCUSSION: The Court reviewed the history of the development of the Exclusionary Rule as applied to federal courts and state courts, citing a number of cases. The Court concluded that to deter unlawful police conduct, evidence seized in violation of the Fourth Amendment is not admissible at trial.

Ker v. California, 374 U.S. 23, 83 S.Ct. 1623 (1963)

FACTS: Deputy sheriffs investigating illegal drug trafficking bought drugs from Murphy and Terrhagen, the transaction taking place at a secluded location. (The deputy recognized Murphy, the "connection'" from a mug shot, where he had been identified as a "large scale seller of marijuana," currently out on bail.)

The next day, surveillance revealed Murphy making contact with Ker at the same secluded location. Although it was dark, the deputies believed that a drug pass had taken place. Once they determined Ker's identity, one of the deputies stated that he had received information from a reliable informant that Ker was a drug dealer who had gotten marijuana from Murphy in the past. The officers followed Ker until Ker made a U-turn in the middle of a street, then they lost him. Believing that Ker was in possession of illegal drugs, and that their surveillance had been "made," the deputies went directly to Ker's apartment, where they found the same car they had been following. They obtained a passkey from the manager and entered the apartment. They found Ker in the living room. Diane Ker, Ker's wife, came from the kitchen into the living room when the deputies entered. One deputy went to the kitchen door to secure Diana Ker and saw a large brick of marijuana on a scale in the kitchen. Both Kers were arrested, and the marijuana in the kitchen was seized.

Following the arrest, the deputies found more marijuana in the kitchen and a package on top of the chest in the bedroom. The next day, the deputies learned that Diane Ker also owned a vehicle and they located and searched that vehicle as well, without a warrant. They discovered marijuana and seeds in the glove compartment and under the seat.

Both Ker and his wife claim the entry and arrest without a warrant violated the Fourth Amendment. The District Court upheld the entry and allowed the introduction of the evidence, which led to the conviction of both of the Kers.

ISSUE:
1) Did the warrantless entry by the deputies, without a warrant and without knocking and announcing their intent to enter, for the purpose of making a narcotics arrest, make the evidence inadmissible?
2) Were the subsequent searches of the apartment lawful?

HOLDING:
1) No
2) Yes

DISCUSSION: The Court held that the surreptitious entry into the apartment was justified because the deputies were investigating narcotics, which was an exigent

circumstance, and held that the arrests of the Kers were lawful. The deputies also argued that the drugs found just prior to and after the arrests were lawfully seized as incident to arrest, while the Kers argued that the deputies could have, and should have, gotten a warrant. However, the Court agreed with the prosecution that the deputies' actions were appropriate given the circumstances. The deputies entered with the purpose of arresting George Ker, and were in the process of making the arrests when the marijuana was kitchen was spotted.

Aguilar v. Texas, 378 U.S. 108, 84 S.Ct 1509 (1964)

FACTS: Two Houston police officers applied to a magistrate for a warrant to search Aguilar's home for narcotics. Their affidavit, in relevant part, recited that:

"Affiants have received reliable information from a credible person and do believe that heroin, marijuana, barbiturates and other narcotics and narcotic paraphernalia are being kept at the above described premises for the purpose of sale and use contrary to the provisions of law."

The search warrant was issued and narcotics were found.

ISSUES: Did the affidavit provide sufficient basis for finding of probable cause and issuance of a search affidavit?

HOLDING: No

DISCUSSION: In passing on the validity of the search warrant, the reviewing court may consider only information brought to the magistrate's attention. Informed and deliberate determinations of magistrates are to be preferred over hurried action of officers who may happen to make arrests, and evidence sufficient to support a magistrate's disinterested determination to issue a warrant will not necessarily justify the officer in making search without warrant.

The point of the Fourth Amendment is not that it denies law enforcement the support of usual inferences which reasonable men may draw from evidence but that it requires that such inferences to be drawn by neutral and detached magistrate instead of the officer engaged in the often competitive enterprise of ferreting out crime. An affidavit for a search warrant may be based on hearsay information and need not reflect direct personal observations of the affiant, but magistrate must be informed of some of the underlying circumstances on which informant based his conclusions and some of the underlying circumstances from which officer concluded that the informant, whose identity need not be disclosed, was "credible" or that his information was reliable.

Although the reviewing court will pay substantial deference to judicial determinations of probable cause, the court must still insist that the magistrate perform his "neutral and detached" function and not serve merely as a rubber stamp.

Beck v. Ohio, 379 U.S. 89 (1964)

FACTS: On November 10, 1961 Beck was driving in Cleveland. Officers stopped him, identified themselves and ordered him to pull to the curb. The officers had no warrant of any kind. The arrested him and searched his car, but found nothing of interest. They took him to the station where they searched his person, and found gambling slips in his sock. He was eventually charged with the gambling offense.

Beck filed a motion to suppress, but was denied, and he was eventually convicted. His conviction was affirmed by the state courts, finding it valid as a search incident to arrest.

ISSUE: Can a valid arrest be based upon a search made after the arrest?

HOLDING: No

DISCUSSION: The validity of a search incident to arrest depends upon the validity of the underlying arrest. The validity of an arrest depends upon whether, at the moment of the arrest, the officer had probable cause (or a warrant) to believe that the individual could be arrested. In this case, the Court determined that the arrest itself was not valid, in fact, the arrest was based upon evidence found during the search, so the search itself was invalid.

Schmerber v. California, 384 U.S. 757 (1966)

FACTS: Schmerber was arrested for driving while intoxicated. He had been injured in a wreck and taken to the hospital. A police officer directed the hospital to take a blood sample, and that sample indicated the presence of alcohol. Schmerber argued that he had not agreed to have the blood drawn, and that the evidence violated his right against self-incrimination. The lower court upheld the conviction.

ISSUE: Is the introduction of physical evidence taken against a defendant's will from their body admissible?

HOLDING: Yes

DISCUSSION: The Court found "[n]ot even a shadow of testimonial compulsion upon

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or enforced communication by the accused was involved either in the extraction or in the chemical analysis" of his blood. As such, the evidence was admissible.

Camara v. Municipal Court, 387 U.S. 523, 87 S. Ct. 1727 (1967)

FACTS: On November 6, 1963, a Housing inspector (Health Department) entered an apartment building for a routine annual inspection. The building manager told him that Camara, who leased the ground floor, was living in part of the space, which was not authorized for residential usage. The inspector confronted Camara and was refused entry to the space. Two days later, the inspector returned, and was again denied entry. A citation was mailed to Camara, and he failed to appear at the district attorney's office, as ordered. Two weeks later, two more inspectors again visited Camara and informed him that he was in violation of the law.

Camara was charged with violating a California law requiring him to permit warrantless inspections of his residence by housing inspectors. He was arrested and filed a writ of prohibition on the charge. The lower courts, basing their opinion on earlier Supreme Court rulings, upheld the charge against Camara.

ISSUE: May the law require warrantless inspections of property?

HOLDING: No

DISCUSSION: While the Court held that allowing such warrantless inspections to be a violation of the Fourth Amendment, the Court agreed that the needs of the community for safety might outweigh the blanket prohibition on such searches. The Court agreed that "area inspections" might be appropriate, and defined that search as designating an area in need of inspection services and requesting a blanket warrant for that area. The appropriate standard may be based upon the passage of time, the nature of the building or the condition of the entire area. The Court stated that:

> "The warrant procedure is designed to guarantee that a decision to search private property is justified by a reasonable governmental interest. But reasonableness is still the ultimate standard. If a valid public interest justifies the intrusion contemplated, then there is probable cause to issue a suitably restricted search warrant. Such an approach neither endangers time-honored doctrines applicable to criminal investigations nor makes a nullity of the probable cause requirement in this area. It merely gives full recognition to the competing public and private interests here at stake and, in so doing, best fulfills the historic purposes behind the con-situational right to be free from unreasonable government invasions of privacy."

See v. City of Seattle, 387 U.S. 541 (1967)

FACTS: During a routine, city-wide canvass of properties, the Seattle Fire Department sought entry to See's locked commercial warehouse. They were refused access, and as a result, See was arrested and eventually convicted for violation of the fire code (a city ordinance).

See appealed, stating that it was inappropriate to arrest him for refusing to allow entry.

ISSUE: Is arrest appropriate for refusing to allow entry to commercial property, for a regular inspection?

HOLDING: No

DISCUSSION: The Court considered this case along with Camara. The Court held that "[T]he agency's particularly demand for access will of course be measured, in terms of probable cause to issue a warrant, against a flexible standard of reasonableness that takes into account the public need for effective enforcement of the particular regulation involved." The Court also stated that they were not addressing "whether warrants to inspect business premises may be issued only after access is refused; since surprise may often be a crucial aspect of routine inspections of business establishments, the reasonableness of warrants issued in advance of inspection will necessarily vary with the nature of the regulation involved and may differ from standards applicable to private homes.

Warden of Maryland Penitentiary v. Hayden, 387 U.S. 294, 87 S.Ct. 1642 (1967)

FACTS: About 8 a.m. on March 17, 1962, an armed robber entered the business premises of the Diamond Cab Company in Baltimore, Maryland. He took $363 and ran. Two cab drivers in the vicinity, attracted by the shouts of "hold-up", followed the man to 2111 Cocoa Lane. One driver notified the company dispatcher by radio that the man was a Negro about 5'8" tall, wearing a light cap and dark jacket, and that he had entered the house on Cocoa Lane. The dispatcher relayed the information to the police who were proceeding to the scene of the robbery. In less than five minutes, the police arrived at the house. An officer knocked and announced their presence. Mrs. Hayden answered the door, and the officers told her they believed that a robber had entered the house, and asked to search the house. She offered no objection. (The court held that the issue of consent by Mrs. Hayden for the entry need not be decided because the officers were justified in entering and searching for the felon, for his weapons and for

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the fruits of the robbery.)

The officers spread out through the first and second floors and the cellar in search of the robber. Hayden was found in an upstairs bedroom feigning sleep. He was arrested when officers on the first floor and in the cellar reported that no other man was in the house. Meanwhile, an officer was attracted to an adjoining bathroom by the noise of running water, and discovered a shotgun and a pistol in a flush tank; another officer, who was "searching the cellar for a man or the money" found in a washing machine a jacket and trousers of the type the fleeing man was said to have worn. A clip of ammunition for the pistol and a cap were found under the mattress of Hayden's bed, and ammunition for the shotgun was found in a bureau drawer in Hayden's room. All of these items were introduced against Hayden at his trial.

ISSUES: 1) Were the entry into the house and the search for the robber, without a warrant, legal?
2) Even if the search was lawful, was the seizure of the items of clothing ("mere evidence") legal?

HOLDINGS: 1) Yes
2) Yes

DISCUSSION:
1) When police were informed that armed robbery had taken place and that a suspect had entered a certain house less than five minutes before they reached it, officers acted reasonably when they entered the house and began to search for the suspect and for weapons which he had used in robbery or which might be used against them.

The permissible scope of the search was as broad as reasonably necessary to prevent danger that suspect at large in house might resist or escape.

The Fourth Amendment does not require police to delay in course of investigation if to do so would gravely endanger their lives or the lives of others. Speed here was essential, and only a thorough search of the house for persons and weapons could have insured that Hayden was the only man present and that the police had control of all weapons that could be used against them or to effect escape.

2) Language of the Fourth Amendment does not support distinction between "mere evidence" and instrumentalities, fruits of crime, or contraband.

Katz v. U.S., 389 U.S. 347, 88 S.Ct. 507 (1967)

FACTS: Katz was convicted of transmitting wagering information out of state. At the trial, the Government was permitted to introduce evidence of Katz's end of telephone conversations, overheard by FBI agents who had attached an electronic listening and recording device to the outside of a public telephone booth from which he had placed his calls.

ISSUE: Did this violate Katz's Fourth Amendment rights?

HOLDING: Yes

DISCUSSION: The Fourth Amendment protects people, not simply areas, against unreasonable searches and seizures, and its reach cannot depend upon or absence of a physical intrusion into any given enclosure.

What a person knowingly exposes to the public, even in his own home, is not a subject of Fourth Amendment protection. What a person seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected under the Fourth Amendment. A person in a telephone booth may rely upon the protection of the Fourth Amendment and is entitled to assume that words he utters into the mouthpiece will not be broadcast to the world.

Searches conducted without search warrants are, per se, unreasonable under the Fourth Amendment, subject only to a few specifically established and well-delineated exceptions.

Probable cause alone is never enough to justify a warrantless search.

Bumper v. North Carolina, 391 U.S. 543, 88 S. Ct. 1788 (1968)

FACTS: Bumper lived with his grandmother, Mrs. Leath, in rural North Carolina. Two days after a rape was reported, the Sheriff, three deputies and a state officer went to the house. They announced they had a search warrant, and Mrs. Leath admitted them. During the search, they took a rifle into evidence that was later introduced at trial.

During the trial, it became known that there was, in fact, no warrant. The officers stated they were relying upon Mrs. Leath's "consent" to enter and search the house.

ISSUE: Is a search justified on “consent” when the consent has been given based on a declaration that a warrant exists?

HOLDING: No

DISCUSSION: The burden is on the prosecution to show that any consent was given freely and voluntarily. A search based on a warrant can later be suppressed if it is shown that the warrant was invalid, so the “result can be no different” when the officers claim to have a warrant when they do not.

“When a law enforcement officer claims authority to search a home under a warrant, he announces in effect that the occupant has no right to resist the search. The situation is instinct with coercion – albeit colorably lawful coercion. Where there is coercion there cannot be consent.”

Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868 (1968)

FACTS: Cleveland Police Detective Martin McFadden had been a policeman for 39 years, a detective for 35 years, and had been assigned this beat in downtown Cleveland for 30 years. At approximately 2:30 p.m. on October 31, 1963, Officer McFadden was patrolling in plain clothes. Two men, Chilton and Terry, standing on the corner of Huron Road and Euclid Avenue attracted his attention. He had never seen the men before, and he was unable to say precisely what first drew his eye to them. His interest aroused, Officer McFadden watched the two men. He saw one of the men leave the other and walk past some stores. He paused and looked in a store window, then walked a short distance, turned around and walked back toward the corner, pausing once again to look in the same store window. Then the second man did the same. This same trip was repeated approximately a dozen times. At one point, a third man approached them and engaged them in conversation. This man then left. Chilton and Terry resumed their routine for another 10-12 minutes, then left to meet with the third man.

Officer McFadden testified that he suspected the men were "casing a job, a stick-up," and that he feared "they may have a gun." Officer McFadden approached the three men, identified himself and asked for their names to which the men "mumbled something." Officer McFadden grabbed Terry, spun him around and patted down the outside of his clothing. In the left breast pocket of Terry's overcoat, Officer McFadden felt a pistol, which he retrieved. It was a .38 caliber revolver. Officer McFadden proceeded to pat down Chilton, felt and retrieved another revolver from his overcoat. Officer McFadden patted down the third man, Katz, but found no weapon.
Chilton and Terry were charged with carrying concealed weapons. (Chilton died before his conviction could be appealed.)

ISSUES: 1) Was the stop of Terry constitutional?
2) Was the frisk of Terry constitutional?

HOLDINGS: 1) Yes
2) Yes

DISCUSSION: The Constitution forbids not all searches and seizures, but unreasonable searches and seizures. There is a "seizure" whenever police officer accosts an individual and restrains his freedom to walk away, and "search" when officer makes careful exploration of outer surfaces of person's clothing to attempt to find weapon.

In justifying a particular intrusion, an officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, that reasonably warrants that intrusion. Those facts must be judged against an objective standard of whether the facts available to officer at moment of seizure or search would warrant man of reasonable caution in belief that action taken was appropriate. Intrusions must be based on more than hunches. Simple good faith on the part of the officer is not enough.

A police officer who had observed persons go through series of acts, each of them perhaps innocent in itself, but when taken together warranted further investigation, was discharging legitimate investigative function when he decided to approach them. The officer in this case had reasonable cause to believe that defendants were contemplating a crime, and thus had cause to stop and speak to them. Because he suspected them of an intent to commit armed robbery on the business, there was cause to believe they may be armed, thus the officer had cause to search them for weapons, and did not exceed the reasonable scope of a proper search in patting down their outer clothing,

The sole justification of officer's search of person whom he has no cause to arrest is protection for officer and others nearby, and it must be confined in scope to intrusion reasonably designed to discover weapons. Although the facts of the Terry case involved a pat down of the outer clothing, the language of the court's decision does not limit a frisk to the outer clothing, such as a coat. The court said, "...it must be limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby. "The scope of the search must be strictly tied to and justified by the circumstances that rendered its initiation permissible."

Chimel v. California, 395 U.S. 752, 89 S.Ct. 2034 (1969)

FACTS: On September 13, 1965, three police officers arrived at Chimel's home with a

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warrant authorizing his arrest for the burglary of a coin shop. The officers knocked on the door, identified themselves to Chimel's wife, and asked if they might come into the house. She agreed, and they waited 10 or 15 minutes until Chimel returned home from work. When he entered the house, one of the officers handed him the warrant and asked for permission to "look around." Chimel objected.

Accompanied by the Chimel's wife, the officers then looked through the entire three-bedroom house, including the attic, the garage, and a small workshop. In the search of the master bedroom and sewing room, the officers directed her to open drawers and "to physically move contents of the drawers from side to side so that [they] might view any items that would have come from [the] burglary." They seized numerous items - primarily coins, but also several medals, tokens, and a few other objects. The entire search took between 45 minutes and an hour.

ISSUE: Was the warrantless search of petitioner's entire house constitutionally justified as incident to the arrest?

HOLDING: No

DISCUSSION: When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist or effect his escape. In addition, the officer can search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction.

The officer can search the area "within [the arrestee's] immediate control" - construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence. There is no comparable justification for routinely searching any room other than that in which an arrest occurs - including all the desk drawers or other closed or concealed areas in that room itself.

Chambers v. Maroney, 399 U.S. 42, 90 S.Ct. 1975 (1970)

FACTS: On May 20, 1963, two men, each of whom displayed a firearm, robbed a service station in North Braddock, Pennsylvania. A witness to the robbery had told police the four male robbers were driving a blue station wagon, and that one was wearing a green sweater and another a trench coat. Within the hour, a station wagon fitting the description was stopped, and the four men inside were arrested. Chambers was wearing a green sweater. (There was also a trench coat in the car.) The car was driven to the police station, where it was thoroughly searched. Two handguns were found hidden in a compartment, a right glove with change inside (as had been done at the robbery), and business cards for another service station that had been robbed

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recently.

Chambers was eventually convicted in both robberies.

ISSUE: Was the search of the vehicle, after it had been taken to the station, lawful?

HOLDING: Yes

DISCUSSION: While the Court acknowledged that a search incident to arrest would not have been appropriate, the Court stated that the theory of a Carroll vehicle exception search is a totally different premise on which to base a search. Based on the facts, the vehicle could have been searched at the scene of the original arrest, and as such, there was no practical difference in searching the car at the station. The Court held that "for the purposes of the Fourth Amendment, there is a constitutional difference between houses and cars."

Whiteley v. Warden, Wyoming State Penitentiary, 401 U.S. 560, 91 S. Ct. 1031 (1971)

FACTS: Carbon County Sheriff Ogburn, acting on a tip, requested a warrant for Harold Whiteley, for burglary and theft from a local business. The affidavit read as follows:

I, C.W. Ogburn, do solemnly swear that on or about the 23 day of November, A.D. 1964, in the County of Carbon and the State of Wyoming, the said Harold Whitely and Jack Daley, defendants did then and there unlawfully break and enter a locked and sealed building…"

The description of the business followed. The information on Whitely and Daley was transmitted to other agencies. As a result of this BOLO, a Laramie police officer located and arrested Whitely and searched his vehicle, finding a number of items from the burglary.

ISSUE: Is a bare-bones conclusion sufficient to support a warrant?

HOLDING: No

DISCUSSION: The Court stated that while the Laramie officers were entitled to act upon the strength of the information they were given, that did not excuse what was otherwise an invalid warrant, and the evidence obtained should have been excluded at trial.

U.S. v. Biswell, 406 U.S. 311, 92 S.Ct. 1593 (1972)

FACTS: Biswell owned a pawn shop in New Mexico licensed to deal in sporting weapons. One day he was visited by a city police officer and a Treasury agent who requested the business books and entry into the locked gun storage area. Biswell asked about a warrant, but was told that it was not needed, that such inspections were authorized. He was provided with a copy of the law. He allowed the two officers to enter the storeroom, where they found two sawed-off rifles. He was convicted of the charge of illegally possessing the weapons and appealed.

ISSUE: Was the search of the room, and the seizure of the rifles, without a warrant constitutional?

HOLDING: Yes

DISCUSSION: The Court found that, "in the context of a regulatory system of business premises that is carefully limited in time, place, and scope, the legality of the search depends not on consent bus on the authority of a valid statute." The Court compared the close regulation of certain businesses, such as the liquor industry in Colannade Catering Corp. v. U.S., to the regulation of firearms sales, and agreed that the firearms industry is subject to the same level of pervasive governmental inspection. The Court balanced the interests of the respective parties and determined that when an individual chooses to engage in such a business, and accept a license to do so, the licensee is made aware of the possibility of such inspections. The Court also stated that "if inspection is to be effective and serve as a credible deterrent, unannounced, even frequent, inspections are essential." Requiring a warrant would defeat that purpose.

Schneckloth v. Bustamonte, 412 U.S. 218, 93 S. Ct. 2041 (1973)

FACTS: Bustamonte was a passenger in a vehicle driven by Gonzales, along with four other men. Officer Rand observed the vehicle with one headlight and the license plate light out, and stopped it. The driver could not produce a license, and when the others were asked, only Alcala, who was also in the front seat, was able to do so.
Alcala stated that the car belonged to his brother. All of the occupants got out of the vehicle at the officer's request. Officer Rand asked Alcala for permission to search the vehicle, which he gave. Gonzales testified that Alcala actually helped to search the vehicle, opening the trunk and glove compartment. Under the left rear seat, the officers found three wadded-up checks, which has previously been stolen from a car wash.

Bustamonte was convicted of unlawfully possessing a check.

ISSUE: Must the police affirmatively show that an individual knew of their right to refuse consent to a search?

HOLDING: No

DISCUSSION: The Court stated that the prosecution must show, taking into consideration the totality of the circumstances, that consent was voluntary and not the result of duress or coercion. While a showing that an individual knew of their right to refuse consent is a factor, it is not necessary to establish that a given consent was voluntary.

Cupp v. Murphy, 412 U.S. 291, 93 S. Ct. 2000 (1973)

FACTS: Murphy's wife was murdered by strangulation in Portland, Oregon. There was no indication of forced entry. Murphy, who did not live with his wife, was notified, and he called the Portland police. At their request, he came to the station for questioning, voluntarily. He arrived, along with his attorney. Officers noticed a dark spot on Murphy's finger. Suspecting it to be blood, they asked him for a scraping of the substance, and Murphy refused. They seized Murphy, and over his protests, they scraped his fingernails. (Upon being aware that they suspected material may be under his fingernails, Murphy began to rub his hands together and possibly use keys to attempt clean his fingernails.) Lab results showed the stain to be traces of skin and blood cells that matched his wife, as well as fabric fibers matching her nightgown. After the lab results were returned, Murphy was arrested, and eventually convicted, of second-degree murder.

He appealed, stating the search of his fingernails was unconstitutional without a warrant.

ISSUE: Is the taking of physical samples from a suspect, without a warrant, unconstitutional.

HOLDING: No

DISCUSSION: The Court distinguished this situation in stating that the detention and search of Murphy were reasonable under the circumstances, in that the evidence was evanescent and needed to be preserved immediately.

U.S. v. Robinson, 414 U.S. 218, 94 S. Ct. 467 (1973)

FACTS: On April 23, 1968, Officer Jenks of the District of Columbia Metropolitan Police Department, observed Robinson driving. Jenks knew that he had just checked on the status of Robinson's operator's permit four days before and found it revoked. He made a traffic stop of the vehicle. All three of the occupants got out of the vehicle. Jenks arrested Robinson for the offense.

In accordance with policy, Jenks searched Robinson. He found a cigarette package containing 14 capsules of heroin, and he was eventually convicted for that offense. Robinson argued that Jenks exceeded the scope of permissible search by going beyond a "frisk."

ISSUE: Does a full search of a person exceed the scope of "search incident to arrest?"

HOLDING: No

DISCUSSION: The Court held that it was "well settled that a search incident to a lawful arrest is a traditional exception to the warrant requirement of the Fourth Amendment." The Court explored the history of the concept, and found very little had been written in case law and legal treatise on the subject. The Court was unwilling to limit the scope of such searches based upon the offense committed, as the rationale for the search However, the Court concluded that a full search following a lawful arrest was not only an exception to the warrant requirement, but a reasonable search under the Fourth Amendment as well.

Cardwell v. Lewis, 94 S.Ct. 2464 (1974)

FACTS: Lewis was a suspect in the murder of a man in Ohio who had been shot, and the victim's automobile had been pushed over an embankment by another vehicle. A vehicle similar to Lewis's car had been seen leaving the scene, and the police learned that body repair work had been done on the front end of Lewis' car on the day after the murder The Columbus, Ohio police wanted to examine the exterior of Lewis' car to see if the foreign paint found on the victim's car and tire tread marks found at the scene matched Lewis' car.
The police had probable cause to believe that his car had been used in the crime, but did not obtain a search warrant. A warrant for Lewis' arrest had been obtained. The police asked Lewis to come in to talk, which he did. He parked his car in a nearby public parking lot. After Lewis was arrested, the police towed his car to their impoundment lot. Tests confirmed that the paint on his car matched that left on

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the victim's car, and the tire treads matched the prints at the crime scene. Lewis appealed his conviction, arguing that the seizure and examination of his car was a search in violation of the 4th and 14th Amendments.

ISSUE: Was the search of the exterior of the vehicle without a warrant lawful?

HOLDING: Yes.

DISCUSSION: The Court, in a series of cases dating back to Carroll v. United States, had long recognized a distinction between the warrantless search of a movable vehicle and a home or building, in light of the obvious fact a vehicle could easily be removed from the jurisdiction before a warrant could be obtained. The Court reasoned such a search was less intrusive on the rights protected under the 4th Amendment. There was a lesser expectation of privacy in a motor vehicle because of its function as transportation and that it usually was not used as a residence or repository of personal effects. It travels about on public roads in plain view of the general public. Citing Katz, the Court stated that what a person knowingly exposes to the public is not a subject of 4th Amendment protection. Since the "search" was limited to the exterior surfaces of a vehicle left in a public parking lot, the Court "fail[ed] to comprehend what expectation of privacy was infringed." Therefore, where probable cause exists, the warrantless examination of the exterior of a car is not unreasonable.

Sedillo v. U.S., 419 U.S. 947, 95 S.Ct. 211 (1974)

FACTS: Sedillo was walking on a freeway on-ramp when an officer stopped him. He gave the officer his name but had no identification. The officer noticed an envelope in his shirt pocket and saw through the window that there was a name other than Sedillo on the item inside. The officer thought the envelope contained a Treasury check, and pulled it from the pocket. The check had been endorsed.

Sedillo was arrested and eventually convicted of forgery.

ISSUES: Did the officer have justification to seize the check?

HOLDING: No

DISCUSSION: Under the only possible justification, the "plain view" doctrine, the officer still did not have justification to seize the check and examine it. Nothing in the record indicates that the officer had any reason to suspect the check was evidence of a crime of any kind.

U.S. v. Watson, 423 U.S. 411, 96 S. Ct. 820 (1976)

FACTS: A postal inspector received information (from a reliable informant) about a stolen credit given to the informant by Watson. A meeting was arranged between the two concerning additional cards. When the informant signaled that the deal was made, the postal inspectors made a warrantless arrest. They searched Watson and found no additional cards, and after a warning, Watson consented to a search of his car, found nearby. Additional cards were found there.

Watson complained that the arrest was illegal, as it was made without a warrant, and that the search was coerced by the "illegal" arrest.

ISSUE: 1) Was the arrest legal?
2) Was the search legal?

HOLDING: 1) Yes
2) Yes

DISCUSSION: The Court first held that the warrantless arrest was legal. The Court stated that it had been the prevailing rule in the states that a "peace officer or a private citizens may arrest a felon without a warrant…." The Court determined that the postal inspector had probable cause for the felony arrest. Because the arrest was held valid, and the circumstances of the search indicated that Watson was capable of understanding the law, was not mentally deficient, and had been warned that the results of the search could be used against him.

U.S. v. Santana, 427 U.S. 38, 96 S.Ct. 2406 (1976)

FACTS: On August 16, 1974, Officer Gilletti, an undercover officer with the Philadelphia police, arranged a heroin "buy" with McCafferty, from whom he'd bought before. The transaction was to occur at "Mom Santana's." Gilletti received the necessary marked cash from his department, and transported McCafferty to Santana's residence. McCafferty took the money and went into the house, returning moments later with several glassine envelopes of heroin.

Gilletti, who was driving, then stopped the car, identified himself and arrested McCafferty. He told her they were returning to Santana's, and asked where the money might be found. She replied, "Mom has the money." Gilletti relayed that information to other officers and took McCafferty to the police station.

Officer Pruitt, with others, drove to the Santana residence. Upon arrival, they saw Santana standing in the threshold with a brown paper bag. They pulled to within 15 feet and got out

of the van, shouting "police" and showing their credentials. Santana retreated back into the house. They followed her and as they caught her, glazed paper
packets of a white powder (later confirmed to be heroin) dropped to the floor. Another individual in the house, Alejandro, tried to grab the envelopes but was restrained. Santana was forced to empty her pockets, and some of the marked money was found. She was indicted for distribution.

The trial court suppressed the heroin and the money, finding that the officers had overstepped their boundary.

ISSUE: Is the threshold a public place?

HOLDING: Yes

DISCUSSION: When Santana was standing in her threshold entryway of her house, she was in full view of the public. She was just as exposed to the public view as she would have been if she had been outside the house. The Court also held that her arrest, set in motion in a public place, could not be prevented by her retreat into the house, and that it was reasonable for the officers to follow her into the house, under the "hot pursuit" doctrine of exigent circumstances.

South Dakota v. Opperman, 428 U.S. 364, 96 S.Ct. 3092 (1976)

FACTS: Local ordinances prohibited parking in certain areas of downtown Vermillion, South Dakota, during the overnight hours. After Opperman's car received two tickets for being parked in the prohibited area, it was towed to the city impound lot.

At the tow lot, an officer noticed a watch on the dashboard, and other items of personal property in view in the car. At the officer's direction, the car was unlocked and inventoried, using a standard form designed for that purpose.

The passenger compartment of the car was inventoried, including the glove compartment, which was unlocked. Marijuana in a plastic bag was found in the glove compartment. All of the property was secured in the property room. Later that day, Opperman appeared to claim his property. Subsequently, he was arrested for possession of marijuana. He was convicted, but the state Supreme Court reversed the conviction, holding that the marijuana had been obtained in violated of the Fourth Amendment.

ISSUE: Is property found during an inventory search admissible as evidence?

HOLDING: Yes

DISCUSSION: The Supreme Court decided that because of the lesser expectation of privacy in vehicles, no exigent circumstances are necessary to search a vehicle lawfully in police custody. An inventory routinely follows an impoundment for three reasons, outlined by the Court: protection of the owner's property, protection of the police from claims or disputes about the property, and the protection of the public (and the public) from potential danger. The Court equated this to the "community caretaking" function held by the police in similar areas. As such, the search was "reasonable" under the circumstances.

U. S. v. Chadwick, 433 U.S. 1, 97 S.Ct. 2476 (1977)

FACTS: On May 8, 1973 Amtrak officials in San Diego observed Machado and Leary load a footlocker onto a train bound for Boston. Their suspicions were aroused when they noticed that the trunk seemed unusually heavy for its size, and that it was leaking talcum powder, a substance often used to mask the odor of drugs. Machado also fit a drug-courier profile used by the railroad. The railroad officials notified DEA in San Diego who in turn notified DEA in Boston.

In Boston, DEA agents did not have a search or arrest warrant, but they did have a drug dog. The agents observed Machado and Leary as they claimed their baggage and the footlocker. The agents released the drug dog near the footlocker and he alerted on the locker. Chadwick met Machado and Leary at the station, and together they lifted the 200-pound footlocker into the trunk of Chadwick's car. At that point (app. 9:00 p.m.), while the trunk of the car was open and before the car engine had been started, the officers arrested all three. A search incident to arrest produced the keys to the footlocker from Machado. All three were taken to the Federal Building in Boston. The agents followed with Chadwick's car and the footlocker. At all times, the footlocker remained in the possession and control of the agents. At app. 10:30 p.m., the agents opened the footlocker. It contained large amounts of marijuana. The agents did not have consent of respondents to search, nor did they have a warrant.

ISSUE: Was the search lawful?

HOLDING: No

DISCUSSION: The Fourth Amendment protects people, not places. By placing personal effects inside a locked footlocker, defendants showed that they expected

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privacy. There being no exigency, it was unreasonable for the Government to conduct a search of the footlocker without a warrant, even where the agents lawfully seized the footlocker at the time of the arrest of its owners and there was probable cause to believe that it contained contraband. A footlocker's mobility did not justify dispensing with warrant by analogy to the "automobile exception" once agents had seized it and had it under their exclusive control. Since defendant's principal privacy interest was not in the container itself, but in its contents, seizure of the locker did not diminish their legitimate expectation that its contents would remain private. Search incident of arrest of luggage after the arrest cannot be justified as incident to arrest if search is remote in time or place from the arrest.

Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330 (1977)

FACTS: While on routine patrol, two Philadelphia police officers observed Mimms driving an automobile with an expired license plate. The officers stopped the vehicle for the purpose of issuing a traffic citation. One of the officers approached and asked Mimms to step out of the car and produce his owner's card and operator's license. Mimms alighted, and the officer noticed a large bulge under his sports jacket. Fearing that the bulge might be a weapon, the officer frisked Mimms and discovered in his waistband a .38-caliber revolver loaded with five rounds of ammunition. Mimms was arrested and convicted of a weapons offense.

ISSUES: 1) Was the ordering of Mimms out of his car reasonable?
2) Was the "pat down" justified?

HOLDINGS: 1) Yes
2) Yes

DISCUSSION: Ordering Mimms out of his car exposed little more than was already exposed. The additional intrusion was not a serious intrusion on the sanctity of the person, and hardly rises to the level of a petty indignity. Ordering Mimms out was reasonable and thus permissible under the Fourth Amendment. The bulge in Mimms jacket permitted the officer to conclude that Mimms was armed and thus posed a serious and present danger to the safety of the officer. In these circumstances, any officer of reasonable caution would likely have conducted the pat down.

Michigan v. Tyler, 436 U.S. 499, 98 S. Ct. 1942 (1978)

FACTS: On January 21, 1970, a fire broke out in Tyler's Auction, a furniture store in Oakland County Michigan. Chief See arrived several hours later, as the firefighters were overhauling the structure. It was the Chief's responsibility to determine the cause of the fire and complete all paperwork. The fire command officer reported that two containers of flammable liquid had been found. They entered the building briefly and the Chief determined that it could have been a case of arson. Chief See notified the police, and the detective (Webb) entered to take photographs, but had to step out because of the smoke and steam still remaining in the structure. Shortly afterward, the firefighters finished their work. The Chief and the police detective removed the two containers, which were placed in evidence for safekeeping. There was neither consent nor a warrant for the entries or the seizure.

Several hours later, Chief See and the Assistant Chief returned to the scene. Eventually, Webb arrived. Together they found suspicious burn marks on the carpet. They left briefly and returned with tools; they removed carpet and sections of the stairs with possible evidence of a fuse trail.

A couple of weeks later, Sgt. Hoffman of the Michigan State Police Arson Section returned to take photographs and search for additional evidence. Among other things, he found a length of fuse. He entered for the sole purpose of obtaining evidence.

Tyler objected to the entry of the evidence collected during these separate entries into the structure. The Michigan Supreme Court ruled that all entries after the fire was extinguished were not allowed, and reversed Tyler's conviction.

ISSUE: Is entry into a fire-damaged property constitutional?

HOLDING: It depends.

DECISION: The Court stated that "there is no diminution in a person's reasonable expectation of privacy nor in the protection of the Fourth Amendment simply because the official conducting the search wears the uniform of a firefighter rather than a policeman, or because his purpose is ascertain the cause of a fire rather than to look for evidence of a crime, or because the fire might have been started deliberately." The Court went on to state that "[I]n the context of investigatory fire searches … a more particularized inquiry (into probable cause) may be necessary." The purpose of the magistrate's examination of the situation "can perform the important function of preventing harassment by keeping that invasion to a minimum."

In taking each of the entries in turn, the Court agreed that entry into a burning building was clearly an exigent circumstance. Once inside the building lawfully to handle the fire, it is appropriate for the firefighters to seize and secure evidence in plain view. To that end, the seizure of the two containers by Chief See was lawful as well. The Court extended the Michigan's Court's interpretation, however, by stating that the exigency did not necessarily end when the last flame was extinguished, and stated that "officials need no warrant to remain in a building for a reasonable time to investigate the cause of a blaze after it has been extinguished. The Court held that the early morning entries by the firefighters and the police detective were simply a logical continuation of the earlier entries. However, the later entry by the Michigan State Police was too removed in time from the exigency and any evidence collected during that search should be excluded.

Zurcher v. The Stanford Daily, 436 U.S. 547, 98 S.Ct. 1970 (1978)

FACTS: On April 9, 1971, officers of the Palo Alto Police Department and the Santa Clara County Sheriff's Department (California) responded to a call from Stanford University Hospital, to remove a large group of demonstrators who had barricaded themselves inside the administrative offices. The officers tried to convince the demonstrators to persuade the demonstrators to leave, with no success. The officers then forced their way into the area, and a group of demonstrators ran from the opposite side. Armed with "sticks and clubs," the assaulted the officers in that area, all nine of the officers suffered injury. The officers were only able to identify two of their assailants. There were no police photographers in the area, but there was another individual present there, taking photographs. The next day, the Stanford Daily (the student newspaper) published a story and photographs, and it was apparent that the individual the officers knew had been at the site of the assault took the photos.

The prosecutor sought and received a search warrant for the Daily's offices, for any negatives or film that might show the incident. The search only revealed the pictures that had already been published, and nothing was taken from the offices.

The Daily and various staff members filed a Sec. 1983 lawsuit. The District Court found that because the subject of the search was not a suspect in a crime, and that because the subject of the search was a representative of the press, that such a search was permitted "only in the rare circumstance where there is a clear showing that (1) important materials will be destroyed or removed from the jurisdiction; *and* (2) a restraining order would be futile."

ISSUE: May a search warrant be issued on an innocent third party believed to be in possession of relevant evidence?

HOLDING: Yes

DISCUSSION: The Court discussed how the Fourth Amendment should be applied to "third party" searches, when officers believe that evidence of a crime is in the possession of someone who is not implicated in the crime. The Court stated that "nothing on the face of the Amendment" prohibited third party searches, and that "valid warrants may be issued to search any property, whether or not occupied by a third party, at which there is probable cause to believe that fruits, instrumentalities, or evidence of a crime will be found." Finally, the Court concluded that "[T]he critical element in a reasonable search is not that the owner of the property is suspected of crime but that there is reasonable cause to believe that the specific 'things' to be searched for and seized are located on the property to which entry is sought."

Mincey v. Arizona, 437 U.S. 385, 98 S.Ct. 2405 (1978)

FACTS: During a drug raid, an undercover officer was killed and Mincey (among others) was wounded. Other narcotics officers on the scene, pursuant to policy, called for medical assistance and searched for other victims in the apartment, but took no further action.

Homicide detectives arrived, secured the scene, and searched the property repeatedly over four days, seizing numerous items. Evidence discovered during this search was introduced at trial. No search warrant was obtained prior to the search.

ISSUE: Was the warrantless search of the "murder scene" permissible?

HOLDING: No

DISCUSSION: There is no "murder scene exception" to the general requirement for a search. There was no emergency or exigency that justified an immediate search; the officers had adequate time and reason to get a warrant. The property could easily have been secured to guard against tampering of evidence while waiting for the warrant.

Rakas v. Illinois, 439 U.S. 128 (1978)

FACTS: In Bourbonnais, Illinois, a police officer received a call about a robbery of a clothing store, and describing the getaway car. The officer spotted a vehicle matching the description. He followed it, and when backup arrived, they stopped it. The occupants, the driver, Rakas and two females, were ordered out of the car, and the officers searched it. They found a box of rifle shells in a locked glove box and a sawed-

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off shotgun under the front passenger seat. At that point, Rakas and the two females were arrested.

All three moved to suppress the evidence, stating that they did not own the car but were merely passengers. (The driver was the owner of the vehicle.) They did not claim to own any of the items seized. The prosecutor challenged their standing to object to the lawfulness of the search. The trial court denied the motion, and Rakas (and the rest) were convicted of the robbery. As it was not necessary, the court did not address the search and seizure – probable cause issue.

ISSUE: May a non-owner (or possessor) of items that are contraband or evidence challenge the search and seizure of such items?

HOLDING: No

DISCUSSION: The Court discussed the issue of standing – the capacity of an individual to be a party in a particular lawsuit. In this case, Rakas was simply a passenger; he did not own or otherwise control the vehicle. Rakas had compared the search to the one done in Jones v. U.S., where the Court stated that a person "legitimately on the premises" might challenge the validity of a search. However, the Court distinguished the two by finding that Jones had a reasonable expectation of access and privacy to a location that was not actually his home, and they were not willing to extend the protection to Rakas, a simple passenger in another's vehicle. The Court found that Rakas did not have a legitimate expectation of privacy in the particular areas that were searched within the vehicle.

Cady v. Dombrowski, 439 U.S. 128, 93 S. Ct. 556 (1978)

FACTS: On September 9, 1969, Dombrowski was a member of the Chicago, Illinois, police force. He possessed, at that time, a1960 Dodge vehicle. On that date, he traveled to West Bend, Wisconsin, and during the evening hours, he was seen at two small taverns in the area. Sometime the morning of the 10th, his vehicle broke down and was to towed to his brother's farm, in an adjacent county. He returned to Chicago and rented another vehicle, and drove back to Wisconsin. That rented vehicle was seen on the farm in the early morning of the 11th, and later that morning, Dombrowsi purchased two towels at a nearby store. During that evening, Dombrowski was seen drinking heavily, and had a wreck. He was picked up by a passing motorist and taken into Kewaskum, where two local officers picked him up to take him back to the wreck scene. They noticed he appeared to be drunk, and gave conflicting information about the wreck.

At the scene, they investigate the wreck. Believing Chicago officers were required to

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carry their weapons at all times, they searched Dombrowski and found no weapon. While waiting for a tow-truck, they searched the passenger area and glovebox of the rented vehicle, again finding no weapon. The Vehicle was towed to a private garage, where it would be left outside. Dombrowski was taken to the West Bend police station, and arrested for drunken driving. Because of his injuries from the wreck, he was then taken to the hospital. The officers stated he was impaired and "incoherent at times." While at the hospital, he fell into a coma, and was hospitalized, under guard. Another officer, Weiss, went back to the garage and again searched the rented vehicle, still believing there might be a weapon in the vehicle.

Inside the vehicle, Officer Weiss found a book of Chicago police regulations and a flashlight that had drops of what appeared to be blood on it. Opening the truck, he found a number of items covered in type O blood; Dombrowski had type A. These items included clothing, including police uniform trousers, a nightstick with "Dombrowski" stamped on it, a raincoat, a towel, and a car mat. The blood on the mat was still moist. These items were collected as evidence.

Eventually Dombrowski informed the police that "he believed there was a body lying near the family picnic area at the north end of his brother's farm." They found the body of McKinney there, he was later found to have been struck over the head and shot, dying in the early morning hours of the 11th. McKinney had type O blood.

Dombrowski was convicted of murder, and that conviction was upheld by the Wisconsin Supreme Court. He filed a habeas corpus petition (a petition to test the legality of the detention) based upon the alleged constitutional violation. The District Court denied the petition, but the Court of Appeals reversed, holding that the searches if the vehicle were unconstitutional.

ISSUE: Is a search of a vehicle, in the interest of general public safety, unconstitutional?

HOLDING: No.

DISCUSSION: The court reasoned that the wrecked vehicle in Dombrowski represented a nuisance, and that the search of the vehicle was done for a proper reason, the concern of the officers for the safety of the general public that might be endangered by someone finding a weapon in the car. The vehicle was to be left outside in an unguarded location. At the time of the search, the officer had no idea that a murder, or any other crime, had been committed. The Court recognized that posting a guard on the vehicle may not have been feasible for the officers in Kewaskum, Wisconsin. The Court concluded that a "caretaking" seizure of the car, and search within for a weapon believed to be inside, was a reasonable and appropriate under the circumstances.

Delaware v. Prouse, 440 U.S. 648, 99 S.Ct. 1391 (1979)

FACTS: A New Castle County, Delaware police officer stopped Prouse's vehicle. As he approached, the officer smelled marijuana. The officer saw marijuana on the floor of the vehicle. At a hearing to suppress the evidence, the officer testified that he did not observe any traffic or equipment violations or any suspicious activity. The officer said that he made the stop to check the license and registration, testifying that; "I saw the car in the area and wasn't answering any complaints, so I decided to pull them off."

ISSUE: Can law enforcement officer's stop vehicles without cause?

HOLDING: No.

DISCUSSION: Stopping an automobile and detaining the driver in order to check his driver's license and automobile registration are unreasonable actions under the Fourth Amendment. If the officer has articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is in violation of the law, the stop would be reasonable.

The Court mentioned that pulling a vehicle over is different from a traffic checkpoint. Questioning of all traffic at roadblock-type stops is permissible, as are weigh stations and checkpoints for commercial motor vehicles.

Arkansas v. Sanders, 442 U.S. 753, 99 S.Ct. 2586 (1979)

FACTS: An officer of the Little Rock P.D. received word from an informant that Sanders would arrive at a particular gate, at a particular time, carrying a green suitcase with marijuana. Both the officer and the informant knew Sanders well, having worked on a case involving Sanders before, a case that resulted in Sanders conviction.

Sanders arrived as expected, and met with a man later identified as Rambo. While Rambo stood by, Sanders retrieved a suitcase from baggage claim; he then handed the case to Rambo. Sanders went outside and entered a taxi, where he had earlier placed his carry-on luggage. In a few minutes Rambo joined him, placing the suitcase in the trunk. The taxi drove away.

Officers pursued and stopped the taxi, and the taxi driver opened the trunk at their request. Without asking permission, officers opened the case and found almost ten pounds of marijuana, packaged in separate bags.

ISSUE: Can officers lawfully open a suitcase in the trunk of a vehicle under these circumstances?

HOLDING: No

DISCUSSION: The Court held that an anonymous tip that is unsupported by specific information is not sufficient to satisfy the requirement of Terry that an officer have reasonable suspicion before initiating a search. In this case, the officers had nothing but an anonymous tip about an individual carrying a firearm. An exception strictly because a firearm is alleged would subject individuals to the potential for harassment by officers acting solely on anonymous tips that may, or may not, be credible. The Court insists on at least an indicia of reliability and credibility in anonymous tips.

The Court specifically stated that this case does not reach to areas where an individual has a diminished expectation of privacy, such as airports and schools.

Lo-Ji Sales, Inc. v. New York, 99 S.Ct. 2319 (1979)

FACTS: A New York State Police investigator went to Lo-Ji Sales, an "adult" bookstore, and purchased two movie films. After viewing them, he concluded that they violated New York's obscenity laws. The investigator showed them to the Town Justice, who also viewed them. The Justice also concluded they were obscene. The investigator provided an affidavit, and based upon the affidavit, the Justice issued a search warrant for the store for the seizure of all copies it had of these two films. However, the affidavit asserted that the store was full of similar films and printed matter portraying similar activities in violation of the obscenity laws. The affidavit requested that the Justice accompany the police to the store for the execution of the warrant. The purpose was to allow the Justice to determine independently if any other items they reviewed in the store were also in violation and subject to seizure. The Justice agreed, and the warrant he issued authorized the seizure "'of the following items that the Court independently [on examination] has determined to be possessed in violation'". At the time of the signing and issuance of the warrant, the space for these items was blank. The Justice accompanied the police, reviewed numerous items, found them to be obscene and ordered them seized. Later, these additional items were added to the already signed search warrant. The defendant appealed on the ground that the search warrant was invalid as a result of the Justice's actions and the later added items.

ISSUE: Is a search warrant valid when the items to be seized are listed on the warrant only after the search, where the magistrate accompanied the police on the search and made judgments as to whether the items should be seized and added to the warrant?

HOLDING: No.

DISCUSSION: The Court strongly disapproved of this action. This warrant was compared to the old general search warrants and writs of assistance, which were the very evils the Fourth Amendment was meant to address. The Fourth Amendment requires that warrants must describe with particularity the things to be seized. Here, only the two original films were specified. The seizure of those items alone was valid. An open-ended search warrant, to be completed while a search is being conducted and items seized or completed afterwards, is illegal. Also, the Court criticized the Justice, who, by accompanying the police and being an active participant, abandoned his constitutionally required role as a "neutral and detached magistrate". Instead, he had become an adjunct law enforcement officer. The fact that the place of the search was a retail store open to the public does not change the need for a warrant that conforms to Fourth Amendment guarantees.

Brown v. Texas, 443 U.S. 47, 99 S.Ct. 2637 (1979)

FACTS: Two officers observed Brown and another man walking away from each other in an alley, in an area known for drug trafficking. The stopped Brown and asked him to identify himself and explain his actions. One officer testified that Brown was stopped because the situation "looked suspicious and we had never seen that subject in that area before."

Brown was arrested under a Texas statute that made it a crime to refuse to identify oneself, and was eventually convicted. At trial, one of the officers admitted that they only reason Brown was stopped was to learn his identity.

ISSUE: Is a stop for the sole purpose of getting an identification lawful?

HOLDING: No

DISCUSSION: In the absence of any basis for suspecting Brown of misconduct, the balance between the public interest and Brown's right to personal security and privacy tilts in favor of freedom from police interference. The guarantees of the Fourth Amendment do not allow stopping and demanding identification from an individual without any specific basis for believing he is involved in criminal activity,

As a result the Court held that detaining Brown and requiring him to identify himself "violated the Fourth Amendment because the officers lacked any reasonable suspicion to believe Brown was engaged or had engaged in criminal conduct."

Ybarra v. Illinois, 444 U.S. 85, 100 S.Ct. 338 (1979)

FACTS: Police had a search warrant for narcotics for the "Aurora Tap Tavern" in Aurora, Ill. and for the person of "Greg", the bartender. Upon entering the tavern to execute the warrant, police announced their purpose and advised those present that they were going to conduct a "cursory search for weapons." All persons present, including Ybarra, a patron, were frisked.

On Ybarra's initial frisk, an officer felt what he described as "a cigarette pack with objects in it" in Ybarra's pocket. After frisking other patrons, the officers returned to Ybarra, frisked him again and retrieved the cigarette pack. Inside, they found six tinfoil packets containing heroin.

Ybarra argued that the search of his person, beyond a frisk for weapons, was unconstitutional.

ISSUE: Was the search of Ybarra, which resulted in the discovery of drug contraband, a violation of his constitutional rights?

HOLDING: Yes

DISCUSSION: It is impermissibly broad to extend the general warrant of a premises to a full search of all individuals found on the premises, when the warrant does not particularly support such a search. In fact, even frisking the patrons, absent specific Terry rationale for such a search of each individual, is impermissible.

Payton v. New York, 445 U.S. 573, 100 S.Ct. 1371 (1979)

FACTS: On January 14, 1970, after a lengthy investigation, New York officers had probable cause to arrest Payton in a murder. Without a warrant, the officers went to Payton's apartment. Although the lights were on, and music was playing, there was no answer to their knock. They broke down the door, but no one was there. However, in plain view, there was a shell casing that they seized and later used in his trial.

Payton appealed the entry and seizure of the shell casing, which was important evidence in the trial, but the state courts upheld his conviction.

ISSUE: Was the officers' warrantless entry for the purpose of an arrest lawful?

HOLDING: No.

DISCUSSION: The warrantless arrest of a person is a seizure the Fourth Amendment requires to be reasonable. "The physical entry of the home is the chief evil against which the Fourth Amendment is directed... we have long adhered to the view that the warrant procedure minimizes the danger of needless intrusions of that sort…In terms that equally apply to seizures of property and to seizures of persons, the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant.

U. S. v. Mendenhall, 446 U.S. 544, 100 S.Ct. 1870 (1980)

FACTS: Mendenhall was stopped by agents of the DEA in the Detroit airport, and was asked to produce her identification and airline ticket. The names on the two did not match. She was asked to accompany the agents to the DEA office in the airport, and did so. She was asked to consent to a search, and did so. (She was told she did not have to consent to a search several times.)

A female officer asked Mendenhall to remove several items of clothing. Without comment, Mendenhall removed two packages from her underclothing; they appeared to contain heroin. She was subsequently arrested.

ISSUE: Were Mendenhall's Fourth Amendment rights violated during the search?

HOLDING: No

DISCUSSION: Mendenhall's consent was voluntary and valid, under the circumstances. An examination of the totality of the circumstances failed to find any evidence of coercion or duress during the process.

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

Rawlings v. Kentucky, 448 U.S. 98, 100 S.Ct. 2556 (1980)

FACTS: Bowling Green police officers, with an arrest warrant for Lawrence Marquess for drug trafficking, arrived at Marquess' home. At the time, Marquess' housemate and four visitors were present, including Rawlings. Officers unsuccessfully searched the home for Marquess. In the course of the search, officers smelled marijuana smoke and saw marijuana seeds in plain sight. Two officers left to obtain a search warrant for the house, while the remaining officers detained the occupants.

(They were told they would be allowed to leave if they would consent to a body search, two did so and were allowed to leave.)

Officers returned with a search warrant for the entire house. An officer read the warrant to the remaining three occupants of the house, and also read them Miranda warnings. At that time, Rawlings was seated on the couch, next to one of the females, who was named Cox. Cox's purse was on the couch between them.

Officer Rainey instructed Rawlings to stand to be searched, and another officer instructed Cox to empty her purse onto the table. A large quantity of controlled substances, including LSD and methamphetamine, fell from the purse. Cox told Rawlings to "take what was his" and he claimed ownership of all of the drugs. Rawlings was also in possession of $4,500 in cash and a knife. He was arrested.

Rawlings stated at trial that he had asked Cox to "carry" the bag containing the drugs for him, and she had agreed. He claimed that the search of the purse invaded his privacy.

ISSUE: Did Rawlings have an expectation of privacy in Cox's purse?

HOLDING: No

DISCUSSION: In examining the facts of this case, the Court found that Rawlings put the drugs in Cox's purse, having only known her a couple of days. He had no access to her purse prior to that time. He had no right to exclude others from her purse. Another individual had been in the purse earlier that same day, searching for a hairbrush. Rawlings admitted he did not expect privacy in the purse. For these reasons, the Court held that he did not have either a subjective or objective expectation of privacy in a purse belonging to another.

Steagald v. U.S., 451 U.S. 204, 101 S.Ct. 1642 (1981)

FACTS: Armed with an arrest warrant for Ricky Lyons, DEA agents developed information that Lyons could be found at Gary Steagald's house. Armed only with an arrest warrant, Agents entered Steagald's house to search for Lyons who was not there. They did not have a search warrant. During the search for Lyons, officers spotted drug evidence.

Upon being informed of the initial observation of cocaine in the house, the lead agent sent an officer for a search warrant. While waiting for the warrant, they conducted a second search, which revealed more incriminating evidence. When the officer returned with the warrant, a third search revealed 43 pounds of cocaine. Steagald was arrested

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on federal drug charges.

Prior to trial, Steagald moved to suppress all of the evidence based on the officers' failure to obtain a search warrant for the house.

ISSUE: Is an arrest warrant adequate to protect the interests of third persons when their homes are searched for others?

HOLDING: No

DISCUSSION: The Agents relied on the arrest warrant as legal authority to enter the home of a third person based on their belief that Lyons may be a guest there. Regardless of how reasonable this belief may have been, it was never subjected to the scrutiny of a detached judicial officer. To hold otherwise would allow officers armed only with an arrest warrant to search the homes of the suspect's friends and relatives.

Michigan v. Summers, 452 U.S. 692, 101 S.Ct. 2587 (1981)

FACTS: Police officers, executing a warrant on a residence to search for narcotics, encountered Summers leaving the house. They requested his assistance in entering the house, and detained him during the search. Finding narcotics in the house, and learning Summers did own the house, the police arrested and searched Summers. Heroin was found in his coat pocket.

ISSUE: Was the initial detention of Summers, during the search of the house, lawful?

HOLDING: Yes

DISCUSSION: The Court stated that a search warrant for a home "carries with it, implicitly, the limited authority to detain the occupants of the premises while a proper search is conducted." The Court agreed that "[T]he risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation."

New York v. Belton, 453 U.S. 454, 101 S.Ct. 2860 (1981)

FACTS: Belton was a passenger in an automobile driven by another individual. The vehicle was stopped for speeding. In the course of the officer's questioning of the occupants, he discovered that none of the occupants owned the car, or was related to the owner of the car. During this time, the officer smelled burned marijuana and spotted an envelope on the floorboard. The officer suspected that the envelope

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contained marijuana.

The officer ordered all of the occupants out of the car, and arrested all of them for possession of marijuana. After searching each individual, the officer searched the passenger compartment of the car. He found a jacket, a jacket belonging to Belton. He unzipped a pocket and found cocaine. Belton maintained that the search of the jacket was unreasonable

ISSUE: Was the search of the jacket lawful?

HOLDING: Yes

DISCUSSION: Incident to arrest, it is lawful to search the person and the immediate area. When a policeman has made a lawful arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile. The police may also examine the contents of any containers found within the passenger compartment, for if the passenger compartment is within reach of the arrestee, so also will containers in it be within his reach.

U.S. v. Ross, 456 U.S. 798, 102 S. Ct. 2157 (1982)

FACTS: Acting on a tip about a drug sale, officers stopped the car that had been "tipped" and arrested the driver, who also matched the tip given. The officers opened the trunk, found a closed paper bag, and inside discovered plastic packages of a white powder, later found to be heroin.

The officers then drove the car to headquarters, and searched the car a second time. On the second search, a zippered pouch was found, containing a good deal of cash.

ISSUE: 1) Was the initial search of the trunk lawful?
2) Was the second search of the trunk lawful?

HOLDING: 1) Yes
2) Yes

DISCUSSION: Police officers who have legitimately stopped an automobile and who have probable cause to believe that contraband is concealed somewhere within may conduct a warrantless search of the vehicle that is as thorough as a magistrate could authorize by warrant. A search of a vehicle is not unreasonable if based on objective facts that would justify the issuance of a warrant.

Florida v. Royer, 460 U.S. 491, 103 S.Ct. 1319 (1983)

FACTS: Royer purchased a one-way ticket from Miami to New York City, under an assumed name. His luggage was checked under that same assumed name. While in the waiting area, he was approached by two police detectives, who believed his actions and appearance fit a "drug profile." When requested, he produced identification, which carried his correct name, and the airline ticket, with the assumed name. When asked about the name discrepancy, he explained a friend had purchased the tickets.

The detectives informed him that they suspected he was carrying narcotics and asked him to accompany them to a small room nearby. They did not return his identification or tickets to him. Without asking permission, an officer reclaimed the luggage and brought it to the room. When asked if they could search the luggage, Royer, without verbally consenting, produced a key and unlocked one of the suitcases. That case contained marijuana. Royer stated he did not know the combination of the second case, so officers pried it open and found more marijuana. Royer was then arrested.

ISSUE: Was the detention and subsequent search lawful?

HOLDING: No

DISCUSSION: When the officers identified themselves, and asked him to accompany them to another location, without giving him back the ID and tickets, he was effectively seized and was not free to leave. As a practical matter he was under arrest, and his consent to the search of his belongings was not voluntary.

U.S. v. Place, 462 U.S. 696, 103 S.Ct. 2637 (1983)

FACTS: Place was waiting in line at Miami International Airport when his behavior attracted the attention of narcotics agents. The officers approached Place and asked for identification, which he provided. They asked for, and received consent, to search two checked suitcases. However, because the plane was ready to depart, they did not search the suitcases at that time.

After he left, the officers discovered some discrepancies in addresses on his luggage tags. (Investigation revealed neither address existed.) They contacted New York DEA and they approached Place as he deplaned at La Guardia Airport. They, too, asked for and received identification. He refused to consent to a search of his luggage, however.

Place was informed that they were going to hold the luggage and seek a federal

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warrant to search the luggage. The DEA Agent took the luggage to Kennedy Airport, where the suitcases were subjected to a "sniff test" by a drug canine. The dog reacted positively to one of the cases. At that point, 90 minutes had elapsed. The agents later received a search warrant and opened the suitcases, and found cocaine in one of them.

ISSUE: Was the detention and search of the suitcases lawful?

HOLDING: No

DISCUSSION: The limitations on the detention of a person apply to the detention of a person's luggage (or other containers). The Agent made a seizure when he told Place he was taking the luggage to a Judge to get a warrant. On facts less than probable cause, it is reasonable to *briefly* detain luggage for limited investigative purposes. One must take into account the *length* of detention in determining whether the seizure is so minimally intrusive to be justified on reasonable suspicion. In assessing the length of detention, one must take into account whether police diligently pursue their investigation. In this case, agents knew when the flight would arrive and had ample time to arrange for the dog to be brought to their location. This would have minimized the intrusion on Place's Fourth Amendment interest.

Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317 (1983)

FACTS: Bloomingdale police received an anonymous letter that included statements that the Gates (husband and wife) were engaged in selling drugs. The text of the letter follows:

This letter is to inform you that you have a couple in your town who strictly make their living on selling drugs. They are Sue and Lance Gates, they live on Greenway, off Bloomingdale Rd. in the condominiums. Most of their buys are done in Florida. Sue his wife drives their car to Florida, where she leaves it to be loaded up with drugs, then Lance flys down and drives it back. Sue flys back after she drops the car off in Florida. May 3 she is driving down there again and Lance will be flying down in a few days to drive it back. At the time Lance drives the car back he has the trunk loaded with over $100,000.00 in drugs. Presently they have over $100,000.00 worth of drugs in their basement.

The brag about the fact they never have to work, and make their entire living on pushers.

I guarantee if you watch them carefully you will make a big catch. They are friends with some big drug dealers, who visit their house often.

Upon receiving this letter, the police initiated an investigation. They learned that Lance Gates did live at a particular address in Bloomingdale. Further investigation revealed a second possible address. The police also determined that Gates had a reservation to fly to Palm Beach, Florida, from Chicago on May 5.

The police contacted Florida DEA agents, who met the plane and followed Gates to a Holiday Inn nearby. He went to a room registered to Susan Gates. The next morning, both Gates and the woman (later identified as Susan Gates, left the hotel in a Mercury station wagon, which was registered to Gates. They went northbound on an interstate highway. Driving time would be approximately 24 hours, from Palm Beach to Chicago.

A search warrant was obtained in Illinois based on this information. The judge determined that the information in the letter, corroborated by the officers' investigation, constituted sufficient probable cause.

When the Gates arrived, the police were waiting. They searched the vehicle and found 350 pounds of marijuana. A search of the residence uncovered more marijuana, weapons and other contraband.

The Gates requested and received suppression of the evidence, on the basis that the affidavit did not support probable cause.

ISSUE: Was the search supported by a valid search warrant?

HOLDING: Yes

DISCUSSION: Previous courts had created a two-pronged test for probable cause, from the Aguilar and Spinelli cases, requiring an affiant to reveal the "basis of the knowledge" of the anonymous tipster, how they came to know what and then to establish the reliability or veracity of the informant

However, the Supreme Court held that Aguilar was too rigid a test, and that "probable cause is a fluid concept – turning on the assessment of probabilities in particular factual contexts – not readily, or even usefully, reduced to a neat set of legal rules."

Instead, the Court adopted a test that considers the "totality of the circumstances." That test requires the issuing judge to "simply make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.

Michigan v. Long, 463 U.S. 1032, 103 S.Ct. 3469 (1983)

FACTS: While patrolling late at night, in a rural area, officers observed a vehicle speeding and traveling erratically. The vehicle then swerved into a ditch. Long, the only occupant, "appeared to be under the influence of something" when he met the officers at the rear of the car. Long did not respond to requests to produce a license and registration, but headed back for the open door of the car. The officers followed him to the car and spotted a hunting knife on the floorboard of the driver's seat. The officers stopped Long and patted him down, and found no other weapons. They looked into the car and spotted a plastic baggie protruding from under the armrest; the bag appeared to contain marijuana.

ISSUE: Was the initial "frisk" of the car legal?

HOLDING: Yes

DISCUSSION: The Court held that a Terry protective frisk was not restricted to the person of the suspect. The Court concluded that roadside encounters are especially hazardous, and that danger may arise from the possibility of weapons in the area near a suspect. For that reason, the Court found that extending the area of a "frisk" to the passenger compartment of a car is reasonable when there is a reasonable belief that there may be weapons in the vehicle.

Michigan v. Clifford, 464 U.S. 287, 104 S. Ct. 641 (1984)

FACTS: In the early morning hours of October 18, 1980, a fire occurred at the home of the Cliffords (Raymond and Emma Jean). By 7 a.m., fire and police had cleared the scene. Within the hour, the fire investigator (Beyer) of the Detroit Fire Department received orders to investigate the fire. He and his partner arrived at about 1 p.m. that afternoon. At the time they arrived, they found a work crew on the scene, boarding the windows and pumping water from the basement. A neighbor indicated that the Cliffords, who were out of town, did not intend to return that day, that the neighbor had notified the insurance company about the boarding.

While waiting for the pump to drain the basement, the investigators found a Coleman fuel can in the driveway and seized it for evidence. Shortly afterward, they entered the house and began their investigation. The found a strong odor of fuel in the basement and two additional fuel cans. Under the fire debris, they found a crock pot with exposed wires and a timer. They continued to search the house finding additional indications of intentional arson.

ISSUE: Was the search lawful?

HOLDING: No

DISCUSSION: The Court stated that "the object of the search determines the type of warrant required." If the search was "only to determine the cause an origin of a recent fire, an administrative warrant will suffice." To get an administrative warrant, "fire officials need show only that a fire of undetermined origin has occurred on the premises, that the scope of the proposed search is reasonable and will not intrude unnecessarily on the fire victim's privacy, and that the search will be executed at a reasonable and convenient time." However, "[I]f the primary object of the search is to gather evidence of criminal activity, a criminal search warrant may be obtained only on a showing of probable cause to believe that relevant evidence will be found in the place to be searched. If evidence of criminal activity is discovered during the course of a valid administrative search, it may be seized under the 'plain view' doctrine." The purpose of an administrative search, which does not require a warrant, would be justified, by example, by the immediate need to ensure against rekindling, and may be no broader than required to achieve that end.

The Court divided the searches into two: the initial, but delayed, search of the basement, and the more extensive search upstairs. In distinguishing the case from Tyler, the court stated that the privacy interests in a residence were much stronger than in a business, and the attempts to secure the residence indicated that the Cliffords expected privacy. Under the facts, an administrative warrant would have sufficed to search the basement. Once the cause was determined, a criminal warrant would have been necessary. In the end, the Court only agreed to admit the fuel can found outside.

Oliver v. U.S., 466 U.S. 170, 104 S.Ct. 1735 (1984)

FACTS: Kentucky State Police narcotics agents, acting on a report that marijuana was being raised on Oliver's farm, went to the farm to investigate. They drove past Oliver's house to a locked gate with a "No Trespassing " sign, but with a open footpath around the gate on one side. The agents walked around the gate and alongside the road; they found a field of marijuana over a mile from Oliver's house.

ISSUE: Does the "Open Fields" doctrine apply to areas outside the curtilage?

HOLDING: Yes

DISCUSSION: There is no reasonable expectation of privacy in open fields. Steps taken to protect privacy, such as erecting fences and "No Trespassing" signs around

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the property, do not establish the expectation of privacy in an open field that society recognizes as reasonable. Open fields do not provide the setting for those intimate activities that the Fourth Amendment is intended to shelter from government interference or surveillance. General property rights or property protected by laws of trespass have little or no relevance to the applicability of the Fourth Amendment.

Massachusetts v. Sheppard, 468 U.S. 981, 104 S.Ct. 3424 (1984)

FACTS: On May 5, 1979, the badly burned body of Sandra Boulware was found in a vacant lot in Boston. An autopsy showed that she had died from multiple skull fractures caused by blows. Investigation led to a boyfriend, Osborne Sheppard. Sheppard's alibi fell through, when it was discovered that he was absent from the location where he claimed to be for several hours, sufficient to commit the crime, and that he had borrowed a vehicle during that time.

The police visited the owner of the car and received permission to search it. Blood and hair were found on the rear bumper and in the trunk, and wire in the trunk was similar to wire found on and near the body. The owner had used the car just previous to when Sheppard borrowed it, and had not noticed any stains.

Det. O'Malley drafted a search warrant, but had a difficult time finding the form normally used for search warrant. He found a form warrant for Controlled Substances, for another area, but deleted the portions that did not apply and substituted the correct information on the form. However, he neglected to delete other, non-applicable, statements on the form. He took the form to a local judge, who made the changes he believed necessary to create a valid warrant, but also neglected to delete several relevant portions. They found several incriminating items, not specifically listed on the warrant but described in the accompanying affidavit, and the search had been consistent with the scope allowed by the warrant. However, the judge had neglected to attach or otherwise reference the affidavit in the actual warrant form. Sheppard was indicted for murder.

The trial court denied Sheppard's request for suppression. While admitting the form of the warrant was somewhat defective, that the officers acted in good faith in executing what they believed to be a valid warrant. The Massachusetts Supreme Court, however, agreed with Sheppard and suppressed the evidence, because Massachusetts had not yet recognized a good-faith exception to the Exclusionary Rule.

ISSUE: Is an officer justified in relying on what is later found to be an invalid warrant?

HOLDING: Yes

DISCUSSION: The Court found that "[I]f an officer is required to accept at face value the judge's conclusion that a warrant form is invalid, there is little reason why he should be expected to disregard assurances that everything is all right, especially when he has alerted the judge to the potential problems." If anyone made a mistake in the situation, it was not the officers but the judge. The Exclusionary Rule was adopted to prevent the police from doing unlawful searches, not to control the actions of judges. Suppressing evidence when the judge makes the errors, not the police, does not serve the purpose of the Exclusionary Rule.

U.S. v. Leon, 468 U.S. 897, 104 S.Ct. 3430 (1984)

FACTS: After an investigation, which included an anonymous tip, officers applied for a warrant to search three houses and the automobiles of three suspects, of which Leon was one. The warrant was issued and the searches yielded large quantities of drugs and other evidence. During a suppression hearing, the court found the warrants, while accurate on their face, were unsupported by probable cause, and as such, the evidence was suppressed. The cases were eventually dismissed for lack of evidence

The prosecution argued that since the officers who executed the warrant were acting in good faith, in reliance of a warrant, that it was inappropriate to suppress the evidence.

ISSUE: Is there a "good faith" exception to the Exclusionary Rule?

HOLDING: Yes

DISCUSSION: The exclusionary rule is designed to deter police misconduct rather than to punish the errors of judges and magistrates. The deterrent purpose of the exclusionary rule necessarily assumes that the police have engaged in willful, or at the very least negligent, conduct which has deprived the defendant of some right. Evidence obtained from a search should be suppressed only if the law enforcement officer had knowledge, or should have known, that the search was unconstitutional. By refusing to admit evidence gained as a result of such conduct, the courts hope to instill a greater degree of care toward the rights of an accused.

When an officer, acting with objective good faith, has obtained a search warrant from a judge or magistrate and acted within its scope, there is no police illegality to deter. It is the magistrate's responsibility to determine whether the officer's allegations establish probable cause and, if so, to issue a warrant. In the ordinary case, an officer cannot be expected to question the magistrate's probable-cause determination or his judgment that the warrant is technically sufficient. Once the warrant is issued, there is literally nothing more the policeman can do in seeking to comply with the law. Penalizing the officer for the magistrate's error, rather than his own, cannot logically contribute to the

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deterrence of Fourth Amendment violations.

Because a search warrant provides the detached scrutiny of a neutral magistrate, which is a more reliable safeguard against improper searches than the hurried judgment of a law enforcement officer engaged in the often competitive enterprise of ferreting out crime, we have expressed a strong preference for warrants and declared that in a doubtful or marginal case a search under a warrant may be sustainable where without one it would fail. Reasonable minds frequently may differ on the question whether a particular affidavit establishes probable cause, and the preference for warrants is most appropriately effectuated by according great deference to a magistrate's determination.

Deference to the magistrate is not boundless. First, a magistrate's finding of probable cause does not preclude inquiry into the knowing or reckless falsity of the affidavit on which that determination was based. Second, the courts must insist that the magistrate perform his neutral and detached function and not serve merely as a rubber stamp for the police. A magistrate failing to manifest that neutrality and detachment acts as an adjunct law enforcement officer, and cannot provide valid authorization for an otherwise unconstitutional search. Third, the warrant must be based on an affidavit that provides the magistrate with a substantial basis for determining the existence of probable cause. Sufficient information must be presented to the magistrate to allow that official to determine probable cause; his action cannot be a mere ratification of the bare conclusions of others.

Thompson v. Louisiana, 469 U.S. 17, 105 S.Ct. 409 (1984)

FACTS: On May 18, 1982, deputy sheriffs arrived at Thompson's home in response to a call by her daughter of a homicide. Upon arriving, deputies went through the house and found Thompson's husband dead of a gunshot wound, and Thompson lying unconscious in another room, apparently the victim of a drug overdose. According to the daughter, Thompson had shot her husband, taken a number of pills in a suicide attempt, then changed her mind and called the daughter for help.

After having Thompson sent to the hospital for treatment, the deputies secured the scene. In a half-hour, homicide detectives arrived and conducted a search of the residence. During that search, three items were located that Thompson asked to have suppressed, a pistol found in the same room as her husband's body, a torn-up note in the trash, and another letter, an apparent suicide note, folded inside a Christmas card in an envelope in that same room.

Detectives admitted that they did not have valid consent to search the residence, and that they had sufficient time to secure a warrant before commencing the search.

ISSUE: Does an invitation to come to a residence to render aid give a blanket consent for a search of the residence?

HOLDING: No

DISCUSSION: While acknowledging factual differences between this case and Mincey, the Court stated that the situation was ultimately the same. The Court stated that such an invitation did not diminish the expectation of privacy of the residents in the house.

Horton v. California, 469 U.S. 128, 110 S.Ct. 2301 (1990)

FACTS: Horton committed an armed robbery where he took jewelry and cash from his victim. In committing the robbery, Horton and his partner were armed with a machine gun and a stun gun. Investigation by officers developed probable cause to search Horton's house for the proceeds of the robbery and the weapons. The search warrant, signed by the magistrate, authorized the search for the proceeds only. During the search, officers found an Uzi, a handgun, and two stun guns. Horton claimed that the seizure of the weapons violated the Fourth Amendment since the weapons were not on the warrant. The State contends that the weapons were in "Plain View."

ISSUE: Were the weapons in plain view and thus admissible as evidence against Horton?

HOLDING: Yes

DISCUSSION: Plain view is a legal concept that requires a prior legal justification for the officer to be present when he sees the evidence to be seized. It is an essential predicate to any warrantless seizure of incriminating evidence that the officer did not violate the Fourth Amendment in arriving at the place from which the evidence would be plainly viewed. Not only must the officer be lawfully located in the place from which the object can be lawfully seen, but also he or she must have a lawful right of access to the object itself.

U.S. v. Johns, 469 U.S. 478, 105 S.Ct. 881 (1985)

FACTS: Pursuant to an investigation of a suspected drug smuggling operation, United States Customs officers, by ground and air surveillance, observed two pickup trucks as they traveled to a remote private landing strip, and the arrival and departure of two small airplanes from that strip. The officers smelled the odor of marijuana as they approached the trucks and saw in the back of the two trucks, packages wrapped in dark

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green plastic and sealed with tape, a common method of packaging marijuana. The officers were unaware of the packages until they approached the trucks.

After making several arrests, including Johns, the officers took the pickup trucks to DEA headquarters. The packages were removed from the trucks. Three days later, and without obtaining a search warrant, DEA agents opened some of the packages and took samples, the samples proved to be marijuana. Johns claims that the search of the packages that had been recovered from the vehicles and placed in storage, three days after the seizure of the vehicles, required a warrant.

ISSUE: Is the warrantless search of packages several days after their seizure from a vehicle that police had probable cause to believe contained contraband a violation of the Fourth Amendment?

HOLDING: No

DISCUSSION: The record shows that the officers had probable cause that not only the packages but also the trucks themselves contained contraband.

The warrantless search of the packages was not unreasonable merely because it occurred three days after the packages were seized. Because the officers had probable cause to believe that the trucks contained contraband, any expectation of privacy in the vehicles or their contents was subject to the officers' authority to conduct a warrantless search. The warrantless search was not unreasonable merely because the officers returned to the DEA headquarters and placed the packages in storage temporarily rather than immediately open them.

Since the Government was entitled to seize the packages and could have searched them without a warrant originally, the warrantless search three days later after the packages were placed in the warehouse was reasonable and consistent with the Court's precedent involving searches of impounded vehicles.

A vehicle lawfully in police custody may be searched on the basis of probable cause to believe it contains contraband and there is no requirement of exigent circumstances to justify such a warrantless search

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U.S. v. Sharpe, 470 U.S. 675, 105 S.Ct 1568 (1985)

FACTS: A DEA agent noticed an overloaded pickup truck with camper, traveling with a Pontiac automobile. Savage was driving the truck; Sharpe was driving the car. The agent followed the vehicles for about twenty miles, then decided to make an investigative stop" and asked the state police for backup. The state trooper

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"caught up with the agent, and they proceeded to stop the vehicles. The Pontiac stopped, but the truck traveled some distance further, followed by the state trooper. Unable to reach the trooper by radio, the DEA agent called upon the local police agency for help.

In the meantime, the trooper had stopped the truck, questioned Savage, and told him he would be detained until the DEA agent arrived. The agent, leaving Sharpe with the local police, arrived at the truck approximately fifteen minutes later.

The agent confirmed his suspicion that the truck was overloaded, and upon smelling marijuana, the agent opened the rear of the camper and found a number of burlap-wrapped bales. The bales were found to contain marijuana. Savage was placed under arrest. The agent returned to the Pontiac and arrested Sharpe.

ISSUE: Was the detention of Sharpe reasonable, given the original suspicion and the length of time between detention and arrest?

HOLDING: Yes

DISCUSSION: The arrest/detention was lawful and reasonable. The Court found that the officers had articulable and reasonable suspicion to make the initial stop. After that stop, the officers "diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly."

Winston v. Lee, 470 U.S. 753, 105 S. Ct. 164 (1985)

FACTS: On July 18, 1982, Watkinson was closing his shop for the night. An armed man approached him, and they exchanged shots. Watkinson was injured; the other individual ran from the scene, also apparently wounded.

Shortly afterward, police found Lee approximately eight blocks away. He was suffering from a gunshot wound to the chest, and stated he had been the victim of an attempted robbery. When he was taken to the same hospital as Watkinson for treatment, Watkinson immediately identified him. Finding Lee's story unbelievable, Lee was charged with the robbery and assault of Watkinson.

The prosecution made a motion to the court to require Lee to undergo surgery to remove the bullet believed to be lodged under his collarbone. At a hearing, the surgeon testified that the procedure would take less than an hour, and that there was a very small chance of nerve damage and an even smaller chance of death, considerably less than one percent. At a second hearing, and upon further investigation, the surgeon now stated that the bullet was just under the skin and would be simple to

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remove.

The Court ordered the surgery. However, upon studying X-rays just prior to the scheduled procedure, the surgeon found that the bullet was much deeper than expected, so the risk was much higher than estimated.

ISSUE: Must an individual be forced to undergo a relatively risky surgical procedure to retrieve evidence?

HOLDING: No

DISCUSSION: The Court sought to balance the prosecution's need for the evidence in Lee's body with Lee's right of privacy. They found that the prosecution had a great deal of evidence concerning Lee's guilt, and because of that, the need for the actual bullet was not great.

California v. Carney, 471 U.S. 386, 105 S.Ct. 2066 (1985)

FACTS: DEA had information that defendant was exchanging marijuana for sex in a motor home parked in a regular parking lot in downtown San Diego. DEA observed a youth enter the motor home with Carney and stay for over an hour. Agents stopped the youth when he left the motor home, and the youth stated he had received marijuana in return for allowing Carney sexual contact. The youth, at the agent's request, went back to motor home, knocked on the door, and Carney stepped out. Agents went inside and observed marijuana immediately, and a further search revealed additional marijuana. Carney claimed that the search of the motor home without a warrant violates the Fourth Amendment because the vehicle has a dual use as a dwelling.

ISSUE: Is a motor home a vehicle or a dwelling for Fourth Amendment purposes?

HOLDING: It depends.

DISCUSSION: A warrant is not required when a vehicle is being used on the highways or is capable of that use and found stationary in a place not regularly used for residential purposes. The vehicle was so situated that an objective observer would conclude that the vehicle was being used as a vehicle, not a residence.

California v. Ciraolo, 476 U.S. 207, 106 S.Ct. 1809 (1986)

FACTS: Santa Clara police received an anonymous telephone tip that marijuana

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was growing in Ciraolo's backyard. The yard was surrounding by a six-foot outer fence and a 10-foot inner fence, completely enclosing the yard. The investigating officer secured a small, fixed-wing plane and flew over the yard at an altitude of 1,000 feet, within legal navigable airspace. Officers in the plane readily identified the eight to ten foot tall marijuana plants growing in the small backyard, and took photos of the plants.

Based on this information, police obtained a search warrant. The next day, 73 marijuana plants were seized from the property.

The state appellate court held that Ciraolo had demonstrated an expectation of privacy by erecting the fences, and that the officers had entered the "curtilage" of the house by flying over and observing the yard. The state court held that since this observation was done with the express intent of surveilling this particular property, that it was a "direct and unauthorized intrusion" on Ciraolo's privacy.

ISSUE: Was the flyover legal?

HOLDING: Yes

DISCUSSION: The Court discussed the two prongs of the Katz rationale, the subjective and the objective expectations of privacy in a particular situation. The Court determined that while Ciraolo had manifested a subjective expectation of privacy in erecting the fences, it was unreasonable to award an objective expectation of privacy in an outside area. The Court determined that the "Fourth Amendment simply does not require the police traveling in the public airways in the public airways at this altitude to obtain a warrant in order to observe what is visible to the naked eye."

Dow Chemical Co. v. U.S., 476 U.S. 227, 106 S.Ct. 1819 (1986)

FACTS: Dow Chemical operated a large chemical plant with numerous buildings, and with outdoor equipment and piping running between the buildings. Dow maintained elaborate fencing and security measures around the perimeter, and it was not possible to see the buildings from ground-level outside the grounds of the plant.
EPA made a request to do an administrative inspection of the plant, and was refused. EPA employed a photographer to take photographs of the plant from the air. Upon learning of this, Dow sued the EPA for an illegal search.

ISSUE: Was the taking of aerial photographs of a business facility a violation of the Fourth Amendment?

HOLDING: No

DISCUSSION: The taking of aerial photographs, from proper navigable airspace, is not a prohibited search. Open areas of a commercial property are not entitled to the protection given to the curtilage, in effect, businesses have no curtilage, where the occupants would have a reasonable and legitimate expectation of privacy. For the purposes of aerial surveillance, the commercial structure is comparable to an "open field" in which an individual is not awarded an expectation of privacy.

The Court also stated that the "mere fact that human vision is enhanced somewhat," by the means of a camera or magnifying apparatus, does not change the result.

Colorado v. Bertine, 479 U.S. 367, 107 S.Ct. 738 (1987)

FACTS: Officer arrested Bertine for DUI. After Bertine was taken into custody, and before the tow truck arrived for his vehicle, another officer, pursuant to policy, inventoried the contents of the van. In that inventory, he opened a backpack and found drugs, paraphernalia and cash.

ISSUE: Was the inventory search lawful?

HOLDING: Yes

DISCUSSION: The inventory search was lawful. The doctrine behind an inventory search is the protection of an individual's property while in custody, and to guard the officers from hazardous items in the vehicle or container. There was no evidence that the officers acted for any other reason than to secure the contents of the van, for safekeeping.

O'Connor v. Ortega, 480 U.S. 709, 107 S. Ct. 1492 (1987)

FACTS: In July, 1981, Dr. Dennis O'Connor, Director of Napa State Hospital, became concerned about problems with Dr. Magno Ortega. Dr. Ortega was responsible for the training of young physicians in the psychiatric residency. Dr. Ortega went on leave while a team made an investigation of the allegations, and eventually, he was terminated.

During the investigation, the team entered Ortega's office "to secure state property." During that search, they discovered that Ortega had taken his computer home. The searched the office thoroughly and seized a number of items that were later used in his hearing to impeach a witness. They had also seized papers relating to private patients.

The lower courts held that the search violated his right to privacy.

ISSUE: Does an employee have an expectation of privacy in their workplace?

HOLDING: No

DISCUSSION: The Court stated that Ortega's rights were violated "only if the conduct of the Hospital officials at issue in this case infringed an expectation of privacy that society is prepared to consider reasonable." The Court outlined the areas related to work that are within an employer's control, and stated those areas are the province of the employer, even though an employee may be allowed to place personal items there. This would not extend to closed luggage, such as handbags and briefcases, however. The Court also stated that employees may expect privacy against intrusions by law enforcement but that employees never have a reasonable expectation of total privacy in their place of work, when supervisors are involved.

Arizona v. Hicks, 480 U.S. 321, 107 S.Ct. 1149 (1987)

FACTS: On April 18, 1984, a bullet was fired through the floor of Hicks' apartment striking and injuring a man in the apartment below. Police officers arrived and finding no one at home at the Hicks' apartment, entered Hicks' apartment to search for the shooter, for other victims, and for weapons. They found and seized three weapons, including a sawed-off rifle, and in the course of their search also discovered a stocking-cap mask.

One of the officers noticed two sets of expensive stereo components, which seemed to be out of place in the squalid and otherwise ill-furnished apartment. Suspecting that they were stolen, he read and recorded their serial numbers, moving some of the components, including a Bang and Olufsen turntable that he recognized was extremely unusual and expensive, in order to do so. The officer then reported his findings by phone to his headquarters. On being advised that the turntable had been stolen in an armed robbery, he immediately seized the turntable. It was later determined that some of the other serial numbers, on the remaining equipment, matched numbers on other stereo equipment taken in the same armed robbery, and a warrant was obtained to seize that equipment as well.

Defendant moved to suppress the stereo equipment, claiming the moving of the stereo was an additional but unrelated search to the original purpose of the entry.

ISSUE: Was the evidence seized in violation of the Fourth Amendment?

HOLDING: Yes.

DISCUSSION: The officer's moving of the equipment did constitute a "search." The

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officer's warrantless entry onto the premises to search for the shooter, victims, and weapons was a lawful entry into the apartment. Moving the equipment was a separate intrusion into an area of privacy unrelated to the original exigencies that justified the warrantless entry.

The moving of the stereo requires probable cause to believe it is evidence of a crime. Therefore, the search is illegal, because the entry was unrelated to the original objective of the entry. The Court distinguished, however, merely looking at an object that is already exposed to view, which is not a "search" for Fourth Amendment purposes.

U.S. v. Dunn, 480 U.S. 294, 107 S.Ct. 1134 (1987)

FACTS: DEA agents, upon discovering that Carpenter had purchased large quantities of chemicals and equipment used to manufacture controlled substances, placed tracking devices on some of the equipment and chemical containers. The devices led them to Dunn's ranch. Aerial photographs showed the truck backed up to a barn behind the house. A perimeter fence surrounded the ranch, and inside that area, several barbed wire fences were erected, in particular, one around the house area, which was 150 feet from the barn, and a wooden fence enclosed the front area of the barn. The barn itself had an open doorway surrounded by locked, waist-high gates.
The officers entered the fenced-in area and went to the front of the barn. They smelled chemicals and heard a motor running. They did not cross the locked gate, but using a flashlight, peered inside, and saw what they believed to be a drug lab. Twice the next day, they entered the ranch, confirming the presence of the lab, but did not enter the barn itself. They obtained a search warrant, seized chemicals, equipment and drugs from the property, and arrested Dunn.

Dunn challenged the entry of the property as a violation of the Fourth Amendment.

ISSUE: Was the entry of the agents into the area of the barn, through the fences, unconstitutional?

HOLDING: No

DISCUSSION: The Court found that the barn was not within the protected "curtilage" of the property. The extent of the curtilage can be defined using four factors: 1) the proximity of the area to the home, 2) whether the area is within an enclosure (fence) that also surrounds the home, 3) the nature and use of the area and 4) the steps taken by owner to protect the area from view by passersby.

In this situation, the barn was a considerable distance from the home, was not surrounded by the same fence as the home (but was inside the perimeter fence), the barn was obviously not used for residential purposes, and the barn did not have doors, but the interior was open to plain sight.

The Court goes on to comment that the fences were of the nature to contain livestock, not to block the view, and that the use of a flashlight to enhance sight was permissible.

California v Greenwood, 486 U.S. 35, 108 S.Ct. 1625 (1988)

FACTS: Acting on information indicating that Greenwood might be engaged in narcotics trafficking, police obtained from the trash collector garbage bags left on the curb in front of Greenwood's house. Based on evidence found in the trash, police obtained a search warrant to search Greenwood's house. The search yielded quantities of cocaine and hashish. Greenwood and others were arrested and released on bail. The police again received information that Greenwood continued to engage in narcotics trafficking. The police again obtained Greenwood's trash from the trash collector. A second search warrant was obtained. The police found more narcotics and evidence of narcotics trafficking. Greenwood was again arrested.

Greenwood claims that the search of the trash violated his Fourth Amendment rights.

ISSUE: Does the Fourth Amendment prohibit a warrantless seizure and search of garbage left for collection outside the curtilage of a home?

HOLDING: No.

DISCUSSION: Greenwood had no expectation of privacy in the garbage bags left at the curb (the usual place for collection) outside his house. Abandoning the garbage to the public is sufficient to defeat the Fourth Amendment claim. Society does not accept as objectively reasonable that abandoned property left at the curb for disposal is private. It is common knowledge that plastic garbage bags left on or at the side of a public street are readily accessible to animals, children, scavengers, snoops, and other members of the public. Moreover, Greenwood placed his refuse at the curb for the express purpose of conveying it to a third party, the trash collector, who might have himself have sorted through the trash or permitted others, such as the police, to do so.

Florida v. Riley, 488 U.S. 445, 109 S.Ct. 693 (1989)

FACTS: Acting upon an anonymous tip that Riley was growing marijuana at his residence, the Pasco County Sheriff's Office started an investigation. Riley lived in a

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rural area, in a mobile home. A greenhouse was located behind the mobile home. Due to fences and other screening, it was impossible to see into the greenhouse. However, two panels of the roof were missing. The entire property was posted against entry.

The investigating officer arranged for a helicopter ride over the property. From approximately 400 feet, he was able to look down into the greenhouse and observed what he believed to be, and what later proved to be, marijuana plants. A search warrant was obtained, and marijuana plants were found. Riley was charged and convicted with possession of marijuana.

ISSUE: Was the officer's observation of Riley's property from the air legal?

HOLDING: Yes

DISCUSSION: Relying upon the related case of Ciraolo, the Supreme Court found no difference in an observation from a fixed-wing aircraft flying at a legal altitude, and observation from a helicopter, also flying at a legal altitude, although that altitude was considerably lower than that allowed for fixed-wing planes.

Brower v. County of Inyo, 489 U.S. 593, 109 S.Ct. 1378 (1989)

FACTS: Brower died when he crashed the stolen car he was driving into a roadblock set up by police. The roadblock consisted of an 18-wheel tractor-trailer commandeered by the police that had been placed across both lanes of a two-lane road. The trailer was located immediately behind a curve and was not lit up in any way. A police car, with its headlights on, was placed between Brower's oncoming car and the truck, facing Brower's car, effectively blinding Brower.

The family sued, claiming a violation of the Fourth Amendment's right to be free from unreasonable seizures.

ISSUE: Was this a seizure under the Fourth Amendment?

HOLDING: Yes.

DISCUSSION: Brower was seized. A person is seized whenever there is a governmentally caused termination of that person's freedom of movement through means intentionally applied. Whenever an officer restrains the freedom of a person to walk away, he has seized that person. A Fourth Amendment seizure requires an intentional acquisition of physical control of a person or thing. The government must intend to seize the person (or thing), must put in motion action to seize the person (or thing), and the person (or thing) must be seized by that action.

Maryland v. Buie, 494 U.S. 325, 110 S.Ct. 1093 (1990)

FACTS: Following an armed robbery by two men, one of whom was wearing a red running suit, police obtained warrants for Buie and another man. Police went to Buie's home, and Buie was arrested coming up from the basement. Police entered the basement "in case there was someone else" and seized a red running suit, lying in plain view.

ISSUE: Are items found in plain view during a "protective sweep" able to be seized?

HOLDING: Yes

DISCUSSION: The Fourth Amendment permits that, incident to an arrest, "the officers could, as a precautionary matter and without probable cause or reasonable suspicion, look in closets and other spaces immediately adjoining the place of arrest…." The Court emphasized that the purpose of such a search is not a full search of the premises, but "may extend only to a cursory inspection of those spaces where a person may be found."

The Court held that since the entry into the basement was lawful, any items located in plain view that were evidence of the crime could be seized.

Smith v. Ohio, 494 U.S. 541, 110 S. Ct. 1288 (1990)

FACTS: As two Ashland, Ohio, police officers approached Smith, he tossed the brown paper grocery bag he was carrying onto the hood of a car. When asked, he refused to open it or reveal its contents. (At no time did the officers articulate any concern for their safety. Although Smith attempted to protect the bag, the officers opened it and found drug paraphernalia, and subsequently arrested Smith. The Ohio Court upheld the arrest, finding it to be search incident to arrest.

ISSUE: Can evidence found prior to an arrest be used to support probable cause for the arrest?

HOLDING: No

DISCUSSION: The Court stated that the Ohio Court's reasoning that it was possible to "justify the arrest by the search" just "will not do." The State had also introduced an alternative theory that Smith had abandoned the bag, but the Court held that there was no indication that Smith had in fact abandoned his property by laying it aside.

Florida v. Wells, 495 U.S. 1, 110 S.Ct. 1632 (1990)

FACTS: Following an arrest for DUI, Wells consented to a search of his vehicle, which was being impounded. Marijuana cigarette butts (roaches) were found in the car, and the officers discovered a locked suitcase with marijuana in the trunk.

Wells pled no contest, but retained his right to appeal the admission of the evidence from the locked suitcase. The state Supreme Court held that the evidence should have been suppressed, as the officers' agency, the Florida Highway Patrol, had no policy on the opening of such containers during an inventory.

ISSUE: Absent a specific agency policy on inventory, or other exigent circumstances, should an officer open closed containers during an inventory search?

HOLDING: No.

DISCUSSION: Both the state and the United States Supreme Court agree that when an agency does not have a specific policy on when and how inventories of vehicles will be conducted, random searches, particularly of closed containers, are prohibited. An inventory policy, however, that is closely followed, to avoid so much latitude that the inventory search becomes "a purposeful and general means of discovering evidence of crime," is permissible. Colorado v. Bertine, 479 U.S. 367, (1987) The Court agreed that opening containers to secure items of value, and to protect officers from danger, can be permitted, when these aims cannot be achieved otherwise.

Illinois v. Rodriguez, 497 U.S. 177, 110 S.Ct. 2793 (1990)

FACTS: Police were called to the home of Dorothy Jackson, in Chicago. There, Gail Fischer met them. She was severely bruised, and told officers she had been beaten by Edward Rodriguez earlier that day. She further told officers that she had left him sleeping in the apartment, and agreed to go with the officers to unlock the apartment door with her key. She referred to the apartment as "our" apartment, and stated that she had belongings there. It was unclear from the record whether she indicated that she currently lived there.

When they arrived at the apartment, Fischer unlocked the door and invited the officers to enter. In the living room, they spotted drug paraphernalia and containers of white powder (later proved to be cocaine). In the bedroom, they found more of the white powder in containers in open briefcases. Rodriguez was asleep there, as well.

Rodriguez argued that the entry into the apartment was illegal, because Fischer had vacated the apartment several weeks before. The trial court agreed, stating that she was not a "usual resident" but at best, an "infrequent visitor" to the apartment at the time. The court found that her name was not on the lease, that she did not contribute to the rent, that she was not allowed to invite others to the apartment nor was she to be there when Rodriguez was absent, and that she had moved some of her belongings from the apartment to another location.

ISSUE: Was the officers' belief that Fischer had authority to invite them into the apartment reasonable?

HOLDING: Yes

DISCUSSION: The trial ended its consideration upon determining that Fischer did not have actual authority to allow the officers to enter the apartment. The Supreme Court, however, found that the officers' reasonable belief in the validity of Fischer's consent to be a primary issue, and remanded the case back to the lower courts for further determination. The Court directed that if the lower court found that the officers' belief was reasonable concerning Fischer's authority over the apartment, then the search would be valid.

California v. Hodari D., 499 U.S. 621, 111 S.Ct. 1547 (1991)

FACTS: In April, 1988, Officer Pertoso, along with other members of the Oakland P.D., in plainclothes but with a jacket that identified him as police, approached a group of young people, including Hodari, a juvenile. When they fled, Pertoso pursued the group, but took a slightly different route, one that brought him face-to-face with Hodari. However, Hodari was watching for pursuit behind him, and did not see the officer until they were almost upon each other. When he spotted the officer, he tossed away a small rock, later proved to be crack cocaine. Pertoso tackled him and the police recovered the rock. Hodari was also in possession of $130.

Hodari requested suppression of the cocaine, claiming that he had been seized by the pursuit, and that the seizure was unreasonable. The trial court denied the motion and he was convicted. He appealed, and the California appellate court found that because the officer did not have reasonable suspicion to pursue Hodari, the evidence was the fruit of an illegal seizure.

ISSUE: Is a foot pursuit a seizure?

HOLDING: No

DISCUSSION: The Court explored the issue of what action was required to create a seizure. To constitute an arrest, the Court agreed that "the mere grasping or application of physical force with lawful authority, whether or not it succeeded in subduing the arrestee, was sufficient." In this case, there had been no contact between the two prior to Hodari discarding the cocaine. The court stated that "[A]n arrest requires *either* physical force … *or*, where that is absent, submission to the assertion of authority." The Court stated that while an arrest can be made without physical contact, by an officer calling out to a suspect that they were under arrest, if the suspect then submits to that authority by stopping, lying down or similar behavior that indicates surrender. The Court also looked at the social consequences of encouraging suspects to flee, stating that "[S]treet pursuits always place the public at some risk, and compliance with police orders to stop should therefore be encouraged."

Michigan Dept. of State Police v. Sitz, 496 U.S. 444 (1990)

FACTS: In early 1986, the Michigan State Police established a sobriety checkpoint. A task force, appointed by the police director, created guidelines concerning checkpoint operations, site selection and publicity. Under those guidelines, all vehicles passing through a checkpoint would be stopped and the driver checked for intoxication. If the officer detected such signs, the motorist would be pulled out of the traffic flow and further examined, and if appropriate, arrested. All other drivers would be allowed to continue.

On the first day of the first checkpoint, in Saginaw County, 126 vehicles passed through the checkpoint in 75 minutes, with the average delay being 25 seconds. Two drivers were further held for field sobriety testing, and one of the two was arrested. (A third vehicle drove through the checkpoint without stopping, and was later stopped and arrested for DUI.)

The checkpoints were suspended pursuant to an injunction filed in another county.

Following a hearing, the trial court found the checkpoints violated the Fourth Amendment. The Michigan Court of Appeals affirmed that decision. The state appealed.

ISSUE: Is a brief stop of a motorist to check for drunk driving unlawful?

HOLDING: No

DISCUSSION: The Michigan courts relied upon language in previous Supreme Court cases to perform a balancing test, between the rights of the motorists and the needs of

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the State to curb drunken driving. However, while the Court agreed that the stops were seizures, it determined such stops were reasonable, given the limited intrusion on law-abiding citizens and the tremendous problem with drunken driving in the United States.

Florida v. Jimeno, 111 S. Ct. 1801 (1991)

FACTS: A Dade County police officer overheard Jimeno using a public telephone arranging what he believed to be drug transaction. Jimeno then drove off in his car, and the officer followed. When Jimeno turned right at a red light without stopping, the officer pulled Jimeno over. After advising him that he was going to give Jimeno a traffic citation, he then told Jimeno that he believed he had narcotics in his car. The officer asked for permission to search the car. Jimeno gave permission. The passengers got out of the car, and the officer began a search. He found a folded, brown paper bag on the floor. The officer opened it, and found cocaine in side. Jimeno was arrested and charged with possession with intent to distribute. On appeal, Jimeno contended that his permission to search the car did not extend to the closed paper bag inside the car.

ISSUE: Is it reasonable to consider a suspect's general consent to a search of his vehicle to include consent to search containers found in it?
HOLDING: Yes.

DISCUSSION: The expressed object defines the scope of a search. The suspect did not place any express limitations on the scope of the search. He merely gave a general permission to search his car. It was objectively reasonable for an officer to conclude that a general consent to search the car would include consent to search all containers inside that may contain contraband. The Court indicated that it might have reached a different result if the container in question was locked, such as a briefcase, but saw no problem with a paper bag. The suspect may place any limits he wishes on the scope of the search, but if a general consent can be reasonably understood to extend to a particular container, there is no need for a specific authorization to search that container.

California v. Acevedo, 500 U.S. 565, 111 S. Ct. 1982 (1991)

FACTS: On October 28, 1987, Officer Coleman of the Santa Ana Police Department received a call from a DEA agent in Hawaii. The agent told Coleman that he had seized a package of marijuana from Federal Express, which was to have been delivered to Daza, in Santa Ana. The agent then sent to package to Coleman, who was to allow Daza to claim the package at the Federal Express office.

Daza claimed the package, and returned to his apartment. Shortly afterward, he left, and was observed disposing of a box and paper in an outside trash container. Coleman went to get a search warrant. A few minutes later, St. George left the apartment, carrying a knapsack. He was stopped, and the knapsack was found to contain over a pound of marijuana.

A little later, Acevedo arrived at the apartment. He stayed a few moments, then left with a full paper bag. The bag was approximately the size of one of the wrapped marijuana packages. He placed the bag in the trunk of his car. At that moment, the officers stopped him and searched the package, finding marijuana.

Acevedo was convicted, but appealed. The lower court, facing confusing rulings in earlier Supreme Court cases, found for Acevedo.

ISSUE: Is a package in the trunk of a car, for which probable cause exists to believe contains contraband, subject to search without a warrant?

HOLDING: Yes

DISCUSSION: The Court outlined the history of search as it relates to automobiles, from Carroll forward. The Court concluded "[I]f destroying the interior of an automobile is not unreasonable, we cannot conclude that looking inside a closed container is." The Court extended the interpretation of the Carroll doctrine in Ross to apply to all searches of containers found in an automobile, stating that "the police may search without a warrant if their search is supported by probable cause." The Court however, limited the decision by stating that probable cause to search a particular package for contraband does not necessarily extend to probable cause to search the entire vehicle.

Florida v. Bostick, 501 U.S. 429, 111 S.Ct. 2382 (1991)

FACTS: Two Broward County Sheriff's Office deputies boarded a bus bound from Miami to Atlanta during a stopover in Fort Lauderdale, Florida. Both displayed badges and one carried a zipper pouch used to carry handguns. (At no time did the officers display a gun.)

The officers asked Bostick for his identification and ticket, which he produced. Both were returned. Persisting, the officers asked Bostick if they could search his luggage, and he agreed. Cocaine was discovered in the second piece of luggage. (Bostick stated that he did not give consent to search the second bag, but the trial court found that he did give consent.)

The Supreme Court of Florida reasoned that Bostick was seized because a reasonable passenger would not have felt free to leave the bus and avoid questioning.

ISSUE: Did the officers' actions constitute a seizure of Bostick, rendering his consent invalid?

HOLDING: No

DISCUSSION: The Supreme Court decided that the Florida court's reliance on a single issue, that the encounter took place on a bus, as too restrictive, and that it was more appropriate to look at the "totality of the circumstances" surrounding the encounter. The correct issue is whether the police conduct in question would have communicated to a reasonable person that the person was free to refuse the officer's request or otherwise end the meeting. Since that issue was not reached by the lower courts, the Supreme Court send the case back for a further consideration based on their decision.

Minnesota v. Dickerson, 508 U.S. 366, 113 S.Ct. 2130 (1993)

FACTS: At 8:15 p.m., officers saw Dickerson leave an apartment building known to the officers as a "crack house." (One of the officers had executed several warrants on the property, and the police had received many complaints of drug sales on the property.) Dickerson walked toward the marked police car, and the officer's suspicion was aroused when Dickerson looked at the car, made eye contact with the officer, then abruptly turned and entered an alley on the side of the apartment building.

The officer stopped Dickerson and patted him down for weapons. The officer found no weapons but found a lump in a coat pocket. The officer examined the lump with his fingers and determined that the object felt like a lump of crack. The officer reached in the pocket and retrieved a lump of crack cocaine. Dickerson claimed this search violated the Fourth Amendment because it exceeded the scope of the frisk.

ISSUE: May officers seize nonthreatening contraband found on a person during the course of a frisk?

HOLDING: Yes.

DISCUSSION: If a police officer lawfully pats down a suspect's outer clothing and feels an object whose contour and mass makes its identity immediately apparent, there has been no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons. However, the continued exploration of the item after concluding the item is not a weapon exceeds the scope of lawful authority.

Wilson v. Arkansas, 115 S.Ct. 1914(1995)

FACTS: Arkansas State Police officers sought a warrant to search the home of Jacobs, a suspected drug dealer. They had probable cause, in that an informant had purchased drugs in the home. At that sale, the petitioner, Sharlene Wilson, had waved a pistol in the informants face and threatened to kill her if she were an informant. The affidavit set forth the essential facts, and noted that Jacobs had previous convictions for arson and firebombing. The warrant was issued, and officers went to the house. On arrival at the house, the officers found the door unlocked and walked in without knocking. As they entered, they announced themselves as police and that they had a warrant. Evidence was seized, and Jacobs and Wilson were arrested. Wilson tried to have the evidence seized in the home suppressed on various grounds, including the fact that the officers had failed to "knock and announce" before entering and that therefore the search was unreasonable. The motion was denied, and the Arkansas Supreme Court affirmed on appeal. Wilson then appealed to the U. S. Supreme Court.

ISSUE: Is entering a dwelling to serve a warrant unreasonable when officers do not knock and announce first and they have not established a risk either to themselves or of evidence destruction justifying an unannounced entry?

HOLDING: Yes.

DISCUSSION: The Court observed that it has long been a tradition of the common law that officers seeking to invade a dwelling with a warrant must knock and announce their presence. Since knock and announce was the rule at the time of the adoption of the Fourth Amendment the framers would have been well aware of that and would have considered it to be part of the inquiry as to whether a search was reasonable or not. Not every entry must be preceded by an announcement. To get a "no knock" warrant, officers must state sufficient facts in their supporting affidavits to permit a neutral and detached magistrate to conclude that knock and announce would create an unreasonable risk of peril for the officers or destruction of the evidence sought to be seized with the warrant. In the majority of cases, however, entry with first knocking and announcing will be an unreasonable search, and any evidence seized will be suppressed.

Whren v. U.S., 517 U.S. 806, 116 S.Ct. 1769 (1996)

FACTS: Officers patrolling a "high drug area" in an unmarked car observed Brown, the driver of a truck, waiting at stop sign for unusually long time, then turning suddenly without signaling, and finally speeding. Officers stopped the vehicle. Upon

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approaching the truck, officers saw plastic bags containing crack cocaine in Whren's hands – Whren was in the passenger seat.

Whren argued that the officer's reason for approaching the car was pretextual, and that the drugs should be suppressed.

ISSUE: Is a "pretext stop," which is defined as a stop for a minor reason when the officer subjectively believes that other crimes are being committed, valid?

HOLDING: Yes

DISCUSSION: The officers had probable cause to make the initial traffic stop. Whren argued that because the traffic code consists of a "multitude of applicable traffic and equipment regulations," that officers could always find a reason to stop any car, and as such, the test should be what a reasonable officer would do under the circumstances. In other words, would a reasonable officer have made that particular stop? The Court recognized that it would be almost impossible to define "standard police practices," as they would differ dramatically from place to place, and held that if the officers could identify valid reasons for the stop, that such stops were permitted without considering the subjective intent of the officers involved.

Pennsylvania v. Labron, Pennsylvania v. Kilgore, 518 U.S. 938, 116 S.Ct. 2485 (1996)

FACTS: Two cases were combined for appeal. In Labron, the police observed Labron engaging in a series of drug transactions from his car. Labron was arrested and his car searched. Bags of cocaine were found in the trunk of the car. In Kilgore, police arrested Kilgore after buying some drugs. The police had observed Kilgore go to his truck during the drug deal. The police found cocaine in the truck during a search.

Both parties argue that the warrantless searches violate the Fourth Amendment because of the lack of exigent circumstances.

ISSUE: Is exigency a requirement for a warrantless search when the police have probable cause to search a vehicle?

HOLDING: No.

DISCUSSION: The Court said that while earlier cases (Carroll v. U.S.) held that the "ready mobility" of the vehicle was based on an "exigency sufficient to excuse failure to obtain a search warrant once probable cause to conduct the search is clear," later

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cases have provided additional justification for warrantless searches. Citing California v. Carney, the court held that the reduced expectation of privacy in a vehicle permitted police to search without a warrant when there was probable cause to believe evidence was present.

Ohio v. Robinette, 519 U.S. 33, 117 S.Ct. 417 (1996)

FACTS: Officer stopped Robinette for speeding. While stopped, the officer asked Robinette for consent to search the car. Robinette consented to the search, and the officer found some marijuana and one tablet of MDMA. Robinette sought to suppress the evidence, claiming that the officer did not, and was required to, advise Robinette of that he was free to go before asking for consent.

ISSUE: Is an officer required to advise a person detained for investigatory purposes that they have the right to leave when asking for consent to search?

HOLDING: No.

DISCUSSION: The Fourth Amendment test for a valid consent to search is that the consent be voluntary. Voluntariness is a question to be determined by all of the circumstances. While it would be unrealistic to impose on consent searches the *requirement* of a warning, it would likewise be unrealistic to require officers to inform detainees they are free to go before consent may be deemed voluntary.

NOTE: *While the Court does not require a warning, giving a warning will go towards showing that the consent was voluntary.*

Maryland v. Wilson, 519 U.S. 408, 117 S.Ct. 882 (1997)

FACTS: An officer attempted to stop a car for speeding. During his pursuit of the car, he noticed two passengers in the car. The passengers were looking out the back window of the car, and repeatedly ducked out of sight and reappeared. With the car stopped, the driver met the officer at the rear of the car. The officer noticed that the front seat passenger, Wilson, was sweating and appeared very nervous. When the officer ordered Wilson from the car, some crack cocaine fell to the ground. Wilson moved to suppress the cocaine, claiming the officer's ordering a passenger out of a car was unreasonable.

ISSUE: On a traffic stop, is it reasonable to order or remove a passenger from the vehicle?

HOLDING: Yes.

DISCUSSION: A vehicle that is lawfully stopped gives cause to the driver having committed an offense, but not necessarily that a passenger has committed any wrongdoing. While there is not the same basis for ordering a passenger out of the car as there is for ordering the driver out, the additional intrusion on the passenger is minimal.

Richards v. Wisconsin, 520 U.S. 385, 117 S.Ct. 1416 (1997)

FACTS: Officers in Madison, Wisconsin obtained a search warrant to search Richards' hotel room for drugs and other items. The officers requested a "no-knock" warrant, but the judge deleted those provisions from the warrant.

Upon arriving, an officer dressed as a maintenance man knocked on the hotel room door. Richards peered out through the crack, with the chain still on the door, then slammed it shut. (Later he stated he saw a uniformed officer behind the officer at the door.) After waiting for several seconds, the officers began kicking and ramming the door, all the while identifying themselves as police. When they broke through the door, they found Richards attempting to leave through a window, and eventually found drugs hidden in the ceiling.

Richards asked to have the evidence suppressed because the officers failed to knock and announce their presence. The state argued that he knew who was at the door, and besides, a drug warrant automatically indicates exigent circumstances since there is a high probability that the drugs might be destroyed if officers delay in entering the premises.

ISSUE: Is there a blanket exception to the "knock and announce" rule of serving warrants, when drugs are involved?

HOLDING: No

DISCUSSION: While the Court upheld the entry in this particular case, the Court refused to recognize a blanket exception for drug cases to the general knock and announce requirement. To justify a "no-knock" warrant, the officers must have a reasonable suspicion, specific to the situation, that knocking would be dangerous or futile, or would allow the destruction of evidence. Just because drugs are suspected is not enough.

Minnesota v. Carter, 525 U.S. 83, 119 S.Ct. 469 (1998)

FACTS: A police informant saw some people, through the window of an apartment, bagging white powder. An officer then observed people for several minutes in a bagging operation through the apartment window. While officers were obtaining a warrant to enter the apartment, two men, later identified as Carter and Johns, left the building and got into a car. When the car was stopped, police found cocaine and cocaine paraphernalia.

A subsequent search of the apartment uncovered cocaine residue on the kitchen table. Thompson, the apartment lessee, said she had allowed Carter and Johns to use her apartment for their bagging operation for an amount of cocaine. Carter and Johns were in the apartment for about two and one-half hours and had never been to the apartment before. Carter and Johns moved to suppress all evidence, arguing that the officer's looking through the apartment window was an unreasonable search, thus violating their Fourth Amendment rights.

ISSUE: Does a guest have an expectation of privacy?

HOLDING: No

DISCUSSION: The Supreme Court held that Carter and Johns had no legitimate expectation of privacy in the apartment as they were only in the apartment one time, for a short time, and for were there for a commercial purpose only. Since they had no expectation of privacy, there is no need to determine whether the officer's looking through the window was a search.

The Court distinguished these cases from Minnesota v. Olson, 495 u.s. 91 (1990), where they held that a social overnight guest in one's home would have an expectation of privacy in the premises. They said that overnight guests in a home may challenge the legality of a search, but one who is merely present with the consent of the householder could not.

Knowles v. Iowa, 525 U.S. 113, 119 S.Ct. 484 (1998)

FACTS: An Iowa police officer issued Knowles a citation for speeding, 43-mph in a 25-mph zone. Iowa law permitted an officer to cite instead of making an arrest for any offense that is bailable. Iowa law further provides that issuing a citation instead of making an arrest does not affect an officer's authority to conduct an otherwise lawful search. The Iowa Supreme Court had interpreted this provision as providing authority

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to officers to conduct a full-blown search of an automobile and driver in those cases where police elect not to make a custodial arrest and instead issue a citation – that is, a search incident to citation. Without either consent or probable cause, the officer searched Knowles' car, found marijuana and a "pot pipe", and arrested Knowles. Knowles was convicted and the Iowa Supreme Court upheld the conviction.

ISSUE: Is a search of a vehicle passenger compartment permissible when the officer has probable cause to arrest, but only issues a citation?

HOLDING: No.

DISCUSSION: The U. S. Supreme Court, by unanimous decision, reversed the conviction, holding that, although authorized by state law, the search violated the Fourth Amendment. Chief Justice Rehnquist reasoned that the two historical rationales for the "search incident to arrest" exception – (1) the need to disarm the suspect in order to take him into custody and (2) the need to preserve evidence for later use at trial – are not present in the citation situation.

Wyoming v. Houghton, 526 U.S. 295, 119 S.Ct. 1297 (1999)

FACTS: On July 23, 1995, a Wyoming Highway Patrol officer stopped a car, with a male driver and two female passengers in the front seat, for minor traffic violations. While questioning the driver, the officer noticed a syringe in his front shirt pocket. He asked the driver to get out and place the syringe on the car. When asked why he had the syringe, the driver with "refreshing candor," replied he used drugs.

At that point, the two female passengers were instructed to get out of the car and asked for identification. Houghton gave her name, falsely, as "Sandra James" and said she had no ID. During this time, another officer searching the car found a woman's purse, which Houghton stated belonged to her. He searched the purse and found identification that correctly identified Houghton, as well as two small cases. One case, a black wallet, Houghton claimed as hers, the other, a brown pouch, she claimed was not her property. The first case contained a small amount of liquid methamphetamine, with syringes, not enough for a felony in Wyoming. The brown pouch contained the same, but with enough methamphetamine to support the felony conviction at issue.

Houghton appealed her conviction on the basis that the officer knew the purse did not belong to the male driver, who was the only person arrested at the time the purse was searched. The Wyoming Supreme Court reversed her conviction.

ISSUE: Was the search of the purse constitutional?

HOLDING: Yes

DISCUSSION: Based upon a historical reading of the law, the Court stated that allowing vehicles to be searched for contraband upon probable cause implies that the containers inside the vehicles were also subject to search. Previous cases had not distinguished actual ownership of the particular item as important. "A passenger's personal belongings, just like the driver's belongings or containers attached to the car like a glove compartment, are 'in' the car, and the officer has probable cause to search for contraband *in* the car." (emphasis in original).

In conclusion, the Court stated that "police officers with probable cause to search a car may inspect passengers' belongings found in the car that are capable of concealing the object of the search."

Flippo v . West Virginia, 528 U.S. 11, 120 S.Ct. 7 (1999)

FACTS: Flippo and his wife were vacationing at a cabin in a state park. One night he called 911 to report that they had been attacked, and the police arrived to find Flippo waiting outside the cabin, with injuries to his head and legs. After questioning him, an officer entered the building and found the body of Flippo's wife, with fatal head wounds. The officers closed off the area, took Flippo to the hospital, and searched the exterior and environs of the cabin for footprints or signs of forced entry. When a police photographer arrived at about 5:30 a.m., the officers reentered the building and proceeded to "process the crime scene." For over 16 hours, they took photographs, collected evidence, and searched through the contents of the cabin. At the crime scene, the investigating officers found on a table, among other things, a briefcase, which they, in the ordinary course of investigating a homicide, opened, wherein they found and seized various photographs and negatives. The photographs included several taken of a man (later identified as a friend of Flippo and a member of the congregation where Flippo was the minister) who appears to be taking off his jeans. The prosecutor introduced the photographs as evidence of Flippo's relationship with the man and argued that the wife's displeasure with this relationship was one of the reasons that motivated Flippo to kill her.

Flippo was indicted for his wife's murder and moved to suppress the photographs and negatives discovered in an envelope in the closed briefcase during the search. He argued that the police had obtained no warrant, and that no exception to the warrant requirement justified the search and seizure. The trial court denied the motion to suppress, approving the search as one of a "homicide crime scene." The West Virginia Supreme Court of Appeals denied discretionary review and Flippo appealed to the United States Supreme Court.

ISSUE: Is there a crime scene exception to the warrant requirement?

HOLDING: No

DISCUSSION: In an unanimous opinion the U. S. Supreme Court reversed the lower courts for further proceedings, stating: "A warrantless search by the police is invalid unless it falls within one of the narrow and well-delineated exceptions to the warrant requirements. . . . The position of the trial court squarely conflicted with Mincey v. Arizona, 98 S.Ct. 2408 (1978), where we rejected the contention that there is a 'murder scene exception' to the Warrant Clause of the Fourth Amendment. We noted that police may make warrantless entries onto premises if they reasonably believe a person is in need of immediate aid and may make prompt warrantless searches of a homicide scene for possible other victims or a killer on the premises, . . . but we rejected any
general 'murder scene exception' as "inconsistent with the Fourth and Fourteenth Amendments . . . ." The Court expressed no opinion on whether the search might be justified as consensual or the applicability of any other exception to the warrant rule.

Maryland v. Dyson, 527 U.S. 465, 119 S.Ct. 2013 (1999)

FACTS: A deputy sheriff in St. Mary's County received a tip from a reliable informant that Dyson, a known drug dealer, had gone to New York in a rented car to buy drugs, and would be returning that night. A description of the vehicle, including the license number, was provided. When Dyson returned in the rented car, he was stopped and the vehicle was searched without a warrant. Crack cocaine was found in a duffel bag in the trunk. Dyson sought to suppress the cocaine as it had been discovered in a warrantless search. He argued among other things that there were no exigent circumstances and the police had plenty of time to get a warrant, but that they had not done so. The Maryland court ruled that there was no exigency that prevented or even made it difficult to get a search warrant prior to the search and suppressed the evidence. The Maryland appellate court upheld that decision.

ISSUE: Is it necessary to find exigent circumstances to avoid getting a warrant for a search of a vehicle when there is probable cause that the vehicle contains contraband?

HOLDING: No

DISCUSSION: The U. S. Supreme Court rejected this argument. The Court stated that the automobile exception has no separate exigency requirement. The automobile exception is based on the "ready mobility" of the vehicle and the "reduced expectation of privacy resulting from its use as a readily mobile vehicle, "which" justified application of the vehicular exception". *California v. Carney*, 105 S.Ct. 2066(1985), at 2069. Citing the more recent *Pennsylvania v. Labron*, 518 U.S. 938 (1996) which had a nearly

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identical fact pattern to this case, the Court restated the rule that "[I]f a car is readily mobile and probable cause exists to believe it contains contraband, a warrant is not needed". There is no exigency requirement that must be met to justify a search of an automobile without a warrant.

Florida v. J.L., 529 U.S. 266, 120 S.Ct. 1375 (2000)

FACTS: Miami-Dade officers received an anonymous tip that a young black male was standing at a particular bus stop, wearing a plaid shirt, and that he was in possession of a gun. A few minutes later, officers found J.L., along with two other young men, wearing a plaid shirt, at that location. The officers observed no suspicious conduct, nor did they see anything to lead them to suspect that J.L. had a weapon. They seized and frisked J.L., and found a firearm.

ISSUE: Can an anonymous tip alone, with no other corroborating information, give reasonable suspicion to frisk for a gun?

HOLDING: No

DISCUSSION: The Court held that an anonymous tip that is unsupported by specific information about a firearm is not sufficient to satisfy the requirement of Terry that an officer have reasonable suspicion before initiating a search. In this case, the officers had nothing but an anonymous tip about an individual carrying a firearm. An exception strictly because a firearm is alleged would subject individuals to the potential for harassment by officers acting solely on anonymous tips that may, or may not, be credible. The Court insists on at least an indicia of reliability and credibility in anonymous tips.

The Court specifically stated that this case does not reach to areas where an individual has a diminished expectation of privacy, such as airports and schools.

Illinois v. Wardlow, 528 U.S. 119, 120 S.Ct. 673 (2000)

FACTS: Upon seeing a caravan of police officers entering the neighborhood, an area known for heavy drug trafficking, Wardlow fled on foot. He was carrying an opaque package. Officers caught up with him and seized him. They executed a pat-down search of Wardlow, and the package. Feeling a hard, heavy object in the shape of a handgun inside the package, they opened it to find a .38 revolver.

ISSUE: Is simply fleeing from the police, under similar circumstances, sufficient to perform a Terry stop?

HOLDING: Yes

DISCUSSION: Under Terry, a stop is justified if the officer has a "reasonable, articulable suspicion that criminal activity is afoot…." In this case, Wardlow's presence in a high crime area combined with his sudden flight upon seeing police officer was sufficient to meet the standard.

The Court held that "[w]hile "reasonable suspicion" is less demanding than probable cause, there must be at least a minimal level of objective justification for the stop." This case also serves to define how "reasonable suspicion" relates to probable cause, specifically pointing out that it is less than a preponderance of evidence.

The Court made the point that unprovoked flight is not "going about one's business," that it is, in fact, "just the opposite." Allowing officers confronted with such flight to stop the fugitive and investigate further is quite consistent with the individual's right to go about his business or stay put and remain silent in the face of police questioning.'

Bond v. U.S., 529 U.S. 334, 120 S.Ct. 1462 (2000)

FACTS: Steven Dewayne Bond was traveling on a bus from California to Little Rock, Arkansas. The bus stopped at a Border Patrol checkpoint in Sierra Blanca, Texas, where a Border Patrol agent boarded the bus to check the immigration status of the passengers. After completing the check, the agent walked forward from the back of the bus, squeezing all of the soft luggage that the passengers had placed in the overhead compartments. He squeezed a bag belonging to Bond that was in the compartment over Bond's head. When the agent squeezed the bag, he felt a solid brick-like object. Bond admitted the bag was his and gave consent to the agent to open it. The agent discovered a brick of methamphetamine, and arrested Bond. Bond's motion to suppress the drugs as fruit of an illegal search was denied, and he was convicted of possession with intent to distribute methamphetamine. The Fifth Circuit Court of Appeals upheld the conviction, finding that the manipulation of the bag was not a search within the meaning of the Fourth Amendment.

ISSUE: Is the squeezing of soft-sided luggage a "search?"

HOLDING: Yes

DISCUSSION: The U. S. Supreme Court reversed the Court of Appeals, holding that the agent's manipulation of the carry on bag violated the Fourth Amendment prohibition against unreasonable searches. The Court rejected the government's argument that by placing his bag in the passenger compartment, and thus exposing it to the public, Bond did not have a reasonable expectation of privacy that his bag would not be physically

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manipulated. After all, it would not be unusual for such a bag to be touched and moved by other passengers while traveling. The Court distinguished this case from California v. Ciraolo, 476 U. S. 207, 106 S. Ct. 1809 (1986), and Florida v. Riley, 488 U.S. 445, 109 S.Ct. 693 (1989), which the government had cited as justification. In Ciraolo and Riley, the Court had held that matters open to public observation are not protected. The Court distinguished those cases by noting that they had involved only visual observation, not tactile observation of an opaque bag by manipulating it. The Court noted that while carry on bags are not part of the person, a traveler uses them to transport personal items that they wish to keep with them.

Further, the Court stated that while a traveler certainly has to expect that a carry on bag might be handled or moved by other passengers or employees of the carrier, the traveler does not have an expectation that they will "feel the bag in an exploratory manner". Therefore, the physical manipulation of the bag violated the Fourth Amendment.

City of Indianapolis v. Edmond, 531 U.S. 32, 121 S.Ct. 447 (2000)

FACTS: Indianapolis, Indiana police directives set guidelines for roadblocks for the specific purpose of drug interdiction. Signs were posted giving notice of a narcotics checkpoint, and persons stopped at such checkpoints were advised they were being stopped briefly at a drug checkpoint and were asked to produce a driver's license and vehicle registration. Edmond and Palmer were stopped at one of the narcotics checkpoints; neither was arrested. Both filed a class action lawsuit (with themselves as representative members of the class) claiming that such stops are unreasonable under the Fourth Amendment.

ISSUE: Do roadblocks set up expressly for the purpose of narcotics interdiction violate the reasonableness of seizures under the Fourth Amendment?

HOLDING: Yes.

DISCUSSION: The Court declined to allow a roadblock that has, as its primary purpose, the uncovering of evidence of general criminal wrongdoing (in this case, narcotics interdiction). To allow such actions would remove the requirement of individualized suspicion in detaining persons. Checkpoints have previously only been recognized as limited exceptions to the general rule of no detention without that particularized reasonable suspicion necessary. Traffic roadblocks intended to catch offenders who are an "immediate, vehicle-bound threat to life and limb," such as sobriety checkpoints, remain permissible, as they bear a "close connection to roadway safety." Roadblocks have been, and still are, effective tools for determining if a person is licensed and a vehicle registered. The Court specifically held that a DUI roadblock is

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also important to highway safety and thus reasonable under the Fourth Amendment. In addition, the Court also said that this does not prevent law enforcement authorities setting up an emergency roadblock to catch a fleeing criminal or to thwart imminent danger such as a terrorist attack.

The Court also said that this decision does not prevent law enforcement officers, while conducting a lawful roadblock, from arresting a motorist for a crime unrelated to the reason for the roadblock. For example, while conducting a roadblock to check license and registration, if the officer smelled marijuana, the officer would then have appropriate cause to check the vehicle for further evidence of marijuana possession.

Illinois v. McArthur, 531 U.S. 326, 121 S.Ct. 946 (2001)

FACTS: On April 2, 1997, Tera McArthur asked two officers to accompany her to the trailer she had shared with her husband, Charles, to keep the peace while she retrieved some belongings. The two officers, Asst. Chief Love and Officer Skidis remained outside while she went inside. When she returned, she advised Love to check the trailer because she had seen drugs, and that Charles had "slid some dope underneath the couch."

Love knocked on the door and requested permission to search the trailer. Charles refused. Love then sent Skidis (with Tera) to request a search warrant. Love also told Charles that he could not reenter the trailer unless he was accompanied. While waiting for the warrant, Charles was allowed to reenter the trailer, accompanied by Love, to retrieve cigarettes and to make a telephone call. Within two hours, Skidis had returned with the warrant. Marijuana was found in the trailer, and Charles was arrested.

ISSUE: Is it lawful to deny entrance to a resident while a search warrant is being obtained?

HOLDING: Yes.

DISCUSSION: The Court analyzed the circumstances as outlined. They determined that the officers made a reasonable effort to balance their needs with the privacy rights of Charles McArthur. They had reason to believe that McArthur was aware of their suspicions and would destroy the drugs if given the opportunity. There was no delay in seeking the warrant. The restraint on Charles McArthur was "both limited and tailored reasonably to secure law enforcement needs while protecting privacy interests."

Atwater v. City of Lago Vista, --- U.S. ---, 121 S.Ct. 1536 (2001)

FACTS: In March, 1997, Gail Atwater was driving her pickup truck, with her 3-year-old son and 5-year-old daughter also in the front seat. Neither Atwater nor the children were restrained.

Officer Turek observed the violations and pulled the vehicle over, permissible under Texas law. According to Atwater (and unrefuted in the record), Turek yelled that they had met before and "you're going to jail." He called for backup and asked for Atwater's operator's license and insurance, both of which she was required to carry. She stated that she did not have the papers because her purse had been stolen. Turek stated he'd heard that story "two hundred times before."

Atwater asked to take her children to a friend's home nearby, but Turek refused. (However, the friend heard about the stop and came to the scene to take the children.) Turek arrested, handcuffed and transported Atwater to jail. There she was searched, booked, photographed and placed in a cell. About an hour later, Atwater posted bond and was released. She was charged with driving without a seatbelt, transporting children without a seatbelt, driving without a license and failing to provide proof of insurance, all Class C misdemeanors in Texas. Eventually, she pled guilty to the two seatbelt offenses; the other charges were dismissed.

Atwater and her husband filed suit against Turek and the City of Lago Vista. The District Court dismissed the lawsuit, but the Court of Appeals (in a three-judge panel) reinstated the case, concluding that an arrest for a first-time minor offense was unreasonable. However, the entire panel (en banc) affirmed the District Court's dismissal of the suit. Atwater appealed the dismissal to the Supreme Court.

ISSUE: Does the Fourth Amendment limit an officer's authority to make a warrantless arrest for minor criminal offenses?

HOLDING: No

DISCUSSION: The Court engaged in a lengthy discussion of the history of arrests for minor offenses. Atwater had argued that such arrests were only appropriate if there had been an actual "breach of the peace," but the Court found much evidence to the contrary. More telling, the Court found that all 50 states and the District of Columbia authorized at least some warrantless misdemeanor arrests by peace officers that did not require a breach of the peace.

While the Court agreed that the situation in Atwater's particular case might not have warranted the arrest, they declined to forbid warrantless arrests for minor crimes that would only result in a fine in court. The Court stated that the distinction between jailable and fine-only offenses is often a distinction that an officer on the street may not be able to make, as it may turn on the weight of a parcel of marijuana or whether an offense is a first or subsequent offense. The Court stated that "there is a world of difference between making that judgment in choosing between the discretionary leniency of a summons in place of a clearly lawful arrest, and making the same judgment when the question is the lawfulness of the warrantless arrest itself." The rule proposed by Atwater "would not only place police in an almost impossible spot but would guarantee increased litigation over many of the arrests that would occur." If officers were required to always favor the "least restrictive alternative," the "the costs to society of such underenforcement could easily outweigh the costs to defendants …." In conclusion, the Court stated that "the standard of probable cause applie[s] to all arrests, without the need to balance the interests and circumstances involved in particular situations."

NOTE: Texas has a classification of offense that includes a Class C misdemeanor; these offenses are similar to violations in Kentucky. Texas law permits arrests in these cases.

Kentucky officers should note that the provisions of KRS 431.015(1) and (2) will control in this state. Kentucky law does not allow a custodial arrest in a violation unless there is reason to believe the defendant will not appear in court, or unless the case involves one of a limited number of listed offenses where arrest is permitted.

Kyllo v. U.S. , 533 U.S. ---, 121 S.Ct. 2038 (2001)

FACTS: In 1991, Agent Elliott of the U. S. Dept. of the Interior began to suspect that Kyllo was growing marijuana in his triplex house in Florence, Oregon. Because growing marijuana indoors requires the use of high-intensity lighting, he elected to use a thermal imager to scan the house. Thermal imaging units detect infrared radiation, "heat", and display it as an image based upon relative warmth in an area. The scan, done from a vehicle across the street from the front and then the back of the house, indicated that the garage roof and a side wall of the house were relatively hot compared to the rest of the house and considerably warmer than the neighboring homes. The agent concluded that Kyllo was using grow lights. Based on tips, utility bills and the results of the scan, Elliott requested and received a federal search warrant of the house and found an indoor growing operation involving more than 100 marijuana plants.

Kyllo requested a suppression of the evidence, and was denied. He entered a conditional guilty plea and filed this lawsuit. The appellate court remanded the case back to the District Court for an evidentiary hearing concerning the intrusiveness of the thermal imaging device, and the District Court upheld the validity of the search warrant. The appellate court eventually (after a change in the composition of the court) affirmed the District Court opinion, holding that Kyllo had no subjective expectation of privacy because he made no effort to conceal the heat escaping from the home. The Court also stated that the imaging device "did not expose any intimate details of Kyllo's life …."

ISSUE: Is there a reasonable expectation of privacy in the heat escaping from a residence?

HOLDING: Yes

DISCUSSION: The Court explored the issue of appropriate surveillance, and noted that the Court had "previously reserved judgment as to how much technological enhancement of ordinary perception from a vantage point, if any, is too much." The Court stated that the question to be dealt with "is what limits there are upon this power of technology to shrink the realm of guaranteed privacy." The Court continued, stating that "obtaining by sense-enhancing technology any information regarding the interior of the home that could not otherwise have been obtained without physical 'intrusion into a constitutionally protected area' constitutes a search – at least where (as here) the technology is not in general public use." In this case, the Court stated that it "must take account of more sophisticated systems that are already in use or in development." The Court took pains to distinguish this opinion from Dow Chemical, which "involved enhanced aerial photography of an industrial complex, which does share the Fourth Amendment sanctity of the home."

Finally, the Court held that the line must be that when "the Government uses a device that is not in general 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."

This case effectively overrules LaFollette v. Commonwealth, 915 S.W.2d 747 (1996), which held that a FLIR (Forward-Looking Infrared) may be used to detect heat waste emanating from a residence, and that such information may be used to support a warrant.

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