

LESSON FIVE

THE FOURTH AMENDMENT TODAY

A. How Does It Protect People—That Is, When Is a Warrant Necessary and What Exceptions Are There to the Warrant Requirement?

There are at least four areas in which the Fourth Amendment protects people today.

1. PERSON-STOP AND FRISK

A person cannot be arbitrarily stopped by the police. The Fourth Amendment is used to determine whether a police officer has the right to stop and frisk a person on the street. Most states have what are known as *stop and frisk* laws.

Stop and frisk laws permit an officer to stop and question a person on the reasonable suspicion that the person has committed, is in the process of committing, or is about to commit a crime. These laws also allow the officer to frisk (pat down) the person if the officer feels his/her own safety may be threatened. A frisk is a type of search consisting of a pat down of a person to see if s/he has a weapon.

A frisk is different from a full-blown search (which consists of going into a person's pockets and clothing). An officer can stop and frisk a person without a warrant. If the officer finds that the person is armed, or if s/he obtains other evidence that would lead a reasonable person to believe that criminal activity has taken, is taking, or is about to take place, the officer then has probable cause (sufficient evidence) to proceed with a lawful arrest. After an arrest, an officer may search a person without a warrant. This is known as a *search pursuant to (after) a lawful arrest*.

Reasonable suspicion is just what it says—the officer has good reason to think someone is behaving in a criminal way, and the officer has the right to investigate.

Probable cause is much stronger. In a probable cause situation, there is good evidence to support the conclusion that criminal activity is taking place or has taken place and the officer can make an arrest.¹

2. HOME

A person's home is like a castle. Normally, a police officer cannot enter a home without a warrant. The warrant must be very exact and state who or what the officer is to search for. Exceptions to the warrant requirement occur, however, if there are special circumstances.

1. Issues concerning the Fourth Amendment are constantly litigated (tried through the legal system). The issues of reasonable suspicion and probable cause are two of those issues in constant litigation. There is no clear delineation or, as some cases say, no bright line separating reasonable suspicion from probable cause. The difference between the two depends on the facts of each case.

For example, assume a police officer is chasing a person who has just robbed someone. If the person runs into his home, a place where the police cannot ordinarily go without a warrant, the officer can run in after him. This is known as *hot pursuit*. The term *hot pursuit* is often used whenever a police officer is chasing a suspect. Where the apprehension of a suspect is justified by hot pursuit, two things must apply. First, there must be a reasonable or probable cause that a person has committed a crime. Second, there must be a chase of the suspect.

In another example, if a police officer sees, through a window, a person shooting another person, that officer has the right to enter the house. The officer would be acting under *exigent* (urgent) *circumstances*.

Finally, a person can *consent* to a search of his/her person or home.

3. EAVESDROPPING

The Fourth Amendment forbids the police from listening in on private telephone conversations by means of a wiretap without a warrant. The warrant may be called an *eavesdropping warrant*, and it must be exact. It must state what crime is involved. It must state the name of the person who is to be listened to (if known) and it must state what kind of conversation the officer is trying to overhear.

For example, assume the police have probable cause to believe a person is gambling illegally (placing bets) over the telephone. Then the warrant must state that the officer can listen for conversations on illegal gambling. A warrant is required because a person in a home, in his/her place of business, in an enclosed telephone booth, or in other areas has a right to privacy. The Supreme Court has used the term *reasonable expectation of privacy* in explaining the reason why a warrant is required.¹

The term eavesdropping is a general term referring to several means of listening to conversations or obtaining information by mechanical and electronic means. The means include wiretapping a telephone, placing a device in a wall or elsewhere to overhear conversations, or placing a video camera in a location to see what is going on there.

4. AUTOMOBILES

Under some circumstances, no warrant is required to search a car. A car can move great distances in a short time. It would be inconvenient to hold a car while the police obtained a warrant. But the police must have probable cause that something illegal is in the car.

For example, assume a reliable person told the officers that a man was selling drugs from his car or had guns in his car. The officers could search

1. A person does not have to be in an enclosed area to have a reasonable expectation of privacy. The Supreme Court made this clear in *Katz v. United States* when it stated that the fact that the defendant was in an enclosed telephone booth was not the determinative factor in its decision. On the other hand, a person who is in an enclosed telephone booth is certainly able to make a more valid argument of a reasonable expectation of privacy than a person who is, for example, talking on a phone in the open where there is no telephone booth but only several phones lined up side by side.

the car and every bag or container in it. This is known as the *automobile exception* to the warrant requirement.

B. How Does a Judge Decide If the Fourth Amendment Has Been Violated? Let's Examine Some General Guidelines.

A judge uses a number of guidelines to decide whether Fourth Amendment rights have been violated. Several of these guidelines are explained or outlined in Lesson Five A above. These guidelines refer to specific areas and how they are protected by the Fourth Amendment.

In addition to these specific areas, there are some general guidelines which judges use in making decisions about whether Fourth Amendment rights have been violated. Several of these guidelines follow.

1. WAS THE SEARCH AND SEIZURE MADE BY A FEDERAL OR STATE OFFICER OR BY A PRIVATE PERSON?

The Fourth Amendment, like all of the amendments in the Bill of Rights, is a check and restraint on federal or state action. It is not a check on private action which is undertaken without federal or state help. Thus, if law officers, who are federal or state officials, broke into a home without a search warrant and seized guns and drugs, there would be a violation of the Fourth Amendment. On the other hand, if a neighbor broke into the house and seized the guns or drugs, the Fourth Amendment would not be violated because no federal or state official is involved. Of course, other provisions of the law make it illegal to break into someone's house.

2. IS A PERSON CLAIMING THAT HIS/HER OWN RIGHTS WERE VIOLATED OR IS S/HE CLAIMING THAT SOMEONE ELSE'S RIGHTS WERE VIOLATED?

Fourth Amendment rights are *personal rights*. A person must assert (claim) his or her own Fourth Amendment rights. He or she cannot assert rights belonging to another person.

Let's assume that a person robbed a hardware store, shooting and killing the owner. The police obtained the identity of the robber from an acquaintance who saw him running from the scene. The acquaintance also saw a gun in the robber's pocket. One of the officers was familiar with the robber because of his past criminal activity. The officer knew that, on occasion, the robber went to his grandmother's house.

With this knowledge, the police went to the grandmother's house without a warrant. The robber opened the door, pointed upstairs, then attempted to flee and was seized and arrested after a brief chase. The police searched the house, also without a warrant, and found a sawed-off .22 caliber rifle in a washing machine. When the robber tried to *suppress* the gun (keep it from being introduced into evidence at his trial), the court refused to suppress it.

Certainly, the grandmother had a reasonable expectation of privacy in her home, and the police violated her personal Fourth Amendment rights in searching her home without a warrant. But she was not arrested and no evidence found (the gun) was being introduced against her. On the other hand, her grandson was arrested and the gun was being introduced as evidence against him. The court ruled that his Fourth Amendment rights were not violated since it was not his home that was searched but his grandmother's—a place he visited only on occasion.

Because Fourth Amendment rights are personal rights and the robber could not show he had a reasonable expectation of privacy in his grandmother's home, the gun could be introduced at his trial.¹

3. CAN AN OFFICER SEIZE CONTRABAND (SOMETHING ILLEGAL LIKE GUNS OR DRUGS) WITHOUT A WARRANT IF IT IS IN PLAIN VIEW?

Contraband *in plain view* can be seized without a warrant. Suppose a search warrant directs the police to search for drugs at a person's home. While the police are searching for drugs, they come across a gun which is in the house illegally. The gun may be on a table and seen as the officers enter, or the gun may be found in a closet as the officers search for drugs. The police then have the right to seize the gun without having a specific warrant for it.

4. WHAT IS MEANT BY A GOOD FAITH EXCEPTION TO THE WARRANT REQUIREMENT?

Sometimes a judge signs a warrant to search for contraband or evidence even though the evidence is not strong enough to properly issue the warrant. Thus the judge makes a mistake and should not have signed the warrant. Also, sometimes a judge may sign a wrong warrant. For example, the judge may intend to order a search for drugs but inadvertently orders a search for guns. In either of these cases, the police then execute the search warrant, relying on the judge's signature that the search is authorized. The Supreme Court says that if the police acted in *good faith*, even though the warrant should not have been issued, the search may be proper and the evidence seized may be admitted in court.

5. WHAT IS THE EXCLUSIONARY RULE?

If a person's Fourth Amendment rights have been violated, the evidence seized when the violation occurred cannot be admitted in a court of law. The evidence would be suppressed. This is known as the *exclusionary rule*. Also, the fact that contraband is found during an improper search does not make the search proper. If someone's Fourth Amendment rights have been violated, the evidence must be excluded from the trial and cannot be used against him.

1. *People v. Ponder*, 54 N.Y. 2d 160 (1981)

ACTIVITY 1 FOR LESSON FIVE

In one or two sentences, explain the meaning of each of the following terms.

- 1. stop and frisk
- 2. reasonable suspicion
- search pursuant to a lawful arrest
- hot pursuit
- exigent circumstances
- consent
- eavesdropping warrant
- suppression of evidence
- contraband

- 10. plain view

- 11. good faith

- 12. exclusionary rule

ACTIVITY 2 FOR LESSON FIVE

- 1. There is a saying that "a man's home is his castle." What do you think this means?
- 2. What is meant by the saying that Fourth Amendment rights are personal rights?
- 3. What do you think the term reasonable expectation of privacy means?
- 4. What do you think probable cause means?