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Searches and Seizures: The Limitations of the Police

Although people in the United States are entitled to privacy and freedom from government intrusion, there is a limit to that privacy. State or federal police officers are allowed, where justified, to search your premises, car, or other property in order to look for and seize illegal items, stolen goods or evidence of a crime. What rules must the police follow when engaging in searches and seizures? What can they do in upholding the laws, and what can't they do?

What the Police MAY Do:

- Under the Fourth Amendment to the U.S. Constitution, police may engage in "reasonable" searches and seizures.
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- To prove that a search is "reasonable," the police must generally show that it is more likely than not that a crime has occurred, and that if a search is conducted it is probable that they will find either stolen goods or evidence of the crime. This is called **probable cause**.
- In some situations, the police must first make this showing to a judge who issues a search warrant. In many special circumstances, however, the police may be able to conduct a search without a warrant. In fact, the majority of searches are "warrantless."
- Police may search and seize items or evidence when there is no "legitimate expectation of privacy." In other words, if you did not have a privacy interest in the items or evidence, the police can take them and, in effect, no "search" has occurred.
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Note: In deciding whether there was a "legitimate expectation of privacy," a court will consider two things:

- Did you have an expectation of some degree of privacy?
- Was that expectation reasonable in our society's view?

Example: You have a semi-automatic rifle that you stole from a pawn shop. You leave the rifle laying on the hood of your car when you get home. You do not have a "legitimate expectation of privacy" with regard to things you leave on the hood of your car, and the police may take the rifle. No search has occurred.

- Police may use first-hand information, or tips from an informant to justify the need to search your property. If an informant's information is used, the police must prove that the information is reliable under the circumstances.
- Once a warrant is obtained, the police may enter onto the specified area of the property and search for the items listed on the warrant.
- Police may extend the search beyond the specified area of the property or include other items in the search beyond those specified or listed in the warrant if it is necessary to:
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 - Ensure their safety or the safety of others;
 - Prevent the destruction of evidence;
 - Discover more about possible evidence or stolen items that are in plain view; or
 - Hunt for evidence or stolen items which, based upon their initial search of the specified area, they believe may be in a different location on the property.
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Example: The police have a warrant to search your basement for evidence of a drug manufacturing operation. On their way through your house to go down to the basement, they see a cache of guns sitting on the kitchen table. They may take the guns in order to ensure their safety while searching your basement.

- Police may search your property without a warrant if you consent to the search. Consent must be freely and voluntarily given, and you cannot be coerced or tricked into giving it.
- Police may search your person and the immediate surroundings without a warrant when they are placing you under arrest.
- If a person is arrested in a residence, police may make a "protective sweep" of the residence in order to make a " cursory visual inspection" of places where an accomplice may be hiding. In order to do so, the police must have a reasonable belief that an accomplice may be around.

Example: The police arrest you in your living room on charges of murder. They may open the door of your coat closet to make sure that no one else is hiding there, but may not open your medicine cabinet because an accomplice could not hide there.

- When you are being taken to jail, police may perform an "inventory search" of items you have with you without a warrant. This search may include your car if it is being held by the police in order to make a list of all items inside.
- Police may search without a warrant if they reasonably fear for their safety or for the public's safety.

Example: If the police drive past your house on a regular patrol of the neighborhood and see you, in your open garage, with ten cases of dynamite and a blowtorch, they may search your garage without a warrant.

- If it's necessary to prevent the imminent destruction of evidence, the police may search without a warrant.

Example: If the police see you trying to burn a stack of money that you stole from a bank, they may perform a search without a warrant to prevent you from further destroying the money.

- Perform a search, without a warrant, if they are in "hot pursuit" of a suspect who enters a private dwelling or area after fleeing the scene of a crime.

Example: If the police are chasing you from the scene of a murder, and you run into your apartment in an attempt to get away from them, they may follow you into the apartment and search the area without a warrant.

- Police may perform a pat-down of your outer clothing, in what is called a "stop and frisk" situation, as long as they reasonably believe that you may be concealing a weapon and they fear for their safety.

What the Police MAY NOT Do:

- The police may not perform a warrantless search anywhere you have a reasonable expectation of privacy, unless one of the warrant exceptions applies.
- If evidence was obtained through an unreasonable or illegal search, the police may not use it against you in a trial. This is called the "exclusionary rule."
- The police may not use evidence resulting from an illegal search to find other evidence.
- The police may not submit an affidavit in support of obtaining a search warrant if they did not have a reasonable belief in the truth of the statements in the affidavit.
- Unless there is a reasonable suspicion that it contains evidence, illegal items, or stolen goods, the police may not search your vehicle. If your car has been confiscated by the police, however, they may search it.
- Unless they have a reasonable suspicion that you are involved in a criminal activity, the police may not "stop and frisk" you. If they have a reasonable suspicion, they may pat down your outer clothing if they are concerned that you might be concealing a weapon.

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