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The Fourth Amendment Reasonableness"

Not every search, seizure, or arrest must be made pursuant to a lawfully executed warrant. The Supreme Court has ruled that warrantless police conduct may comply with the Fourth Amendment so long as it is reasonable under the circumstances. The exceptions made to the Fourth Amendment's warrant requirement reflect the Court's reluctance to unduly impede the job of law enforcement officials. The Court has attempted to strike a balance between the practical realities of daily police work and the privacy and freedom interests of the public. Always requiring police officers to take the time to complete a warrant application and locate and appear before a judge could result in the destruction of evidence, the disappearance of suspects and witnesses, or both. The circumstances under which a warrantless search, seizure, or arrest is deemed reasonable generally fall within seven categories.

1) No warrant is required for a felony arrest in a public place, even if the arresting officer had ample time to procure a warrant, so long as the officer possessed **probable cause** that the suspect committed the crime. Felony arrests in places not open to the public generally do require a warrant, unless the officer is in "hot pursuit" of a fleeing felon (see *Warden v. Hayden*, 387 U.S. 294 [1967]). The Fourth Amendment also allows warrantless arrests for misdemeanors committed in an officer's presence.

2) No warrant is required for searches incident to lawful arrest. If a police officer has made a lawful arrest, with or without a warrant, the Fourth Amendment permits the officer to conduct a search of the suspect's person, clothing, and all of the areas within the suspect's immediate reach. This kind of warrantless search is justified on grounds that it allows police officers to protect themselves from hidden weapons that might suddenly be wielded against them. Accordingly, officers are only permitted to seize items from the area in the immediate control of the arrestee.

3) Automobiles may be stopped if an officer possesses a reasonable and articulable suspicion that the motorist has violated a traffic law. Once the vehicle has pulled to the side of the road, the Fourth Amendment permits the officer to search the vehicle's interior, including the glove compartment. However, the trunk of a vehicle cannot be searched unless the officer has probable cause to believe that it contains contraband or the instrumentalities of criminal activity. But similar to a search incident to arrest, once a vehicle has been lawfully impounded, its contents may be inventoried without a warrant, including the contents of the trunk.

4) An officer who reasonably believes that criminal activity may be afoot in a public place is authorized to stop any person who is suspected of participating in that criminal activity and conduct a carefully limited search of the suspect's outer clothing for weapons that may be used against the officer (see *Terry v. Ohio*, 392 U.S. 1 [1968]). The officer may also ask for identification, but the suspect is under no obligation to produce it. However, a suspect's refusal to identify himself together with surrounding events may create probable cause to arrest (see *People v. Loudermilk*, 241 Cal. Rptr. 208 (Cal. App. 1987)). This kind of warrantless search, called a Terry stop or a Terry frisk, is designed to protect officers from hidden weapons. Accordingly, items that do not feel like weapons, such as a baggie of soft, granular substance tucked inside a jacket pocket, cannot be seized during a Terry frisk, even if it turns out that the item is contraband.

5) Warrantless searches, seizures, and arrests may be justified by "exigent" circumstances. To determine whether exigent circumstances justified police conduct, a court must review the totality of the circumstances, including the gravity of the underlying offense and whether the suspect was fleeing or trying to escape. However, the surrounding circumstances must be tantamount to an emergency. Shots fired, screams heard, or fire emanating from inside a building have all been considered sufficiently exigent to dispense with the Fourth Amendment's warrant requirement.

6) The Supreme Court has upheld brief, warrantless seizures at fixed roadside checkpoints aimed at intercepting illegal aliens (see *United States v. Martinez-Fuerte*, 428 U.S. 543 [1976]) and drunk drivers (see *Michigan v. Sitz*, 496 U.S. 444 [1990]). Both checkpoint programs passed constitutional muster because they were tailored to remedying specific problems that law enforcement could not effectively address through more traditional means, namely problems relating to policing the nation's border and ensuring roadway safety. However, when the primary purpose of a checkpoint is simply to detect ordinary criminal activity, the Supreme Court has declared it violative of the Fourth Amendment (see *Indianapolis v.*

Edmond, 531 U.S. 32 [2000]).

7) Searches, seizures, and arrests made pursuant to a defective warrant may be justified if the officer was proceeding in "good faith." The Supreme Court has said that a search made pursuant to a warrant that is later declared invalid (i.e., it fails to meet the requirements for a valid warrant enumerated above) will still be considered reasonable under the Fourth Amendment so long as the warrant was issued by a magistrate and the defect was not the result of willful police deception (see *United States v. Leon*, 468 U.S. 897 [1984]). This exception to the warrant requirement was created so as not to punish honest police officers who have done nothing wrong while acting in accordance with an ostensibly valid warrant.

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