CHAPTER 3

Introduction to the Fourth Amendment
Chapter Agenda

• Outline the history, purpose, and essential elements of the Fourth Amendment.

• Define searches within the context of the Fourth Amendment.

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Chapter Agenda

• Define seizures within the context of the Fourth Amendment.
• Explain the concept of justification, including probable cause.
Learning Objective

Outline the history, purpose, and essential elements of the Fourth Amendment.
FIGURE 3-2  Elements of a Fourth Amendment Search.

government action

infringement on a person’s reasonable expectation of privacy
The Fourth Amendment

- The Fourth Amendment to the U.S. Constitution reflects one of the primary grievances early American colonists had toward the Crown.
Clauses of the Fourth Amendment

• Reasonableness
  ▪ Unreasonable searches and seizure

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Clauses of the Fourth Amendment

- Warrant
  - Probable cause
  - Must describe place to be searched and persons or things to be served
The Fourth Amendment

- Protections
  - Persons
  - Houses
  - Papers
  - Effects

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The Fourth Amendment

- A framework
  - Search
  - Seizure
Define searches within the context of the Fourth Amendment.
Search

• An activity geared toward finding evidence to be used in a criminal prosecution

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Search

• Two important factors
  ▪ Whether the presumed search is a product of government action
  ▪ Whether the intrusion violates a person's reasonable expectation of privacy
Learning Objective

Define seizures within the context of the Fourth Amendment.
Seizure

• Dual meaning in criminal procedure
  ▪ Property
    • Seizure of evidence
    • *United States v. Jacobsen*
Seizure

• Dual meaning in criminal procedure
  ▪ People
    • Person is restrained by police officer through physical force or show of authority.
    • Reasonableness
Learning Objective

Explain the concept of justification, including probable cause.
Justification

• The police need to have justification, or cause, before they can conduct a search or a seizure.
  - *Beck v. Ohio*
  - *Brinegar v. United States*
Elements of Probable Cause

- Prior record
- Flight from the scene
- Suspicious conduct
- Admissions

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Elements of Probable Cause

- Incriminating evidence
- Unusual hour
- Suspect resembles the perpetrator
- Evasive and untruthful responses to questions

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Elements of Probable Cause

- Obvious attempt to hide something
- Presence in a high-crime area and/or near a crime scene
- Furtive gestures
- Knowing too much
Probable Cause

• Required in the following scenarios:
  ▪ Arrests with warrants
  ▪ Arrests without warrants
  ▪ Searches and seizures of property with warrants
  ▪ Searches and seizures of property without warrants
Reasonable Suspicion

• Below probable cause, but above a hunch
  - *Terry v. Ohio*

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Reasonable Suspicion

• Five factors
  ▪ Suspect in high-crime area at unusual hour
  ▪ Suspect flees from officers
  ▪ Suspect appears to receive cash in exchange for two small envelopes

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Reasonable Suspicion

- Five factors
  - Suspect puts television in the trunk of a car in an area where most businesses are closed
  - Suspect appears to be "casing" a convenience store
**Factors That *May* Give Rise to Reasonable Suspicion**

- Suspect in high-crime area at unusual hour.
- Suspect flees from officers.
- Suspect appears to receive cash in exchange for two small envelopes.
- Suspect puts television in the trunk of a car in an area where most businesses are closed.
- Suspect appears to be “casing” a convenience store.

**Factors That *Will Not* Give Rise to Reasonable Suspicion**

- Hunch
- Rumor
- Intuition
- Instinct
- Curiosity
Administrative Justification

• Government entities occasionally conduct searches in circumstances other than criminal investigations.
  - Noncriminal searches
  - Weighs the privacy interests of individuals with the interests of society in preserving public safety