

Chapter 2.2: Legal Evidence

Learning Goals and Objectives

Evidence must be legally collected to be useful as forensic evidence. Key considerations you should understand from this section include:

- What are the important features of the 4th Amendment to the US Constitution;
- What is required for a search warrant;
- When are allowances legal for warrantless searches;
- What are the outcomes of the key cases regarding evidence collection;
- When is evidence inadmissible in court.

Evidence Collection and the Law

You’ve probably heard the old saying that a person’s “home is their castle”. This idea, in fact, has its roots in English law dating back at least to the early 1600’s. By the mid-1700’s, it was fairly well established in a number of nations that a government’s rightful abilities to search and seize personal properties were limited and could only happen under certain special circumstances, especially when searching specifically for illegal materials or criminal evidence, and then only when a written warrant had been issued stating the goals and purpose of the search. Today, most countries around the world have similar laws to protect the privacy of its citizens but also to allow that there are certain times when it is proper to invade this privacy to look for evidence of criminal activity.

In the United States, a person’s right to privacy and the protection of their property is guaranteed by the Fourth Amendment to the US Constitution (see inset box above), a notion deeply rooted in 18th Century English Law. The fourth amendment specifically guards 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.”

Fourth Amendment to the US Constitution

The 4th Amendment to the US Constitution, from the Bill of Rights, passed in 1791, states that: “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.”

Figure 2.2.1. Search and seizures typically require a court issued search warrant (http://blog.nj.com/nj_guest_blog/2009/05/car_search_and_seizure_supreme.html).
types of privacy intrusions. These times can be broken down into two main categories: those that require warrants before the search can take place and warrantless searches. Of course, a person can always waive the rights provided in the fourth amendment and give their consent to searches of themselves and their property, assuming that they have the proper authority to do that and are aware of what they are doing and are not under duress. Additionally, some types of searches don’t fall under the 4th amendment provisions at all.

There are times that police and other government officers deem it necessary to search for things that are either illegal to possess or may be material evidence related to a criminal act. In these cases, a search warrant is required before the search can take place. A search warrant is an order issued by a judge or magistrate that gives officers the authority to conduct a search at a very specific place, time, and for a specific reason. Before a search warrant can be issued, however, the police must first show a probable cause to an unbiased judge that they are likely to find specific illegal items or criminal evidence in the search. Probable cause is not strictly defined in the Constitution but common practice usually requires the police to present to the judge objective facts or evidence that support that they will find what they are looking for during the search. In other words, a warrant can’t be issued on a hunch by the police but requires more substantial evidence to overcome the constitutionally guaranteed freedom of privacy.

A search warrant is issued for a specific place, time, and describes what items are to be looked for. Officers are then allowed to search the designated place and seize only the items listed in the warrant. The warrant is strictly limited as to what the officers can legally do. For example, if they have a warrant to look for a stolen truck, they cannot look through the glove compartment of your car – trucks don’t fit into glove compartments and it would be unreasonable

---

**Fourth Amendment Rights**

A person’s 4th amendment protection from unreasonable search and seizure currently only applies to searches by government officials (e.g., police officers, court officials, etc.) and not to private security guards who currently vastly outnumber police officers. For example, the 4th Amendment would require a police officer to obtain a search warrant before searching a person’s backpack in a mall – requiring probable cause and a court-issued warrant. A private security officer, however, can legally search the backpack without a warrant and, if they found something illegal, could call the police and turn the evidence over to the authorities. This would constitute a legal search and seizure by the private security officer and the evidence is currently admissible in court.

In a related case, the Supreme court said that a police officer cannot probe the outside of a opaque bag that is in public view without a warrant because the person had a “legitimate expectation of privacy” provided by the opaque bag (Bond v US, 529 US 334, 2000).

---

**What Happens after an Illegal Search?**

If a court rules that evidence resulted from a search that violated someone’s 4th amendment protections, the evidence may not be admissible in court through on two important legal ideas:

**Exclusionary Rule:** any evidence resulting from an illegal search cannot be used as direct evidence in court.

**Fruit of the Poisonous Tree Doctrine:** any evidence found from an illegal search also cannot be used to find other evidence. For example, an illegally seized smart phone cannot be used to provide information leading to the discovery of evidence hidden elsewhere – such as an address listed on the phone showing where evidence is hidden.

But illegally-seized evidence can actually be used by courts in a few limited circumstances:

- When the judge considers sentencing;
- In civil or deportation cases;
- To attack the credibility of a witness at trial.
to expect to find one there. They could, however, look through a glove compartment to try to find the keys to a missing truck if that is specifically stated in the warrant.

It is important to note that the fourth amendment only protects a person if they have a “legitimate expectation of privacy” – this is a very important phrase. Police officers do not need a warrant, for example, to seize items that are plainly visible from a place that the officer has a right to be (e.g., sidewalk, roadside, etc.) – this is called the **plain view doctrine**. Items in plain view do not fall under the 4th amendment’s provisions since the person can have no real expectation of privacy in such circumstances. If a police officer notices a gun or drugs on the seat of a car while standing on the roadside after stopping someone for a vehicular violation, they do not need a warrant to seize the gun or drugs. Investigators cannot, however, put up a surveillance camera in a public bathroom without a warrant because society generally holds that someone has a reasonable expectation of privacy in that circumstance.

There are some exceptions to the 4th amendment’s requirement for a prior warrant before a search and seizure can happen. These “special” circumstances that allow warrantless searches include:

- **Consent**: if an officer asks and the person says “yes”, the officer may search and seize any criminal evidence or contraband that they find in the place identified by the person – it does not open every door, however, and specific consent sometimes needs to be given for different areas. Only adults with some measure of control over the space can give proper consent. For example, a roommate can give consent to have their space and all common spaces searched but cannot authorize the search of the other person’s private property.

- **Searches during legal arrests**: in the course of an arrest, police officers have the right to search your person and the immediate area to seize evidence (including items found after a person has been incorrectly arrested). The surrounding area could be a person’s car (not usually the trunk, however, unless they have a probable cause), home or property. The search of a person’s home needs to be only a “sweep” to make sure that no threat to the officers or public still exists – more extensive searches still require warrants.

- **Emergency circumstances**: when there is an insufficient amount of time to go through the formal process of obtaining a search warrant and where officials must act to protect people from...
hazard and the destruction of evidence, a warrantless search is justified. For example, officers may enter a smoke-filled building in an emergency and search for people or determine if a threat exists to the public. They may also enter a building when they are in “hot pursuit” of a fleeing suspect or responding to an emergency call. Police can intervene without a warrant if they believe that evidence is being destroyed, such as drugs being flushed down the drain or alcohol destroyed by the body (see inset “Body’s Evidence”)

- **Plain view:** as described previously, this includes items that are visible from a legal viewpoint – such as items seen through a window or out in the open as viewed from a “public” place. Officers may also seize items not listed in an original warrant if they are in “plain view” when conducting a warrant-based search.

- **Airport, border, and sea searches:** warrantless searches of a person and their luggage are legal to protect the public from danger at airports, transportation centers, and at international borders. This can include the scanning of luggage and personal body scans and searches. If agents have a reasonable suspicion, a more thorough “non-routine” search can be justified, often without warrants, that could include strip and cavity searches. The main decks of boats may also be searched without a warrant, although interior compartment still require probable cause and warrants.

- **“Stop and frisk”**: If an officer suspects that a person is either engaged in or about to be engaged in a criminal action, has a weapon, or poses an immediate threat to the public, the officer may detain the person and perform a “pat down search” (“frisk”). If the officer feels something on the suspect, such as a weapon, they can reach in and seize it without a warrant.

- **Inventory searches:** Officials are allowed to search anything seized as part of an investigation or arrest, such as an automobile, airplane, or boat, in the process of completing an inventory the items contents. The inventory is meant to protect both the person’s property and the police from false claims of missing or damaged property. But, if illegal materials are found, they can be collected as evidence.

**Body’s Evidence**

The US Supreme court has ruled that a person may be forced to take a blood alcohol test (Chapter 13) without their consent or search warrant as part of a vehicular investigation. The grounds for this decision was that the body, through its normal processes, works to destroy any alcohol consumed. Since the alcohol in the blood constitutes evidence related to potential criminal DWI or DUI actions, the body’s metabolism of the alcohol actually represents the destruction of evidence. Requiring a person to give blood alcohol evidence (blood sample usually) without a warrant or their consent is, therefore, admissible under the 4th Amendment.
• **National Security:** Under the USA Patriot act and similar laws worldwide, email messages, medical and financial records, and other personal information may be searched without a warrant. Such provisions are enacted by Congress and, thus far, have been allowed by the Supreme Court which may, of course, modify that decision over time. National security searches are also subject to varying rules about when they can be employed but often the investigators are given wide latitude as to what constitutes a national security-related search.

• **Administrative searches:** certain agencies, such as fire, electrical, gas, and safety inspectors, may conduct warrantless searches but these searches usually cannot be used to provide evidence in criminal cases. They can, however, alert authorities who can then request a normal search warrant to search and seize the previously observed items.

The important aspect of this to remember is that evidence found and seized unlawfully cannot be used as direct evidence in court and may, therefore, be legally useless at best and very damaging to a case at worst. It is, therefore, critically important for investigators to conduct searches lawfully in order that the evidence they find can be used in courtroom proceedings.

Finally, two important cases have helped to set some additional rules governing the practice of how and when forensic evidence may be collected from a crime scene:

**Mincy v. Arizona:** This was a case of a drug bust that went wrong, resulting in the death of an undercover police officer and the wounding of several others, including the suspect, in the suspect’s apartment. After a quick search of the apartment, the initial officers turned the investigation over to homicide detectives who then spent 4 days opening drawers, ripping up carpet and searching and seizing 200-300 pieces of evidence from the apartment. This evidence led to the conviction of Mincy on homicide and narcotics charges. The US

**Figure 2.2.4.** The Michigan v. Tyler case centered around warrantless search and seizure from a suspected arson fire in Michigan (www.shropshirefire.gov.uk/promoting-safer-communities/crime-reduction/arson-reduction).

**The Case of the People v. Rosario**

In 1961, the case of Rosario set a standard that requires statements by witnesses who testify (written, recorded, emails, etc.) be shared between both the defense and the prosecution.

Other laws and rules also bear upon sharing of evidence between the two sides of a case. The constitution forbids the prosecution from withholding any evidence related to the innocence of the defendant from the defense. In addition, the states all have statutes governing when and what the prosecution must share with the defense. Usually, during the pre-trial “discovery” phase of a trial, the prosecution must turn over some or all of their evidence to the defense. Additionally, some states require the defense to likewise share the information that they have with the prosecution. [The discovery portion of a legal proceeding is the formal pre-trial process where the defense and prosecution exchange information relevant to the investigation.]
Supreme Court later ruled that the evidence obtained was inadmissible since it was not obtained properly – no warrant had been issued. While an emergency situation initially existed that allowed the police to quickly search the home, the emergency could not reasonably be thought to exist for four days of searching – in fact, the detailed search did not begin until all the bodies had been removed from the scene. In this case, the police should have obtained a warrant after the emergency had passed to continue their search – a warrantless search based on an emergency is limited in duration.

**Michigan v. Tyler**: In this case, a fire broke out in a furniture store before midnight and was extinguished by the fire department. At 2 AM, an investigation by fire and police officials began that was halted at 4 AM due to darkness, heat and steam. During the following three weeks, investigators returned to the scene repeatedly to collect and remove evidence for a possible arson investigation. Tyler was ultimately convicted of arson. The Supreme Court, once again, said that the evidence was not properly collected and ruled it inadmissible. In this case, they said that “entry to fight a fire requires no warrant, and that once in the building, officials may remain there for a reasonable time to investigate the cause of the blaze. Thereafter, additional entries to investigate the cause of the fire must be made pursuant to the warrant procedures”. An additional problem was that the crime scene was not controlled by the police and left abandoned between searches – allowing someone to potentially remove or tamper with any evidence obtained (see the next section of this chapter for more about this relative to the “chain of custody”).