

Fourth Amendment Motion Practice

Citizen Encounters

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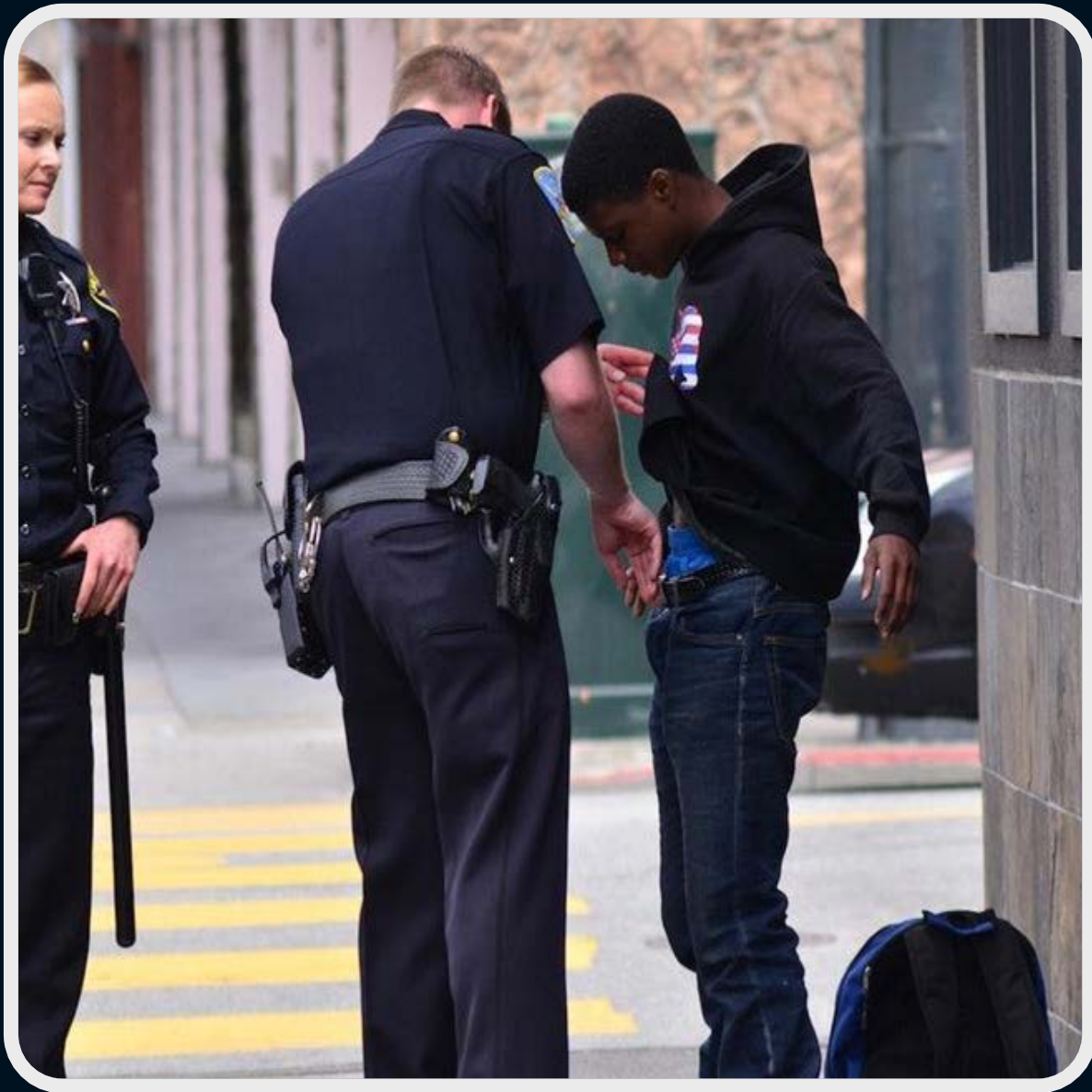
August
2020

Warrantless Stops and Searches

The 4th Amendment

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.

A word cloud of terms related to the 4th Amendment. The most prominent words are 'Fourth Amendment' in large blue font. Other significant words include 'Surveillance', 'Stop-and-frisk', 'Warrants', 'Right', 'Probable Cause', 'Search', 'Seizures', 'Arrests', 'Protection', 'Wiretaps', 'Unreasonable', 'Secure', 'Papers', 'Houses', 'Persons', and 'Government'. The words are in various colors (blue, brown, red) and sizes, arranged in a circular pattern.



CONSENSUAL ENCOUNTERS...SURE

“Our cases make it clear that a seizure does not occur simply because a police officer approaches an individual and asks a few questions. A consensual encounter, will not trigger Fourth Amendment scrutiny unless it loses its consensual nature.”
Florida v. Bostik, 501 U.S. 429, 434 (1991)

When is the 4th Amendment Implicated?

When a reasonable person doesn't feel free "to disregard the police and go about his business." *California v. Hodari D.*, 499 U.S. 621 (1991).

When officers by means of physical force or show of authority has in some way restrained the liberty of a citizen. *Terry v. Ohio*, 392 U.S. 1, n. 16 (1968)

• Relevant factors suggesting that an encounter is not consensual include "the threatening presence of several officers, the display of a weapon by an officer, and "the use of language or tone of voice indicating that compliance with officer's request might be compelled." *U.S. v. Mendenhall*, 446 U.S. 544, 554 (1980).

Types of Seizures and Levels of Suspicion

- Arrest = Probable Cause
- Terry Stop = Reasonable Articuable Suspicion
- Terry Frisk = Reasonable Articuable Suspicion



ARRESTS

- Officers don't need a warrant to arrest, as long as officer has probable cause to believe that the suspect committed a crime. *Atwater v. Lago Vista*, 532 U.S. 318, 354 (2001).
- An officer's on the scene assessment of probable cause provides legal justification for arresting a person suspected of crime, and for a brief period of detention to take the administrative steps incident to arrest. *Gerstein v. Pugh*, 420 U.S. 103 (1975).

WHAT IS PROBABLE CAUSE?

Where facts and circumstances are sufficient in themselves to warrant a man of reasonable caution (or an objectively reasonable officer) in the belief that . . . an offense has been or is being committed. *Brinegar v. United States*, 338 U.S. 160, 175- 176 (1949)

To determine whether an officer had probable cause to arrest you must examine events leading up to the arrest, and then decide “whether these historical facts, viewed from the standpoint of an objectively reasonable police officer amount to probable cause. *Maryland v. Pringle*, 540 U.S. 366, 371 (2003).

Probable cause deals with probabilities and depends on the totality of the circumstances. *Maryland v. Pringle*, 540 U.S. 366, 371 (2003)

It requires only a probability or substantial chance of criminal activity, not an actual showing of such activity.” *Illinois v. Gates*, 462 U.S. 213, 232 (1983).

SEARCH INCIDENT TO ARREST

- If a person is lawfully arrested, the police have the right to search that person as a search incident to arrest.

United States v. Robinson, 414 U.S. 218 (1973).

Terry Stops

The Fourth Amendment allows a police officer to briefly detain a person for investigative purposes if the officer has a reasonable suspicion, supported by articulable facts, that the person is engaging, is about to engage, or has engaged in criminal activity. *See Terry v. Ohio, 392 U.S. 1, (1968).*

An officer may initiate a *Terry* stop when he or she suspects that an individual is committing, has committed, or is about to commit a crime, but *pc* does not yet exist to arrest and the officer wants to stop the suspect to investigate.

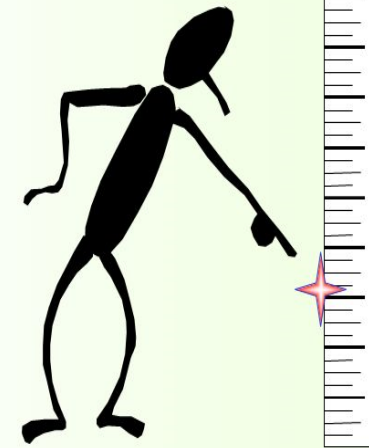
What is RAS?

A Low Standard of Proof

- Reasonable suspicion is more than just a hunch, but it is satisfied by a likelihood of criminal activity less than probable cause, and falls considerably short of satisfying the preponderance of the evidence standard. *U.S. v. Arvizu*, 534 U.S. 266, 272 (2002).
- Courts must determine whether the officer has **particularized an objective basis for suspicion of criminal conduct**.

Standards of Proof

Reasonable
suspicion



WHAT DOES THAT MEAN?

Who knows what that means? All we know is that Courts determine RAS by a totality of the circumstances and the suspicion has to be objectively reasonable. *See US v. Navarette, 134 S. Ct* at 1687 (Court must determine whether officer has particularized and objective basis for suspicion of criminal conduct.)

Reasonable Suspicion

Attempting to Meet the Standard

Officer Favorites

- High crime area, *Illinois v. Wardlow*, 528 U.S. 119 (2000)
- Unprovoked Flight, *Id.*
- Furtive movements
- Turning and walking away
- Stopping and staring at police

Terry Frisk and Plain Feel

A Terry Frisk is justified only where a police officer observes unusual conduct which leads him to reasonably conclude in light of his experience that ... the person with whom he is dealing with may be armed and *presently* dangerous. *Terry v. Ohio*

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- Scope is limited to a search for weapons. But if an object detected during a lawful pat-down search whose incriminating character is immediately apparent based on its contour or mass may be seized. *Minnesota v. Dickerson*, 508 U.S. 366, 375-76 (1993).
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The armed and dangerous standard has two separate and distinct prongs

The suspect must be both armed AND dangerous

- Notably, the “armed and dangerous” standard required for a frisk contains two separate prongs: a “requirement that the suspect be *dangerous* as well as armed.” *Adams v. Williams*, 407 U.S. 143, 159 n. 8 (1972) (Marshall, J., dissenting) (emphasis added)

TERRY STOP or ARREST

The “detention must be temporary and last no longer than is necessary” and “the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer’s suspicion in a short period of time.” *Florida v. Royer*, 460 U.S. 491, 500 (1983).

A *Terry* stop cannot be excessively intrusive and must be reasonably related in scope and duration to the purposes of the investigation. *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984).

