Chapter 6

KEY HOLDINGS FROM MAJOR U.S. SUPREME COURT SEARCH AND SEIZURE CASES

Ker v. California, 374 U.S. 23, 32-34 (1963): "We reiterate that the reasonableness of a search is in the first instance a substantive determination to be made by the trial court from the facts and circumstances of the case and in light of the 'fundamental criteria' laid down by the Fourth Amendment and in opinions of this Court applying that Amendment."

Illinois v. Rodriguez, 497 U.S. 177, 185-86 (1990) (emphasis added): "It is apparent that in order to satisfy the "reasonableness" requirement of the Fourth Amendment, what is generally demanded of the many factual determinations that must regularly be made by agents of the government — whether the magistrate issuing a warrant, the police officer executing a warrant, or the police officer conducting a search or seizure under one of the exceptions to the warrant requirement — *is not that they always be correct, but that they always be reasonable*."

Maryland v. Macon, 472 U.S. 463, 469 (1985): "[R]espondent did not have any reasonable expectation of privacy in the areas of the store where the public was invited to enter and to transact business . . . The mere expectation that the possibly illegal nature of a product will not come to the attention of authorities, whether because a customer will not complain or because undercover officers will not transact business with the store, is not one that society is prepared to recognize as reasonable. The officer's action in entering the bookstore and examining the wares that were intentionally exposed to all who frequent the place of business did not infringe a legitimate expectation of privacy and hence did not constitute a search within the meaning of the Fourth Amendment." 472 U.S. at 469.

California v. Ciraolo, 476 U.S. 207, 215 (1986): "In an age where private and commercial flight in the public airways is routine, it is unreasonable for respondent to expect that his marijuana plants were constitutionally protected from being observed with the naked eye from an altitude of 1,000 feet. The Fourth Amendment simply does not require the police traveling in the public airways at this altitude to obtain a warrant in order to observe what is visible to the naked eye."

California v. Ciraolo: 476 U.S. at 213: "That the area is within the curtilage does not itself bar all police observation. The Fourth Amendment protection of the home has never been extended to require law enforcement officers to shield their eyes when passing by a home on public thoroughfares. Nor does the mere fact that an individual has taken measures to restrict some views of his activities

preclude an officer's observations from a public vantage point where he has a right to be and which renders the activities clearly visible.

Illinois v. Andreas, 463 U.S. 765, 771-72 (1983): "Once a container has been found to a certainty to contain illicit drugs, the contraband becomes like objects physically within the plain view of the police, and the claim to privacy is lost. Consequently, the subsequent reopening of the container is not a 'search' within the intendment of the Fourth Amendment."

Terry v. Ohio, 392 U.S. 1, 19, n.16 (1968): "Obviously, not all personal intercourse between policemen and citizens involves 'seizures' of persons. Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred."

United States v. Jacobson, 466 U.S. 109, 119-200 (1984): "Respondents could have no privacy interest in the contents of the package, since it remained unsealed and since the Federal Express employees had just examined the package and had, of their own accord, invited the federal agents to their offices for the express purpose of viewing its contents. the agent's viewing of what a private party had freely made available for his inspection did not violate the Fourth Amendment . . . . similarly, the removal of the plastic bags from the tube and the agent's visual inspection of their contents enabled the agent to learn nothing that had not previously been learned during the private search. It infringed no legitimate expectation of privacy and hence was not a 'search' within the meaning of the Fourth Amendment."

Aguilar v. Texas, 378 U.S. 108, 111 (1965): "When a search is based upon a magistrate's, rather than a police officer's, determination of probable cause, the reviewing courts will accept evidence of less 'judicially competent or persuasive character than would have justified an officer in acting on his own without a warrant.' . . . and will sustain the judicial determination as long as 'there was substantial basis for [the magistrate] to conclude that [seizable evidence was] probably present . . . . '"

Illinois v. Gates, 462 U.S. 213, 231 (1983). "Probable cause is a fluid concept — turning on the assessment of probabilities in particular factual contexts — not readily, or even usefully, reduced to some neat set of legal rules."

Texas v. Brown, 460 U.S. 730, 742 (1983). "Probable cause is a flexible, common-sense standard. It merely requires that the facts available to the officer would 'warrant a man of reasonable caution [to believe]' that certain items may be contraband or stolen property or useful as evidence of a crime; it does not demand any showing that such belief be correct or more likely true than false."

Illinois v. Gates, 462 U.S. at 231: "Perhaps the central teaching of our decisions bearing on the probable cause standard is that it is a 'practical, nontechnical conception.' . . . 'In dealing with probable cause, . . . as the very name implies, we deal with probabilities. These are nontechnical; They are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act."

Illinois v. Gates, 462 U.S. at 231: "Given all the circumstances set forth in the affidavit before the magistrate, including the veracity and basis of knowledge of the person supplying hearsay information, was there a fair probability that contraband or evidence of a crime would be found in the particular place described in the warrant?"

Illinois v. Gates, 462 U.S. at 232-33: "Rigid legal rules are ill-suited to an area of such diversity. One simple rule will not cover every situation. . . Moreover, the "two-pronged test" directs analysis into two largely independent channels — the informant's "veracity" or "reliability" and his "basis of knowledge." There are persuasive arguments against according these two elements such independent status. Instead, they are better understood as relevant considerations in the totality of the circumstances analysis that traditionally has guided probable cause determinations: a deficiency in one may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability."

Sibron v. New York, 392 U.S. 40, 66-67 (1968): "Although an affidavit may be based on hearsay information and need not reflect the direct personal observations of the affiant . . . the magistrate must be informed of some of the underlying circumstances from which the informant concluded that the narcotics were where he claimed they were, and some of the underlying circumstances from which the officer concluded that the informant, whose identity need not be disclosed . . . was 'credible' or his information 'reliable.' Otherwise, 'the inferences from the facts which lead to the complaint' will be drawn not 'by a neutral and detached magistrate,' as the Constitution requires, but instead, by a police officer 'engaged in the often competitive enterprise of ferreting out crime' . . . or, as in this case, by an unidentified informant." *Aguilar v. Texas*, 378 U.S. 108, 114-15 (1964).

Spinelli v. United States, 393 U.S. 410, 416 (1969): "In the absence of a statement detailing the manner in which the information was gathered, it is especially important that the tip describe the accused's criminal activity in sufficient detail that the magistrate may know that he is relying on something more substantial than a casual rumor circulating in the underworld or an accusation based merely on an individual's general reputation."

Franks v. Delaware, 438 U.S. 154, 155-56 (1978): "[W]here the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request. In the event that at the hearing the allegation of perjury or reckless disregard is established by the defendant by a preponderance of the evidence, and, with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit."

Steele v. United States, 267 U.S. 498, 503 (1925): "It is enough if the description is such that the officer with a search warrant can with reasonable effort ascertain and identify the place intended."

Marron v. United States, 275 U.S. 192, 196 (1927): "The requirement that warrants shall particularly describe the things to be seized makes general searches under them impossible and prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant."

Bivens v. Six Unknown Named Agents, 403 U.S. 388, 394 n.7 (1971): "[T]he Fourth Amendment confines an officer executing a search warrant strictly within the bounds set by the warrant. . . ."

Terry v. Ohio, 392 U.S. 1, 18 (1968): "The scope of the search must be "strictly tied to an justified by the circumstances which rendered its initiation permissible."

Nix v. Williams, 471 U.S. 1138 1984): "if the government can prove that the evidence would have been obtained inevitably and, therefore, would have been admitted regardless of any overreaching by the police, there is no rational basis to keep that evidence from the jury in order to ensure the fairness of the trial proceedings." 467 U.S. 431, 447.

Wilson v. Arkansas, 514 U.S. 927, 936 (1995): "Although a search or seizure of a dwelling might be constitutionally defective if police officers enter without prior announcement, law enforcement interests may also establish the reasonableness of an unannounced entry."

United States v. Ramirez, 118 S.Ct. 992 (1998): "whether a 'reasonable suspicion' exists depends in no way on whether police must destroy property in order to enter."

Chimel v. California, 395 U.S 752, 763 (1969): "There is no comparable justification, however, for routinely searching rooms other than that in which an arrest occurs — or, for that matter, for searching through all the desk drawers or other closed or concealed areas in that room itself. Such searches, in the absence of well-recognized exceptions, may be made only under the authority of a search warrant. The 'adherence to judicial processes' mandated by the Fourth Amendment requires no less."

Maryland v. Buie, 494 U.S. 325, 333 (1990): "[A]s an incident to the arrest the officers could, as a precautionary matter and without probable cause or reasonable suspicion, look in closets and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched. Beyond that, however . . . there must be articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene."

Bumper v. North Carolina, 391 U.S. 543, 550 (1968) (emphasis added): "When a law enforcement officer claims authority to search a home under a warrant, he announces in effect that the occupant has no right to resist the search. The situation is instinct with coercion — albeit colorably lawful coercion. ***Where there is coercion there cannot be consent***."

Ohio v. Robinette, 519 U.S. 33, 39-40 (1996): "We have previously rejected a per se rule very similar to that adopted by the Supreme Court of Ohio in determining the validity of a consent to search. In *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973), it was argued that such a consent could not be valid unless the defendant knew that he had a right to refuse the request. We rejected this argument: 'While knowledge of the right to refuse consent is one factor to be taken into account, the government need not establish such knowledge as the sine qua non of an effective consent.' *Id.,* at 227. And just as it 'would be thoroughly impractical to impose on the normal consent search the detailed requirements of an effective warning.' *Id.*, at 231, so too would it be unrealistic to require police officers to always inform detainees that they are free to go before a consent to search may be deemed voluntary."

Id. "The Fourth Amendment test for a valid consent to search is that the consent be voluntary, and 'voluntariness is a question of fact to be determined from all the circumstances,' *id.*, at 248-49. The Supreme Court of Ohio having held otherwise, its judgment is reversed, and the case is remanded for further proceedings not inconsistent with this opinion."

Florida v. Jimeno, 500 U.S. at 251: "the standard for measuring a suspect's consent under the Fourth Amendment is that of 'objective reasonableness' —

what would the typical reasonable person have understood by the exchange between the officer and the suspect?"

Carroll v. United States, 267 U.S. 132, 149 (1925): "On reason and authority the true rule is that if the search and seizure without a warrant are made upon probable cause, that is upon a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains that which by law is subject to seizure and destruction, the search and seizure are valid. The Fourth Amendment is to be construed in the light of what was deemed an unreasonable search and seizure when it was adopted, and in a manner which will conserve public interests as well as the interests and rights of individual citizens."

United States v. Ross, 456 U.S. 798, 824 (1982): "The scope of the warrantless search of an automobile thus is not defined by the nature of the container in which the contraband is secreted. Rather, it is defined by the object of the search and the places in which there is probable cause to believe that it may be found. Just as probable cause to believe that a stolen lawnmower may be found in a garage will not support a warrant to search an upstairs bedroom, probable cause to believe that undocumented aliens are being transported in a van will not justify a warrantless search of a suitcase. Probable cause to believe that a container placed in the tunk of a taxi contains contraband or evidence does not justify a search of the entire cab."

C*alifornia v. Acevedo*, 500 U.S. 565, 579-80 (1991): "In the case before us, the police had probable cause to believe that the paper bag in the automobile's trunk contained marijuana. That probable cause now allows a warrantless search of the paper bag. The facts in the record reveal that the police did not have probable cause to believe that contraband was hidden in any other part of the automobile and a search of the entire vehicle would have been without probable cause and unreasonable under the Fourth Amendment."

Minnesota v. Olson, 495 U.S. 91, 100 (1990): "a warrantless intrusion may be justified by hot pursuit of a fleeing felon, or imminent destruction of evidence . . . or the need to prevent a suspect's escape, or the risk of danger to the police or to other persons inside or outside the dwelling." "[I]n the absence of hot pursuit there must be at least probable cause to believe that one or more of the other factors justifying the entry were present and that in assessing the risk of danger, the gravity of the crime and the likelihood that the suspect is armed should be considered."

Welsh v. Wisconsin, 466 U.S. 740, 753 (1984): "[A]n important factor to be considered when determining whether any exigency exists is the gravity of the underlying offense for which the arrest is being made. Moreover, although no exigency is created simply because there is probable cause that a serious crime

has been committed . . . application of the exigent-circumstances exception in the context of a home entry should rarely be sanctioned when there is probable cause to believe that only a minor offense . . . has been committed."

United States v. Biswell, 406 U.S. 311, 316 (1972): "[I]f inspection is to be effective and serve as a credible deterrent, unannounced, even frequent, inspections are essential. In this context, the prerequisites of a warrant could easily frustrate inspection; and if necessary flexibility as to time, scope and frequency is to be preserved, the protections afforded by a warrant would be negligible."

Id: "When a dealer chooses to engage in this pervasively regulated business and to accept a federal license, he does so with knowledge that his business records, firearms, and ammunition will be subject to effective inspection."

Michigan v. Tyler, 436 U.S. 499, 512 (1978): "Evidence of arson discovered in the course of such investigations is admissible at trial, but if the investigating officials find probable cause to believe that arson has occurred and require further access to gather evidence for a possible prosecution, they may obtain a warrant only upon a traditional showing of probable cause applicable to searches for evidence of crime."

Florida v. Royer, 460 U.S. 491, 500 (1983): "The scope of the detention must be carefully tailored to its underlying justification . . . must be temporary and last no longer than necessary to effectuate the purpose of the stop."

Terry v. Ohio, 392 U.S. 1, 27 (1968): "Our evaluation of the proper balance that has to be struck in this type of case leads us to conclude that there must be a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime."

Michigan v. Long, 463 U.S. 1032, 1049 (1983): "[T]he search of the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden, is permissible if the police officer possesses a reasonable belief based on 'specific and articulable facts which taken together with the rational inferences from those facts, reasonably warrant' the officers in believing that the suspect is dangerous and the suspect may gain immediate control of weapons."

Whren v. United States, 517 U.S. 806, 813 (1997): "'the fact that [an] officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken so long as the circumstances viewed objectively, justify the action.' Simply put, 'the Fourth Amendment's concern with "reasonableness" allows certain circumstances, whatever the subjective intent [of the police officer]'"

Maryland v. Wilson, 519 U.S. 408, 414 (1997): "an officer making a traffic stop may order passengers to get out of the car pending completion of the stop."

Id.: "[A]s a practical matter, the passengers are already stopped by virtue of the stop of the vehicle. The only change in their circumstances which will result from ordering them out of the car is that they will be outside of, rather than inside of, the stopped car. Outside the car, the passengers will be denied access to any weapon that might be concealed in the interior of the passenger compartment. It would seem that the possibility of a violent encounter stems not from the ordinary reaction of a motorist stopped for a speeding violation, but from the fact that evidence of a more serious crime might be uncovered during the stop. And the motivation of a passenger to employ violence to prevent apprehension of such a crime is every bit as great as that of the driver."

Illinois v. Wardlow, 2000 U.S. LEXIS 504: "Such a holding is entirely consistent with our decision in *Florida v. Royer*, 460 U.S. 491 (1983), where we held that when an officer, without reasonable suspicion or probable cause approaches an individual, the individual has a right to ignore the police and go about his business. And any 'refusal to cooperate, without more, does not furnish the minimal level of objective justification needed for a detention or seizure.' But unprovoked flight is simply not a mere refusal to cooperate. Flight by its very nature, is not 'going about one's business'; in fact, it is just the opposite. Allowing officers confronted with such flight to stop the fugitive and investigate further is quite consistent with the individual's right to go about his business or to stay put and remain silent in the face of police questioning."

Coolidge v. New Hampshire, 403 U.S. 443, 466 (1972): "What the 'plain view' cases have in common is that the officer in each of them had a prior justification for an intrusion in the course of which he came . . . across a piece of evidence incriminating the accused. The doctrine serves to supplement the prior justification — whether it be a warrant for another object, hot pursuit, search incident to lawful arrest, or some other legitimate reason for being present unconnected with a search directed against the accused — and permits that warrantless seizure."

Florida v. J.L., 2000 U.S. LEXIS 2345, 146 L.Ed 2d 254: "An anonymous tip that a person is carrying a gun is not, without more, sufficient to justify a police officer's stop and frisk of that person. An officer, for the protection of himself and others, may conduct a carefully limited search for weapons in the outer clothing of persons engaged in unusual conduct where . . . the officer reasonably concludes in light of his experience that criminal activity may be afoot and that the persons in question may be armed and presently dangerous."