**I. Searches and Seizures**

A. Chapter 1: The “Threshold” of the Fourth Amendment Right to be Secure Against Searches

1. Threshold questions to consider

 a. Was there a state actor? (police officer)

b. Was there a “search” or “seizure” within the meaning of the 4th Amendment?

c. Does the person claiming the violation have standing to do so? Was a personal privacy right violated?

 2. *Katz v. United States*

a. Involved whether the tapping of a public phone booth violated the defendant’s 4th Amendment right

b. Court ruled that it was a violation of the 4th Amendment because people have a **reasonable expectation of privacy**

c. 4th Amendment protects people, not places, but a person who enters a phone booth can reasonably expect that his conversation will not be broadcast to the world

 3. *United States v. White*

a. Evidence was obtained against White from an informant wearing a concealed radio transmitter

b. The court determined that the recording was admissible evidence against the defendant

c. The court noted that the testimony of an informant with a recording device is more reliable than one without

d. The opinion also cited *On Lee v. U.S.*, which held that there was no 4th Amendment protection because the defendant **consented** to the presence of someone who overheard incriminating evidence

 4. *Smith v. Maryland*

a. Police had phone company install a pen register (device to trace who defendant was calling) in defendant’s phone

b. Court determined that there was not a reasonable expectation of privacy because the defendant already disclosed the numbers to the phone company

c. The court here developed a **two-pronged test**:

i. Whether the individual, by his conduct, has exhibited an actual expectation of privacy?

ii. Whether the individual’s subjective expectation of privacy is one that society is prepared to recognize as reasonable?

 5. *California v. Ciraolo*

a. Police flew a plane over the defendant’s backyard because they received a tip that he was growing pot

b. The intermediate court said that this was a violation of the **curtilage doctrine** and the sanctity of the home

i. The curtilage doctrine states that the home and any land or dwelling immediately surrounding may be protected from searches. However, this does not extend to any “open fields” beyond.

c. The Supreme Court determined this was not a violation of the 4th Amendment because it was visible to the naked eye and exposed to the public from an altitude of 1000 feet

 6. *Bond v. United States*

a. A border patrol agent squeezed a passenger’s bag on a bus and felt a brick-like object inside, which turned out to be methamphetamine

b. The court held that this was a violation of the defendant’s 4th Amendment rights because he had a privacy interest in his luggage and it was reasonable against the agent’s physical manipulation of the bag

c. This decision may have differed if the bag was a clear container or if it was in a compartment beneath the bus where other people would be expected to handle it

 7. *Kyllo v. United States*

a. Police used a thermal imaging device to detect heat coming from the defendant’s home and suspected he was growing pot, which he was

b. The court held that this was a violation of the defendant’s 4th Amendment rights because they used a device that was not in general public use to explore details of the home that would previously have been unknowable without physical intrusion

c. Police officers would not be able to know in advance whether his through-the-wall surveillance picks up “intimate” details and thus would be unable to know in advance whether it is constitutional

B. Chapter 2: Unreasonableness and the Probable Cause Requirement

 1. Probable cause to arrest requires a likelihood that:

a. That particular individual has committed or is committing a particular offense

 2. Probable cause to search an area requires a likelihood that:

a. Something that is properly subject to search by the government is presently in the specific place to be searched

 3. *Spinelli v. United States*

a. Defendant was convicted of illegal gambling after FBI agents had followed him and received information about his activities from a reliable informant

b. The court determined that there was no probable cause because the corroboration of evidence was not enough. There needed to be an extent of reliability and credibility that the informant did not have

c. This test required two things:

i. Adequately reveal the basis of knowledge of the informant (how he came across the information)

ii. Provide facts sufficiently establishing either the veracity of the affiant’s informant or the reliability of the informant’s report

 4. *Illinois v. Gates*

a. Police received an anonymous letter about a couple who were drug dealers. After obtaining a warrant, police followed and arrested the couple. Probable cause did exist here

b. The court abandoned the two-pronged test in favor of a **totality of the circumstances** approach instead where a deficiency in one area may be compensated for by some other indicia of reliability

 5. *Whren v. United States*

a. Police pulled over a car in a high drug area when the driver failed to signal and sped off at an unreasonable speed. They found several types of drugs when the driver rolled down his window

b. The court said that temporary detention of individuals during the stop of an automobile, even if only for a brief period and for a limited purpose constitutes a seizure

c. The police officers had probable cause to believe that the driver had violated the traffic code and was therefore reasonable in stopping him as part of a seizure

C. Chapter 3: Unreasonableness and the Warrant Requirement

1. The Warrant Requirement and Searches of Persons, Houses, Papers, and Effects

 a. *Johnson v. United States*

i. Police searched the defendant’s hotel room without a warrant after smelling opium and found the drug

ii. The court said that the search violated the 4th Amendment even though there might have been probable cause

iii. A neutral magistrate must give a warrant, an officer engaged in the search doesn’t have the authority to conduct the search without a warrant

2. The Warrant Requirement and Seizures of Persons

 a. *Atwater v. City of Lago Vista*

i. A woman was pulled over by police while driving with her kids without seatbelts and arrested without a warrant

ii. The court said that the arrest did not violate the reasonableness requirement

iii. If the officer has probable cause to believe that even a misdemeanor offense has occurred, he may arrest the offender

3. The Issuance, Content, and Execution of Warrants

 a. *United States v. Grubbs*

i. Defendant ordered child pornography, police obtained an anticipatory warrant, and arrested him

ii. The court ruled that probable cause is anticipated to exist when the triggering condition occurs

 b. *Andresen v. Maryland*

i. Police seized papers from a lawyer’s office that incriminated him of false pretenses with a general warrant

ii. The court ruled that general warrants are prohibited by the 4th Amendment and a description of the things to be seized is required

iii. On the defendant’s 5th Amendment claim of self-incrimination, the court ruled that it was constitutional because he was not forced to say anything as a result of a subpoena

 c. *Wilson v. Arkansas*

i. Police entered defendant’s home with a warrant, searched and found drugs and weapons

ii. Defendant said that police need to “knock and announce” their presence prior to entering

iii. The court said the **knock and announce principle** was constitutional. However, if it would endanger the officers or lead to destruction of evidence, it is not necessary.

D. Chapter 4: Reasonable Searches Without Warrants: The Nature and Scope of the Exceptions to the Warrant Requirement

 1. Searches Incident to Arrests and Searches for Arrestees

 a. *Chimel v. California*

i. Police came to defendant’s home with an arrest warrant, not a search warrant. They conducted a search anyway and found incriminating evidence

ii. The court found that any search in an arrestee’s home beyond his **area of immediate control** is unreasonable

iii. Police may conduct a search without a warrant if there is reasonable belief that the defendant may:

 • Have a weapon

 • Attempt to destroy evidence

 b. *United States v. Robinson*

i. Police pulled over a driver he knew was driving with a revoked license, searched him, and found heroin

ii. The court held that the search was constitutional because it was a search incident to arrest and there was probable cause of criminal conduct

 c. *New York v. Belton* **MODIFIED BY *GANT***

i. Police pulled over a speeding car and smelled weed. He arrested all four people in the car and searched them and the car. He found cocaine in a jacket in the car.

ii. The court said that when a lawful custodial arrest has been made, an officer may search the passenger compartment of the vehicle and any containers within if they are within the immediate control of the person

 d. *Payton v. New York*

i. Police entered defendant’s home without a warrant to make an arrest. While in the home, they found evidence of the crime in plain view.

ii. The court ruled that this evidence could not be admitted because it was obtained without a warrant and without exigency.

 e. *Steagald v. United States*

i. Police had an arrest warrant, not a search warrant, for a man that was staying at the defendant’s home. They did not find him, but instead found 43 pounds of cocaine.

ii. Court ruled that absent any exigency, an arrest warrant is not sufficient to search a home. A search warrant is required.

 f. *Arizona v. Gant*

i. Gant was arrested on an outstanding warrant for driving with a suspended license. After he was handcuffed and put in the squad car, police searched his car and found cocaine and a gun.

ii. Court ruled police could not search the car after Gant was already arrested and the scene was secure.

 2. Exigent Circumstances Searches

a. Exception to the warrant requirement because of concern that evidence may disappear

 b. *Warden, Maryland Penitentiary v. Hayden*

i. Police followed defendant to his home after a robbery and entered with permission from his wife. They seized articles of clothing and weapons.

ii. Court ruled that the police were allowed to enter the defendant’s home without a warrant and conduct a search because it was essential that they make sure no one was in physical danger.

 c. *Vale v. Louisiana*

i. Police observed defendant selling drugs outside his house and arrested him. They then searched his house and found more drugs.

ii. In order for the search of the house to be allowed, the arrest would have had to take place inside the house. There were not exigent circumstances to justify a warrantless search of the house.

d. Remember to consider probable cause in these scenarios. If the officer reasonably believes there may be evidence of crime, he should get a warrant. If there is no time, then the exigent circumstance exception may apply.

 3. Vehicle and Container Searches

 a. *Chambers v. Maroney*

i. A robbery suspect was arrested while riding in his car. Police took it to the station, searched it, and found incriminating evidence.

ii. Court ruled there is no difference between seizing a car before getting a warrant and immediately searching the car without a warrant. Also, the REOP is lower in a car than in a house.

 b. *Texas v. White*

i. Police asked defendant to search his car after observing him stuffing something between the seats. He refused, but they did a search anyway and found forged checks.

ii. Court ruled that there was no violation because probable cause developed at the scene.

 c. *California v. Carney*

i. Police conducted a search of a motorhome without a warrant, but they did have probable cause.

ii. Court ruled that the vehicle exception extends to motorhomes because they are readily mobile and vehicles have a lower REOP than a residence.

iii. If a car is readily mobile and probable cause exists to believe it contains evidence of a crime, the 4th Amendment allows a search.

 d. *United States v. Chadwick*

i. Federal agents seized a footlocker from a train station and took it to a federal building, where they found drugs inside of it.

ii. Court ruled that the search was unconstitutional because there was no warrant, consent, or exigency.

iii. Once the footlocker was seized, there was no danger that weapons could be gained or evidence seized by the owner.

 e. *California v. Acevedo*

i. Police observed a man take a package believed to contain drugs into his car. They pulled him over and searched his car without a warrant.

ii. Court ruled that there was probable cause to search the bag within the car.

iii. Limited to area where the probable cause exists. If looking for rifles, can’t search the glove box.

 4. Inventory Searches

 a. Interests in conducting inventory searches of a vehicle:

 i. Protect the property of the owner

 ii. False claims of theft

 iii. Public safety

b. Lawful impoundment of the vehicle is necessary for a inventory search and it must be done pursuant to a standard operating procedure

 c. *South Dakota v. Opperman*

i. Police arrested the defendant for a traffic violation and impounded his car. They conducted a routine inventory and found marijuana.

ii. Where a vehicle is lawfully impounded, an inventory search may be conducted without a warrant if it is part of a routine procedure.

 d. *Illinois v. Lafayette*

i. Police searched a man upon booking him and found amphetamine pills in a container.

ii. It is entirely proper for police to remove and inventory any property found on the person of someone who is to be jailed.

 e. *Colorado v. Bertine*

i. Police found drugs, paraphernalia, and money in a van after arresting the driver for DWI.

ii. If an inventory is conducted in good faith, the police do not have to use the least intrusive means if it is not unreasonable.

 5. Consent Searches

 a. Issues concerning consent

 i. Must be given voluntarily

 ii. Must have authority to give consent

 b. *Schneckloth v. Bustamonte*

i. Driver was pulled over and gave consent to search his vehicle, which revealed stolen checks.

ii. Consent waives the defendant’s right so long as it was given voluntarily (without coercion). Voluntariness is a question of fact determined from the totality of the circumstances**.**

 c. *United States v. Matlock*

i. Police obtained consent to search the home of defendant from another person who lived there.

ii. A 3rd party who has common authority over or other sufficient relationship to the premises or property to be inspected may give consent.

iii. Common authority rests on mutual use of the property by persons having **joint access or control**.

 d. *Georgia v. Randolph*

i. Police searched the home of a separated couple and found cocaine. The wife gave consent, but the husband refused.

ii. Where co-occupants are both present and one consents while the other does not, the search is unconstitutional.

 e. *Illinois v. Rodriguez*

i. Woman opened defendant’s apartment to search for drugs when she didn’t have the authority because she was not a resident.

ii. The search was ruled permissible because the officer’s reasonably believed they had obtained the consent of someone who had authority to give it.

 6. The “Plain View” Doctrine

 a. Three requirements originally existed:

 i. Officer must be lawfully in position

 ii. Evidence must be immediately apparent

 iii. Inadvertent discovery (no longer required)

 b. *Horton v. California*

i. Police had a warrant to search for rings, and found illegal weapons in plain view.

ii. There is no violation when the evidence seized:

 • Is in plain view

• Incriminating character is immediately apparent

 c. *Arizona v. Hicks*

i. Police searched an apartment from which gunshots had been fired. They saw stereo equipment looked out of place and found out it had been stolen.

ii. The search was conducted with only reasonable suspicion. For the plain view doctrine, probable cause must exist for a search to be constitutional.

E. Chapter 5: The Balancing Approach to Fourth Amendment Reasonableness

1. Stops, Frisks, and the Right to be Secure in One’s Person, House, and Effects

 a. Constitutional Doctrine and Its Theoretical Underpinnings

 i. *Terry v. Ohio*

• Police observed suspicious activity between three men outside a storefront. He stopped and frisked them, finding weapons on two of them.

• Probable cause is not required for a stop and frisk, only **reasonable suspicion**.

• Think in terms of a “stop” as a seizure and a “frisk” as a search, but with less requirement.

 ii. *Dunaway v. New York*

• Police detained a man and brought him to the station for questioning.

• This was a full seizure, not just a stop, and therefore violated the 4th Amendment because they did not have probable cause.

Terry “stop” Arrest

Purpose Investigate Incapacitate

Duration Temporary Indefinite

Suspicion Reasonable suspicion Probable cause

 No warrant Warrant

 b. Seizures of Persons

i. *United States v. Mendenhall*

• Federal agents asked a woman to see her ticket and ID at an airport because she fit a drug courier profile. She consented to further questioning and they found heroin on her person.

• In order for a seizure to be unconstitutional, the defendant must reasonably believe that they are not free to leave. That was not the case here; her seizure was constitutional.

 ii. *Florida v. Bostick*

• Police approached a man on a bus and asked to search his luggage.

• The same rule applies on a bus as it does in other places. If a defendant reasonably believes that they are not free to leave, there is a violation. Here, there was no violation.

 iii. *California v. Hodari D.*

• Defendant ran from police and threw a rock later identified as cocaine.

• No seizure occurred because the defendant was not **physically restrained**. Therefore, the cocaine was obtained legally.

 c. The Showing Needed to “Stop” and “Frisk”

 i. *Illinois v. Wardlow*

• Police conducted a pat-down search of someone who ran when seeing police in a high-drug area.

• Reasonable suspicion was present because:

 1. High-drug area

 2. Headlong flight

 3. Unprovoked flight

 ii. *Alabama v. White*

• Police received a tip that a woman would have cocaine. They found it, but not where the informant said it would be.

• The tip was reasonably corroborated because it gave evidence of future events.

 iii. *Florida v. J.L.*

• Police received a tip that a young black male was carrying a gun.

• The tip was not sufficiently corroborated because it lacked indicia of reliability.

 d. The Permissible Scope of Stops, Frisks, and Sweeps

 i. *Hayes v. Florida*

• Police searched defendant’s home w/out a warrant and later took him to the station for fingerprinting.

• You cannot forcibly remove a person from their home w/out a warrant for investigative purposes. Reasonable suspicion and probable cause distinction does not matter here.

 ii. *United States v. Sharpe*

• Police detained suspects while another car was being stopped in connection with the crime.

• The suspects were not detained for an unreasonable amount of time and the suspect’s actions contributed to the delay.

 iii. *United States v. Place*

• DEA Agents took a suspect’s luggage and held it over the weekend until getting a warrant.

• There was no authority to hold the luggage for an extended period of time w/out a warrant.

 iv. *Michigan v. Long*

• Police searched a vehicle for weapons that may endanger officers and found marijuana.

• If there is reasonable suspicion that the suspect may be armed and dangerous, you can look in their car to find a weapon.

 v. *Minnesota v. Dickerson*

• An officer lawfully patted down defendant’s jacket and felt an object revealed to be cocaine

• If the officer feels an object that immediately apparent as illegal, there is no violation. Here, there was no violation of the defendant’s rights.

 vi. *Maryland v. Buie*

• Officers conducted a protective sweep of the house to make sure no one else was there and found evidence linking defendant to the crime.

• A protective sweep may be conducted if there is a reasonable belief that others may be present.

2. Special Balancing Contexts

 a. School Searches

 i. *New Jersey v. T.L.O.*

• Students caught smoking in a school bathroom. Inspection of a purse revealed evidence of marijuana trafficking.

• The search was constitutional. The court does not specify, but something like reasonable suspicion is required here.

 b. Checkpoints

 i. Things to consider

 • Is there a state interest?

 • Is it effective?

 • Is it intrusive?

i. *Michigan Department of State Police v. Sitz*

• Michigan police used sobriety checkpoints on a highway. Ruled constitutional because:

 1. Low level of intrusion on motorists

2. State interest in preventing drunk driving

3. Reasonable to stop for a short time

 ii. *City of Indianapolis v. Edmond*

• Police set up checkpoints to search for evidence of drugs or other illegal activity.

• The purpose of a checkpoint has to be distinguishable from general crime prevention. This checkpoint did not meet that requirement.

 iii. *Illinois v. Lidster*

• Police had a checkpoint to ask about a hit and run. A driver was arrested for DUI.

• The checkpoint was constitutional because there was a public concern and it was minimally intrusive.

 c. Drug Testing

i. *Skinner v. Railway Labor Executives’ Association*

• Federal Railroad Administration imposed drug testing on employees involved in accidents.

• The government has a compelling interest in testing for drugs that outweighs employees’ privacy concerns.

 ii. *Chandler v. Miller*

• A statute required candidates for public office to submit to drug testing prior to nomination.

• Suspicionless searches such as this are unconstitutional against the right to privacy.

 d. Border Searches

i. *United States v. Flores-Montano*

• Officials searched a car, including removing the fuel tank, at a border and found drugs.

• A border search may be conducted without suspicion if it is brief and the government has an interest in protecting the border.

3. Higher Than Usual Standards of Reasonableness

 a. *Tennessee v. Garner*

i. Police shot and killed a visibly unarmed suspect who was trying to escape by climbing over a wall.

ii. If there is probable cause to believe that a suspect poses a threat of serious bodily harm, officers may use deadly force to prevent escape.

 b. *Schmerber v. California*

i. Defendant had his blood taken against his will to gain evidence of a DWI.

ii. The 5th Amendment protection against self-incrimination only applies to testimonial evidence. Getting a blood sample does not violate the constitution.

 c. *Winston v. Lee*

i. A suspected robber and a storeowner shot each other. State wanted to surgically remove the bullet from the suspect for evidence.

ii. It is not reasonable to conduct an invasive surgery in order to obtain evidence of a crime.

**II. Confessions**

 A. Chapter 7: Due Process of Law and Confessions

 1. Issues to think about:

 a. 5th Amendment: No self-incrimination

 b. 6th Amendment: Right to counsel

 c. 14th Amendment: Due process (voluntary confession)

 2. *Ashcraft v. Tennessee*

a. Man gave a confession to killing his wife after 36-hour interrogation w/out sleep, rest, or a break.

b. His confession was coerced and inadmissible. Confessions must be voluntarily given under the totality of the circumstances.

 3. *Spano v. New York*

a. Defendant confessed to a friend who was an officer in training because of emotional sympathy and fatigue.

b. The confession was involuntarily obtained by psychological coercion.

 4. *Colorado v. Connelly*

a. Defendant approached an officer and said he wanted to confess to a murder. After being read his rights and waiving them, he confessed. He said voices told him to confess.

b. There must be state action to suppress a confession. This confession was voluntary and not coerced by police.

 B. Chapter 8: The Privilege Against Self-Incrimination and Confessions

 1. Issues to think about

a. Confessions obtained in violation of due process are inadmissible and cannot be used for any purpose.

b. If suspect asks for a lawyer, interrogation must cease immediately.

c. Silence is not a waiver of rights.

 2. The Constitutional Basis

 a. *Miranda v. Arizona*

i. Established rights must be given to a suspect prior to custodial interrogation

• Right to remain silent, including notice that anything they say can be used against them in court

• Right to counsel, both during interrogation and during a trial

• An attorney will be appointed if they cannot afford one

 ii. Waiver of any of these rights must be voluntary

 b. *New York v. Quarles*

i. Suspect for armed rape was identified and told police where a gun was before being read his rights.

ii. Defendant’s answers about where the gun was were admissible because of the **public safety exception**.

 c. *Dickerson v. United States*

i. Suspect voluntarily gave confession about a bank robbery without being read his rights. Made admissible by statute.

ii. Court ruled that Congress cannot overrule *Miranda*. It is constitutional, not just case law. Two factors must exist for warnings to take place:

 • Custody

 • Interrogation

 3. Custody

 a. *Berkemer v. McCarty*

i. Defendant was pulled over for erratic driving and revealed to be drunk after questioning w/out rights being read.

ii. The defendant had not yet been taken into custody and his statements were admissible. Motivating factors:

 • Temporary traffic stop

 • Not coercive or police-dominated

 4. Interrogation

 a. *Rhode Island v. Innis*

i. Defendant arrested for murder in an area with mentally challenged children. Police talked about how it would be a tragedy if one of the kids hurt themselves with the gun. Defendant led them to the gun after being told his rights.

ii. If police make a statement that is likely to elicit an incriminating response, it is considered questioning. Here, it was not considered questioning.

 b. *Illinois v. Perkins*

i. A murder suspect gave incriminating details to an undercover agent in jail with him without warnings.

ii. This was not a police-dominated atmosphere and the statements were voluntarily given to someone who the defendant believed to be his friend. Deception by the police is not against the rules.

 5. Waiver

 a. *North Carolina v. Butler*

i. Defendant was arrested for a robbery and was read his rights. He said he would speak but refused to sign a form waiving his rights.

ii. An express statement can constitute a waiver. A signed form is not needed. However, silence alone does not constitute a waiver.

 b. *Colorado v. Spring*

i. Suspect was arrested on a weapons charge and waived his rights. He subsequently confessed to an unrelated murder.

ii. Police do not need to inform a defendant of all possible subjects that may be discussed in an interrogation prior to questioning.

 6. Invocation of Protections

 a. *Michigan v. Mosley*

i. Defendant first questioned about robberies and didn’t want to speak. Later questioned about a murder and confessed.

ii. Confession was admissible because:

 • Interrogation ceased immediately

 • Significant time passed (at least 2 hours)

 • Talked to a different officer

 • Talked about an unrelated crime

 b. *Edwards v. Arizona*

i. Defendant requested a lawyer and questioning stopped. The next morning police tried again, and told him he had to talk.

ii. Once right to counsel has been invoked, questioning cannot continue on the same crime without a voluntary waiver.

 c. *Davis v. United States*

i. During questioning, defendant mentioned something about an attorney, but did not clearly request one.

ii. A request for counsel must be **clear and unambiguous** to a reasonable officer.

 d. *Minnick v. Mississippi*

i. Defendant requested a lawyer and spoke with him a few times. Questioning later resumed without the lawyer present.

ii. Once the right to counsel has been invoked, police cannot conduct questioning w/out counsel present.

 e. *Maryland v. Shatzer*

i. Defendant was questioned about sexual child abuse and invoked his right to counsel. He was returned to prison on an unrelated charge. Three years later, he was questioned again, waived his rights, and confessed.

ii. Court determined that a significant period of time (at least 2 weeks) must pass after the suspect has returned to their normal life for questioning to continue

 C. Chapter 10: Confessions and the Right to Assistance of Counsel

 1. *Massiah v. United States*

a. Defendant and co-conspirator were indicted for narcotics. Co-conspirator got incriminating evidence out of defendant while wearing a wire.

b. Once adversarial proceedings have initiated against defendant, right to counsel attaches and he may not be questioned w/out an attorney unless he waives that right.

 2. *Brewer v. Illinois*

a. Officer gave “Christian burial” speech to defendant, who led them to the body of a little girl he murdered.

b. Evidence was inadmissible because the defendant had already invoked his right to counsel and proceedings were brought against him.

 3. *United States v. Henry*

a. Defendant gave evidence to another prisoner who was a paid informant without waiving his right to counsel.

b. By intentionally creating a situation where the defendant was likely to reveal incriminating evidence w/out the assistance of counsel, the government violated the 6th Amendment.

 4. *Kuhlmann v. Wilson*

a. Defendant was arrested for a murder. Another prisoner was put in a cell with him and did not solicit a confession, but just listened. Defendant revealed incriminating evidence.

b. Where a defendant reveals incriminating evidence that is completely unsolicited to an informant, his rights are not violated.

**III. Identifications**

 A. Chapter 11: Identifications and the Right to Assistance of Counsel

 1. Types of Identifications

 a. Live

 i. Lineup

• Defendant can make non-incriminating statements

• Double blind: person administering test doesn’t know who defendant is so as not to give away any clues to witness

 ii. 1 on 1

 b. Photo spread

 i. Must not be prejudicial, one guy can’t stand out

 c. In-court

 i. Witness on stand identifies suspect

 2. *United States v. Wade*

a. Defendants participated in a lineup identification prior to trial w/out counsel present after indictment. The witness later identified them in court.

b. An in-court identification must be of independent origin, free of the lineup identification to be admitted.

 3. *Kirby v. Illinois*

a. Two men were brought to the station as suspects for a stolen wallet. The victim came to the station and immediately identified them.

b. There was no violation of rights because the right to counsel had not yet attached. The suspects were not indicted and the identification was allowed.

 4. *United States v. Ash*

a. Suspect was identified in a photographic lineup after indictment.

b. The 6th Amendment does not grant the defendant a right to counsel at photographic identifications because the defendant is not present and not subject to interrogation.

 B. Chapter 12: The Due Process Clause and Identifications

 1. *Stovall v. Denno*

a. Defendant was taken to victim’s hospital room for identification because it wasn’t clear if she would live.

b. Identification was allowed without counsel because this was the only feasible procedure available for identification.

 2. *Manson v. Brathwaite*

a. Police bought heroin from a dealer at his apartment. He was later identified before trial by one photograph.

b. Factors to consider in identifications:

i. Opportunity of witness to view suspect at time of crime

ii. Degree of attention paid by witness

iii. Accuracy of prior description

iv. Level of certainty

v. Time between crime and confrontation

 C. Chapter 9: The Right to Assistance of Counsel at Trial

 1. *Betts v. Brady* **OVERRULED BY *GIDEON***

a. Defendant was indicted for robbery and asked for an attorney at trial, but was denied.

b. Court ruled that not every indigent defendant is entitled to an attorney, so long as his conviction is obtained fairly.

 2. *Gideon v. Wainwright*

a. Defendant was charged with burglary and denied counsel at trial because it was only appointed in capital offenses.

b. Court ruled that the right to counsel is fundamental and cannot be denied, regardless of capital or non-capital offenses.

 3. *Scott v. Illinois*

a. Defendant was convicted of shoplifting w/out counsel and fined $50, although the penalty allowed for up to $500 and/or no more than 1 year in jail.

b. Court ruled that where a defendant is not sentenced to imprisonment, they can be tried w/out counsel.

**IV. Exclusionary Rules**

 A. Chapter 13: The Sources of and Rationales for the Exclusionary Rules

 1. *Weeks v. United States*

a. Police illegally seized letters from the defendant’s home and used them as evidence at trial.

b. The 4th Amendment bars the use of evidence secured through an illegal search and seizure.

 2. *Mapp v. Ohio*

a. Police illegally searched the defendant’s home and found evidence against him that was used at trial.

b. The evidence was inadmissible at trial. This case ensured that state courts must also follow the exclusionary rule in addition to federal courts.

 B. Chapter 14: The Scope of and Exceptions to the Exclusionary Rules

 1. The “Standing” Limitation

 a. *Note on Alderman v. United States*

i. Suppression of the product of a 4th Amendment violation can be successfully urged only by those whose rights were violated by the search itself, not by those who are aggrieved solely by the introduction of damaging evidence. Co-conspirators have been accorded no special standing.

 b. *Rakas v. Illinois*

i. Passengers in a car from a robbery attempted to suppress shotgun shells found in the car.

ii. The right to exclusion of evidence only protects the owner of the car, it does not extend vicariously to passengers.

 c. *Minnesota v. Carter*

i. Defendants were observed bagging cocaine in another’s home and were later arrested in their car.

ii. The protection against unreasonable searches does not extend to temporary business guests, but does to overnight social guests.

 2. The “Independent Source” and “Inevitable Discovery” Doctrines

a. Independent source applies in Texas, but inevitable discovery does not

 a. *Silverthorne Lumber Co. v. United States*

i. Federal agents illegally seized tax records from the defendant.

ii. Establishes the “fruit of the poisonous tree” doctrine. The evidence was tainted and inadmissible. Subject to four exceptions:

 • Independent source

 • Inevitable discovery

 • Too remote (attenuation)

 • Good faith

 b. *Murray v. United States*

i. Police entered a warehouse illegally and found bails of marijuana. They did not use this information in obtaining a warrant.

ii. The initial discovery did not contribute to the issuance of the warrant and was constitutional.

 c. *Nix v. Williams*

i. Follow-up to Christian burial case. State argued that the body would have been found eventually by search teams in the area.

ii. If the state can show that the evidence would have been discovered and admitted, it is constitutional.

 3. The “Attenuation” Doctrine

 a. *Wong Sun v. United States*

i. Police went through 4 people and got statements from several of them concerning drug trafficking.

ii. The court ruled that the evidence at the end was so remote from the illegally obtained statement that the taint had been removed.

 b. *Brown v. Illinois*

i. Defendant was arrested w/out probable cause, given his rights twice and confessed twice.

ii. *Miranda* warnings by themselves do not assure that statements are of sufficient free will as to purge the primary taint of unlawful arrest.

 c. *Hudson v. Michigan*

i. Police obtained evidence after using the knock and announce principle and only waiting 3-5 seconds.

ii. Violation of the knock and announce principle does not require suppression of the evidence obtained.

 d. *Oregon v. Elstad*

i. Defendant stated incriminating evidence before being warned of rights. After he was informed of his rights, he signed a confession.

ii. The initial statement was the fruit of a poisonous tree and therefore inadmissible. However, the subsequent confession was obtained after a waiver and admissible.

 e. *Missouri v. Seibert*

i. Police intentionally withheld *Miranda* to obtain a confession. After getting the confession, they gave defendant her rights and got a subsequent confession.

ii. After eliciting an un-*Mirandized* confession, police must give defendant ample opportunity to consider the effect of the warnings.

 f. *United States v. Patane*

i. Defendant admitted to illegal possession of a firearm w/out being read his rights.

ii. Physical evidence obtained from un-*Mirandized* voluntary statements is admissible, although the statements themselves are inadmissible.

 4. The “Good Faith” Exception

 a. *United States v. Leon*

i. Police conducted a search of a home with a warrant that was later found to be invalid.

ii. Searches conducted in good faith by an officer in reliance of a warrant are constitutional.

 b. *Massachusetts v. Sheppard*

i. Court was closed and officers had to fill in an old warrant form, but forgot to change some material facts.

ii. This satisfied the good faith exception because it was the fault of the judge, not the officers, that the warrant had some discrepancies on it.

 5. The “Impeachment” Limitation

 a. *Harris v. New York*

i. Police had evidence that called into question the validity of defendant’s testimony.

ii. Evidence was admissible despite being illegally obtained.

 b. *United States v. Havens*

i. Court allowed evidence to be admitted against the defendant even though it impeached his own testimony.

 c. *James v. Illinois*

i. A witness testified for the defendant. Police had evidence that could impeach this witness’s testimony.

ii. Evidence could not be used against another witness, only against the defendant himself.