

CRJ 201-POLICING

Policing and the Law

INTRODUCTION

- Explain the concept of judicial review and describe how it applies to the police.
- List and describe the various constitutional amendments that specifically impact policing.
- Discuss case law relevant to the exclusionary rule
- Describe standards of proof.
- List and describe exceptions to the fourth amendment.
- Explain custodial interrogation and Miranda.
- Explain eyewitness identification procedures.

IN CLASS SCENARIO

- Exercise #1:
 - Three male teenagers are hanging out in front of a small family owned grocery store acting rowdy and making comments to people who are passing by. As a result, people are avoiding that side of the street and the grocery store. The manager of the store asks the three teenagers to “please move along.” The teenagers respond to “go f.... yourself old man.”
 - The manager calls 911, knowing that a call for a “disorderly group” will take a long time for the police to respond, he says that the teenagers are “selling drugs and have a gun”
 - The police arrive with lights and sirens.
 - What should they do?
 - What can they legally do?

JUDICIAL REVIEW

- Policing must adhere to the U.S. Constitution, however, the interpretation of how law applies changes.
- How do we know what is Constitutional Policing and what is not?
- Courts decide.....
- This is why it is unwise to fight the police in the streets....always a losing proposition.
- Courts have routinely changed police policies and procedures over the last 100 years using a process known as judicial review.

JUDICIAL REVIEW

- Judicial review: The process by which actions of the police in areas such as *arrests, search and seizures, and custodial interrogations* are reviewed by the court system to ensure their constitutionality.
- The U.S. Supreme Court, has made many legal decisions that effect policing and the criminal justice system as a whole, through what are known as landmark cases.
- Many of the decisions by the courts attempt to strike a balance between individual rights and public safety.

CONSTITUTIONAL AMENDMENTS

- Paraphrased
- First Amendment:
 - *Free speech;
 - Freedom of religion;
 - *Freedom of press;
 - *Right to peaceably assemble (protest).
- Fourth Amendment:
 - *Secure against unreasonable searches and seizures;
 - *Warrants required and probable cause

CONSTITUTIONAL AMENDMENTS

- Fifth Amendment:
 - Right to a grand jury;
 - Protection against double jeopardy;
 - *Cannot be compelled to testify against oneself;
 - *Due process.
- Sixth Amendment:
 - Speedy public trial;
 - Impartial jury of peers;
 - *Confronted by witnesses and aware of the accusations;
 - *Right to an attorney.

CONSTITUTIONAL AMENDMENTS

- Eighth Amendment:
 - No excessive bail;
 - No excessive fines;
 - No cruel and unusual punishment imposed.
- Fourteenth Amendment:
 - *States cannot pass laws depriving persons of life, liberty or property without due process;
 - Equal protection of law to all persons within the U.S. jurisdiction.

IN CLASS SCENARIO

- Exercise #2:
 - A woman is walking home from work, it's dark out and few people are around. She is accosted from behind (grabbed) by a man who displays a knife and says "give me your pocketbook." She does as she's told.
 - The man runs towards the subway before she gets a good look at him, but she notices he's a dark-skinned male, about 6 feet tall, wearing a black hoodie and dark jeans. She thinks he's in his late teens. She calls 911 and gives the above description.
 - The police arrive in the area 5 minutes later. They go into a nearby subway, observe a person who fits that description. They stop, and frisk him at gunpoint, finding an illegally possessed firearm in his waistband, but no knife.
 - The female victim arrives at the scene, and says "that's not the guy who attacked me."
 - What happens to the guy with the gun?

EXCLUSIONARY RULE

- Not in the U.S. Constitution, but rather an interpretation of how constitutional law is applied.
- This is known as case law (decided by courts) rather than statutory law (passed by legislatures)
- *Weeks v. United States (1914)*
 - Evidence seized by the FEDERAL GOVERNMENT in violation of the Fourth Amendment cannot be used in court against a defendant.
 - This evidence will be suppressed.
 - “Fruit of the poisonous tree” doctrine.

EXCLUSIONARY RULE

- *Mapp v. Ohio (1961)*
 - Supreme court ruled that the exclusionary rule applies to all state governments.
 - Courts now have what are known as “Mapp” hearings to determine the admissibility of evidence.
- Impact of the exclusionary rule:
 - Some see it as pro-criminal and unfair;
 - Allows some people to get off on a “technicality”
 - What do you think?
 - *U.S. v. Leon (1984)* good faith exception

STANDARDS OF PROOF

Legally Sufficient Evidence:

- Highest:

- Beyond a reasonable doubt (criminal conviction)

- Medium:

- Preponderance of evidence (civil case)

- Moderate:

- *Probable cause (arrest, obtain a warrant)

- Low:

- *Reasonable suspicion (stop, question, and frisk)

- Very low:

- Common law Right of inquiry-founded suspicion (accusatory questions)

- Request for information

STANDARDS OF PROOF

PROBABLE CAUSE

- Evidence that may lead a reasonable person to believe that a crime has been committed and that a certain person committed it.
- Necessary for arrest, warrant
- Must be established before an arrest is made.
- Government can search.

REASONABLE SUSPICION

- Less than probable cause;
- Lead a police officer to believe that a crime is happening, was about to happen, or did happen.
- Necessary legal standard to perform a stop, question, and frisk.
- Can be temporarily detained, frisked.

4TH AMENDMENT (AGAIN)

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.

- This applies to:
 - Search warrants;
 - Arrest warrants;
 - Arrests;
 - Searches of persons and property in general.
- The government must get a warrant before arresting or searching except....

4TH AMENDMENT

Exceptions to the 4th Amendment fall into two categories:

1. Exigent Circumstances: Simply put “Emergencies”
2. Other Exceptions: “SPACESHIP”
 - Search incident to arrest
 - Plainview
 - Auto exception
 - Consent
 - Emergency
 - SQF
 - Hot pursuit
 - Inventory
 - Period

4TH AMENDMENT

- Search incident to lawful arrest:
 - *Chimel v. California (1969)*
 - Head to toe and everything within reachable area;
 - Looking for the three “E’s”
 - Escape,
 - Endangerment,
 - Evidence.
- Plain-view:
 - Unconcealed and inadvertently seen evidence by an officer engaged in a lawful activity.
 - Abandoned property.
 - Open fields.

4TH AMENDMENT

- Auto Exception:
 - *Carroll v. United States (1925)*
 - Known as the “Carroll Doctrine”
 - Less Fourth Amendment protections than other places.
 - Search incident to arrest can include entire passenger compartment, including boxes, luggage, etc.
 - Guns or drugs – bumper to bumper search.
 - Anyone in a stolen car with a gun or drugs.....who gets arrested?????
 - EVERYONE!!!!

4TH AMENDMENT

- Consent:
 - Consent to search can be given by someone who has authority.
 - Must be freely given, free of pressure or duress.
- Emergency:
 - Prevent escape;
 - Prevent harm to officers or others;
 - Prevent destruction of evidence;
 - Render immediate aid to person in need of assistance.
 - Search must stop when emergency has ended.

4TH AMENDMENT

- Stop, Question and Frisk:
 - *Terry v. Ohio (1968)*
 - Allows police to conduct a field interrogation, also known as Stop, Question and Frisk when they have reasonable suspicion.
 - Temporary detaining of a person, possible frisk for weapons.
- Hot Pursuit:
 - While chasing a suspect.
- Inventory:
 - For safekeeping while in custody or unable to secure property.

CUSTODIAL INTERROGATION

Custody:

- Person is not free to leave by the police. Falls into two types:
 1. Arrest:
 - Can be made with or without a warrant, but must have probable cause.
 - The initial taking into custody of a person by law enforcement to answer for an offense.
 2. Stop/ Terry Stop:
 - Detaining someone temporarily for the purpose of performing a short term investigation.
 - No warrant required, must have reasonable suspicion.

CUSTODIAL INTERROGATION

- While in custody (not free to leave) by the police, before being asked interrogative questions, the suspect must be given Miranda warnings:
 - Right to remain silent;
 - Anything said can be used in court;
 - Right to an attorney, and have one present during questioning;
 - Attorney will be provided if the accused cannot pay
- *Miranda v. Arizona (1966)*
- *Escobedo v. Illinois (1964)*
 - *Does not apply to non-custodial, spontaneous utterances, basic questions, or citizen to citizen statements.*

EYEWITNESS IDENTIFICATION

Lineups:

- Placing a suspect with a group of other people of similar physical characteristics so that a witness or victim has the opportunity to ID the criminal.
- *U.S. v. Wade (1967)*
- Person in lineup can be made to perform actions occurring during crime.
- Right to an attorney after indictment.



EYEWITNESS IDENTIFICATION

- Showups:
 - Bringing the victim to the suspect for identification purposes.
 - Should not be unnecessarily suggestive.
 - Victim to alleged perpetrator in exigent circumstances or hospitalization (seriously injured or likely to die_