**Chapter 07**

**Lesson Plan**

1. **The Fourth Amendment**

**Learning Objective 1:** Outline the four major sources that may provide probable cause

**Learning Objective 2:** Explain the exclusionary rule and the exceptions to it

* 1. Contains two critical legal concepts
     1. Fourth Amendment prohibits against unreasonable searches and seizures
     2. The requirement of probable cause to issue a warrant
  2. Reasonableness
     1. Law enforcement personnel use searches and seizures to look for and collect the evidence prosecutors need
     2. No specific meaning for reasonable exits
  3. Probable cause
     1. Burden of probable cause requires more than mere suspicion on a police officer’s part
     2. Sources of probable cause
        1. Personal observation
        2. Information
        3. Evidence
        4. Association
     3. The probable cause framework
        1. Allows the police officers to do their job effectively
        2. Most arrests are made without a warrant
        3. Once an arrest is made, the arresting officer must prove to a judge that probable cause existed
  4. The exclusionary rule
     1. The courts have looked to the Fourth Amendment for guidance to regulate the activity of law enforcement officers
        1. The exclusionary rule prohibits the use of illegally seized evidence
        2. Any physical or verbal evidence police are able to acquire by use of illegally obtained evidence is known as the fruit of the poisoned tree
           1. Inadmissible in court
     2. The “inevitable discovery” exception
        1. The inevitable discovery exception states that evidence gathered illegally is admissible if police, using legitimate means, would have discovered it anyway
           1. *Brewer v. Williams* (1977)
           2. *Nix v. Williams* (1984)
     3. The good faith exception states that evidence gathered illegally is admissible if it was collected in good faith by police
        1. *United States v. Leon* (1984)
        2. *Arizona v. Evans* (1995)

1. **Lawful Searches and Seizures**

**Learning Objective 3:** List the four categories of items that can be seized by use of a search warrant

**Learning Objective 4:** Explain why searches can be made without a warrant

**Learning Objective 5:** Describe the plain view doctrine and indicate one of the limitations

* 1. The role of privacy in searches
     1. The crucial concept in understanding search and seizure law is privacy
     2. The reasonable expectation of privacy
        1. Established in *Katz v. United States* (1967)
        2. A two pronged test for a person’s expectation of privacy includes
           1. The individual must prove that she or he expected privacy
           2. Society must recognize that expectation as reasonable
     3. A legitimate privacy interest
        1. The steps must be reasonably certain to ensure privacy
     4. Privacy and satellite monitoring
        1. *United States v. Jones* (2012)
           1. The U.S. Supreme Court emphasized the important roles that time and technology play in privacy
           2. The Court found the government has “physically occupied” private property – a car with a hidden GPS device – for an unreasonably long amount of time
  2. Search and seizure warrants
     1. Particularity of search warrants
        1. The members of the First Congress did not want law enforcement to have the freedom to make general exploratory searches through a person’s belongings
           1. A warrant must describe “particularly” the place to be searched
           2. Places a heavy burden on law enforcement
        2. An affidavit provides written information on property that law enforcement wish to search and seize
           1. Courts frown on vague affidavits
           2. A seizure is the act of taking possession of a person or property by the government because of a violation of law
        3. Four categories of items can be seized by a warrant
           1. Items resulting from a crime, such as stolen goods
           2. Items that are inherently illegally for anybody to possess
           3. Items that can be called “evidence” of the crime
           4. Items used in committing a crime, such as an ice pick
     2. Reasonableness during a search and seizure
        1. The law gives law enforcement the ability to act reasonably during a search and seizure in the event of unforeseeable circumstances
        2. Plain view items can be seized during a search warrant
  3. Searches without a warrant
     1. Most searches take place in the absence of a judicial order
        1. *Warrantless searches and seizures can be lawful when police are in “hot pursuit” of a subject*
        2. *Warrantless searches and seizures are allowed in “border areas”*
     2. Searches incident to an arrest
        1. Most frequent exception to the warrant requirement involves searches
        2. Searches are valid for two reasons (*United States v. Robinson* (1973))
           1. Need for a police officer to find and confiscate any weapons a suspect may be carrying
           2. Need to protect any evidence on the suspect’s person from being destroyed
        3. Police may search any area within the suspect’s “immediate control” to confiscate any weapons or evidence that the suspect could destroy due to *Chimel v. California* (1969)
     3. Searches with consent
        1. Second most common type of warrantless searches
        2. Takes place when individuals give law enforcement officers permission to search their persons, homes, or belongings
        3. Consent must be voluntary, without any threats, taking into consideration:
           1. Age, intelligence, and physical condition of the suspect
           2. Any coercive behavior by the police
           3. The length of the questioning and its location
        4. The citizen’s decision
           1. Standard set in *Schneckcloth v. Bustamonte* (1973)
        5. Recent developments
           1. Digital devices on the border – traditional reasons for allowing warrantless searches at entry points do not apply to laptops and cell phones
           2. Blood used as evidence in drunk driving cases – The Supreme Court has held that the natural dissipation of alcohol in the bloodstream is not enough to draw a drunk driving suspect’s blood without a warrant or consent
           3. Homes over the objection of an absent resident – The Supreme Court ruled that any occupant’s consent is sufficient.
  4. Searches of automobiles
     1. In *Carroll v. United States* (1925) the Supreme Court ruled that the law could distinguish among automobiles, homes, and persons in questions involving police searches
     2. Warrantless searches of automobiles
        1. For nearly three decades, police officers believed that if they lawfully arrested the driver of the car they could search the car’s entire front and back seat based on *New York v. Benton* (1981)
        2. In *Arizona v. Gant* (2009), the Court ruled that Benton had been misinterpreted and that warrantless searches of automobiles are only allowed if:
           1. The person being arrested is close enough to the car to grab a weapon or destroy evidence, or
           2. The arresting officer believes the car contains evidence pertinent to the crime for which the suspect is under arrest
        3. Significant powers.
           1. Officers still can conduct a warrantless search of an automobile based on circumstances other than the incident-to-an-arrest doctrine
           2. Probable cause of criminal activity
           3. Consent of the driver
           4. Protective searches
        4. Pretextual stops
           1. As long as an officer has probable cause to believe a traffic law has been broken, the “true” motivation for making a stop is irrelevant.
     3. Container searches
        1. The Supreme Court has provided a great deal of leeway for conducting warrantless searches of containers within a vehicle
           1. The officers can search every part of a vehicle that might contain the items they are seeking, as long as they have probably cause to believe that the items are somewhere in the car
           2. Exceptions apply
  5. The plain view doctrine
     1. No probable cause is needed for search and seizure of contraband in plain view established in *Coolidge v. New Hampshire* (1971)
        1. Law enforcement officers may make a warrantless seizure of an item when four criteria are met
           1. Item is positioned so as to be detected easily by an officer’s sight or some other sense
           2. Officer is legally in a position to notice the item in question
           3. Discovery of the item is inadvertent
           4. Officer immediately recognizes the illegal nature of the item
        2. Technology has allowed officers to see “beyond” normal human capabilities
  6. Electronic surveillance
     1. During the course of a criminal investigation, law enforcement officers may decide to use electronic surveillance, or electronic devices such as wiretaps or hidden microphones to monitor and record conversations, observe movements, and trace or record telephone calls
     2. Basic rules: consent and probable cause
        1. Recorded conversations are inadmissible as evidence unless certain procedures are followed (*Katz v. United States*)
        2. In general, law enforcement can use electronic surveillance only if consent is given by one party or with a warrant. A warrant is valid if:
           1. Detail with “particularity” the conversations that are to be overheard
           2. Name the suspects and the places that will be under surveillance
           3. Show probable cause to believe that a specific crime has been or will be committed
     3. Force multiplying
        1. Digital and video surveillance
        2. Local police are welcoming CCTV systems because they are “force multipliers” by expanding their capabilities
           1. Automatic license plate recognition (ALPR) devices on patrol cars
     4. Constitutional concerns
        1. Critics argue that technologies infringe on individual privacy
        2. Law enforcement do not need a warrant when using surveillance technologies that record short periods of time in public
  7. Cell phones and the Fourth Amendment
     1. Tracking cell phones
        1. Courts must decide whether the Fourth Amendment requires a warrant for police to use cell phone records to track a suspect
        2. StingRay device used by the FBI and local departments to carry out warrantless searches on cell phone data
     2. Searching cell phones
        1. In 2014, the Supreme Court unanimously ruled that officers do need a warrant to search the contents of cell phones belonging to suspects they have just arrested.

1. **Stops and Frisks**

**Learning Objective 6:** Distinguish between a stop and a frisk, and indicate the importance of the case *Terry v. Ohio*

* 1. The elusive definition of reasonable suspicion
     1. *Terry v. Ohio* 
        1. The precedent for the definition of a “reasonable” suspicion in stop-and-frisk situations was establish in *Terry v. Ohio* (1968).
     2. The “totality of the circumstances” test
        1. The Supreme Court has ruled that an officer must have “specific and articulable facts” to make a stop
  2. A stop
     1. The terms stop and frisk are often used in concert, but they describe two separate acts.
        1. A stop is a brief detention of a person by law enforcement agents for questioning.
        2. There are limits to the extent police can detain someone who has been stopped.
  3. A frisk
     1. A frisk is a pat down or minimal search by police to discover weapons
     2. A frisk does not necessarily follow a stop
  4. Race and reasonable suspicion
     1. Racial profiling
        1. If a police officer can provide a valid reason for a stop, any racial motivation is often legally irrelevant
        2. However, racial profiling can leave police departments open for lawsuits
     2. Immigration law and profiling
        1. Arizona law S.B. 1070 requires state and local police officers to check the immigration statues of someone they have a reasonable suspicion is in the country illegally
        2. Officers can inquire about immigration status only after a suspect has been stopped for another reason

1. **Arrests**

**Learning Objective 7:** List the four elements that must be present for an to take place

* 1. Elements of an arrest
     1. The state of being under arrest is dependent not only on the actions of the law enforcement officers but also on the perception of the suspect
     2. Four elements are necessary for an arrest to take place:
        1. The intent to arrest
        2. The authority to arrest
        3. Seizure or detention
        4. The understanding of the person that he or she has been arrested
  2. Arrests with a warrant
     1. When law enforcement officers have established probable cause to arrest an individual who is not in police custody, they obtain an arrest warrant for that person
        1. An arrest warrant contains information such as the name of the person suspected and the crime he or she is suspected of having committed
        2. Judges or magistrates issue arrest warrants after determining that the law enforcement officers have indeed established probable cause
     2. Entering a dwelling
        1. An arrest warrant does not give law enforcement officers the authority to enter a dwelling without first announcing themselves
           1. Police officers must be known and announce their identity and purpose before entering a dwelling
        2. announce themselves
           1. Suspect is armed and poses a strong threat of violence to the officers or others inside the dwelling
           2. Persons inside the dwelling are in the process of destroying evidence or escaping because of the presence of the police
           3. A felony is being committed at the time the officers enter
     3. The waiting period
        1. *Hudson v. Michigan* (2006) weakened the practical impact of “knock and announce” by holding that an improper “knock and announce” is not unreasonable enough to provide defendants with a “get-out-of-jail-free card” by disqualifying evidence uncovered on the basis of a valid search warrant.
  3. Arrests without a warrant
     1. Officers can make a warrantless arrest if:
        1. The offense is committed in the presence of the officer
        2. The officer has knowledge that a crime has been committed and probable cause to believe the crime was committed by a particular suspect
        3. The time lost in obtaining a warrant would allow the suspect to escape or destroy evidence, and the officer has probable cause to make an arrest
     2. When exigent circumstances do not exist and the suspect has not given consent to enter a dwelling, officers cannot force themselves in to make a warrantless arrest, including the homes of third parties

1. **The Interrogation Process and Miranda**

**Learning Objective 8:** Explain why the U.S. Supreme Court established the *Miranda* warnings

**Learning Objective 9:** Indicate situations in which a warning is unnecessary

* 1. The legal basis for *Miranda*
     1. Fifth Amendment guarantees protection against self-incrimination
     2. Setting the stage for *Miranda*
        1. Supreme Court first ruled that a confession could not be physically coerced in a 1936 case concerning a defendant who was beaten and whipped until confessing to a murder
        2. In 1964, the Court recognized that the accused’s due process rights should be protected during interrogation (*Escobedo v. Illinois*)
     3. The *Miranda* Case
        1. Introduced concept of *inherent coercion*—that even if a police officer does not lay a hand on the suspect, the general atmosphere of an interrogation is in and of itself coercive
        2. Most concerned about the treatment of suspects during interrogation
        3. Court ruled that every suspect needed protection from coercion, not just those who had been physically abused
  2. When a *Miranda* warning is required
     1. Applies generally only when a suspect is in custody
        1. Custody is defined as an arrest or a situation in which a reasonable person would not feel free to leave
        2. Custodial interrogation occurs when a suspect is under arrest or is deprived of his or her freedom in a significant manner and questions are being asked of him/her.
        3. *Miranda* warning is only required before a custodial interrogation takes place
  3. When a *Miranda* warning is not required
     1. A *Miranda* warning is not necessary in a number of situations
        1. When police do not ask the suspect any questions that are testimonial in nature
        2. When the police have not focused on a suspect and are questioning witnesses at the scene of the crime
        3. When a person volunteers information before the police have asked a question
        4. When the suspect has given a private statement to a friend or some other acquaintance
        5. During a stop and risk, when no arrest has been made
        6. During a traffic stop
     2. Waiving *Miranda*
        1. To ensure that a suspect’s rights are upheld, prosecutors are required to prove that a suspect “knowingly and intelligently” waived his/her rights
           1. Do you understand your rights?
           2. Knowing your rights, are you willing to talk to another law enforcement officer or me?
     3. Clear intent
        1. The suspect must be absolutely clear about his or her intention to stop questioning or have a lawyer
           1. *Davis v United States* (1994)
  4. The weakening of *Miranda*
     1. In 2004 case, the Supreme Court found that *Miranda* warnings are merely prophylactic—only intended to prevent violations of the Fifth Amendment
  5. False confessions
     1. About 30 percent of wrongful convictions overturned by DNA evidence were at least partially the result of false confessions.
     2. The three types of false confessions are voluntary, internalized, and compliant.
        1. The Reid Technique is premised on assumption that all interrogation subjects are guilty.
           1. Pressure points
     3. Recording confessions
        1. Nearly 900 law enforcement agencies, including the FBI and DEA, regularly record police interviews, particularly as part of felony investigations

1. **The Identification Process**

**Learning Objective 10: List the three basic types of police identification**

* 1. Essential procedures
     1. Three basic types of identification procedures:
        1. Showups
        2. Photo arrays
        3. Lineups
     2. The Sixth Amendment right to counsel does not apply during showups and arrays
     3. Nontestimonial evidence:
        1. Booking procedures
        2. Voice and handwriting samples
        3. Blood draws from drunk drivers