Lecture Notes

# Chapter 11: Investigations and Evidence

## Annotated Chapter Outline

1. Searches and Seizures
   1. The founders recognized the importance of physical evidence to the criminal process, but they also understood that people’s rights could be abused by overzealous law enforcement efforts to obtain such evidence.
   2. The Fourth Amendment contains two provisions, the first stating the basic right against unreasonable searches and seizures, and the second detailing the requirements for search warrants.
   3. The amendment does not stop police from searching and seizing; it simply outlaws such activities as are deemed “unreasonable.”
   4. What Is a Search?
      1. *Hester v. United States (1924)*
         1. The Court reviewed a conviction for possession of bootleg whiskey during Prohibition.
         2. Hester claimed that the gallon jug of moonshine he dropped while fleeing was the product of an illegal search, but the justices ruled that the whiskey was not obtained by any kind of search at all.
         3. Officers had only picked up what Hester had left behind for anyone to see.
      2. ***Olmstead v. United States (1928)***
         1. Federal agents had reason to believe that Roy Olmstead and others were importing and selling alcohol in violation of the National Prohibition Act.
         2. The agents, without first obtaining a search warrant, placed wiretaps on Olmstead’s telephone lines without setting foot on Olmstead’s property.
         3. Olmstead alleged a violation of the Fourth Amendment.
         4. The Court decided in favor of the government, ruling that the Fourth Amendment did not protect Olmstead’s conversations because it covered only searches of “material things—the person, the house, his papers or his effects.”
      3. *Katz v. United States (1967)*
         1. The Court treated the conflict between the need of the people to be secure against unwanted government intrusions and law enforcement’s need to have effective weapons to combat crime.
         2. The justices concluded that the Olmstead decision had misinterpreted the Fourth Amendment by placing not enough emphasis on the “right of the people.”
         3. The Court changed its interpretation of the Fourth Amendment by focusing on individual privacy rather than on the physical penetration of a person’s constitutionally protected space.
      4. *United States v. Knotts (1983)*
         1. The justices unanimously ruled that it was not a search when the police used an electronic transmitter to follow the transportation of chemicals used to manufacture illegal drugs.
         2. It invaded no more privacy than if the police had surveilled the suspect by following him in a car, something that surely would not be labeled as a search.
      5. *California v. Ciraolo (1986) and Dow Chemical v. United States (1986)*
         1. The justices split on the question of whether flying over private property to observe illegal activity qualified as a search.
         2. By identical 5–4 votes, the Court ruled that these actions did not violate a reasonable expectation of privacy; property owners know that their property can be observed from the air.
      6. ***Kyllo v. United States (2001)***
         1. The Court ruled that the use of thermal imaging technology to measure the heat emanating from a home qualified as a search.
         2. Even though officers did not physically enter Kyllo’s residence, they were able to gather evidence about activity within his home through the use of modern technology.
         3. The government therefore had intruded where Kyllo had a reasonable expectation of privacy.
      7. *Florida v. Jardines (2013)*
         1. This case involved an age-old method of gathering evidence, the sniff of a police dog.
         2. The majority held that, by trespassing, the police had conducted a search in violation of the Fourth Amendment.
         3. Merely coming to a home’s entrance is not, by itself, a trespass; people anticipate that various individuals will come to their front doors for one reason or another.
         4. They do not expect, however, that visitors will arrive with a drug-sniffing dog to help gather incriminating evidence.
      8. *United States v. Jones (2012)*
         1. This case presented the question of whether placing a GPS tracking device on the automobile of a suspected drug dealer qualified as a search.
         2. In a 9–0 decision the justices ruled that use of the GPS device was, in fact, a search.
         3. In tying the decision to a protection against trespass, however, the Court was not turning its back on *Katz*.
      9. *Carpenter v. United States (2018)*
         1. This case raises questions about the ease with which law enforcement can acquire large amounts of digital data.
         2. The digital records belonged to a cell phone carrier, not the person being investigated.
         3. For Chief Justice Roberts, obtaining the cell site data, even from a third party, was too invasive of the expectation of privacy—it was “detailed, encyclopedic, and effortlessly compiled”—and therefore qualified as a search.
         4. The four dissenters each took a different tack in answering Roberts’s opinion.
   5. When Is a Search Reasonable?
      1. One of the problematic hurdles for the state to overcome in obtaining a search warrant is establishing probable cause.
      2. *Brinegar v. United States (1949)*
         1. The Supreme Court explained that when police, or even judges, deal “with probable cause . . . as the very name implies, [they] deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.”
         2. Under some conditions, police clearly have probable cause to believe that crimes have been committed.
         3. Much police work, however, is not so simple.
      3. *Aguilar v. Texas (1964)* and *Spinelli v. United States (1969)*
         1. The Supreme Court imposed a test for the use of informants in establishing probable cause.
         2. A police officer had to explain reliably both why the individual was credible and how the individual came to possess the information given to the police.
      4. *Illinois v. Gates (1983)*
         1. The totality-of-the-circumstances standard clearly facilitates police efforts to obtain search warrants, since it abandons any reliance on hard and fast rules for establishing probable cause.
         2. Such flexibility notwithstanding, the Fourth Amendment is still very definite about what the warrant must contain.
         3. At the same time, the Court has tried to allow its abstract legal doctrines to be informed by the practical realities of law enforcement.
      5. *Terry v. Ohio (1968)*
         1. This case offers flexibility to police when investigating possible crimes.
         2. If an individual exhibits suspicious behavior that would lead a law enforcement official reasonably to suspect that criminality is occurring or is about to occur, the officer can detain the person to investigate.
         3. The officer may also conduct a pat-down search of the person’s outer clothing to search for weapons, provided there is cause to believe the person may be armed and currently dangerous.
         4. *Terry* suggests that, even though the Court might be concerned about potential abuses by law enforcement officials—and therefore require warrants—the justices still recognize that police officers acting in good faith will encounter certain situations where obtaining a warrant might be problematic.
      6. ***Carroll v. United States (1925)***
         1. The Court held that automobiles do not deserve the same degree of protection as people and homes.
         2. In general, the Court has given the police broad authority to search cars without warrants because:
            1. Cars are mobile, and thus evidence can quickly be removed from the area under investigation.
            2. Automobile windows allow outsiders to look in, and thus drivers have a lower expectation of privacy inside a car than they do in their homes.
            3. The government has a pervasive interest in regulating cars.
         3. The Court was confronted with many car search questions beginning in the 1970s.
      7. *Safford Unified School District #1 v. Redding (2009)*
         1. This case provides a useful illustration of the Court’s sensitivity to protecting Fourth Amendment rights, even when there is a lower expectation of privacy.
         2. Savana Redding’s age and gender undoubtedly influenced the Court’s conclusion that her strip search was unreasonable.
         3. Outside the context of the public school setting, however, the justices have been more tolerant of such intrusive searches.
      8. ***Florence v. Board of Chosen Freeholders of the County of Burlington (2012)***
         1. The justices held that routine strip searches of incoming detainees at a county jail are constitutionally permissible even when the new inmate faces minor charges and has not yet been convicted.
         2. The majority reasoned that jail officials have ample justification to check newly arriving detainees for infectious diseases, weapons, and drugs and other contraband in order to secure the facility and protect other members of the inmate population.
      9. ***Birchfield v. North Dakota (2016)***
         1. The issue was the degree to which the Fourth Amendment restricts police attempts to determine the extent of impairment of a suspected drunk driver.
         2. The justices drew a sharp distinction between breath tests and blood tests.
         3. The blood test with its necessary puncture of the skin is much more intrusive than a breath test.
         4. Consequently, the justices held that a state may conduct warrantless breath tests, but that blood tests require a warrant.
      10. *Mitchell v. Wisconsin (2019)*
          1. The Court upheld a blood test for an unconscious motorist suspected of drunk driving.
   6. Enforcing the Fourth Amendment: The Exclusionary Rule
      1. ***Weeks v. United States (1914)***
         1. This case arose from a federal investigation into the activities of Fremont Weeks, who was suspected of illegally using the U.S. mail to transport lottery tickets.
         2. On two occasions, law enforcement officers searched Weeks’s residence without a warrant and carried off boxes of his papers and various personal items, a clear violation of search and seizure rules.
         3. Justice Day wrote: “If letters and private documents can thus be seized and held and used as evidence against a citizen accused of an offense, the protection of the Fourth Amendment declaring his right to be secure against such searches and seizures is of no value….”
         4. The Court, through Justice Day, created the exclusionary rule: judges must exclude from trial any evidence gathered in violation of the Fourth Amendment.
      2. ***Wolf v. Colorado (1949)***
         1. This case involved a Colorado physician who was suspected of performing illegal abortions.
         2. A deputy sheriff surreptitiously took Wolf’s appointment book and followed up on the names in it.
         3. Writing for the Court, Justice Felix Frankfurter agreed that the states had to obey the Fourth Amendment.
         4. The Court, however, refused to hold that the exclusionary rule was a necessary part of the Fourth Amendment.
         5. The rule, the Court said, was one method of enforcing search and seizure rights, but not the only one.
      3. *Mapp v. Ohio (1961)*
         1. Dollree Mapp’s successful appeal to the Supreme Court was a major accomplishment for those who supported increased protections for the criminally accused.
         2. Beyond Ms. Mapp’s victory, the application of the exclusionary rule to the states was a revolutionary decision of the Warren Court, not least because it accentuated the highly politicized nature of criminal law.
   7. Exceptions to the Exclusionary Rule
      1. *United States v. Leon (1984)*
         1. The Court endorsed the most significant of the proposed modifications to Mapp: the good faith exception to the exclusionary rule.
         2. Justice White’s opinion rests on the view that the purpose of the exclusionary rule is to serve as a deterrent against police misbehavior.
         3. When police act in good faith, as they did in this case, the punitive aspect of the exclusionary rule becomes irrelevant.
      2. *Hudson v. Michigan (2006)*
         1. The court approved the use of evidence gathered by police who entered a home without following proper procedures.
         2. *Hudson* joins a number of other cases that have established various exceptions to the exclusionary rule.
2. The Fifth Amendment and Self-Incrimination
   1. The Self-Incrimination Clause and Testimony
      1. A defendant in a criminal case cannot be compelled to take the witness stand to give testimony.
      2. Demanding that a defendant do so in many cases would force the defendant to make a choice between admitting guilt or committing perjury.
      3. If a criminal defendant refuses to take the witness stand, no implication of guilt may be drawn.
      4. The government is prohibited from coercing a person to testify.
      5. The right not to testify applies to any government trial or hearing.
   2. The Self-Incrimination Clause and Police Interrogations
      1. ***Brown v. Mississippi (1936)***
         1. Law enforcement officers, with the assistance of other racist citizens, stripped, whipped, hanged until near death, and otherwise physically tortured Black suspects to force them into confessing to a murder.
         2. Justice Charles Evans Hughes stated, “It would be difficult to conceive of methods more revolting to the sense of justice than those taken to procure the confessions of these petitioners.”
      2. *Spano v. New York (1959)*
         1. The Court struck a blow against the use of psychological coercion.
         2. Vincent Joseph Spano, an Italian immigrant with little formal education and a history of emotional instability, was psychologically coerced by police into confessing to a murder.
         3. The justices unanimously agreed that the police violated Spano's rights: intense psychological coercion has no place in a modern criminal justice system.
      3. *Escobedo v. Illinois (1964)*
         1. Coercion, the majority concluded, may take place even if overt physical or psychological pressure is not present.
         2. When arrested and brought to the police station for questioning, a suspect does not stand on equal footing with law enforcement authorities.
         3. The presence of an attorney, the Court said, serves to guard against both obvious and subtle methods to coerce a confession from a suspect.
      4. *Miranda v. Arizona (1966)*
         1. The justices thought it too dangerous to ignore the likelihood that individuals would forgo their privilege against self-incrimination under intense and ultimately coercive police questioning.
         2. The solution, according to Chief Justice Warren’s majority opinion, was to require police to read the so-called *Miranda* warnings to suspects before any custodial interrogation takes place.
         3. Relying on *Miranda*, the Court has clarified the meaning of this decision, ruling that “custody” is any situation in which the suspect is under police control and may not freely leave—no matter where this may occur.
      5. ***Dickerson v. United States (2000)***
         1. At issue in this case was a federal statute declaring that the administration of Miranda warnings was not required for a confession to be valid but was just one of several elements that could be used to establish that a confession was given voluntarily.
         2. The Court reaffirmed the *Miranda* ruling.
         3. The majority held that *Miranda* rested firmly on the Fifth Amendment and Congress had no authority to alter by statute the Court’s interpretation.
      6. *Missouri v. Seibert (2004)*
         1. This case had its origins in an earlier Supreme Court decision, *Oregon v. Elstad (1985)*.
            1. Elstad involved a young burglary suspect who, while confronted by police in his home, blurted out incriminating comments before *Miranda* warnings could be given him.
            2. Police then transported Elstad to the police station, where he subsequently confessed after being provided Miranda warnings.
            3. The Supreme Court held that although Elstad’s in-home comments were not admissible, his police station confession—because it had been preceded by proper warnings—could be used.
         2. Suppose, though, that the police decide to employ the coercive process of interrogation from the outset, with the aim of securing a confession.
         3. With decisions such as *Dickerson* and *Seibert*, it appears that *Miranda*’s core principle is firmly in place and will not be overruled in the foreseeable future.