Criminal Investigation 12th edition Swanson Solutions Manual

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Chapter 2
Legal Aspects of Investigation

Learning Objectives

1. Explain the historical evolution of the laws of arrest and search and seizure from the Bill of Rights through the Fourteenth Amendment.
2. Describe and diagram the flow of constitutional rights to a defendant in a federal criminal trial and a defendant in a state criminal trial.
3. Outline the requirements of a valid arrest warrant.
4. Describe whether a "John Doe" arrest warrant is ever valid, and if so, under what circumstances.
5. Define probable cause.
6. Describe the evolution of the Exclusionary Rule.
7. Explain the "Silver Platter" doctrine.
8. Describe the reasons for a search incident to a lawful arrest.
9. Explain the limitations on the search of a motor vehicle incident to an arrest.
10. Describe at least five circumstances that justify a search under exigent circumstances.
11. Define the law enforcement policy issue that determines whether an inventory search is lawful.
12. Identify the primary requirement that makes a plain view seizure lawful.
13. Describe the limitations of a stop and frisk encounter.
14. Explain the circumstances that would cause application of the "Fruits of the Poisonous Tree" doctrine.

Introduction

All law enforcement officers, uniformed and plainclothes, conduct investigations. That is a statement of fact. There are, of course, differing concentrations of the investigative process and varying responsibilities among different units and different people.

Every law enforcement officer must have a working knowledge of the criminal laws that he or she is charged with enforcing. The greater the knowledge, the better overall job one can do as an investigator. This will become apparent throughout the remainder of this text. It will be reinforced over and over because the criminal law is the foundation on which every investigation is built.

Criminal law is divided into two major components that are interrelated yet serve different

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functions. The **substantive criminal law** deals with those elements that describe and define a crime. When an investigator has the needed proof to satisfy the particular elements of an offense, it can then be said that the crime did occur.

The other component of criminal law is **procedural criminal law**. It is not enough to know whether a crime has been committed. The investigator must understand what and how things need to be done with the people involved in an investigation, be it a victim, a witness, an informant, or a suspect. Thus, the procedural part of criminal law defines what can and cannot be done with or to people. Procedural law changes much more rapidly than does substantive criminal law. Procedural law deals with processes of arrest, search and seizure, interrogations, confessions, admissibility of evidence, and testifying in court. Some of these topics will be discussed in other portions of this book because they are relevant to specific subject matter covered. For example, legal matters dealing with interrogations and confessions are dealt with in detail in Chapter 5, Interviewing and Interrogation. Rules regarding admissibility of evidence and testifying in court round out the book in Chapter 22, "The Trial Process and The Investigator as a Witness" because they come into play when an investigation is completed and the case is submitted for prosecution. This chapter concerns the concepts of arrest and search and seizure. But, knowing the current case law on these topics is not enough. The student must also understand the historical constitutional principles.

Lecture Notes

I. The Bill of Rights and the States

An examination of constitutional history reveals that the powers yielded by the states were specifically granted for the purpose of establishing a national government. However, final ratification of the new constitution was delayed because some states wanted guarantees that individual liberties would be safeguarded from potential oppression by the newly formed government.

A. Evolution of the Fourteenth Amendment

The Civil War was over. Slavery had been abolished. The Thirteenth, Fourteenth, and Fifteenth Amendments were all designed to guarantee the freedoms and equal protection of the laws for all citizens, especially former slaves.

Interpretations given portions of the Fourteenth Amendment provide the foundation for much of modern criminal procedure in the United States today.

B. The Fourth Amendment

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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.

II. Arrest

There are a number of definitions of the term **arrest**. They range from "any interference with a person which, if not privileged, would constitute false imprisonment" to "interfering with the freedom of a person who is suspected of criminal conduct to the extent of taking him to the police station for some purpose" to "the taking of custody upon sufficient and proper evidence for the purpose of prosecution."

A. Ingredients of Arrest

There are three essential ingredients of an arrest:

- Intention
- Authority
- Custody

B. Arrest Distinguished from Detention

Detention is a temporary and limited interference with the freedom of a person for investigative purposes. Sometimes called investigative detention, it is also commonly referred to by law enforcement as a "street stop" or "field interrogation." In this instance, police are justified in employing "**stop-and-frisk**" measures—patting down the outer clothing—if they suspect that the person being questioned may be armed and their safety is in jeopardy.

C. Arrest Distinguished from Charging

Formally **charging** a suspect with a crime does not automatically flow from an arrest. Charging follows a decision to prosecute.

D. Arrest Procedures

The laws of most jurisdictions permit an arrest in at least three and sometimes four types of situations:

- When a warrant has been issued
- When a crime is committed in the presence of an arresting officer

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- When an officer has probable cause to believe that the suspect being arrested has committed a felony
- In statutorily created instances

E. The Arrest Warrant

The preferred method of effecting an arrest is under the authority of a warrant. An **arrest warrant** is a judicial order commanding the person to whom it is issued or some other person to arrest a particular individual and to bring that person promptly before a court to answer a criminal charge.

The warrant must be supported by an **affidavit**—a written statement of the information known to the officer that serves as the basis for the issuance of the warrant.

Any offense committed in the presence of an officer, whether felony or misdemeanor, can be the basis of an arrest without a warrant.

F. Probable Cause

The third major category in which a lawful arrest is generally permitted involves offenses not committed in the officer's presence and for which a warrant has not been issued. One acceptable definition of **probable cause** is that it is more than suspicion but less than actual knowledge. Mere suspicion is not enough to justify an arrest; there must be supporting facts and circumstances.

Certain factors may help to decide the existence of probable cause. The most common is the personal knowledge of the officer/investigator. The investigator must be able to establish the reliability of the information and the informant by indicating the length of time the investigator has known or dealt with the informant, the general character and reputation of the informant, the number of tips received from the informant in the past, the accuracy of previous information, whether the informant is paid for the information, and the informant's motives for volunteering the information.

III. Search and Seizure

The evolution of the law of **search and seizure** illustrates the relationship described earlier between federal and state court systems and between the Bill of Rights and its application to the states through the due process clause of the Fourteenth Amendment.

A. Legal Searches and Seizures

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As is true for arrests, the Fourth Amendment also recognizes searches and seizures only by government agents under the authority of a warrant. The United States Supreme Court recognizes judicially created exceptions.

B. Search with a Warrant

A **search warrant** is a written order, in the name of the state, signed by a judicial officer, exercising proper authority, and directing a law enforcement officer to search for specific property and bring it before the court. A warrant to search must be based upon probable cause.

C. Search with Consent

One of the most common situations arising today is when a uniformed officer, in encountering a citizen during a traffic stop or other routine activity, asks the person if he/she has any weapons or drugs on his/her person or in the vehicle. Sometimes the person says yes, and that might lead to an immediate arrest. Often, the person says no, and the officer may then ask if he/she can search the person and/or the vehicle. If the person gives affirmative consent, the search may be conducted.

If the person denies consent, which he/she has the right to do, no search may be made unless there is probable cause to conduct a search under one of the other exceptions to the warrant requirement. A refusal to allow a search, standing alone, does not constitute probable cause to justify any further action.

D. Search Incident to Arrest

The courts have regularly recognized the right of law enforcement officers to search people who have been arrested without a warrant. Such searches are justified for officer safety and to preserve evidence.

E. Search of a Motor Vehicle

The search of a motor vehicle, sometimes referred to as the automobile exception to the requirement that a search be conducted with a warrant, really involves two distinct legal issues under modern law.

The first can be traced back to a 1925 Supreme Court case. In *Carroll v. United States*, the Court created the “moveable vehicle” rule. In *Chambers v. Maroney,* a service station was

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robbed by two armed men. The Supreme Court approved of the search under the motor vehicle exception. The motor vehicle exception is still very viable. In *Maryland v. Dyson*, the Supreme Court continued to follow the ruling in *Carroll*.

The second issue involves the search of a vehicle incident to a lawful arrest.

F. Emergency (Exigent Circumstances)

The **exigent circumstances** exception recognizes that a warrantless entry by law enforcement officials may be legal when there is a compelling need for official action and no time to get a warrant.

Law enforcement agencies have not only the right, but also the obligation to inventory property taken from a person arrested. The inventory is done for the purpose of protecting the property of the person arrested and documenting what was found with a receipt given to the person arrested.

H. Plain View Seizures

If an investigator/officer is lawfully in a place and sees contraband or evidence in plain view, the investigator may seize the evidence and it will be admissible.

I. Stop and Frisk

Earlier in this chapter, the stop-and-frisk topic was mentioned to distinguish arrest from detention. There is, of course, a search and seizure aspect to this concept.

In *Terry v. Ohio*, the Court said that officer safety in a detention situation justifies the frisk. The Court held that an officer cannot frisk for illegal drugs but only for weapons. If, however, the officer feels something that she/he believes might be a weapon but turns out to be contraband, it is admissible. However, if it is readily apparent that the item is not a weapon, its seizure is unreasonable.

In the case of *Minnesota v. Dickerson*, the Supreme Court held that even though the detention and frisk were lawful under the Terry doctrine, it was obvious to the officer that the lump in the pocket was not a weapon. Therefore, the seizure of the cocaine was based on an unlawful search and should not have been admitted into evidence.

J. Fruits of the Poisonous Tree

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A final point is necessary to fully comprehend the consequences of an unreasonable search and seizure. The **fruits of the poisonous tree doctrine** provides that evidence obtained from an unreasonable search and seizure cannot be used as the basis for learning about or collecting new admissible evidence not known about before.

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