# Con crim Pro Cheat Sheet

by SweetDhee via cheatography.com/32943/cs/10724/

## What is a Search?

1. **Right Actor**

Government Actor. 14th Amendment

2. **Right Target**

*Verdugo-Uquidez*: Even non-citizen. Person with a meaningful connection with the U.S. Community

3. **Is it a search?**

Touchstone: Reasonableness

*ESSAY*

**4th Amendment**

-Protects Persons, Houses, Papers, Effects from unreasonable searches and seizures (Arbitrary Gov't Intrusion)
-4th Amdt applied to states via the 14th Amdt DP Clause

Issue:

Whether police collection of (evidence) is a search because if a search, need warrant first or presumptively unreasonable.

**Search**

Presumptively unreasonable in the absence of a warrant

**Two tests whether or not a search:**

1. *Jones*: Trespass plus intent to obtain information
2. *Katz* (Harlan's concurring opinion): Reasonable expectation of privacy subjectively held.

***Jones***

1. Trespass
2. Intent to obtain information

--Alito/Sotomayor concurrences

Highlight length of search and how intimate details of one's life are revealed when GPSed for 28 days, hence crossing line of REOP.

## What is a Search? (cont)

--Sotomayor concurrence

Phone records turn into a search because of the huge amount of data (life details) that could be revealed. Privacy shouldn't be treated as a discrete commodity.

***Katz***

1. Subjective Expectation of Privacy
2. Reasonable Expectation of Privacy

Katz majority, Maryland v. Smith

What one knowingly exposes to the public is not protected by the 4th amendment because no REOP in what one knowing exposes

**REOP Test**

1. Site ex) home
2. Steps taken to keep information private. Not knowingly exposing oneself to the public.
3. Degree of intrusion

2.No REOP when one is knowingly exposed to the public

1. *White v. Maryland*: in that knowingly giving telephone numbers dialed to phone company hence pen register capture of that data (metadata) is not a search because the phone co. is a 3rd party
->assumption of risk
->public
2. *Knotts*: which found knowing exposure of movements on public road to not constitute a search
----**Exception**----
3. *Karo*: found that beeper identifying movement of canister inside a home was a search

Curtilage

Kyllo

Thermal Imager is a

## What is a Search? (cont)

Jones

1. Trespass 2. Intent to obtain information is a search

4. **Is there a warrant?**

**Exclusionary Rule**

Bars the use of evidence gathered through an illegal search and seizure

## Warrant

1. Probable Cause

1. Reliability
2. Basis of Knowledge (1st Hand knowledge)

2. Particular description

3. Affidavit

4. Neutral/Detached Magistrate

Why?

Individualized Suspicion v. Arbitary classification of large groups

*Note:
-Dog certified at a dog training faciliitiy is enough to show probable cause
- Police affidavit is automatically reliable
- Police state of mind, reputation w/o facts is irrelevant to PC: cannot be Basis of Knowledge

## Warrant

WARRANT REQUIREMENTS

1. Neutral and Detached Magistrate
2. Probable Cause
3. Oath and Affirmation
4. Particularity of Description (what is seized and where)

**King** Probable Cause at home:

1. Knock and announce
2. Get a warrant
unless had exigent of circumstances

**Search Warrant**

1.



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## Warrant (cont)

**Arrest Warrant**(Payton)

1. Must have reason to believe resident is home
2.No unconsenual entry *unless*

**Exceptions**:

1. Hot pursuit
2. Imminent destruction of evidence
3. Need to prevent a suspect's escape
4. Risk of danger to the police or to others

Excessive force

Reasonableness standard: deadly force only when immediate threat to police or others. Would a reasonable police officer under same or similar circumstances.

**Richards**

1. When at a home, must knock and announce rule when executing a search or arrest warrant.
2. However, they may dispense with knock and announce if Police must have reasonable suspicion (belief) that knock and announce at home would be dangerous or futile or inhibit effective investigation.
3. Even if no K&A and no rsbl suspicon: no remedy anyway

**Ybarra** Seizure of persons during warranted searches

1. Probable cause
2. Exigent Circumstances

Police created exigency

Engage in or threatening to engage ina 4th amdt violation

Automobile Search

1. PC
2. SITLA (PC-less)
3. Inventory search

## Warrant (cont)

***Exceptions***

1. SITLA
2. Automobile Exception
3. PC of Evidence of Crime inside Car/ Exigent Circumstances
4. Inventory Search 5. Plain view Doctrine

Plain View Doctrine

1. Observe from Lawful location (with warrant/PC)
2. Immediately apparent contraband or incriminatory nature (=Probable Cause)
3. Lawful access (sidewalk v. being in the house)--Scope of the Search

Payton:
Steagold
**McArthur**: Police can "seize" premises or thing (or maybe even a person) while waiting for a warrant? Yes, if reasonable and PC

## Terry Stop

Scale of Individualized Suspicion

Consent (0)I-----BID----PC-----I (100)

Consensual Police Encounter (CPE)

Yes-Taking personal items, No- Come with/accompany police, Ability to say no

Factors:

1. Blocking door
2. Asking for permission. 3. Would a reasonable person know they could decline search/seizure

Brief Investigatory Detention (BID)

1. Reasonable Suspicion "crime is afoot"
2. Reasonable Time it takes to diligently pursue a means of investigation that was likely to confirm or dispel their suspcions quickly
3.

Where is a seizure?

No longer in a public concourse

## Terry Stop (cont)

Reasonable Suspicion

1. Objective facts or circumstances
2. Hunch

3rd Party Informants

1. TOC
2. BOK + Credibility

Arrest

What is a seizure?

- Only by physical force or show of authority
- Only if in view of all the circumstances, a reaonable person would have believed that he was not free to leave

Show of authority

Hodari: Seizure requires that D yield/-submit to show of authority.

Illegal Seizure

If legal seizure

Must be based on reasonable suspicion

Ex) Fleeing from police in high crime area gives police reasonable suspicion



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