

Search and Seizure in the Digital Age

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Search and Seizure: Defined

The Fourth Amendment of the U.S. Constitution protects objects and locations against unwarranted search and seizure in the absence of an exception. The Fourth Amendment places limits of the power of law enforcement to make arrests, search people and their property, and seize contraband (such as illegal drugs or weapons). These limitations serve to protect the citizenry against heavy-handed police tactics and ensures the preservation of privacy. The Fourth Amendment of the U.S. Constitution reads as follows:

" The right of the people the be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant 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."

Objectively Reasonable Expectation of Privacy

The Fourth Amendment search-and-seizure provisions are primarily concerned with privacy. To protect this freedom, the Fourth Amendment bars "unreasonable" searches and seizures by local, state, or federal law enforcement. However, the Fourth Amendment is not a carte blanche restriction on the invasion of personal privacy. Police are permitted to search and seize property if doing so is legally reasonable. This means that law enforcement can supersede personal privacy rights, and subsequently search a person's body, home, out-building, vehicles, personal and business documents, bank account, or whatever else has been authorized by a judicial order. In order to conduct a search, the police must satisfy the following:

1. Law enforcement must have probable cause to believe that evidence of a crime will be discovered, and a judge issues a warrant.

OR

2. The particular circumstances of a situation justify the search without a warrant (such as when the police search a person's body upon being arrested).

The Fourth Amendment only protects citizens with a "legitimate expectation of privacy." In practice, this means that the thing being searched must belong to the defendant in order for the defendant to claim Fourth Amendment protection. The Amendment offers no protection because there is, by definition, no privacy issues being violated.

The U.S. Supreme Court has formulated a two-part test to determine whether a defendant had a legitimate expectation of privacy in the place or thing at the time of the search:

1. Does the Defendant actually expect some degree of privacy?

IF YES, THEN:

2. Is the Defendants expectation of privacy objectively reasonable (i.e. one that society writ large is willing to recognize)?

For example, if the cops find contraband that belongs to citizen A in the home of citizen B, then citizen A has no right to claim an expectation of privacy (because it is not citizen A's home). This means that police could conduct an unwarranted search of citizen B's property, and still admit any evidence seized in the otherwise illegal search against citizen A. On the other hand, doing something like installing hidden video cameras in a public restroom with the intent of spying on a drug deal would almost certainly violate the Fourth Amendment. This is because most people—including judges— hold an that there is an objectively reasonable social expectation of privacy when utilizing public restrooms.

A prime example of how the expectation of privacy doctrine is litigated is presented in the case *Bond v. U.S.*, 529 U.S. 334 (2000). The court held that a bus passenger had a legitimate expectation of privacy in an opaque carry-on bag positioned in the luggage rack above the passenger. The Court reasoned that the because law enforcement physically probed the exterior of the bag for evidence of contraband, their actions constituted a search subject to Fourth Amendment limitations.

If a court finds that an unreasonable search occurred, any evidence seized as a result of the improper search cannot be used as direct evidence against the defendant in a criminal prosecution. This principle is known as the "exclusionary rule," and it was first established by the U.S. Supreme court in 1961. While some critics claim that the

exclusionary rule unfairly “lets the criminal go free because the constable has erred;” others argue that police are less likely to conduct illegal searches if the resulting evidence cannot be used.

Moreover, not only is the evidence of improper search inadmissible in court, but so too is any additional evidence derived from the initial improperly acquired evidence. This principle is known as the “fruit of the poisonous tree” doctrine. The “tree” is the original evidence that the police illegally seize; the “fruit” is any second-generation products of the initial improper search. Under the doctrine, both tree and fruit are generally inadmissible at trial.

Virtual Privacy: Explained

In the landmark case of *Carpenter v. United States*, the U.S. Supreme court held that the warrantless acquisition of cell phone data violated the defendants Fourth Amendment rights. Chief Justice Roberts authored the majority opinion, acknowledging that the Fourth Amendment protects not only property interests, but also the reasonable expectation of privacy. While expectations of privacy are significantly diminished in this increasingly interconnected digital age, the court reasoned that tracking a person’s movements and location through extensive use of cell phone data is objectively unreasonable.

The Court declined to apply the “third party doctrine”—a principle that states that information disclosed to a third party carries no reasonable expectation of privacy—to cell phone data. The Court reasoned that the third-party doctrine applies strictly to voluntary disclosures, and while the average cell phone user may be aware that cell phone providers keep detailed logs, the information gathering occurs without any affirmative assent on the part of the user. Thus, the Supreme Court narrowly held that government needs a warrant to access cell phone data.

If you or someone you know has been charged with a crime, call [Wasatch Defense Lawyers!](#) Our team of tenacious attorneys have [extensive experience](#) litigating search-and-seizure issues and are well equipped to achieving the [best possible legal outcome](#). If the government has conducted an improper search, [Wasatch Defense Lawyers](#) will work tirelessly to exclude any and all illegally obtained evidence!