

## CRIMINAL PROCEDURE, 4<sup>th</sup> AMENDMENT

### ESSAY FRAMEWORK<sup>4</sup>

<b>MEMORY BOX<sup>5</sup> [MoE]</b>
<b>FOURTH AMENDMENT</b> 4 <sup>th</sup> Amendment, applicable to states through 14 <sup>th</sup> Amendment, protects public including defendant (D) if D has a [RUG] reasonable expectation of privacy from unreasonable search and seizure by government action.
<b>Motion to Exclude (Item/Arrest) [VE]</b> <b>Violation of 4<sup>th</sup> Amendment? [RUG V]</b> Reasonable expectation of privacy Unreasonable search and seizure Government action Thus violation of 4 <sup>th</sup> Amendment
<b>Exclusionary Rule<sup>6</sup> [S RED]</b> <b>Standing [PR]</b> Possessory property right Reasonable Expectation of Privacy
<b>REQUIREMENTS Valid Warrant [2PON]</b> Probable Cause Particularity Oath or affirmation Neutral and Detached Magistrate
<b>EXCEPTIONS to Warrant Requirement [CPE SIA BIA SW]</b> <b>Consent [KIV AT]</b> <b>Plain View [2PF]</b> <b>Exigent Circumstances [PHD E]</b> Protect public Hot Pursuit Destruction or loss of evidence Endanger police
<b>Stop and Frisk [Terry stop] [RSF]</b> Frisk – [RIF] for weapons ONLY Reasonable basis suspect armed Identification of contraband Further search
<b>Incident to Arrest</b> Lawful arrest [GT MAP] – first, Good faith delay Track ‘probable cause object’ to car Moving Lungespan Auto interior Protective Sweep
<b>Automobile Exception [RNS]</b> <b>Border Search [RING]</b> <b>Impoundment Inventory [T2P]</b>
<b>Administrative Inspections [AP]</b> Airline passengers Private homes and buildings
<b>Special Needs Searches [ID GPS]</b> Inventory search Drug testing Government employee’s desk and files Public school officials Search of probationer’s home
<b>Wiretapping [PCS]</b>
<b>DEFENSES that Invalidate Warrant [PIE]</b> <b>Probable Cause [F RFI]</b> Fruit from poisonous tree Reckless disregard for truth by police False statement, supporting affidavit <u>Insufficient probable cause</u> , w/o false statement
<b>Informant credibility [VIP]</b> Veracity – informant Informant’s basis for information Probable cause – suspect’s behavior
<b>Execution of warrant [NKGS]</b> No unreasonable delay Knock and announce mandate Good Faith Reliance Scope of search Particularity Exceed scope within home
<b>4<sup>th</sup> Amendment Post Trial Issues [AB 2DI 5P]</b>

## FOURTH AMENDMENT

### Motion to Exclude (Item/Arrest) [VE]<sup>7 8</sup>

- **Valid Search and Seizure [RUG V]** – 4<sup>th</sup> Amendment, applicable to states through 14<sup>th</sup> Amendment, protects public including defendant (D) if D has a reasonable expectation of privacy from unreasonable search and seizure by government action of D’s person, home, papers, and effects.
  - **Reasonable expectation of privacy<sup>9</sup>** – D must show a subjective expectation of privacy that society will recognize in one’s person, home, papers, and effects, based on totality of circumstances.
    - **Subjective expectation**
    - **Society’s perspective**
  - **Unreasonable search** – Failure to obtain a search warrant prior to the search and seizure.
  - **Government action [PAG]** – To be unlawful, D must show that search and seizure was conducted by government.
    - **Police**
    - **Arm of state**
    - **Government authorized act**
  - **Violation<sup>10</sup>** – Thus search is a 4<sup>th</sup> Amendment violation unless government can show a valid exception.
- **Exclusionary Rule [S RED]** – Police observation and seizure of any item is illegal unless accompanied by a valid warrant, or supported by an exception to warrant requirement. Evidence seized in violation of 4<sup>th</sup> Amendment will be excluded at trial, if D has standing and state has not met warrant requirement, nor has a valid exception.
  - **Standing<sup>11 12</sup> [PR]** – 4<sup>th</sup> Amendment standing is a personal right<sup>13</sup>, D must have
    - **Possessory right** in item searched, or
    - **Reasonable expectation of privacy**. See Supra.
  - **Requirements for Valid WARRANT<sup>14</sup> [2PON]**
    - **Probable Cause** – exists if it is more likely than not, based on totality of circumstances that
      - **Search warrant:** item described will be found at location described and are related to criminal activity involved
      - **Arrest warrant:** crime is about to be, is being, or was committed and D is involved.
    - **Particularity** – warrant must state with particularity places, things, and persons to be searched or seized.
    - **Oath or affirmation** – in good faith
    - **Neutral and detached magistrate** – Issuing magistrate must be neutral and detached, not an agent of police, and able to objectively examine police’s supporting affidavit.

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<sup>6</sup> Illegally obtained evidence is inadmissible in trial. (not for - grand jury, civil, parole, impeachment)

<sup>7</sup> Repeat for each item of evidence AND ARREST to be suppressed.

<sup>8</sup> Expect 4-5 search/seizure MBEs out of a total of 14 Crim Pro MCQs on the MBE.

<sup>9</sup> **Fact intensive** – requiring a balancing discussion.

**Privacy if:** legally parked auto, personal property in closed/locked containers on D or in presence of D – but NOT IN AUTO, police bug placed outside a phone booth, warrantless squeezing carry-on luggage in a bus, warrantless thermal-imaging of private home, locked curtilage.

**BUT NO Expectation of Privacy if:** Closed/locked containers inside auto, dog sniff inside auto, dog sniff of luggage in public places, beeper attached to auto, electronic tracking of auto location, non-testimonial evidence, open fields, garbage, unlocked curtilage, bank records, false confidences, conversation with police informant (with bug on person), police entering land w/ NO Trespassing signs, aerial mapping camera photos of a business curtilage, warrantless helicopter fly-over, warrantless recording of phone numbers dialed from particular phones, dwelling of person named in arrest warrant OR exigent circumstances, ANY dwelling where suspect is – IF BOTH search and arrest warrants OR arrest warrant + exigent circumstances.

<sup>10</sup> ALWAYS find a violation – such that Exclusionary Rule can be discussed.

<sup>11</sup> Standing is **HIGHLY TESTED**. 4<sup>th</sup> Amendment rights are PERSONAL RIGHTS that require standing. Thus D has NO standing to argue a 3<sup>rd</sup> party’s 4<sup>th</sup> Amendment rights violated during 3<sup>rd</sup> party’s confession or to exclude evidence illegally obtained as a result of 3<sup>rd</sup> party confession (fruit of poisonous tree). Alderman v US. Net effect is that ‘fruit of poisonous tree’ resulting from 3<sup>rd</sup> party coerced confession is admitted at trial.

<sup>12</sup> D’s testimony to assert standing can NOT be admitted be used against D at trial.

<sup>13</sup> Exceptions; vendors have been held to have standing to assert the constitutional rights other customers, and IF an ACCESSORY to the commission of a crime, D has standing to argue violation of a 3<sup>rd</sup> party when such violation would negate the underlying crime.

<sup>14</sup> Address if FP includes a warrant description – focus to warrant defects.

<sup>4</sup> Look for Valid Exceptions – Racehorse Exams/Follow Call OR chronological Order (Arrest => Trial).  
NO MAJORITY/MINORITY RULES

<sup>5</sup> **Memory Box** – denotes that portion of framework to memorize. Know it and use it to spot sub-issues.

**CRIMINAL PROCEDURE,  
4<sup>th</sup> AMENDMENT  
ESSAY FRAMEWORK  
CONTINUED**

- **EXCEPTIONS to Warrant Requirement**<sup>15 16</sup> [CPE SIA BIA SW]
  - **Consent**<sup>17</sup> [KIV AT] – D’s consent to a search or seizure must be knowingly, intelligent and voluntary under totality of circumstances.
    - **Knowingly** – adequate knowledge
    - **Intelligently** – reasoned and deliberate choice
    - **Voluntarily** – made freely. Consent is NOT voluntary if police make a ‘show of authority or misrepresent their authority to search’<sup>18</sup>.
      - **Coercion** – destroys ‘voluntariness’ of consent<sup>19</sup>
        - Tone of authority
        - Giving suspect orders
        - Touching suspect.
    - **Authority to Consent**
      - Cohabitant has authority to consent
      - Former cohabitant **if** police reasonably believe that person possesses common authority over dwelling
      - Hotel clerk has NO authority to consent
      - Landlord has NO authority to consent
      - Babysitter and visitor – must be given express permission by inhabitant to consent
    - **Totality of circumstances**
      - Government has burden of proof that consent is voluntary – but NO police warning of ‘right to refuse’ is required to establish voluntary consent<sup>20</sup>.
  - **Plain View**<sup>21</sup> [2PF] – Plain view exception allows warrantless seizure of items in plain view when police have probable cause and are lawfully present<sup>22</sup>.
    - **Police lawfully present**
      - **Reasonable suspicion**
      - **Probable cause**
    - **Plain view**
      - **Open fields**
    - **Further Search** – Police may conduct a further search if police identified a weapon or contraband upon plain feel.
      - **If Contraband**<sup>23</sup> **identified** DURING initial FRISK – contraband is admissible evidence.
      - **If contraband not identified** DURING initial FRISK – contraband becomes fruit of poison tree unless independent source basis to admit evidence.

4 <sup>th</sup> AMENDMENT ESSAY APPROACH	
1)	Based on CALL, Identify Evidence to be Suppressed
a)	Headnote – each specific evidence
2)	Identify Constitutional Power Source (4 <sup>th</sup> Amendment and 14 <sup>th</sup> Amendment)
3)	Analyze Search / Seizure Procedure
a)	Search
i)	With warrant
(1)	Validity of warrant
ii)	Without warrant
(1)	Apply all applicable exceptions
b)	Seizure
i)	Person
(1)	Arrest with warrant
(2)	Arrest without warrant
(a)	Apply all applicable exceptions
ii)	Evidence
(1)	Did <u>probable cause exist</u> for seizure?
4)	Apply Exclusionary Rule (WONG SUN)
a)	Argue D’s STANDING to invoke Exclusionary Rule
b)	Exceptions To Exclusionary Rule
i)	Dissipation of taint
ii)	Independent source rule
iii)	Inevitable discovery rule
c)	Analyze Exclusionary Rule Limitations
i)	Good faith reliance on
(1)	warrant or
(2)	unconstitutional statute

US Constitution, 4 <sup>th</sup> Amendment
The right of the people to be secure in their <u>persons, houses, papers, and effects</u> , against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath and affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

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<sup>15</sup> Court attempts to establish Brightline rule exceptions. Most tested exception – often tested with Automobile Exception

<sup>16</sup> Under 4<sup>th</sup> Amendment, police may make a valid arrest, with arrest warrant, or if probable cause for arrest based on reasonable belief that a crime has been committed and that arrestee committed it.

<sup>17</sup> ALWAYS ARGUE NO CONSENT

<sup>18</sup> *Bumper v. North Carolina* (1968)

<sup>19</sup> *US v. Mendenhall* (1980) – Look for false claim of authority by police.

<sup>20</sup> *Schneekloth v. Bustamonte* (1973)

<sup>21</sup> *Horton v. California* (1990)

<sup>22</sup> **KEY defense argument** = police cannot rely on their plain view search powers to obtain **lawful access to interior of home**. Must have warrant or consent – or contraband becomes fruit of poison tree unless independent source basis to admit evidence. *Horton v. California*.

<sup>23</sup> GUN, MARIJUANA = PC = potentially incriminating evidence of a crime, because it can be illegally possessed.