

Probable Cause, the Terry Stop, Exceptions to the Warrant Requirement, and Ariel Castro

Law enforcement sometimes uses 'reasonable suspicion' to harass citizens. Probable cause is the requisite for an arrest, yet it is the *activity leading up to the arrest* that could constitute harassment. Probable cause is "...defined by the Supreme Court as a fair probability- either that the person involved has committed a crime or that contraband or evidence, fruits, or implements of a crime are in a particularly described place" (Ferdico, Fradella & Totten, 2012, p. 20).

Reasonable suspicion allows a police officer, who **reasonably** believes that criminal activity is afoot, to approach the suspect(s), detain them for a brief investigation, and pat down the outside of their clothes for weapons and contraband. This is also called a Terry Stop pursuant to the *Terry v. Ohio* (1968) Supreme Court ruling. A Terry Stop is a brief detention of a person, by police, on reasonable suspicion of involvement in criminal activity- but short of probable cause to arrest.

Harassment is found when the officer does not have reasonable suspicion to merit a Terry Stop. However, even under such a circumstance, if an officer finds contraband then an arrest can be made. It is then up to the defendant to argue, in court through her or his attorney, that there was no reasonable suspicion to merit the Terry Stop.

Nearly *any* activity could be considered 'possible criminal activity', and this is the excuse to stop someone and pat them down (looking for contraband). For example: Is there anything inherently illegal about standing on a sidewalk? No. However, police may state that the person is a 'look-out' in a high crime area (and this is very much true). This is enough to have reasonable suspicion...and thus be a reasonable basis to conduct a Terry Stop.

Consent and **Plain Sight** are the two most used exceptions to the warrant requirement. The first explains itself. The second explains why police officers use a flashlight to peer into a car, during a vehicle approach, when conducting a traffic stop. This practice is for officer safety (primary concern) and officers are looking for contraband situated in plain sight. People are commonly foolish enough to leave contraband in plain view, such as drug paraphernalia (smoking devices) or weapons. Further, if an officer states that they 'detect the odor of cannabis' emanating from the vehicle, then the officer has automatic probable cause to search the car.

The Fourth Amendment protections for citizens are strong provided that the citizen is intelligent enough to **1. Not** consent to a search and **2. Keep** contraband out of plain sight.

The Ariel Castro incident could be perceived as bad policing. There was more than enough evidence and eye witnesses to meet the probable cause for a search warrant; neighbors had notified police about suspicious activity numerous times previous to the May 6, 2003 incident where the kidnapped women were discovered by the neighbor (who

was eating a Big Mac on his front porch...famously). Another exception to the warrant requirement is 'exigent circumstances'. This is when law enforcement may enter an otherwise private space if 1. Serious bodily injury or death could result to a person therein; or 2. In the pursuit of a fleeing dangerous felon (Ferdico, Fradella & Totten, 2012, p. 391). Thus, if law enforcement had heard screams or seen one of victims pounding against the door to get out of Castro's house (as the rescuer did), they could enter the residence without a warrant.

Another good example, to illustrate the use of exigent circumstances, is the following: When serving a warrant, police are supposed to 'knock and announce' their presence. The police do not have to 'knock and announce' if they reasonably believe that evidence will be destroyed (such as drugs).

There are numerous exceptions to the Exclusionary Rule. The one exception that I believe is 'unfair' is the 'good faith exception'. "Under the good faith exception, if a law enforcement officer acting with objective good faith obtains a warrant from a neutral and detached magistrate and acts within the scope of that warrant, evidence seized pursuant to that warrant will be admissible even if the warrant is later determined to be invalid" (Ferdico, Fradella & Totten, 2012, p. 85). Using this exception is a quick way to relieve law enforcement's burden because the illegal warrant, and execution, simply has to facially be 'in good faith'.

I find this about as unfair because it is a blanket exception to get illegally seized evidence into court. Further, the officer will always argue that he or she acted in good faith...so why even have a Fourth Amendment if there is a blanket exception that could easily be met?

The 'tail light' stop is often a pre-text stop i.e. it is a reason for law enforcement to conduct a traffic stop when they believe that there is criminal activity present. I saw this all the time as a Prosecutor; police would pull over cars for a dirty license plate, rolling stop, or a tail light out as a means to run the driver's license for a warrant check....and to get a look inside of the car. I have also witnessed police pulling over cars for 'too dark window tint'. Now, bear in mind, these stops rarely happen in middle-to-upper income areas; they were nearly exclusive to the poor areas of town. It is perfectly legal, though, and I had many hearings where the defense attorney challenged the nature of the initial stop. If the stop can be shown to be a pre-text then any subsequent arrest and evidence is suppressed as **Fruit of the Poisonous Tree**.

Reference:

Ferdico, J., Fradella, H., & Totten, C. (2012). *Criminal procedure for the criminal justice professional*. (11th ed.). Belmont, CA: Wadsworth, Cengage Learning.

