

The Fourth Amendment

- Protects the people's right to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures
- Requires that warrants to search places and to seize people and things must be supported by probable cause and must be issued on information given under oath or affirmation

Terry v. Ohio (1968), page 249

- Stops and frisks are subject to Fourth Amendment
- Conduct to be tested by general proscription against unreasonable searches and seizures, not probable cause and warrant
- Balance between governmental interest versus individual's right to be left alone
 - Camara v. Municipal Court (1967)
- Objective standard used to judge officer's actions

Terry v. Ohio (1968), page 249

- Court's review of facts in this case
 - Officer's actions in light of his experience
- Court did not discuss right to make forcible stop
 - Justice Harlan's concurring opinion

Balancing Test Under Fourth Amendment

- Government interest served by search or seizure
- Degree to which search or seizure advances government interest
- Severity of interference with person's liberty

Davis v. Mississippi (1969), page 272

- Defendant taken to police station for fingerprinting without probable cause to arrest
- Detention for taking fingerprints is subject to Fourth Amendment
- *Dicta*: Detention for fingerprinting without probable cause to arrest may be permissible when authorized by judicial official
 - Nontestimonial identification procedure in North Carolina

Adams v. Williams (1972), page 249

- Brief investigative forcible stop is permitted under *Terry v. Ohio*
 - Recognizing forcible stop for drugs, not just violent crime as in *Terry*
- Informant's information may justify stop
- Information was sufficient in this case
- Frisk was permissible

Vehicle Stops

- U.S. v. Brignoni-Ponce (1975), page 249
 - *Terry* permits stopping vehicle based on reasonable suspicion, but no reasonable suspicion in this case
 - Reasonable suspicion to be considered in light of officer's experience
 - But apparent Mexican ancestry by itself was insufficient in this case
- But State v. Wilson, page 261, requires probable cause to stop vehicle for readily observed traffic violation—speeding, running red light, seat belt
 - State v. Villeda, 165 N.C. App. 431 (2004)

Vehicle Stops

- Recent cases since ASI published
- Reasonable suspicion existed to stop vehicle
 - State v. Blackstock, 165 N.C. App. 50 (2004)
 - Loitering at closed shopping center late at night in high crime area and then get in vehicle
 - State v. Martinez, 158 N.C. App. 105 (2003)
 - Pedestrian late at night near mobile home park ran upon seeing officer
 - Later, officer stops same person driving away in vehicle parked in mobile home park

Pennsylvania v. Mimms (1977), page 271

- Officer has automatic authority to order driver out of vehicle stopped for traffic violation
- Court balances officer's safety versus additional intrusion on stopped motorist
- May passenger be ordered out of vehicle?

Delaware v. Prouse (1979), p. 249

- Random stop of car on highway for license or registration is unconstitutional without reasonable suspicion
- Balancing test: discretionary spot check is insufficiently productive to justify intrusion on privacy interests
- Court appears to approve roadblock type license checks and weight station inspections

Dunaway v. New York (1979), page 272

- Suspect taken from home to police station for questioning without probable cause violated Fourth Amendment
 - Reasonable suspicion is insufficient even if suspect is not “arrested”

Brown v. Texas (1979), page 249

- Reasonable suspicion must be based on articulable facts
- Drug stop was not supported by reasonable suspicion
 - Situation “looked suspicious”
 - Court noted difference when officer is trained and experienced

U.S. v. Mendenhall (1980), page 264

- First of several airport drug cases
- Definition of seizure in two-Justice opinion
 - “Reasonable person” would have believed that he or she was not free to leave
 - Definition later adopted in *Florida v. Royer* and modified in *California v. Hodari D.*
- No seizure in this case, or if it was a seizure, it was supported by reasonable suspicion
 - Officers’ training and experience as drug agents

Reid v. Georgia (1980), page 265

- Airport drug case
- Decision based on assumption that officers had seized defendant
 - Officer's approaching person outside airport terminal may not have been a seizure
- No reasonable suspicion to seize defendant

U.S. v. Cortez (1981), page 249

- Border Patrol stop was based on reasonable suspicion
- Totality of circumstances in determining whether there was reasonable suspicion
 - Must be particularized and objective basis for reasonable suspicion
 - Evidence to be considered not in terms of library analysis by scholars, but as understood by those versed in field of law enforcement

Michigan v. Summers (1981), page 278

- Execution of search warrant to search home for drugs
- Automatic authority to detain occupants of home while conducting search, even if occupants outside home when officers arrive
- Government interest in detaining occupants outweighs occupants' privacy interest
 - Prevent flight if drugs are found
 - Minimize risk of harm to officers & occupants
 - Facilitate orderly execution of search

Florida v. Royer (1983), page 265

- Airport drug stop
- Court adopts *Mendenhall* definition of “seizure”
- Officers seized defendant in this case
- Officers had reasonable suspicion to seize defendant
- Movement of defendant exceeded scope of investigative stop, and therefore probable cause was required
- Using least intrusive means to dispel officer’s suspicion
 - But see later case of *United States v. Sharpe*

Scope of investigative stop (pp. 30; 268-71)

- Using force
 - Drawing weapons
 - Using handcuffs
- Questioning of suspect during investigative stop
 - *Miranda* warnings are generally not required
 - p. 30; State v. Benjamin, n. 163, p. 55
 - State v. Sutton, 167 N.C. App. 242 (2004)
 - State v. Martinez, 158 N.C. App. 105 (2003)

Scope of investigative stop (pp. 30; 268-71)

- Questioning about matters unrelated to traffic stop, such as drugs and weapons
 - Shabazz, n. 163, page 55
 - Muehler v. Mena, 125 S. Ct. 1465 (2005)
 - No Fourth Amendment violation when questioning did not prolong detention during search warrant execution

Scope of investigative stop (pp. 30; 268-71)

- Moving suspect for safety or security reasons
 - Florida v. Royer, discussed in n. 164, p. 55
 - Return suspect to crime scene
 - But may not take suspect to law enforcement facility
- Using identification procedures, such as one-on-one showup (see also pp. 212; 487-89)
- Check DCI for outstanding warrants, etc.
- During traffic stop, checking driver's license, registration, rental agreement, and DCI (p. 30; n. 169, p. 55)

U.S. v. Place (1983), pages 322, 347

- Airport drug seizure
- Application of *Terry* to seizure of luggage with reasonable suspicion of drugs inside
- Seizure of luggage for 90 minutes to await drug dog was beyond scope of seizure based on reasonable suspicion
- Dicta: using drug-sniffing dog to examine exterior of luggage is not search under Fourth Amendment

Michigan v. Long (1983), pages 93, 366

- Application of *Terry* to search car for weapons with reasonable suspicion: “car frisk”
 - Facts in this case supported search
- State v. Edwards, 164 N.C. App. 130 (2004)
 - Suspect stopped while driving vehicle after report of rape committed with handgun
 - Suspect placed both hands underneath seat and jumped out of vehicle

INS v. Delgado (1984), p. 275

- Immigration survey at factory: agents posted at entrances
- Not a seizure under Fourth Amendment
- Later case, *Florida v. Bostick*, on bus boardings

Florida v. Rodriguez (1984), page 265

- Airport drug stop
- Assuming seizure occurred, there was reasonable suspicion to stop defendant
- Officer's special training and defendant's evasion of officer

U.S. v. Hensley (1985), page 250

- Application of *Terry* to stop of vehicle based on wanted flyer (for robbery) from another jurisdiction
- Reasonable suspicion to stop vehicle
- Government's interest in solving crimes

New Jersey v. T.L.O. (1985), page 250

- Searches of students by public school officials: neither search warrant nor probable cause required
- Same standard when school resource officer is involved in detention or search or other officers act in conjunction with school official
 - In re D.D., page 250
 - In re Murray, page 250
 - In re J.F.M., ___ N.C. App. ___, 607 S.E.2d 304 (18 January 2005)
 - In re S.W., ___ N.C. App. ___, 614 S.E.2d 424 (5 July 2005)

U.S. v. Sharpe (1985), page 250

- Drug stop of vehicle
- Reasonable suspicion supported stop
 - Tandem driving of two suspect vehicles
 - Pickup with covered camper shell
 - Evasive driving
- Length of investigative stop (20 minutes) was proper in this case (pages 29; 266-67)
 - Officers acted diligently
 - Delay due partly to suspect's evasive action
 - Courts should not indulge in second-guessing officers

Hayes v. Florida (1985), page 272

- Similar ruling to *Davis v. Mississippi*
- Court indicates that, with reasonable suspicion, may fingerprint suspect at place where detained

Michigan v. Chesternut (1988), page 274

- Officers in patrol car followed suspect who was walking and began to run and threw object
- No seizure, based on *Florida v. Royer* definition of seizure
- Officers did not order suspect to stop
 - See later case of *California v. Hodari D.*

Brower v. County of Inyo (1989), page 274

- Fleeing suspect crashes into police roadblock
- Seizure includes government's termination of person's movement by means intentionally applied
 - No seizure if defendant runs off road and hits tree

U.S. v. Sokolow (1989), page 264

- Airport drug stop
- Reasonable suspicion is based on totality of circumstances
 - Consideration of drug profile
 - “Innocent” facts
 - See also State v. Bonds, 139 N.C. App. 627 (p. 255)
- Decision when to stop suspect is not subject to using least intrusive means
 - Least intrusive means applies only to length of stop

Factors in Determining Reasonable Suspicion, page 20

- Officer's observations in light of officer's training and experience
- Information received from others
- Time of day or night
- High-crime area?
- Suspect's location to criminal activity
- Suspect's reaction to officer; Illinois v. Wardlow (2000), page 251
- Officer's knowledge of suspect's past
- Suspect's flight from crime scene
- Suspect's matching profile of criminal behavior

Alabama v. White (1990), page 251

- Reasonable suspicion to make investigative stop vehicle for drugs
- Anonymous telephone tip
 - Amount of detail in tip
- Anonymous caller's prediction of future events
- Anonymous information and law enforcement corroboration
 - “Sufficient indicia of reliability”
 - No corroboration of anonymous call
 - State v. McArn, 159 N.C. App. 209 (2003)

Anonymous Information and Reasonable Suspicion

- Knowledge of the source's background
 - Citizen informant
- Basis of source's knowledge
 - Direct observation?
- Amount of detail given
- Reporting past or present criminal activity
- Prediction of future behavior

Anonymous Information and Reasonable Suspicion

- Seriousness of offense: recent violent acts and DWI versus merely possessing guns or drugs
- Need for immediate law enforcement response
- U.S. v. Wheat, (8th Cir. 2001), page 254
 - Anonymous 911 call about current observation of reckless driving; sufficient to stop vehicle
 - State v. Golotta, 837 A.2d 359 (N.J. 2003) (similar ruling)

Michigan Dept. of State Police v. Sitz (1990), page 278

- DWI roadblock plan was reasonable
- Balancing test

Seizure of a Person

Levels of officer's interaction with a person

- Interaction that does not constitute seizure
- Initial seizure at lawful checkpoint that does not require reasonable suspicion
- Seizure that constitutes investigatory stop requiring reasonable suspicion
- Seizure that constitutes arrest requiring probable cause

Seizure of a Person

- Definition of a seizure: when a reasonable person would have believed that he or she was not “free to leave”
 - Later modification of definition under *California v. Hodari D.* (1991) and *Florida v. Bostick* (1991)

California v. Hodari D. (1991), page 273

- Officer chasing suspect, suspect drops object, and officer tackles suspect
- “Seizure” redefined
- Definition of seizure
 - Applying actual physical force to suspect, *or*
 - Suspect submitting to officer’s “show of authority”
- State v. Leach, 166 N.C. App. 711 (2004): cocaine thrown from vehicle during high speed chase

Florida v. Bostick (1991), page 273

- Officers boarding bus to ask consent to search for drugs
- Passengers are not automatically seized because officers boarded bus
- Court rejects “free to leave” standard in deciding this case
- Test: reasonable person would feel free to decline officer’s requests or otherwise terminate encounter
- “Reasonable person” standard presupposes an innocent person

Minnesota v. Dickerson (1993), page 372

- “Plain feel” is within “plain view” doctrine
- Frisk for weapons
- Feeling object that is not weapon—must be probable cause then that object is contraband
 - Manipulating object to determine probable cause is not permitted
 - But see State v. Briggs, page 372
 - Feeling cigar holder frequently used to keep drugs

Minnesota v. Dickerson (1993), page 372

- Questioning during frisk
 - *Miranda* warnings generally not required
 - p. 30; State v. Benjamin, n. 163, p. 55
 - State v. Sutton, 167 N.C. App. 242 (2004)
 - State v. Martinez, 158 N.C. App. 105 (2003)
- During frisk, officer asks consent to search body of suspect
- During frisk, officer asks suspect to remove item from pocket

Whren v. United States (1996), page 281

- Drug officers stop vehicle for traffic violations
- Officer's motivation for stopping vehicle for traffic violation is irrelevant, if probable cause exists for violation
- *Whren* adopted in *State v. McClendon*, page 282
- Ruling effectively overruled *State v. Morocco*, 99 N.C. App. 421 (1990)—see *State v. Hamilton*, page 282
- Does ruling apply when reasonable suspicion to stop vehicle? See page 29 and note 149, page 54

Ohio v. Robinette (1996), page 268

- Facts: Defendant stopped for speeding and later gave consent to search car
- Must lawfully-seized suspect be advised he or she is “free to go” before consent to search is considered voluntary? Answer: No
- Undecided issue: When, if ever, does lawfully-seized defendant become unlawfully-seized so consent to search is fruit of poisonous tree?
- Detention should last no longer than necessary to effectuate purpose of stop—Florida v. Royer

Ohio v. Robinette (1996), page 268

- Factors in determining when lawful seizure has ended and unlawful seizure or consensual encounter has begun
- United States v. Carrasco, page 271
 - Not illegal detention when three seconds elapsed after traffic stop was concluded to ask consent to allow dog sniff of vehicle

Maryland v. Wilson (1997), page 271

- Officer who lawfully stopped vehicle may order passengers out of vehicle without showing reason under Fourth Amendment

Richards v. Wisconsin (1997), page 400

- No automatic exception for felony drug investigation to excuse knock and announce before entering home to execute search warrant
- If reasonable suspicion that doing so would be dangerous or futile, no need to knock and announce—but see G.S. 15A-251 (probable cause required)
- Officer's failure to knock and announce was reasonable in this case

United States v. Ramirez (1998), page 400

- *Richards v. Wisconsin* standard applies when officer making “no knock” entry with search warrant must destroy property to enter home
- Entry was reasonable when officers needed to break garage window where they suspected weapons were located that could be used against them

County of Sacramento v. Lewis (1998), page 274

- High speed chase
 - Person fell off motorcycle being pursued
 - Officer's vehicle accidentally struck person
- Person was not seized under Fourth Amendment
 - No governmental termination of person's movement through intentionally applied means

Knowles v. Iowa (1998), page 363

- Search of vehicle is not permitted incident to stopping vehicle to issue citation to driver
- State v. Fisher (2000), page 364
 - Defendant stopped for driving while license revoked
 - Officer intended to write citation, but drug dog called for
 - Court: defendant never was arrested for DWLR
 - No search incident to arrest permitted

Not Charging Violation for Which Defendant Stopped

- State v. Baublitz, ___ N.C. App. ___, 616 S.E.2d 615 (16 August 2005)
 - When probable cause to stop for readily-observed traffic violation, failure to charge violation is irrelevant to validity of stop
 - Motive for stopping vehicle is irrelevant
 - State v. McClendon, 350 N.C. 630 (199)

Illinois v. Wardlow (2000), page 251

- Officers in four cars drove in area known for heavy drug trafficking—so they could investigate drug transactions
- Officers anticipated encountering large number of people in area, including drug customers and lookouts
- Defendant was standing next to building and holding opaque bag, and looked in direction of officers and fled

Illinois v. Wardlow (2000), page 251

- Defendant's unprovoked flight on seeing officers and presence in heavy drug trafficking area provided reasonable suspicion to stop
- *Terry v. Ohio* accepts risk innocent people may be stopped

North Carolina cases before *Illinois v. Wardlow*

- State v. Butler, (1992), page 255: reasonable suspicion based on drug area and person's reaction to officers
- State v. Fleming, (1992), page 255: no reasonable suspicion when two people walked away from officers in drug area
- State v. Wilson, (1993), page 262: reasonable suspicion based on anonymous call—people selling drugs at apartment—and flight when officers arrived
- State v. Rhyne, (1996), page 371: no reasonable suspicion when anonymous call—people selling drugs—and defendant sitting in breezeway of apartment

North Carolina cases before *Illinois v. Wardlow*

- Probable cause to arrest based on flight from officers who had authority to conduct investigative stop
 - State v. Lynch, (1989), page 285
 - State v. McNeill, (1981), page 257
 - State v. Swift, (1992), page 285

North Carolina cases after *Illinois v. Wardlow*

- State v. Foreman, 351 N.C. 627 (2000)
 - Immediately before car passed DWI checkpoint's sign giving notice of checkpoint, car made quick left turn onto another street
 - Court cites *Wardlow* in stating that legal turn before DWI checkpoint in conjunction with other circumstances, such as time, place and manner in which it was made, may constitute reasonable suspicion to stop

North Carolina cases after *Illinois v. Wardlow*

- State v. Foreman, 351 N.C. 627 (2000)
 - Court rules that officer, pursuant to totality of circumstances or checkpoint plan, may pursue and stop vehicle that has turned away from checkpoint

Florida v. J. L. (2000),
page 251

- Anonymous telephone call: black male at bus stop with plaid shirt has gun
- Officers went there and saw black male with plaid shirt
 - But officers did not see firearm, and defendant did not make any threatening or unusual movements
- Ruling: Anonymous tip that person is carrying gun, without more, is insufficient for reasonable suspicion to make investigate stop
 - Alabama v. White, 496 US 325 (1990), and Adams v. Williams, 407 US 143 (1972), distinguished

Florida v. J. L. (2000),
page 251

- Effect of ruling on DWI stop based on anonymous tip?
 - U.S. v. Wheat, (8th Cir. 2001), page 254:
anonymous 911 call about current observation
of reckless driving; sufficient to stop vehicle
 - State v. Golotta, 837 A.2d 359 (N.J. 2003)
- Ruling in State v. Cornelius (1991), page 255, is
effectively reversed
- What if J.L. had run from officers when they
arrived? Would *Illinois v. Wardlow* apply to
justify a stop?

City of Indianapolis v. Edmond (2000), page 278

- Checkpoint whose primary purpose is to detect illegal drugs is unconstitutional
- Court did not decide if it is constitutional for
 - license or DWI checkpoint to have as secondary purpose the detection of illegal drugs

City of Indianapolis v. Edmond (2000), page 278

- United States v. Davis, 270 F.3d 977 (D.C. Cir. 2001): court indicates that drug enforcement as secondary purpose is constitutional
- United States v. Moreno-Vargas, 315 F.3d 489 (5th Cir. 2002)
 - fixed checkpoint whose primary purpose was to investigate illegal immigration
 - constitutional even if secondary purpose was drug interdiction based on permanent presence of drug detection dogs

State v. Mitchell, 358 N.C. 63 (2004)

- Written guidelines are not required for driver's license checkpoints
- Officer received supervisory approval to conduct driver's license checkpoint
- Ruling: driver's license checkpoint did not violate Fourth Amendment
- Ruling: stop of vehicle was supported by reasonable suspicion
- G.S. 20-16.3A
 - License checkpoint that is in fact DWI checkpoint?
- State v. Rose, ____ N.C. App. ____, 612 S.E.2d 336 (17 May 2005)

United States v. Knights (2001), page 355

- No more than reasonable suspicion required for law enforcement officer
- To enter house of probationer
- Whose probation condition required probationer
- To submit to search by probation officer or law enforcement officer
 - But see G.S. 15A-1343(b1)(7)

United States v. Arvizu (2002), page 252

- Reasonable suspicion supported Border Patrol agent's stop of vehicle for illegal alien and drug smuggling
- Court disavows method of analysis of federal court of appeals in this case
 - Although each of factors alone were susceptible to innocent explanation
 - And some factors were more probative than others
 - Factors, taken together, established reasonable suspicion to stop vehicle

United States v. Drayton (2002), page 274

- Officers did not seize bus passengers during bus boarding procedure
- Fourth Amendment does not require officers to advise bus passengers of
 - Their right not to cooperate and to refuse to consent to searches
- Bus passengers voluntarily consented to search of their luggage and their bodies

Illinois v. Lidster, 540 U.S. 419 (2004)

- Checkpoint seeking information about hit-and-run committed one week earlier was constitutional
- Court distinguishes *City of Indianapolis v. Edmond*
 - Public concern was grave, and checkpoint was designed to find perpetrator of specific crime
 - Checkpoint significantly advanced public concern
 - Minimal interference with Fourth Amendment rights

Hiibel v. Sixth Judicial Dist. Court of Nevada, 124 S. Ct. 2451 (2004)

- No Fourth Amendment violation when suspect, stopped with reasonable suspicion of committing crime
 - Was arrested for refusing to disclose name as required by state law
- Conviction for refusing to disclose name did not violate Fifth Amendment
- Application to North Carolina state law

Illinois v. Caballes, 125 S. Ct. 834 (2005)

- Walking drug dog around vehicle
- While driver was lawfully detained
- For officer's issuance of warning ticket for speeding
- Did not violate Fourth Amendment
 - Compare with State v. Branch, 162 N.C. App. 707 (2004), vacated and remanded by U.S. Supreme Court on Oct. 11, 2005
 - Walking drug dog around vehicle detained beyond license checkpoint, based on reasonable suspicion unrelated to drugs, violated Fourth Amendment

Muehler v. Mena, 125 S. Ct. 1465 (2005)

- Detention of house occupant in handcuffs for 2-3 hours
 - during search warrant execution concerning gang shooting
 - was reasonable under Fourth Amendment
- Questioning concerning immigration status
 - did not violate Fourth Amendment
 - when questioning did not prolong length of detention
 - application to vehicle stops; note 163, p. 55