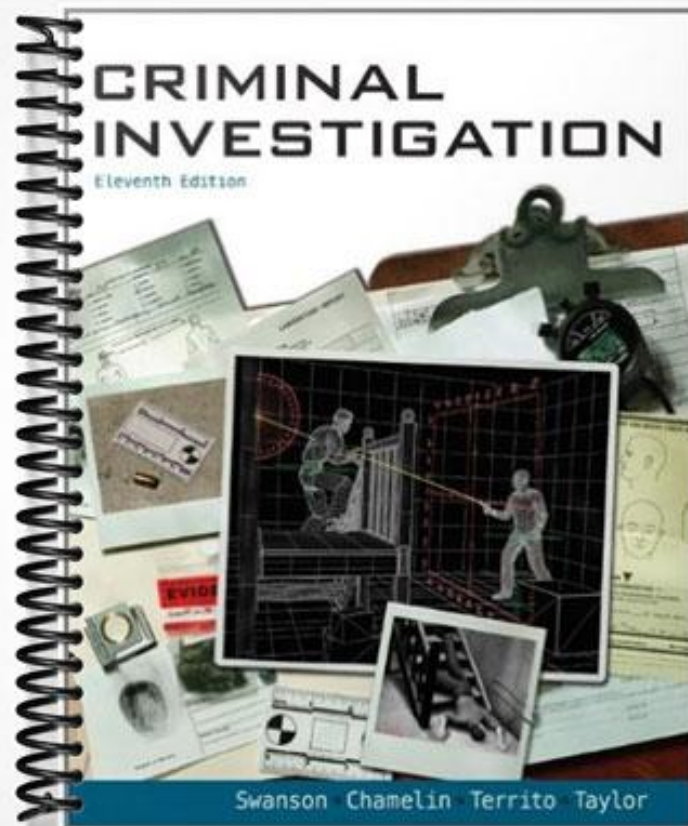


# SOLUTIONS MANUAL



# CHAPTER 2

## LEGAL ASPECTS OF INVESTIGATION

### Objectives

- 1) Explain the historical evolution of the laws of arrest and search and seizure from the Bill of Rights through and inclusive of the Fourth Amendment.
- 2) Describe and diagram the flow of constitutional rights to a defendant in a federal criminal trial and a defendant in a state criminal trial.
- 3) Outline the requirements of a valid arrest warrant.
- 4) Describe whether a “John Doe” arrest warrant is ever valid, and if so, under what circumstances.
- 5) Define probable cause.
- 6) Describe the evolution of the Exclusionary Rule.
- 7) Explain the “Silver Platter” doctrine.
- 8) Describe the reason for a search incident to a lawful arrest.
- 9) Explain the limitations on the search of a motor vehicle incident to an arrest.
- 10) Describe at least five circumstances that justify a search under exigent circumstances.
- 11) Define the law enforcement policy issue that determines whether an inventory search is lawful.
- 12) Identify the primary requirement that makes a plain view seizure lawful.
- 13) Describe the limitations of a stop and frisk encounter.
- 14) Explain the circumstances that would cause application of the Fruits of the Poisonous Tree doctrine.

### Overview

All law enforcement officers, uniformed and plainclothes, conduct investigations. That is a statement of fact. There are, of course, differing concentrations of the investigative process and varying responsibilities among different units and different people.

Every law enforcement officer must have a working knowledge of the criminal laws that he or she is charged with enforcing. The greater the knowledge, the better overall job one can do as an investigator. This concept will become apparent throughout the remainder of this text and will be reinforced because criminal law is the foundation upon which every investigation is built.

Criminal law is divided into two major components that are inter-related but serve different functions. The substantive criminal law deals with those elements that describe and define a crime. When an investigator has the needed proof to satisfy the particular elements of an offense, it can be said that the crime did occur.

The other component of criminal law is procedural criminal law. It is not enough to know whether a crime has been committed. The investigator must understand what and how things need to be done with the people involved in an investigation, whether or not it is a victim, a witness, an informant, or a suspect. Thus, the procedural part of the criminal law defines what can and cannot be done with or to people. The procedural law changes much more rapidly than does the substantive criminal law. Procedural law deals concerns processes of arrest, search and seizure, interrogations, confessions, evidentiary admissibility, and court testimony. Some of these topics will be discussed in other portions of this book because they are relevant to the specific subject matter covered. Legal matters dealing with interrogations and confessions are

addressed in the chapter on interviews and interrogation. Rules regarding admissibility of evidence and court testimony round out the book because they are necessary to understand when an investigation is completed before the case is submitted for prosecution. This chapter concerns itself with the concepts of arrest and search and seizure. Mere knowledge of the current case law on these topics is not enough. The student must also understand the historical and constitutional principles that got us where we are today and perhaps where we are going tomorrow.

## **Lecture Notes**

### **I. THE BILL OF RIGHTS AND THE STATES**

An examination of constitutional history reveals that the powers yielded by the states were specifically granted for the purpose of establishing a national government. However, final ratification of the new constitution was delayed because some states wanted guarantees that individual liberties would be safeguarded from potential oppression by the newly formed government.

#### **A. Evolution of the Fourteenth Amendment**

The Civil War was over. Slavery had been legally abolished. The Thirteenth, Fourteenth, and Fifteenth Amendments were all designed to guarantee the freedoms and equal protection of the laws for all citizens, especially the former slaves. Interpretations of portions of the Fourteenth Amendment provide the foundation for much of modern criminal procedure in the United States today.

#### **B. The Fourth Amendment**

The Right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants 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.

### **II. ARREST**

There are a number of definitions of the term arrest. They range from “any interference with a person which, if not privileged, would constitute false imprisonment,” to “interfering with the freedom of a person who is suspected of criminal conduct to the extent of taking him to the police station for some purpose,” to “the taking of custody upon sufficient and proper evidence for the purpose of prosecution.”

#### **A. Ingredients of Arrest**

There are three essential ingredients of an arrest:

1. Intention
2. Authority
3. Custody

#### **B. Arrest Distinguished from Detention**

Detention is a temporary and limited interference with the freedom of a person for investigative purposes. Sometimes called investigative detention, also it is commonly referred to by law enforcement as a “street stop” or “field interrogation.”

#### **C. Arrest Distinguished from Charging**

Formally charging a suspect with a crime does not automatically flow from an arrest. Charging follows a decision to prosecute.

- D. Arrest Procedures  
The laws of most jurisdictions permit an arrest in at least three and sometimes four types of situations:
1. When a warrant has been issued.
  2. When a crime is committed in the presence of an arresting officer.
  3. When an officer has probable cause to believe that the suspect being arrested has committed a felony.
  4. When statutorily created instances occur.

- E. The Arrest Warrant  
The most preferred method of affecting an arrest is under the authority of a warrant.
1. An arrest warrant is a judicial order commanding the person to whom it is issued or some other person to arrest a particular individual and to bring that person promptly before a court to answer a criminal charge.
  2. The warrant must be supported by an affidavit—a written statement of the information known to the officer that serves as the basis for the issuance of the warrant

- F. Probable Cause  
The third major category in which a lawful arrest is generally permitted involves offenses not committed in the officer's presence and for which a warrant has not been issued. One acceptable definition of **probable cause** is that it is more than suspicion but less than actual knowledge. Mere suspicion is not enough. There must be supporting facts and circumstances based on the personal knowledge of the officer/investigator or information obtained from a reliable informant.

### III. SEARCH AND SEIZURE

The evolution of the law of search and seizure illustrates the relationship described earlier between federal and state court systems and between the Bill of Rights and its application to the states through the due process clause of the Fourteenth Amendment.

- A. Legal Searches and Seizures  
As is true for arrests, the Fourth Amendment also only recognizes searches and seizures by government agents under the authority of a warrant. The United States Supreme Court recognizes judicially created exceptions.
- B. Search with a Warrant  
A search warrant is a written order, in the name of the state, signed by a judicial officer, exercising proper authority, and directing a law enforcement officer to search for specific property and bring it before the court. A warrant to search must be based upon probable cause.
- C. Search with Consent  
One of the most common situations arising today is when a uniformed officer, who encounters a citizen during a traffic stop or other routine activity, asks the person if they have any weapons or drugs on their person or in their vehicle. If the citizen consents, the officer may initiate a search. If the citizen declines, the officer must have probable cause to initiate a search.
- D. Search Incident to Arrest

The courts have regularly recognized the right of law enforcement officers to search people who have been arrested without a warrant. Such searches are justified for officer safety and to preserve evidence.

E. Search of a Motor Vehicle

The search of a motor vehicle sometimes referred to as the automobile exception to the requirement that a search be conducted with a warrant, really involves two distinct issues under modern law: 1. *Carroll v. United States, Chambers v. Maroney, Maryland v. Dyson* and 2. The search of a vehicle incident to a lawful arrest.

F. Emergency (Exigent Circumstances)

The **exigent circumstances** exception recognizes a warrantless entry by law enforcement officials may be legal when there is a compelling need for official action and no time to get a warrant.

G. Conducting an Inventory

Law enforcement agencies have not only the right but also the obligation to inventory property taken from a person arrested. The inventory is done to protect the property of the person arrested and to document what was found with a receipt given to the person arrested.

H. Plain View Searches

If an investigator/officer is lawfully in a place and sees contraband or evidence in plain view, the investigator may seize the evidence and it will be admissible.

I. Stop and Frisk

Earlier in the chapter, the stop and frisk topic was mentioned to distinguish arrest from detention. There is, of course, a search and seizure aspect to this concept (*Terry v. Ohio, Minnesota v. Dickerson*).

J. Fruits of the Poisonous Tree

A final point is necessary to fully comprehend the consequences of an unreasonable search and seizure. The **fruits of the poisonous tree doctrine** provide that evidence obtained from an unreasonable search and seizure cannot be used as the basis for learning about or collecting new admissible evidence not known about before (*Wong Sun v. United States*).