

The Fourth Amendment: Searches and Seizures

The Fourth Amendment guarantees freedom from “unreasonable searches and seizures,” but the only type of search the Constitution mentions is one authorized by a search warrant. To obtain a warrant, police must present a neutral judge with an affidavit swearing there is reason to believe that a crime has been committed and that evidence can be found in a specific place. The judge then must determine whether **probable cause** exists to issue the search warrant. However, the Supreme Court ruled in 2012 that if mistakes are made and the police execute a search warrant without probable cause, they are entitled to immunity from any possible lawsuits (*Messerschmidt v. Millender*).⁸³ In 2013, the Court held in *Bailey v. United States* that police officers could not pick up and detain a person while they searched his premises for contraband if the individual had already left the premises before the execution of the search. Judges usually require the probable cause standard for wiretaps and electronic surveillance as well. Since the passage of the USA Patriot Act in 2001, however, federal agents investigating terrorism can trace e-mail messages with less than probable cause.

In two cases decided in 2014, *Riley v. California* and *United States v. Wurie*, a unanimous Supreme Court underscored the importance of the search warrant requirement in the digital age. It ruled that police generally may not without a warrant search the digital information on a cell phone seized from an individual who has been arrested.

The Constitution does not preclude the possibility of warrantless searches; it only requires that such searches be reasonable. But what is reasonable? The Supreme Court has recognized several categories of warrantless searches as reasonable:

1. The police may conduct a search at the time of a valid arrest. They may search any area within the suspect’s immediate control where he or she might obtain a weapon or conceal evidence.⁸⁴
2. The courts also recognize a search as valid if the police receive permission voluntarily from a person with the authority to give it. In 2001, the Supreme Court ruled that a person on probation must consent to have his or her property searched if the probation officer has a reasonable suspicion of wrongdoing.⁸⁵
3. Searches without warrants have also been justified when conducted in hot pursuit of a criminal who has just committed a crime, is considered dangerous, and who may destroy evidence if the police must delay a search in order to obtain a warrant.⁸⁶
4. In the case of *Terry v. Ohio* (1968), the Supreme Court approved stop-and-frisk searches in which an experienced police officer believes a suspect is about to commit a crime. The Court reasoned that the police have the power to prevent crimes and that the frisk was necessary to protect the safety of the officer. The Court held in a 2000 case that a young man running from a high-crime area when he saw uniformed police officers created sufficient suspicion to justify such a search.⁸⁷
5. In 1973, the Supreme Court created a new category of warrantless searches known as “loss of evidence searches.” In such cases, police may conduct a search if they reasonably suspect that a delay will result in the suspect destroying evidence.⁸⁸ In this instance, the Court allowed police to take fingernail scrapings of a murder suspect at the time of the interrogation and before an arrest because of the risk that the evidence could be easily destroyed at a later time.⁸⁹ The Court struck down a hospital-instituted drug-screening program for patients that gave results to the police as a requirement for receiving medical care. The Court does allow schools, however, to test students for drugs if only their eligibility for sports or extracurricular activities is at stake.⁹⁰
6. In considering the constitutionality of warrantless searches, the Court also has taken into consideration the place being searched and the means of the search. For example, it has ruled that the police may search a field for marijuana plants, even though the area is marked with No Trespassing signs.⁹¹ Police may conduct an aerial search for marijuana



The U.S. Supreme Court has upheld the validity of a dog sniff to establish the necessary probable cause to search an automobile. (© Mario Villafuerte/Getty Images)

probable cause A practical and nontechnical calculation of probabilities that is the basis for securing search warrants.