



4th Amendment

GLORIA

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What is the 4th Amendment?

- ▶ The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. It requires governmental searches and seizures to be conducted only upon issuance of a warrant, judicially sanctioned by probable cause, supported by oath or affirmation, describing the place to be searched and the persons or things to be seized.

Terry v. Ohio (Stop-and-Frisk) (1968)

- ▶ A police officer witnessed three men pacing in front of a jewelry store and suspected that a robbery was being planned. He approached the men and identified himself, then performed frisks of defendants Chilton and Terry and discovered illegal concealed weapons. Defendants were convicted and appealed, claiming that the frisk violated their Fourth Amendment right against unlawful searches and seizures.
- ▶ The Supreme Court upheld the conviction, finding that when a law enforcement officer has "reasonable grounds" for suspecting that a criminal suspect may be armed, he may pat down the outer layer of the suspect's clothing for weapons. The ruling held that the Fourth Amendment protection against unreasonable searches and seizures is not violated when a pat down is performed based on reasonable suspicion for the purpose of ensuring officer safety.
- ▶ The U.S. Supreme Court held that the Fourth Amendment prohibition on unreasonable searches and seizures is not violated when a police officer stops a suspect on the street and frisks him or her without probable cause to arrest, if the police officer has a reasonable suspicion that the person has committed, is committing, or is about to commit a crime and has a reasonable belief that the person "may be armed and presently dangerous."
- ▶ Police CANNOT conduct frisks for the purpose of discovering evidence other than weapons. The Supreme Court has ruled that suspicious items other than weapons retain their Fourth Amendment protection during a frisk. This means that if a police officer claims that objects in your pocket feel like drugs, the objects cannot be further investigated without your consent.

Fernandez v. California (2009)

On October 12, 2009, after identifying himself as a member of a local gang, Walter Fernandez, along with a few compatriots, attacked and robbed Abel Lopez. Responding to Lopez's 911 call, two police officers headed to an alley frequented by the local gang, where a bystander informed the officers that Fernandez was in a nearby apartment. The officers then saw a person run into it, followed by sounds of fighting and screaming. Knocking on the door, the officers were met by Roxanne Rojas. Rojas — who was carrying a young child in her arms — displayed signs of recent injuries, including traces of blood, a red face, and a swollen nose. Rojas said she had been in a fight, but that only she and her two children were present. The police asked Rojas to step out of the house so they could perform a protective sweep, at which point Fernandez appeared and told the police they could not enter. The police arrested Fernandez on the suspicion that he had beaten Rojas, and Lopez shortly thereafter identified Fernandez as his attacker. Fernandez was brought to the police station, and one hour later the police requested and received Rojas's consent to search the apartment. Inside the apartment, the police found gang paraphernalia, a butterfly knife, clothing the suspect wore during the robbery, and ammunition. Rojas's four-year-old son also showed the police where Fernandez hid a sawed-off shotgun.

Fernandez was charged with several crimes, including possession of a firearm by a felon, possession of a short-barreled shotgun, and felony possession of ammunition. Prior to his trial, Fernandez moved to suppress the evidence found in his home. Denying the validity of the warrantless search, he contended that his objection to the police's entry trumped Rojas's subsequent consent. The trial court denied the motion, and Fernandez appealed.

United States v. Ross (1982)

- ▶ Ross (defendant) was arrested pursuant to an informant's tip that he was selling illegal drugs kept in the trunk of his car. District of Columbia police officers stopped Ross' car and conducted a search. During the search, the officers found a bullet on the driver's seat. The officers then searched the glove compartment and discovered a gun. Ross was placed under arrest. After arresting Ross, the officers took his keys and opened the trunk of his car. In the trunk, they found a brown paper bag. The officers opened the paper bag and discovered clear plastic bags containing what appeared to be drugs. The car was transported to the police station, where another search of the trunk uncovered a zippered leather pouch. A search of the pouch revealed that it contained a large sum of cash.
- ▶ Ross moved to suppress the introduction at trial of the contents of the paper bag and zippered pouch. The trial court denied Ross' motion and he was convicted at trial. A panel of the court of appeals concluded that Ross had a greater expectation of privacy with respect to the contents of the zippered pouch than with respect to the contents of the paper bag. The panel upheld the judgment of conviction based on the admissibility of the paper bag evidence. The court of appeals *en banc* reversed the panel decision and vacated the judgment of conviction. The United States (plaintiff) petitioned the United States Supreme Court for review.