

10.1: Interrogations

Chapter 10 - Interrogations and Police Searches

Interrogations ^[117]



Quotable

“Understanding the correct processes and legal parameters for interviewing, questioning, and interrogation, can make the difference between having a suspect’s confession accepted as evidence by the court or not.”

In this chapter, we will examine the interviewing, questioning, and interrogation of suspects as information gathering techniques police use to aid them in investigations. In modern day policing, interviewing, questioning, and interrogation techniques are measured, objective, and ethical. They are aimed at the goal of discovering the truth; not just getting a confession to a crime. This is a contrast to earlier times of policing, when techniques called the “third degree” sometimes involved threats, intimidation, coercion, and even physical violence. Fortunately, these “third degree” techniques were identified in the United States by the Wickersham Commission in 1931, as being unlawful police practices that caused false confessions and miscarriages of justice, where suspects were sometimes wrongfully convicted and imprisoned (Head, 2010).

Emerging from this, police forces across North America, who were using the “third degree” techniques to varying extents, started moving towards less oppressive and less aggressive methods of interrogating suspects (Gubrium, 2002).

While there has been a significant evolution to more objective and ethical practices, the courts still remain vigilant in assessing the way police interview, question, and interrogate suspects during criminal investigations. The courts expect police to exercise high standards using practices that focus on the rights of the accused person and minimize any physical or mental anguish that might cause a false confession. In meeting these expectations, the challenges of suspect questioning and interrogation can be complex, and many police agencies have trained interrogators and polygraph operators who undertake the interrogation of suspects for major criminal cases. But not every investigation qualifies as a major case, and frontline police investigators are challenged to undertake the tasks of interviewing, questioning, and interrogating possible suspects daily. The challenge for police is that the questioning of a suspect and the subsequent confession can be compromised by flawed interviewing, questioning, or interrogation practices. Understanding the correct processes and the legal parameters can make the difference between having a suspect’s confession accepted as evidence by the court or not. With the above in mind, this chapter will focus on several salient issues, including:

1. The progression from interviewing to questioning to interrogating, and how this progression relates to investigative practices
2. The junctures that demonstrate the need to change from interviewing a witness to questioning a detained suspect to interrogating an arrested suspect
3. The issues of physical and mental distress, and how to avoid the perception of officer-induced distress during an interrogation
4. The seven elements to review to prepare an interrogation plan
5. The five common reasons arrested suspects waive their right to silence and provide statements and confessions
6. The interrogation strategies to initiate statements using the motivations within the five common reasons
7. The three types of false confessor and strategies to deal with false confessions
8. The additional rights of young offenders and practices required to meet the investigative obligations under Canada’s Youth Criminal Justice Act
9. Ancillary offence recognition

Topic 1: Interviewing, Questioning, and Interrogating

Police investigations can be dynamic, and the ways in which events unfold and evidence is revealed can be unpredictable. This premise also holds true for interviewing, questioning, interrogating suspects. Players in a criminal event may be revealed as suspects at different stages of the investigation. To properly secure and manage the statement evidence that is gained during interactions with suspects or possible suspects, it is important for investigators to understand the actions that should be taken at each stage, while remembering that interviewing, questioning, and interrogating are terms that refer to separate stages in the process of gathering verbal responses from a suspect or a possible suspect. But each stage is different in relation to when and how the information gathering process can and should occur. The differences between these three stages needs to be defined in the mind of the investigator since they will move through a process of first interviewing, then questioning, and finally interrogating a

suspect. When this progression occurs, the investigator needs to recognize the changing conditions and take the appropriate actions at the correct junctures to ensure that, if a confession is obtained, it will be admissible at trial. Given this, let us examine the operational progression of these three stages and identify the circumstances that make it necessary to switch from one stage to the next.

Interviewing a possible suspect is the first stage and the lowest level of interaction. In fact, the person is not even definable as a suspect at this point. As pointed out in our chapter on witness management, suspects often report criminal events while posing as witnesses or even victims of the crime. The investigator receiving a statement report from such a person may become suspicious that they are not being truthful; however, until those suspicions are confirmed by evidence that meets the test of forming reasonable grounds for belief, the investigator may continue to talk to this possible suspect without providing any Section 10 Charter or cautions. There is a unique opportunity at that point to gather the poser's version of events, including any untrue statements that may afford an opportunity to later investigate and demonstrate a possible fabrication, which is by itself a criminal offence. The transition point for an investigator to move from interviewing a witness or victim to detaining and questioning the person as a possible suspect should occur when real evidence is discovered giving the investigator reasonable grounds to suspect that the person is involved in the event. Discovering real evidence and gaining "reasonable grounds to suspect" creates an obligation for the investigator to stop interviewing the person who then becomes a suspect. At this point, the person is a suspect and should be detained for the suspected offence and provided the appropriate Section 10 Charter and Statement Caution before proceeding with the questioning of the suspect.

Questioning a suspect is the next level of interaction. For a suspect to be questioned, there will be some type of circumstantial evidence that allows the investigator to detain that suspect. In our previous scenario of the young man found at 3AM standing under the tree in a residential area at the boarder of an industrial complex one block away from the building where a break-in was confirmed to have taken place, that young man was properly detained, chartered, and warned for the investigation of the break-in. However, there was no immediate evidence that could link him to that actual crime at that point. He was only suspected by the circumstantial evidence of time, conduct, and proximity to the event. He was obligated to provide his name and identification. If he had tried to leave, he could have been arrested for obstructing a police officer in the execution of duty. The investigator at the scene of that incident would have questioned this suspect, and by his rights under the Canadian Charter of Rights and Freedoms, the suspect would not be obliged to answer questions.

This right to not talk does not preclude the investigator from asking questions, and the investigator should continue to offer the suspect an opportunity to disclose information that may be exculpatory and enable the investigator to eliminate that person as a suspect in the crime being investigated. As an example of this, again, consider our young man who was detained when found standing under the tree near a break-in. If that man had answered the question, "What are you doing here?" by stating that he lived in the house just across the street, and when he heard the break-in alarm, he came outside to see what was happening, this would greatly reduce suspicion against the young man once this statement was confirmed. Subsequent confirmation by a parent in the home that they had heard him leave when the alarm sounded could eliminate him as a suspect and result in his release.

Interrogation is the most serious level of questioning a suspect, and interrogation is the process that occurs once reasonable grounds for belief have been established, and after the suspect has been placed under arrest for the offence being investigated. Reasonable grounds for belief to make such an arrest require some form of direct evidence or strong circumstantial evidence that links the suspect to the crime. Of course, where an arrest is made, the suspect will be provided with their charter rights and the police caution, as per the following:

Charter Warnings

Section 10(a)

"I am arresting/detaining you for: (State reason for arrest/detention, including the offence and provide known information about the offence, including date and place.)"

Section 10(b)

"It is my duty to inform you that you have the right to retain and instruct Counsel in private, without delay. You may call any lawyer you want. There is a 24-hour telephone service available which provides a legal aid duty lawyer who can give you legal advice in private. This advice is given without charge and the lawyer can explain the Legal Aid Plan to you. If you wish to contact a legal aid duty lawyer, I can provide you with the telephone number.

Do you understand?

Do you want to call a lawyer?” (Canadian Charter, 1982, s 10(a,b))

Police Warning

“You are not obliged to say anything, but anything you do say may be given in evidence.” (Transit Police, 2015)

If the suspect has already had communication with the police in relation to the offence being investigated, they should be provided with the secondary caution. This secondary caution serves to advise the accused person that, even if they have previously made a statement, they should not be influenced by that to make further statements.

Secondary Police Warning

“(Name), you are detained with respect to: (reason for detainment). If you have spoken to any police officer (including myself) with respect to this matter, who has offered you any hope of advantage or suggested any fear of prejudice should you speak or refuse to speak with me (us) at this time, it is my duty to warn you that no such offer or suggestion can be of any effect and must not influence you or make you feel compelled to say anything to me (us) for any reason, but anything you do say may be used in evidence” (Transit Police, 2015).

Once the accused has been afforded the opportunity to speak with a lawyer, the caution obligations of the police to the accused have been met, and the suspect may be questioned with respect to their involvement in the offence. These cautions and warnings may sound like a great deal of effort aimed at discouraging a suspect from saying anything at all to the police, and, in many cases that is the result. However, if the cautions are properly administered, and the opportunities to speak with counsel are properly provided, a major obstacle to the admission of any future statements has been satisfied.

Interrogation generally takes place in the formal environment of an interview room and is often tape-recorded or video-recorded to preserve the details of what was said. A video recording is the preferred means because it accurately represents the environment of the interview room in which the interrogation was conducted. In challenging the processes of an interrogation where a statement has been made by an accused, defense counsel will look for anything that can be pointed to as an oppressive environment or threatening conduct by the investigator. Within the appropriate bounds of maintaining an environment of safety and security, the investigator should make every effort to demonstrate sensitivity to these issues.

Seating in the room should be comfortable and balanced for face-to-face contact. The investigator should not stand over the suspect or walk around the room behind the suspect while conducting the interview. More than one investigator in the room with the suspect can be construed as being oppressive and should be avoided. The suspect should be offered a beverage or food if appropriate and should be told that a bathroom is available for their needs upon request. The demeanor of the investigator should be non-aggressive and calm, demonstrating an objective professional tone as a seeker of the truth. Setting a non-aggressive tone and establishing an open rapport with the suspect is not only beneficial to demonstrate a positive environment to the court, but it also helps to create a positive relationship of openness and even trust with the suspect. This type of relationship can be far more conducive to gaining cooperation towards a statement or even a confession.

Prior to beginning the actual interrogation, the investigator should prepare an interrogation plan by:

1. Reviewing the suspect’s profile, criminal record, and past investigations
2. Reviewing the full details of the existing investigation to date
3. Determining the elements of the offence that will need to be proved
4. Determining if sufficient evidence has already been obtained to submit a prima facie case to Crown
5. Examining evidence that demonstrates motive, opportunity, and means
6. Determining what evidence was located and considered in forming reasonable grounds to arrest the suspect
7. What physical evidence has been found that may yet be analyzed to prove the suspect’s involvement

Preparing the interrogation plan can assist the investigator in developing a strategy to convince the suspect to answer questions or confess to the crime. Those uninitiated to the process of interrogation might wonder why anyone would possibly choose to answer questions or confess when they have been provided with their Charter of Rights and Freedoms and the standard caution that they are not obliged to say anything, and anything they do say may be used as evidence. There are several reasons that can motivate or persuade a suspect to answer questions or confess. Statements or confessions are often made despite the warnings that would seemingly deter anyone from saying anything. These reasons include:

- Wishing to exonerate oneself,
- Attempting deception to outsmart the system,
- Conscience,

- Providing an explanation to minimize one's involvement in the crime, or
- Surrender in the face of overwhelming evidence.

Investigators who are familiar with these reasons and motivations can utilize them in assessing their suspect and developing a strategy for their interrogation plan.

Exoneration

After making an arrest, an objective investigator must always be prepared to hear an explanation that will challenge the direct evidence or the assumptions of the circumstantial evidence that led to the reasonable grounds for belief to make that arrest. The best reason an arrested suspect can be offered to answer questions is to be exonerated from the crime. It is possible, and it does occur, that persons are arrested for a crime they have not committed. Sometimes, they are wrongly identified and accused by a victim. Other times, they are incriminated by a pattern of circumstantial evidence that they can ultimately explain. The interrogation following the arrest is an opportunity for the suspect to put their version of events on the record, and to offer an alternate explanation of the evidence for investigators to consider. Exoneration is not just an interrogation strategy; it is the duty of an objective investigator to offer a suspected person the opportunity to make an explanation of the evidence that led to their arrest. This can be initiated by offering the suspect the proposition, "This is the evidence that led to your arrest. If there is an alternate explanation for this evidence, please tell me what that is." In some cases, the statements made by the suspect will require additional investigation and confirmation of facts to verify the exoneration. Conducting these investigations is also the duty of an objective investigator.

Deception to Outsmart the System

Some experienced criminals or persons who have committed well-planned crimes believe that they can offer an alternate explanation for their involvement in the criminal event that will exonerate them as a suspect. An investigator may draw answers from this type of suspect by offering the same proposition that is offered for exoneration. This is the opportunity for a suspect to offer an alibi or a denial of the crime and an alternate explanation or exonerating evidence. It can be very difficult for a suspect to properly explain away all the evidence. Looking at the progression of the event, an interrogator can sometimes ask for additional details that the suspect cannot explain. The truth is easier to tell because it happened, and the facts will line up. In contrast, a lie frequently requires additional lies to support the untrue statement. Examining a statement that is believed to be untrue, an interrogator can sometimes ask questions that expose the lies behind the original lie.

Conscience

As much as the good guys versus the bad guys' concept of criminal activity is commonly depicted in books and movies, experienced investigators can tell you that people who have committed a criminal offence often feel guilt and true regret for their crime. This is particularly true of persons who are first-time offenders and particularly young offenders who have committed a crime against a person.

Suspects fitting this category may be identified by their personal profile, which typically includes no criminal record, no police record or limited police record of prior investigations, evidence of poor planning, or evidence of emotional/spontaneous actions in the criminal event.

Suspects who fit this profile may be encouraged to talk by investigators who have reviewed the effect that the criminal act has had on the victim or the victim's family. Following this review of victim impact, the investigator can accentuate the suspect's lack of past criminal conduct, while making the observation that the suspect probably feels really bad about this. Observing the suspect during this progression, a suspect affected by guilt will sometimes exhibit body language or facial expressions of concern or remorse. Responses, such as shoulders slumping, head hung down, eyes tearing up, or avoiding eye contact, can indicate the suspect is ashamed and regretful of the crime. Observing this type of response, an investigator may move to a theme of conversation that offers the suspect the opportunity to clear their conscience by taking responsibility for their actions and apologizing or by taking some other action to right the wrong that has been done.

Explanation to Minimize Involvement

Suspects who have been arrested will sometimes be willing to provide an additional explanation of their involvement or the events to reduce their level of culpability or blame for the crime. In cases where multiple suspects have been arrested for a crime, one of those suspects may wish to characterize their own involvement as peripheral, sometimes as being before the fact or after the fact involvement. Examples of this would be a person who left the door unlocked for a break-in to take place or merely driving the getaway car. These less involved suspects hope to gain a reduced charge or even be reclassification as a witness against their co-

accused. In such cases, where multiple suspects are arrested, the investigator can initiate this strategy by offering the proposition, “If you have only a limited or minimal level of involvement in this crime, you should tell me about that now.”

Surrender to Overwhelming Evidence

The arrested suspect in a criminal investigation waiting in custody for interrogation has plenty to think about. Even the most experienced criminals will be concerned about how much evidence the police have for proving their connection to the crime. In the process of presenting a suspect with the opportunity to address the evidence that has been collected, an additional strategy can sometimes be engaged where there is a large volume of incriminating evidence or undeniable direct evidence, such as eyewitnesses or strong forensic evidence for circumstantial connections of the suspect to the crime. In such cases, if the interrogator can reveal the evidence in detail to the suspect, this disclosure may result in the suspect losing hope and making a confession to the crime. Although this tendency to surrender to overwhelming evidence may seem illogical, it does happen. Sometimes, this surrender has more to do with conscience and shame of the crime, but other times, the offender has just lost the energy to resist what they perceive to be a hopeless fight. As counter intuitive as this may seem, research has found that the suspect’s perception of the strength of police evidence is one of the most important factors influencing their decision to confess to police (Gudjonsson & Petursson, 1991). More recent research has shown that the stronger the evidence, the more likely a suspect was to confess (Gudjonsson, 2015).

Topic 2: Dealing with False Confessions

As noted at the beginning of this chapter, the goal of ethical interviewing, questioning, and interrogation is to elicit the truth, and the truth can include statements that are either inculpatory confessions of guilt or exculpatory denial of involvement in a crime. Whenever an investigator has interrogated a suspect, and a confession of guilt has been obtained, that investigator needs to take some additional steps to ensure that the confession can be verified as truthful before it goes to court. These additional steps are required because, although the investigator has not used any illegal or unethical techniques, the court will still consider whether the accused, for some reason, has confessed to a crime they did not commit. A skilled defense lawyer will often present arguments alleging that psychological stresses of guilt or hopelessness from exposure to overwhelming evidence have been used to persuade a suspect to confess to a crime they did not commit. In such cases, it is helpful for the court to hear any additional statements made by the accused, such as those that reveal that the suspect had direct knowledge of the criminal event that could only be known to the criminal responsible.

In police investigations, there are many details of the criminal event that will be known to the police through their examination of the crime scene or through the interview with witnesses or victims. These details can include the actual way the crime was committed, such as the sequence of events, the tools used in the crime; or the means of entry, path of entry/exit, along with other obscure facts that could only be known by the actual perpetrator. There are opportunities in a crime scene examination for the investigator to observe one or more unique facts that can be withheld as “hold back evidence.” This hold back evidence is not made part of reports or media release and is kept exclusively to test for false confessions. Confessing to the crime is a step, but confessing to the crime and revealing intimate details is much more compelling to the court. Regardless of the effort and care that investigators take to not end up with a false confession, they still occur, and there are some more common scenarios where false confessions happen. It is important for an investigator to consider these possibilities when a confession is obtained. These situations are:

1. The confessor was enlisted to take the blame — On occasions where persons are part of organized crime, a person of lower status within the group is assigned or sacrificed to take the blame for a crime in place of a person of higher status. These organizational pawns are usually persons with a more minor criminal history or are a young offender, as they are likely to receive a lesser sentence for the offence.
2. The Sacrificial Confessor — Like the confessor enlisted in an organized criminal organization, there is another type of sacrificial confessor; the type who steps forward to take the blame to protect a friend or loved one. These are voluntary confessors, but their false confession can be exposed by questioning the confessor about the hold back details of the event.
3. The Mentally Ill False Confessor — This type of false confessor is encountered when there is significant media attention surrounding a crime. As Pickersgill (2015) noted, an innocent person may voluntarily provide a false confession because of a pathological need for notoriety or the need to self-punish due to guilt over an unrelated past offence. Additionally, those suffering from psychosis, endogenous depression, and Munchausen Syndrome may falsely confess to a crime they did not commit (Abed, 2105) . As with other false confessors, these people can be discovered using hold back detail questioning.

Topic 3: Interviewing, Questioning, and Interrogating Young Offenders

Over the past century, with the Juvenile Delinquents Act (1908), the Young Offenders Act (1984), and the Youth Criminal Justice Act (2003), there has been an increased recognition in Canada of the need to treat young offenders differently than their adult counterparts. Recognizing the special needs of youth, each of these acts moved to treat young offenders less punitively and with a greater attention to rehabilitation. Further, under the Youth Criminal Justice Act (YCJA), young offenders are regarded as a special category of suspect, and some very strict rules apply to the process of arresting, questioning, or interrogating a young offender. For instance, the YCJA requires the notification and inclusion of parents or guardians in situations where a youth is being subjected to action for an investigation or a charge for an offence. As well, any young persons must have their Charter Rights explained by the investigator with language appropriate to their age and level of understanding. This means that the officer must talk with and assess an accused youth to determine their ability to understand their rights before taking their statement.

The officer's process of assessment will be questioned and examined by the court before any statement made by a youth is admitted as evidence. During this examination, the court will determine from the evidence whether the youth fully understood the rights being explained to them. An officer presenting evidence of having conducted a proper assessment of an accused youth should have notes reflecting the conversations and specific observations of the youth's responses to satisfy the court that adequate efforts were made to ensure that the youth did understand their rights. Good evidence of understanding can be achieved by asking the youth to repeat, summarize, or paraphrase their understanding of the rights that were explained to them.

In addition to the right to instruct counsel, as afforded to any adult under the Canadian Charter of Rights and Freedoms, a youth must also be afforded the additional right of being given a reasonable opportunity to consult with a parent or, in the absence of a parent, an adult relative or any other appropriate adult chosen by the young person, as long as that person is not a co-accused or under investigation for the same offence.

Further, in addition to this right, there is also an obligation on the police investigator to provide independent notice to the parent of a detained young person as soon as possible. The requirement for notice to the parent is a separate obligation for police, and it requires specific notification of (a) the name of the young person, (b) the charge against the young person, and (c) a statement that the young person has the right to be represented by counsel. If a parent is not available to receive this notice, it may be given to a person whom the investigator deems appropriate. In the case of some young people, this could be an older sibling, an adult caregiver, or, for those in the care of Social Services, a social worker in charge of the young person's care. In any case, these requirements and others specific to young offenders are spelled out under Sec 146 of the Youth Criminal Justice Act:

Youth Criminal Justice Act (Section 146)

1. Subject to this section, the law relating to the admissibility of statements made by persons accused of committing offences applies in respect of young persons.
2. No oral or written statement made by a young person who is less than eighteen years old, to a peace officer or to any other person who is, in law, a person in authority, on the arrest or detention of the young person or in circumstances where the peace officer or other person has reasonable grounds for believing that the young person has committed an offence is admissible against the young person unless
 1. the statement was voluntary;
 2. the person to whom the statement was made has, before the statement was made, clearly explained to the young person, in language appropriate to his or her age and understanding, that
 1. the young person is under no obligation to make a statement,
 2. any statement made by the young person may be used as evidence in proceedings against him or her,
 3. the young person has the right to consult counsel and a parent or other person in accordance with paragraph (c), and
 4. any statement made by the young person is required to be made in the presence of counsel and any other person consulted in accordance with paragraph (c), if any, unless the young person desires otherwise;
 3. the young person has, before the statement was made, been given a reasonable opportunity to consult
 1. with counsel, and
 2. with a parent or, in the absence of a parent, an adult relative or, in the absence of a parent and an adult relative, any other appropriate adult chosen by the young person, as long as that person is not a co-accused, or under investigation, in respect of the same offence; and
 - (d) if the young person consults a person in accordance with paragraph (c), the young person has been given a reasonable opportunity to make the statement in the presence of that person.

3. The requirements set out in paragraphs (2)(b) to (d) do not apply in respect of oral statements if they are made spontaneously by the young person to a peace officer or other person in authority before that person has had a reasonable opportunity to comply with those requirements.
4. A young person may waive the rights under paragraph (2)(c) or (d) but any such waiver
 1. must be recorded on video tape or audio tape; or
 2. must be in writing and contain a statement signed by the young person that he or she has been informed of the right being waived.
5. When a waiver of rights under paragraph (2)(c) or (d) is not made in accordance with subsection (4) owing to a technical irregularity, the youth justice court may determine that the waiver is valid if it is satisfied that the young person was informed of his or her rights, and voluntarily waived them.
6. When there has been a technical irregularity in complying with paragraphs (2)(b) to (d), the youth justice court may admit into evidence a statement referred to in subsection (2), if satisfied that the admission of the statement would not bring into disrepute the principle that young persons are entitled to enhanced procedural protection to ensure that they are treated fairly, and their rights are protected.
7. A youth justice court judge may rule inadmissible in any proceedings under this Act a statement made by the young person in respect of whom the proceedings are taken if the young person satisfies the judge that the statement was made under duress imposed by any person who is not, in law, a person in authority.
8. A youth justice court judge may in any proceedings under this Act rule admissible any statement or waiver by a young person if, at the time of the making of the statement or waiver,
 1. the young person held himself or herself to be eighteen years old or older;
 2. the person to whom the statement or waiver was made conducted reasonable inquiries as to the age of the young person and had reasonable grounds for believing that the young person was eighteen years old or older; and
 3. in all other circumstances the statement or waiver would otherwise be admissible.
9. For the purpose of this section, a person consulted under paragraph (2) (c) is, in the absence of evidence to the contrary, deemed not to be a person in authority. (Government of Canada, 2015)

Topic 4: Ancillary Offence Recognition

Criminal acts can be complex and persons committing crimes can be devious. For every law prohibiting a criminal act, there are those who seek to avoid prosecution or to subvert the law completely. Criminal law has evolved into the current model to reflect the different types of crimes that are possible, and this evolution now includes laws known as ancillary offences. For an investigator, part of the investigative skill set is learning to recognize the evidence and fact patterns that constitute these ancillary criminal acts. These offences include:

- Conspiracy to commit an offence
- Attempting to commit an offence
- Being an accessory after the fact to an offence
- Aiding and abetting an offence
- Counselling a person to commit an offence
- Compounding an indictable offence

For any of these offences, an investigator needs to be aware of the types of information and evidence that will support these charges. Sometimes an investigation will identify a suspect participant where there appears to be a nexus of involvement to the crime, but that nexus is not sufficient evidence of a criminal act to support an arrest or a charge. In these cases, an ancillary offence may be appropriate.

Conspiracy to Commit an Offence

A conspiracy to commit any offence requires an agreement between two or more persons to commit a criminal act.

Conspiracy Offence

1. Except where otherwise expressly provided by law, the following provisions apply in respect of conspiracy:
 1. everyone who conspires with anyone to commit murder or to cause another person to be murdered, whether in Canada or not, is guilty of an indictable offence and liable to a maximum term of imprisonment for life;

2. everyone who conspires with anyone to prosecute a person for an alleged offence, knowing that he did not commit that offence, is guilty of an indictable offence and liable
1. to imprisonment for a term not exceeding ten years, if the alleged offence is one for which, on conviction, that person would be liable to be sentenced to imprisonment for life or for a term not exceeding fourteen years, or
2. to imprisonment for a term not exceeding five years, if the alleged offence is one for which, on conviction, that person would be liable to imprisonment for less than fourteen years;
1. everyone who conspires with anyone to commit an indictable offence not provided for in paragraph (a) or (b) is guilty of an indictable offence and liable to the same punishment as that to which an accused who is guilty of that offence would, on conviction, be liable; and
2. everyone who conspires with anyone to commit an offence punishable on summary conviction is guilty of an offence punishable on summary conviction. (Dostal, 2012)

The offence that is being conspired upon is called the “target offence,” and that offence does not need to be carried out to constitute the offence of conspiracy. All that is required to establish the offence of conspiracy is evidence that two or more persons conspired together and formed a common intent to commit the targeted offence.

As an interesting side note to the conspiracy charge: if two persons conspire together to commit any offence outside of Canada and that offence would be an offence if committed in Canada, they may be charged with conspiracy (Government of Canada, 2017). In other words, two persons may conspire in Canada to commit a murder in the United States, and, even if that murder is not committed, they could be charged with conspiracy to commit murder.

Conspiracy opens the door to many possibilities where persons not otherwise chargeable may be held accountable for their part in a criminal act or in a proposed criminal act.

Consider the situation where an armed robbery of a bank occurs, and three suspects flee the scene as police respond. The last suspect to exit the bank, William Tooslow, is stopped and arrested by police responding to the alarm, but the other two suspects escape. As the investigation proceeds, no additional evidence is found to identify the two robbers who escaped, but searches of Mr. Tooslow’s cell phone reveal book messages and emails with another male, Iben Faster, where plans to rob this bank were clearly being made over the past week.

Although there is not enough evidence to place Mr. Faster in the bank at the time of the robbery, he could still be charged with conspiracy to commit armed robbery, while Mr. Tooslow is charged with the actual offence of armed robbery. During an interrogation, a suspect may attempt to minimize their involvement in the crime and admit only to participating in making the plan. An investigator needs to recognize that this is still a chargeable offence.

Attempting to Commit an Offence

Like conspiracy, attempting to commit an offence does not require that the offence is committed.

Attempts

24. (1) Everyone who, having an intent to commit an offence, does or omits to do anything for the purpose of carrying out the intention is guilty of an attempt to commit the offence whether or not it was possible under the circumstances to commit the offence. (Dostal, 2012)

Unlike conspiracy, attempting to commit an offence only requires one person planning the crime to commit the target offence. For the offence of attempting to commit an offence to be completed, there must be evidence to show that the accused went past the point of mere planning and did something or omitted to do something in the furtherance of their plan. This attempting to commit provision can be a useful strategic tool for investigators because it provides the option to intervene before an offence in the planning stage takes place.

Consider the scenario where a suspect, Franky Yapsalot, tells a friend that he is planning to do a home invasion at the residence of a wealthy local businessman on Saturday night. The friend informs to the police and investigators conduct surveillance on Mr. Yapsalot. On Saturday night, Mr. Yapsalot is observed wearing dark clothing and gloves and gets into his car with a sawed-off shotgun. As he drives into the residential area of the businessman’s home, police stop his car and make the arrest. In this case, sufficient evidence would exist to make a charge of attempted break and enter with intent to commit an indictable offence.

The offence of attempting to commit an offence can sometimes allow police to take effective enforcement action and intervene before the target offence occurs, without endangering the proposed victim of the planned offence. At the interrogation stage of an

investigation, a suspect wanting to minimize his culpability may admit to sufficient planning and action to make out the offence of attempting to commit.

Being an Accessory After the Fact to an Offence

Accessory after the fact is another offence where a person can be charged with participating in a crime, even if they were not directly involved in planning or carrying out the primary offence.

Accessory after the fact

23. (1) An accessory after the fact to an offence is one who, knowing that a person has been a party to the offence, receives, comforts or assists that person for the purpose of enabling that person to escape. (Dostal, 2012)

A person can be charged as an “accessory after-the-fact” to an offence, if evidence is discovered to show that they knew that another person had committed the primary offence and they received, comforted, or assisted that person to enable them to escape justice. An example of this offence could be where a person receives a phone call from a friend asking to be transported and hidden away after escaping from prison. If the friend complies with this request, they will become an accessory after the fact to the offence of escaping lawful custody.

Counselling a Person to Commit an Offence

In this type of ancillary crime, the person providing the counselling becomes a party to the offence if it is committed.

Person counselling offence

22. (1) Where a person counsels another person to be a party to an offence and that other person is afterwards a party to that offence, the person who counselled is a party to that offence, notwithstanding that the offence was committed in a way different from that which was counselled.

Idem

(2) Everyone who counsels another person to be a party to an offence is a party to every offence that the other commits in consequence of the counselling that the person who counselled knew or ought to have known was likely to be committed in consequence of the counselling.

Definition of “counsel”

(3) For the purposes of this Act, “counsel” includes procure, solicit or incite.
R.S., 1985, c. C-46, s. 22; R.S., 1985, c. 27 (1st Supp.), s. 7. (Dostal, 2012)

Like conspiracy and aiding/abetting, it is not necessary for the person providing the counselling to participate in the offence, and the offence does not even need to be committed following the exact instruction of the counsellor. A condition to this offence is that the counsellor will only be a party if they knew or should have known that the other person was likely to commit that crime in consequence of the counselling. An interrogator recognizing this offence would seek to draw out admissions of what the counselling suspect knew or should have known about the likelihood of the perpetrator committing the offence.

Parties to an Offence

The ancillary offence of being a party to an offence, under section 21(1) of the Criminal Code is also often referred to as aiding and abetting.

Parties to offence

21. (1) Everyone is a party to an offence who

1. actually commits it;
2. does or omits to do anything for the purpose of aiding any person to commit it; or
3. abets any person in committing it.

Common intention

(2) Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any one of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to that offence.
R.S., c. C-34, s. 21. (Dostal, 2012)

Aiding and abetting is different from other ancillary offences in that it does not become a separate charge from the primary offence. In the cases of conspiracy, counselling, and accessory after the fact, persons are charged with those ancillary offences; however, in the case of aiding and abetting an offence, the person is charged with the primary offence. So, where evidence shows that a person purchased the weapons to enable an armed robbery to take place, that person would be charged under the section for armed robbery proper.

Summary

So far, we have defined the stages and discussed the issues surrounding the investigative tasks of interviewing, questioning, and interrogating suspects in criminal investigations. We have also called attention to the specific change obligations that must be recognized and responded to by an investigator as the investigation progresses. In terms of the interrogation of suspects, this chapter examined the process of developing an interrogation plan by considering the variety of motivations that might cause a suspect to make a confession to a crime, and the additional protections afforded to youth was also discussed. In this chapter's final section, definitions and examples of hybrid ancillary offences was presented, as was the need to interrogate suspects and investigate for additional evidence in support of proving the unique elements of ancillary offences, if they have occurred.

Study Questions

- At what point would an investigator move from interviewing a person to questioning them?
- At what point would an investigator move from questioning a suspect to interrogating them?
- What are three common scenarios where an investigator is likely to come across a false confession?
- What are two ways in which young offenders must be treated differently than adults by an investigator in the process of questioning them about involvement in a crime?
- What are six examples of ancillary offences that investigators need to be aware of?
- What evidence must be provided to show that a person can be charged with being an “accessory after the fact”?
- How is “aiding and abetting” different from other ancillary offences?

Miranda Rule ^[118]

The Miranda warning is a statement read by police to criminal suspects that asserts their right to counsel and right to remain silent.

Learning Objective

- Describe the Miranda Rights and the obligations they impose on police

Key Points

- The Miranda warning (also referred to as Miranda rights) is a warning given by police in the United [States](#) to criminal suspects in police custody.
- The Miranda rule applies to the use of [testimonial evidence](#) in criminal proceedings that is the product of custodial police interrogation. Miranda [right to counsel](#) and right to remain silent are derived from the self-incrimination clause of the Fifth [Amendment](#).
- The Miranda rule would apply unless the prosecution can establish that the statement falls within an exception to the Miranda rule. The three exceptions are (1) the routine booking question exception (2) the jailhouse informant exception and (3) the public safety exception.

Terms

- [testimonial evidence](#) : It is the proof given by the product of custodial police interrogation.
- [procedure rule](#) : It is the body of law that sets out the rules and standards that courts follow when adjudicating civil lawsuits (as opposed to procedures in criminal law matters).

EXAMPLE

- In *Berghuis v. Thompson*, the Court ruled that a suspect must clearly and unambiguously assert right to silence. Merely remaining silent in face of protracted questioning is insufficient to assert the right.

Background

The Miranda warning (also referred to as Miranda rights) is a warning given by police in the United States to criminal suspects in police custody (or in a custodial interrogation) before they are interrogated to preserve the admissibility of their statements against them in criminal proceedings.

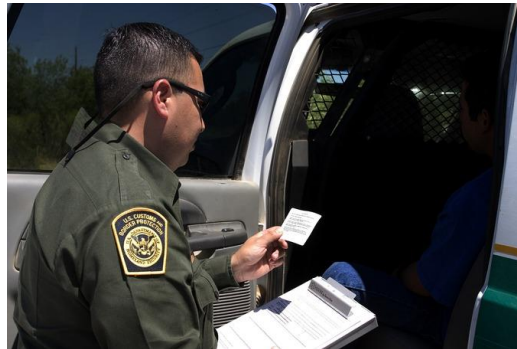


Figure 10.1 Incorporating Amendment V Here, a US law enforcement official reads an arrested person his rights. Amendment V, the right to due process, has been incorporated against the states. ^[119]

In other words, a Miranda warning is a preventive [criminal procedure rule](#) that law enforcement is required to administer to protect an individual who is in custody and subject to direct questioning or its functional equivalent from a violation of his or her Fifth Amendment right against compelled self-incrimination. In *Miranda v. Arizona*, the [Supreme Court](#) held that the admission of an elicited incriminating statement by a suspect not informed of these rights violates the Fifth and the Sixth Amendment right to counsel.

Miranda refers to Ernesto Miranda. In 1963 Miranda was arrested in Phoenix and charged with rape, kidnapping, and robbery. Miranda was not informed of his rights prior to the police interrogation. During the two-hour interrogation, Miranda allegedly confessed to committing the crimes, which the police apparently recorded. Miranda, who had not finished ninth grade and had a history of mental instability, had no counsel present. At [trial](#), the prosecution's case consisted solely of his confession. Miranda was convicted of both rape and kidnapping and sentenced to 20 to 30 years in prison. Miranda appealed to the U.S. Supreme Court and won his case. The Supreme Court devised a statement that must be read to those who are arrested.

Thus, in theory, if law enforcement officials decline to offer a Miranda warning to an individual in their custody, they may still interrogate that person and act upon the knowledge gained, but may not use that person's statements to incriminate him or her in a criminal trial. However, in the pragmatic interactions between police and citizens, this is rarely true. In *Berghuis v. Thompkins*, the court held that unless a suspect actually states that he is relying on this right, his subsequent voluntary statements can be used in court and police can continue to interact with or question him. The Miranda rule applies to the use of testimonial evidence in criminal proceedings that is the product of custodial police interrogation. The Miranda right to counsel and right to remain silent are derived from the self-incrimination clause of the Fifth Amendment.

It is important to note that immigrants who live in the United States illegally are also protected and should receive their Miranda warnings as well when being interrogated or placed under arrest. Aliens receive [constitutional](#) protections when they have come within the territory of the United States and have developed substantial connections with this country.

Assertion of Miranda Rights

If the [defendant](#) asserts his right to remain silent all interrogation must immediately stop and the police may not resume the interrogation unless the police have "scrupulously honored" the defendant's assertion and obtain a valid [waiver](#) before resuming the interrogation. In determining whether the police "scrupulously honored" the assertion the courts apply a totality of the circumstances test. The most important factors are the length of time between the termination of the original interrogation and commencement of the second and a fresh set of Miranda warnings before resumption of interrogation.

The consequences of assertion of Fifth Amendment right to counsel are stricter. The police must immediately cease all interrogation and the police cannot reinstate interrogation unless counsel is present (merely consulting with counsel is insufficient) or the defendant contacts the police on his own volition. If the defendant does reinstate contact, a valid waiver must be obtained before interrogation may resume.

In *Berghuis v. Thompkins*, the Court ruled that a suspect must clearly and unambiguously assert right to silence. Merely remaining silent in face of protracted questioning is insufficient to assert the right.

Exceptions of Miranda Rights

The Miranda rule would apply unless the prosecution can establish that the statement falls within an exception to the Miranda rule. The three exceptions are (1) the routine booking question exception (2) the jailhouse informant exception and (3) the public safety exception. Arguably only the last is a true exception—the first two can better be viewed as consistent with the Miranda factors. For example, questions that are routinely asked as part of the administrative process of arrest and custodial commitment are not considered "interrogation" under Miranda because they are not intended or likely to produce incriminating responses. Nonetheless, all three circumstances are treated as exceptions to the rule.

Admissions vs. Confessions ^[120]

Admissions and confessions are a family of statements made by an accused that are admissible as evidence. An admission is a statement, usually inculpatory, made by an accused to a civilian witness. A confession is a statement, usually inculpatory, made by an accused to a person in authority.

Admissions to Undercover Officer

Generally, statements that are spontaneous to an undercover officer will not violate the right to silence. However, the police conduct must not "subvert" the accused's rights.

There is no bar on exchanges between undercover and suspect who chooses to freely speak to someone who happens to be an undercover.

Where the accused knows that they are talking to an agent of the state and makes voluntary admissions, there will be no violation of the right to silence.

Out of Custody vs In Custody Admission

An undercover officer who is in contact with an accused out of custody, such as during a "Mr. Big" operation, may listen and actively attempt to elicit confessions.

In-Custody Admissions

An undercover officer posing as an inmate within a prison may only listen and not actively seek a confession.

Cell Plant or Cell Shot After Interview

Where there has been a refusal by a detainee to give a statement during a formal cautioned interview, there is no rule precluding the use of a cell plant afterwards to gain admissions.

"actively elicited information"

An undercover officer cannot "actively elicited information" from the accused without violating their s. 7 right to silence. They may only passively observe. To determine whether a statement was "actively elicited" or not, depends on consideration of whether "considering all the circumstances of the exchange between the accused and the state agent, is there a causal link between the conduct of the state agent and the making of the statement by the accused?"

Steps of Analysis

First, it must be determined if the person receiving the statement was an agent or not. Second, it must be determined if the statement was "actively elicited" contrary to the right to silence.

-Factors of Analysis

The question of elicitation involves two dimensions:

1. concerns of "the nature of the exchange between the accused and the state agent"
2. concerns of "the nature of the relationship between the state agent and the accused". This includes whether there was a relationship of trust that was exploited.

The focus on the first factors should be upon whether the conversations were functionally equivalent to an interrogation.

Admission to Agents

Where the informer is acting independent of the will of the police, any statements obtained will generally not be subject to the right to silence. This asks the question of whether the exchange would have still taken place, in the form and manner that it did, but for the intervention of the state.

Confessions

General Principles

A confession is a written or oral statement by the accused to a person in authority that admits a factual element to the Crown's case. The law regarding confessions applies equally to inculpatory statements as well as exculpatory statements.

Where a confession has been admitted as evidence in the Crown's case, the trier-of-fact may consider the statement as proof of facts found within it.

Voluntariness of Confessions

All confessions must be voluntary to be admissible. This is the court's key concern. When it is not voluntary it is not reliable and so is not admissible in evidence.

Burden of Proof

This Crown must prove voluntariness beyond a reasonable doubt in.

Vague Statements

The confession must be given sufficient context background to be admissible. If the statement is too vague and the context of the statement could have multiple meanings, it should not be admitted. However, vagueness on the exact wordings of the statement without loss of meaning is not sufficient.

Methods of Recording Statement

There is no requirement that the statement be recorded to be admissible as voluntary.

Where the statement was not recorded under suspicious circumstances, such as where recording facilities were readily available, the judge must determine "whether or not a sufficient substitute for an audio or video tape record has been provided ... to prove voluntariness beyond a reasonable doubt." The "completeness, accuracy and reliability of the record have everything to do with the court's inquiry into and scrutiny of the circumstances surrounding the taking of the statement." However, where the recording was not done properly, the Crown will have a heavy onus to admit the statement.

Admission of Guilt

An admission of guilt can encompass statements that are direct admissions of guilt or admission of fact that tends to prove guilt.

Such an admission can be by words or by conduct that could reasonably be taken as intending to be an assertion.

By the Accused

The rules on confessions apply only to statements made by the accused.

This does not include statements by third parties in the presence of the accused. These statements are only admissible as adoptive admissions.

Persons in Authority

A confession includes statements made merely in the presence of a person in authority as long as the accused was aware of their presence.

Voir Dire

A voir dire on the admissibility of a statement to a person in authority requires the judge to determine: [\[1\]](#)

1. whether there is some evidence that it was made; and
2. whether it was given voluntarily.

The voir dire should generally be held as part of the Crown's case regardless of whether the statement is only to be used for cross-examination. There are circumstances where the voluntariness can be proven at the time of cross-examination of the accused.

Where the accused denies the statement, the voir dire is not to determine whether the statement was actually made beyond a reasonable doubt. The issue of whether the statement was made for the purpose of trial is determined after the voir dire.

In the voir dire, the judge only needs to have "some credible evidence" that the statement was made.

There is no need to have a voir dire for the admission where the statement of the accused is part of the offence (e.g., uttering threats, perjury, refusal).

Circumstances of the Statement

Suspect Statements Made before Arrest or Detention

When a suspect is invited to give a formal statement to police the statement is admissible as long as it is given [voluntarily](#) and not while detained or charged. If the suspect is detained or charged then they are entitled to have [access to counsel](#) .

Statements Made upon Arrest

Exculpatory statements of the accused upon arrest are admissible as an exception to prohibiting self-serving evidence when tendered by the Crown. However, it has been held that such exculpatory statements can be admitted by the accused's testimony.

Derived Confessions

Confessions that follow an inadmissible involuntary confession may also be excluded from evidence as a derived confession.

The judge must consider the connection between the statements and the influence the improper conduct had on the derived confession, taking into account all relevant circumstances including:

1. the time span between the statements;
2. advertence to the earlier statement during questioning in the subsequent interview, including whether there were cautions that the prior statement should not influence the decision to make subsequent statements;
3. discovery of additional information after completion of the first statement;
4. the presence of the same police officers during both interviews; and
5. other similarities between the two sets of circumstances.

The derived statement will be involuntary if "the tainting features that disqualified the first continue to be present" or if "the fact that the first statement was made was a substantial factor that contributed to the making of the second statement". All of this is to the view of whether the derived statement was contaminated by the first statement.

Connection between statements includes a temporal, contextual and causal connection.

Contamination is not limited to involuntariness but also to Charter breaches such as the right to counsel under s. 10(b) of the Charter. In such cases, the admissibility is based on s. 24(2) of the Charter.

A secondary caution or warning can be a major factor in eliminating any contamination that a previous involuntary statement would have on a subsequent derived statement.

Admission of a Confession as Part of Case or for Cross-Examination

A confession that is found to be admissible may be used by the Crown to be admitted as part of its case for the truth of its contents as a hearsay exception or it may be held for cross-examination purposes.

If the Crown introduces the as part of its case, the parts favorable to the defense also become admissible. The trier-of-fact, however, determines what part of the statement to accept as fact. When the statement is put in as part of the Crown's case, the Court must consider the statement as if he had testified.

The rule requiring the admission of the whole statement, however, cannot be used to force the Crown to adduce all statements made by the accused. The rule should not be allowed to be used by defense to avoid subjecting the accused to cross-examination, challenges to credibility. The exception to the hearsay rule permitting admission is based on the reliability of statements of guilt. Exculpatory statements are self-serving and so are not considered as reliable.

An accused cannot lead evidence of any of his statements made at the time as it permits the accused from avoiding to testify, it self-serving and lacks probative value. Exceptions exist for circumstances such as [recent possession](#) .

Whether the statement is inculpatory or exculpatory or a mix, does not affect its admissibility.

The answers to questions given during police questioning should be considered in light of the impermissible rules on cross-examination. Questions that would be impermissible as a cross-examination may be equally inadmissible within a statement. The police asking the accused "why would complainant lie", is considered inappropriate to put to the jury.

An accused statement adduced by the Crown can be afforded the same weight as the actual testimony, however, it may also be given lesser weight in light of it not being under oath and not subject to cross-examination. An accused statement can still be used to establish reasonable doubt.

Editing Statements

Once a statement has been found to be admissible, the court has a "heavy duty to edit out the prejudicial aspects of the statement, but must also ensure that what remains is meaningful".

Where the statement cannot be appropriately edited then the statement should not be admitted.

Any statements that are admitted with bad character evidence should require the judge to give a limiting instruction.

Searches ^[121]

To understand how the Constitution of the United States limits the criminal law, it is important to consider the right to privacy. Shockingly, the term "privacy" never appears in the Constitution. Yet, over the years, the Supreme Court has said that several of the rights that are explicitly stated in the constitution come together to create a right to privacy. In the world of procedural law, it must be remembered, if the Supreme Court of the United States says it, it is so.

The right to privacy places a limit on many forms of police conduct, from searches to arrest. It is important, however, to understand there is a limit to how far the right goes. It is not absolute. The police are not prohibited from interfering with a citizen's privacy interest, but it must be reasonable when they do so.

When it comes to the police conducting searches of people, vehicles, homes, offices and anywhere else a person has a right to privacy, the idea of reasonableness comes down to probable cause. Probable cause means that there is sufficient evidence to make a reasonable person would believe that the person is doing something contrary to the law.

Police activity that the courts consider a search must be based on probable cause but remember that the courts define a search differently than the everyday use of the term. There are many exceptions to the probable cause requirement that, while the average person may consider the police conduct a search, it is not considered so by the courts. Objects in plain view, for example, are not subject to the probable cause standard, nor are things located in open fields. When the probable cause standard does apply because the courts consider a particular police action a search, the police are not allowed to determine if there is in fact probable cause. That job goes to the courts.

Search Warrants

An officer desiring to conduct a search needs probable cause for the search to be lawful. Because society expects police officers to find evidence and arrest criminals, they may be overzealous in determining whether they do or do not have probable cause. As a general rule, the evidence establishing probable cause must be submitted to an impartial magistrate, and if the magistrate agrees that probable cause exists, then he or she will issue a search warrant.

Probable Cause

For a warrant to be issued, the magistrate must determine that probable cause exists. This has to be in the form of a sworn statement called an affidavit. When determining probable cause for a search, the reasonableness test used by the courts considers the experience and training of police officers. That is, the test is not merely what a reasonable person would believe, but what a reasonable police officer would believe considering the evidence as well as the officer's training and experience. Note that the standard for establishing probable cause is more likely than not. This is a far lesser standard than the proof beyond a reasonable doubt standard required for a conviction in criminal court.

The Particularity Requirement

Another requirement for a search warrant to be valid is that it must particularly describe the person or thing to be seized. There are many supreme court cases that establish what this means in particular circumstances. As a general rule regarding search warrants, it means that the place to be searched is sufficiently described that it cannot be confused with some other place.

Obtaining and Executing a Search Warrant

The warrant application process varies in exact detail from jurisdiction to jurisdiction. Often, the Supreme Court of the state in which the warrant is sought provides the details in a legal document known as the Rules of Criminal Procedure. The basic rules, however, are dictated by the Supreme Court as interpretations of the Fourth Amendment. All of the officer's evidence must be contained in an affidavit. The rules also dictated how a warrant must be executed. As a general rule, the warrant must be served during daylight hours, and officers must identify themselves as officers and request entry into the place to be searched. This identification requirement is known as knock and announce.

No-knock Warrants

The general rule that officers must “knock and announce” when serving a warrant is not absolute, but special permission from a judge must be obtained before it can be lawfully circumnavigated. A no-knock warrant can be issued have a legitimate fear that announcing their presence would endanger lives or give criminals time to destroy evidence. Such a warrant authorizes law enforcement to break down doors without warning and to enter a structure. These types of warrants are controversial. Civil liberty advocates say that such warrants violate the spirit of the Fourth Amendment. Police defend such warrants on the grounds that they save lives and very frequently result in the seizure of contraband.

Searches Without Warrants

There are several exceptions to the general requirement that officers must obtain search warrant for a search to be legal. The Supreme Court has determined that exigent circumstances justify an exception to the rule. Exigency is another word for emergency. Thus, an exigent-circumstances search is an entry into a place that would otherwise require a warrant but for the emergency situation.

Another common warrantless search is a consent search . Most of the rights guaranteed by the constitution can be waived by the person that has the right. If a person gives the police permission to search, so long as the permission is given voluntarily, then there is no violation of the person’s Fourth Amendment rights. A shocking number of criminal convictions come as a result of consent searches. Many criminals do not do what is in their legal best interest. According to the Supreme Court of the United States, the police are not obligated to inform citizens that they have the right to refuse consent. Some state courts (e.g., Arkansas), however, have interpreted state constitutions to give this right.

Another exception to the general requirement that police have a warrant to conduct a search is known as a hot pursuit search . If an officer chases an offender into a private place, there is no legal requirement that the officer break off the pursuit. If contraband is discovered in such a pursuit, it can be seized and will be admissible in court.

Most of the exceptions to the warrant requirement above do not, for one reason or another, require probable cause. An automobile search is an interesting hybrid because it does require probable cause to obtain a warrant, even though the officer is not obligated to actually obtain the warrant. The court allows this compromise because of the inherent mobility of vehicles. The criminal suspect could simply drive away of the officer were required to leave the scene and go obtain a warrant. Merely citing the driver for a traffic violation, however, is not sufficient to establish probable cause for a lawful search.

To preserve evidence and to protect officers from hidden weapons, officers are allowed to search a person after they have been arrested. Such a search is known as a search incident to arrest . As an extension of this idea, the officer may search the area immediately surrounding the arrested person. That is, the area immediately under the arrestee’s control. The Court has ruled the fact that the suspect is in handcuffs and could not reach for a weapon is immaterial.

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