

# NEXTGEN FIELD TRAINING

## Stuff Every FTO Should Know - Terminology

- Burdens of Proof

95% +	BEYOND A REASONABLE DOUBT
75% +	CLEAR AND CONVINCING
51% +	PREPONDERANCE
??%	PROBABLE CAUSE
??%	REASONABLE SUSPICION
1% +	SCINTILLA
0%	NO EVIDENCE

- **Consent:** A voluntary agreement, free of threats, promises, or coercion, to do something or allow something to happen.
  - **Express Consent:** A clear and direct statement of agreement from the person agreement is being sought from. (“Yes, I will do that.”)
  - **Informed Consent:** A statement of agreement once all requested factors are made known to the person agreement is being sought from. (“After having been informed of all your rights, are you willing to answer my questions?”)
  - **Implied Consent:** An agreement that is assumed agreeable based upon a person’s indirect action or inaction. (For example, it is agreed because the person did not say “no” or because they nodded affirmatively.)
- **Reasonable Suspicion:** Specific and articulable facts, along with rationale inferences, that would lead a reasonable police officer to believe that a crime is being committed, has been committed, or was going to be committed. More than a mere hunch.
- **Investigative Detention:** A temporary seizure of a person based upon reasonable suspicion for the purpose of determining...
  - Whether there is probable cause to arrest.
  - Whether further investigation is necessary.
  - Whether the officer’s suspicions were unfounded
- **Probable Cause:** Specific and articulable facts that would lead a reasonable police officer to believe that a crime is being committed, has been committed, or was going to be committed. Can be based on the collective knowledge of the police. What can be corroborated?
- **Element of the Offense:** The individual components that define a crime. Each element must be proven to have occurred beyond a reasonable doubt in order for a person to be found guilty of the offense. (Example: 28-1381.A1 – (1) Person was driving or APC of a vehicle, (2) in the State of Arizona, and (3) is under the influence of liquor/drugs, and (4) is impaired to the slightest degree.)



# Stuff Every FTO Should Know – Common Case Laws

- **Tennessee vs. Garner – Use of Deadly Force on a Fleeing Felon (1985)**

- **BRIEF DESCRIPTION:** Officer responded to a call for service that a home was being burglarized. They went to the home and saw a young man, Garner, running from it. An officer told Garner to stop, but Garner kept fleeing. When it became apparent that Garner was going to escape, the officer shot and killed Garner.
- **LEGAL IMPLICATIONS:**
  - Set that use of force must be analyzed under the 4<sup>th</sup> Amendment as a seizure.
  - To be a reasonable shooting, the officer must reasonably believe the suspect is an immediate threat of deadly force or serious bodily injury to the officer or someone else.
  - Four elements that must be present in order to use deadly force on a fleeing felon:
    - **Ability** - The suspect must have the physical and practical ability to cause harm.
    - **Opportunity** - While the suspect may have the ability to cause harm, it means nothing unless they also have the opportunity to do so; right here and right now.
    - **Imminent Jeopardy** - This criterion requires that a “reasonable and well-trained officer” would believe him/herself or others to be in immediate danger.
    - **Preclusion** - Officers must exercise self-restraint to the extent possible based upon the specific situation and circumstances. Use force only to the extent and level necessary.

- **Graham vs. Connor – Use of Force (1989)**

- **BRIEF DESCRIPTION:** Graham was suffering from an insulin problem and was driven to a convenience store by a friend to purchase orange juice. Graham ran into the store, but when he realized the line was too long, he ran out and got back into the car. Officers saw Graham run in the convenience store and quickly run out, so they believed he had just committed a robbery. The officers stopped the car. Graham ran around and sat on the curb. The officers thought Graham was on drugs, so they banged his face on the car (presumably) to clear his head. Another officer then checked the convenience store to learn that Graham had not robbed the store.
- **LEGAL IMPLICATIONS:**
  - Set the objectively reasonable standard for judging use of force.
  - Developed the 3 Prong Test for determining whether the force used was reasonable.
    - Severity of the Crime – Felony vs. Misdemeanor, Violent vs. Nonviolent Offense
    - Did the suspect pose an immediate threat to officers or others? (This has been determined to be the most important factor by the courts.)
    - Is the suspect actively resisting arrest or attempting to escape?
  - Has been expanded to include consideration of the totality of other circumstances - the possibility of using de-escalation techniques, the availability of lesser means of force, etc.
  - Judgements must be made based upon what the officer knew at the time, those specific circumstances, and does not allow for 20/20 hindsight.
  - Officers must also follow state statutes and department policy for use of force.

- **Terry vs. Ohio – Reasonable Suspicion to Detain (1968)**

- **BRIEF DESCRIPTION:** A 39-year officer observed two men standing on a street corner. One would walk up to a store window, look inside, and return to confer with his companion. This process was repeated about a dozen times. The suspects talked with a third man, then followed him up the street. Thinking the suspects were “casing” the store, the officer confronted the three men and asked their names. The men mumbled a response, at which time the officer spun one of the men, Terry, around and patted his breast. He found and removed a pistol.
- **LEGAL IMPLICATIONS:**
  - A Terry Stop must be supported by reasonable suspicion the person is involved in criminal activity.
  - This case created the distinction between a “seizure” and a “non-seizure.”
  - What factors can be used to establish Reasonable Suspicion?
    - Officer’s training and experience. (Have you actually had the training?)
    - The person’s appearance.
    - Their actions.
    - Prior knowledge of the offender.
    - Their demeanor.
    - Location.
    - Time of day.
    - The purpose for your stop.
    - The subject’s companions or lack thereof.
    - Possible source of information.
    - Any other relevant facts that would assist an officer in determining whether there is reasonable suspicion.
  - Make sure the reasonable suspicion is specific and articulable combined with rationale inferences

- **Terry vs. Ohio – Reasonable Suspicion to Frisk for Weapons (1968)**

- **LEGAL IMPLICATIONS:**
  - For a person detained based on reasonable suspicion of criminal activity, the officer can frisk based only on a reasonable suspicion the person is armed, regardless of whether the officer believes the person is presently dangerous.
  - It is only for consensual encounters (those not involving RS of criminal activity) that an officer must have reasonable belief the person is both armed and presently dangerous. State v. Serna (AZ Supreme Court 2014), and Gastelum v. Hegyi (AZ Court of Appeals 2015).

- **Minnesota vs. Dickerson – Contraband Discovered During a Terry Frisk for Weapons (1993)**

- **BRIEF DESCRIPTION:** Officers saw the defendant coming out of a crack house. The officers, from the behavior of the defendant and from their past experience, got reasonable suspicion that the defendant was involved in illegal conduct. The officers stopped the defendant to question and frisked him for weapons. The officer searching the defendant did not feel any weapons, but he did feel something which he believed could be cocaine. The officer closely felt the object and then removed it from the defendant's pocket. It was cocaine.
- **LEGAL IMPLICATIONS:**
  - A frisk for weapons is less invasive than a search incident to arrest. A frisk for weapons allows the officer to conduct only a pat-down of the outer clothing of the detained person.
  - During a Terry Frisk, the officer is not allowed to manipulate an object to determine what it is. If it is determined during the frisk that the object may be a weapon, the officer can remove it from the detainee's clothing.
  - During a Terry Frisk for weapons, if an officer feels an object that is "immediately apparent" as contraband to the officer, based upon training and experience, the officer may remove it from the detainee's clothing.
  - If a Terry Frisk goes beyond what is necessary to determine if the subject is armed or has to manipulate an object in any way, it is no longer valid under Terry and its fruits will be suppressed.
  - The easiest way to overcome this potential pitfall is to utilize consent.

- **Miranda vs. Arizona (1966)**

- **BRIEF DESCRIPTION:** Miranda was arrested and taken to the police station where officers questioned him for two hours. He signed a confession. The confession stated that it was made voluntarily and that he had full knowledge of his legal rights. Miranda's confession was used against him at trial and over his objection. He was convicted of rape and kidnapping.
- **LEGAL IMPLICATIONS:**
  - The landmark case that says when a suspect is in custody, officers must give the suspect his/her 5<sup>th</sup> Amendment rights and obtain a waiver before questioning suspects.
  - Custody + Interrogation = Miranda Required
  - **Custody** - Restraint in a significant way and is the same as an arrest for the purpose of the Fourth and Fifth Amendments. Custody is determined based on objective standard – whether a reasonable person under the circumstances feel he was under arrest? The officer's subjective belief that a person was or was not under arrest is not relevant.
  - **Detention** – Restraint based on reasonable suspicion or during a traffic stop not amounting to custody and therefore not requiring Miranda Warnings.
  - **Interrogation** – Any question or statement intended to elicit a statement or information regarding the crime a subject is suspected of committing.

- **Florida vs. J.L. – Without Corroboration, Anonymous Tips Lack Reliability (2000)**

- **BRIEF DESCRIPTION:** J.L., a minor, was standing at a bus stop in Miami-Dade County, Florida with two other black males. Police received an anonymous tip that a black male wearing a plaid shirt and at that location was carrying a gun. Responding to the scene, officers saw J.L. wearing a plaid shirt and otherwise matching the limited description provided by the anonymous caller (he was a black male). Without any other cause to suspect criminal activity, and having observed no suspicious behavior personally, police approached J.L., frisked him, and uncovered a gun in his pocket.
- **LEGAL IMPLICATIONS:**
  - Anonymous tips, without more, lack sufficient indicia of reliability to provide reasonable suspicion to make an investigatory stop/detention.
  - Indicia of reliability can be established if the anonymous tipster provides information of future behavior that is corroborated by police.
  - Indicia of reliability has been improved due to dispatch technological improvements – audio recording of calls, capturing caller phone numbers, and capturing of caller location, etc.

- **Pennsylvania vs. Mimms – Controlling Driver Movement During Traffic Stop (1977)**

- **BRIEF DESCRIPTION:** Two Philly cops were on patrol when they observed the defendant driving a car, which had an expired license plate on it. The officers stopped the vehicle so they could ticket the driver for the traffic violation. The officer pursuant to safety concerns asked the driver (Mimms) to exit the vehicle; he saw a bulge in a sport jacket he was wearing. A frisk of Mimms uncovered a loaded 38-caliber handgun in his waistband.
- **LEGAL IMPLICATIONS:**
  - After officers lawfully stop a vehicle, they may request or require the driver and other vehicle occupants to get out and move to the rear of the car for officer safety reason.
  - This is a matter to be left up to the discretion of the officers as traffic stops can be dangerous.

- **Maryland vs. Wilson – Controlling Passenger Movement During Traffic Stop (1997)**

- **BRIEF DESCRIPTION:** An officer stopped a vehicle for speeding. Wilson was a passenger in the vehicle. He officer ordered Wilson out of the vehicle and as Wilson got out, cocaine fell on the ground.
- **LEGAL IMPLICATIONS:**
  - After officers lawfully stop a vehicle, they may request or require (but should initially request) passengers to get out and move to the rear of the car for officer safety reason. This is a matter to be left up to the discretion of the officers as traffic stops can be dangerous.
  - The courts states that because the passenger is already “seized” being as to get out of or into the vehicle is a “mere inconvenience.”

- **Arizona vs. Gant – Search Incident to Arrest of Vehicle After Subject Arrest (2009)**

- **BRIEF DESCRIPTION:** Officers stopped Gant after he parked his vehicle and walked away from it. Gant had an outstanding warrant for driving with a suspended drivers license. Gant was arrested, handcuffed, and put in the backseat of a patrol vehicle. The officers then searched Gant’s car and discovered crime-related evidence of drugs and a weapon.
- **LEGAL IMPLICATIONS:**
  - Officer may not search incident to arrest after an arrestee has been handcuffed.
  - If there is probable cause to believe the vehicle contains evidence of the crime for which the arrestee has been arrested, police can search the vehicle pursuant to the Motor Vehicle Exception, not search incident to arrest.
  - Due to the need to tow/impound vehicles, officers are able to inventory vehicles for the protection of the vehicle owner’s property, ensure there is nothing harmful inside, and lessen liability for the department due to false claims of lost, damaged or stolen property. This is an administrative exception, not a search, and must be conducted pursuant to department policy. Officers should be careful not to refer to this as an “inventory search” of the vehicle.

- **Illinois vs. Wardlow – Unprovoked Flight from Police in High Crime Area (2000)**

- **BRIEF DESCRIPTION:** Chicago police officers, in the course of saturation patrols of an area well-known for narcotics, spotted Wardlow. Wardlow, upon seeing a group of police vehicles converge on his position, ran headlong from the area carrying a bag. Two officers, after catching up with Wardlow, conducted a pat down search based on their experience and belief that individuals in areas known for narcotics trafficking were likely to be carrying weapons. During the limited search, officers discovered Wardlow was carrying a handgun and arrested him.
- **LEGAL IMPLICATIONS:**
  - Court ruled in this case that unprovoked flight from police in a known high crime area created reasonable suspicion to believe the fleeing persons may be involved in a crime. Once police had reasonable suspicion to stop based on flight in a high crime/ high drug area, the Terry Frisk was valid based on the officers’ knowledge that guns are often associated with illegal drug activity.
  - However, flight alone is not enough to create reasonable suspicion. It must be combined with other factors to create reasonable suspicion.
  - Officer must take into account the type of activity they are doing prior to the flight – patrolling, making a consent contact, etc.
  - What defines a high crime area? (Subjective or objective? Data?)

- **US v. Ross - Warrantless Search of Containers in Vehicles (1982)**

- **BRIEF DESCRIPTION:** Police obtained a tip that a subject was selling heroin from the trunk of his car. After corroborating the tip, they pulled him over, frisked him for weapons, and found a bullet on the front seat of the car. They then searched the car, found a gun in the glovebox, and placed him under arrest. From there, they used his keys to open the trunk where they found and opened a brown bag containing heroin.
- **LEGAL IMPLICATIONS:**
  - When police officers have probable cause to search an entire vehicle, they may conduct a warrantless search of every part of the vehicle and its contents, including all containers and packages, that may conceal the object of the search.
  - The search can be as extensive as if it were conducted by way of a search warrant.
  - Police may search any container in the vehicle that may contain the suspected contraband or object, regardless of whether the container is owned by the driver or a passenger. (Wyoming v. Houghton)
  - If police have information that only a specific container in the vehicle contains contraband or object, they may only search that container, not the whole vehicle or every container, unless during the search they develop additional PC to search. (California v. Acevedo)

- **Fernandez vs. California – Consent to Search with Objecting Co-Residents (2014)**

- **BRIEF DESCRIPTION:** When police arrived at Fernandez's apartment, they believed a suspect in a gang-related assault had just entered. While approaching the apartment they heard screaming and fighting occurring inside. Police knocked on the apartment's door, which was answered by Fernandez's bloodied girlfriend. Believing that Fernandez may have assaulted his girlfriend, police attempted to separate the two. Fernandez refused to follow the police's directive to step away from his girlfriend and yelled "You don't have a right to come in here. I know my rights." The officers soon realized that Fernandez was the suspect in the gang-related assault and arrested him for that crime. About an hour later the police came back to ask Fernandez's girlfriend for consent to search the apartment, which she gave. Fernandez later challenged the lawfulness of this consent due to his previous statement of refusal.
- **LEGAL IMPLICATIONS:**
  - This case law is governed by two related cases – US vs. Matlock (1974) and Georgia vs. Randolph (2005).
  - In Matlock, the US Supreme Court created the “co-occupant consent rule.” This meant that anyone with “common authority” over the home can consent to a warrantless search of the home.
  - In Randolph, the US Supreme Court decided that if the co-occupants are both “physically present” and do not both consent to the warrantless search, then it cannot be conducted.
  - In Fernandez, the US Supreme Court ruled that the search which followed the arrest of Fernandez did not violate the Constitution because Fernandez was no longer physically there and had been removed for “fair reasons” (ie. arrest, transport for medical reasons, etc). Respect for the girlfriend's independent voluntary consent requires that it be honored.