



CSI Case Law

COURSE OUTLINE

How to get into the scene, what you can take, and when you need the warrant

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Course Description

The Crime Scene Investigator Course is for all sworn and non-sworn members who process crime scenes. This topic is vital because many times the evidence retrieved from the scene provides the crucial link when trying to connect the suspect to the crime. This course will help you get it right every time. It teaches the case law most applicable to crime scene investigators: what the Fourth Amendment protects, the two kinds of searches, curtilage, abandoned property, plain view, and the central rule that there is no murder scene exception, so every scene is processed by consent, exigency, or a warrant. It closes with freezing homes, detaining witnesses, and detaining occupants during a warrant.

Course title	CSI Case Law
Length	4 hours (240 minutes, including one 10-minute break)
Learners	In-service training for certified law enforcement, including patrol, investigations, specialty units, and administration, and for non-sworn crime scene and forensic personnel
Prerequisites	None
Formats	In-person, live online, and on-demand. In-service credit available in many states.
Methods	Lecture with slides, case briefs, Socratic “What would you do?” discussion, video case studies, and scenario discussion
Assessment	Instructor observation of participation and closing scenario discussion. Certificates emailed after class; students registered in Blue to Gold University.
Instructor	Blue to Gold legal instructor. Course author: Anthony Bandiero, Esq., Attorney and President.
Contact	Blue to Gold, LLC, 174 E Neider Ave #212, Coeur d’Alene, ID 83815 888-579-7796 info@bluetogold.com www.bluetogold.com

Learning Objectives

By the end of this course, the student will be able to:

1. Name the four things the Fourth Amendment protects and state the C.R.E.W. rule: every search and seizure requires consent, a recognized exception, or a warrant.
2. Distinguish the Katz privacy search from the Jones trespass search and apply the 100-person test.
3. Apply the four curtilage factors and the red, yellow, and green color codes to decide where CSI may lawfully stand, look, and collect.
4. Distinguish intentional abandonment, inadvertent abandonment, and lost property.

5. State the requirements for a plain view observation and a plain view seizure.
6. Explain why there is no murder scene exception and identify the three lawful ways to process a scene.
7. Identify the three requirements of valid consent and explain when implied consent goes stale or ends.
8. Identify what exigency allows officers to search for at a violent crime scene and why it does not allow full processing.
9. Describe the three types of home freezes and the justification each requires.
10. Apply the five-step material witness detention analysis and the nexus and immediate vicinity rules for detaining occupants during a warrant.

Schedule

Segment	Slides	Minutes
Part One: Fundamentals	1 to 23	18
Part Two: Two Searches	24 to 43	20
Part Three: Curtilage, Abandonment, and Plain View	44 to 108	50
Part Four: No Murder Scene Exception and Consent	109 to 181	51
Break		10
Part Four: Exigency, Arson, Non-Crime Scenes, Warrants	182 to 233	40
Part Five: Freezing Homes, Witnesses, Occupants, Closing	234 to 294	51
Total		240

Part One: Fundamentals

SLIDES 1 TO 23 | 18 MINUTES

Opening the Class

- ▶ Instructor introduction, how to ask questions, who is here
- ▶ Disclaimers: laws and SOPs may be more restrictive; push doubts up the chain; legal education, not legal advice
- ▶ Certificates emailed after class; course objective and five-part roadmap

The Fourth Amendment and C.R.E.W.

- ▶ Text of the Fourth Amendment; two clauses
- ▶ C.R.E.W.: every search and seizure requires Consent, a Recognized Exception, or a Warrant
- ▶ State constitutions; Illinois Article I, Section 6; People v. Johnson, 164 N.E.3d 64 (Ill. 2020) (lockstep)
- ▶ Four things protected: people, structures and curtilage, data, possessions
- ▶ Purposes of the exclusionary rule: no judicial complicity, deterrence, public trust

Part Two: Two Searches

SLIDES 24 TO 43 | 20 MINUTES

The Privacy Search

- ▶ *Katz v. United States*, 389 U.S. 347 (1967): subjective expectation plus societal reasonableness
- ▶ The 100-person test as the field version of *Katz*
- ▶ Standing case studies: *People v. Olson*, 198 Ill. App. 3d 675 (2d Dist. 1990) (hotel guest); *State v. Bruski*, 2007 WI 25 (disclaimed car); *State v. Joyce*, 229 Conn. 10 (1994) (burnt clothing); *State v. Tentoni*, 2015 WI App 77 (texts on another's phone)

The Trespass Search

- ▶ *United States v. Jones*, 565 U.S. 400 (2012): physical intrusion on a protected area plus intent to gather information
- ▶ *State v. Speights*, 2021 UT 56: hand on the hood in the driveway
- ▶ *Schmidt v. Stassi*, 250 F. Supp. 3d 99 (E.D. La. 2017): swabbing a door handle is a search

Part Three: Curtilage, Abandonment, and Plain View

SLIDES 44 TO 108 | 50 MINUTES

Curtilage (slides 44 to 84)

- ▶ Curtilage protected like the home itself; *Florida v. Jardines*, 569 U.S. 1 (2013)
- ▶ Four factors from *United States v. Dunn*, 480 U.S. 294 (1987): proximity, enclosure, use, sight screening; *State v. Kender*, 60 Haw. 301, 588 P.2d 447 (1978)
- ▶ Color codes: red (exigency, emergency, urgency), yellow (knock and talks, calls for service), green (open fields); *State v. Waldschmidt*, 12 Kan. App. 2d 284, 740 P.2d 617 (1987)
- ▶ Searching for AirPods video; artificial vantage point and the Peepin' Tom rule; *State v. Bowling*, 867 S.W.2d 338 (1993)
- ▶ Evidence retrieval requires lawful access: *Lewis v. State*, 358 Ga. App. 482 (2021); *People v. Pakula*, 89 Ill. App. 3d 789 (1980)
- ▶ Open fields; *Dunn* is done; back to C.R.E.W. and the recognized exceptions

Abandoned Property (slides 85 to 99)

- ▶ Fourth Amendment does not protect abandoned property; words and actions prove abandonment
- ▶ Three types: intentional (fully searchable), inadvertent (search as the public could), lost (owner information only)
- ▶ *Cooper v. State*, 806 P.2d 1136 (Okla. Crim. App. 1991); *McDuff v. State*, 939 S.W.2d 607 (Tex. Crim. App. 1997)
- ▶ *Edwards v. State*, 497 S.W.3d 147 (Tex. App. 2016): phone on hood abandoned, not best practice; *Morris v. State*, 908 P.2d 931 (Wyo. 1995): wallet lost, not abandoned

Plain View (slides 100 to 108)

- ▶ Observation: lawfully present, immediately apparent, no manipulation; seizure adds lawful access
- ▶ Right to be, right to see (including smell and hearing)
- ▶ *Commonwealth v. Sourbeer*, 492 Pa. 17 (1980); *People v. Raibley*, 338 Ill. App. 3d 692 (4th Dist. 2003): seize a container under PC, but do not search it under plain view

Part Four: Ways to Search a Crime Scene

SLIDES 109 TO 233 | 91 MINUTES PLUS BREAK

No Murder Scene Exception (slides 109 to 127)

- ▶ Once the emergency is over, consent or a warrant is required to process the scene
- ▶ The old view: *State v. Chapman*, 250 A.2d 203 (Me. 1969); consent in advance: *State v. Duke*, 110 Ariz. 320 (1974); *State v. Butler*, 676 S.W.2d 809 (1984)
- ▶ *Mincey v. Arizona*, 437 U.S. 385 (1978); *Thompson v. Louisiana*, 469 U.S. 17 (1984); *Flippo v. West Virginia*, 528 U.S. 11 (1999)

Consent (slides 128 to 181)

- ▶ Three ways to process a scene: consent, exigency, search warrant
- ▶ Why suspects consent; three requirements: authority, voluntariness, scope (*United States v. Strickland*, 902 F.2d 937 (11th Cir. 1990))
- ▶ Implied consent and its scope: *Thompson v. McManus*, 377 F. Supp. 589 (1975); *Knight v. State*, 50 Ala. App. 39 (1973); *Commonwealth v. Witman*, 750 A.2d 327 (Sup. Ct. Penn. 2000); stale consent
- ▶ Express consent; refusal requires a warrant: *Sample v. Eyman*, 469 F.2d 819 (9th Cir. 1972); *State v. Flippo*, 212 W. Va. 560 (2002)
- ▶ In-custody and absent consenters: *United States v. Watson*, 423 U.S. 411 (1976); *United States v. White*, 617 F.2d 1131 (1980)
- ▶ Authority: *People v. Stacey*, 317 N.E.2d 24 (1974); *State v. Miranda*, No. 086773 (N.J. 2023); *State v. Crumb*, 307 N.J. Super. 204 (App. Div. 1997); *Fernandez v. California*, 571 U.S. 292 (2014)
- ▶ Scope: *Commonwealth v. Ortiz*, 478 Mass. 820; *State v. Mack*, 118 Ohio App. 3d 516 (1997); *State v. Riggins*, 2004-Ohio-4247; consent ends when the named item is found

Break (10 minutes)

Exigency (slides 182 to 209)

- ▶ Search confined to the exigency. Outstanding perpetrator: *Brown v. Jones*, 407 F. Supp. 686 (W.D. Tex. 1974); *People v. Williams*, 192 Colo. 249 (1976)
- ▶ Evanescent evidence: *State v. Grant*, No. 83 C.A. 144 (Ohio Ct. App. 1990)
- ▶ Protective sweeps for suspects and victims: *State v. Hanes*, 3 Kan. App. 2d 125 (1979); *Baird v. State*, 357 Ark. 508 (2004)
- ▶ Unattended deaths; later-arriving CSI continue the lawful entry: *State v. Hutchison*, 482 S.W.3d 893 (Tenn. 2016)

Arson Scenes and Non-Crime Scenes (slides 210 to 220)

- ▶ *Michigan v. Tyler*, 436 U.S. 499 (1978): remain to determine cause; morning reentry a continuation
- ▶ Unattended deaths: rescue doctrine and coroner role; spark of life; *Ex parte Usrey*, 527 So. 2d 732 (Ala. 1987)

Search Warrants (slides 221 to 233)

- ▶ United States v. Leon, 468 U.S. 897 (1984): strong preference for warrants; presumptions flip
- ▶ It's not personal, it's business; photographs before the warrant: evanescent evidence only

Part Five: Dealing with Homes and People

SLIDES 234 TO 294 | 51 MINUTES

Freezing Homes (slides 234 to 261)

- ▶ Freezing must be justified; three types: prohibiting entry, maintaining the status quo, entry and exclude
- ▶ Prohibiting entry: *United States v. Song Ja Cha*, 597 F.3d 995 (9th Cir. 2010); *Shrum v. Cooke*, No. 21-3150 (10th Cir. 2023); necessities and shadowing
- ▶ Maintaining the status quo: *United States v. Doubet*, 969 F.2d 341 (7th Cir. 1992); *Illinois v. McArthur*, 531 U.S. 326 (2001); don't search or photograph while waiting
- ▶ Entry and exclude: *United States v. Dessesaure*, 429 F.3d 359 (1st Cir. 2005); four requirements; *McNairy v. State*, 835 S.W.2d 101 (1991)

Witnesses (slides 262 to 281)

- ▶ No authority to compel a victim to cooperate; material witnesses may be detained and identified, then released
- ▶ Five steps: serious crime, compelling need, material information, reasonable manner, diligence
- ▶ *Nicholson v. City of Los Angeles*, 935 F.3d 685; *Walker v. City of Orem*, 451 F.3d 1139
- ▶ ID and release; seize physical evidence under plain view, exigency, or warrant

Detaining Occupants During a Warrant (slides 282 to 290)

- ▶ Nexus to the property and immediate vicinity; *Mena v. City of Simi Valley*, 226 F.3d 1031 (9th Cir. 2000)
- ▶ *United States v. Martinez-Cortes*, 566 F.3d 767 (8th Cir. 2009); *Bailey v. United States*, 568 U.S. 186 (2013)

Closing (slides 291 to 294)

- ▶ Student scenarios run through the sequence: search? curtilage? C.R.E.W.? when does exigency end?
- ▶ There is no murder scene exception; the warrant is the lazy boy