

Spanish Search and Seizure: An Overview

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Protections against unlawful searches of a person or house are among the most basic freedoms and liberties a free society can provide. In fact, such protections are so important that they were enshrined in both the American and Spanish constitutions. The Fourth Amendment states that:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Similarly, the Spanish Constitution protects unlawful searches by this language: “The dwelling is inviolable. No entry or search may be made therein without the consent of the owner or a judicial resolution except in the case of a flagrant crime.”¹ Although the language of the right is divergent, the law on the ground, or implementation of searches and seizures, are vastly the same. Spanish and American law operates similarly in three major categories of searches: people, cars, and houses.

Person

Temporary detentions, also known as “Stop and Frisk,” are allowable in both the American system and Spanish system. In Spain, the Spanish Supreme Court has held that the right to liberty does not extend to the mere “nuisance” of having to submit to a frisk and identification. The police need only be justified by “rational grounds,” and the police action cannot be arbitrary.²

The United States Supreme Court has interpreted the Constitution in much the same way. Police, acting with reasonable suspicion, are permitted to briefly detain an individual and frisk them, even without probable cause for arrest.³ Because such a frisk is warranted by the officer’s suspicion of criminal activity, exigent circumstances allow the officer this leeway.

Car

Spanish law and American 4th amendment protections on the searches of vehicles also are vastly similar, although the American protection weaker in regard to the main difference. Spanish police may warrantlessly search a car if they have reason to believe the vehicle has evidence of a crime.

¹ Spanish Constitution, Art. 18(2). Cited from *Comparative Criminal Procedure*, Stephen C. Thaman, pg. 264 (2nd ed. 2008).

² Decision of Jul 12, 1995. *Comparative Criminal Procedure*, pg. 45.

³ Terry v. Ohio, 392 U.S. 1 (1968)

This “automobile exception” is based, in the Spanish system, of exigent circumstances.⁴ Because the car has such mobility, the Spanish system is comfortable dispensing with a warrant requirement to give officers on the ground more leeway to search. However, this exception ends the moment the car is secured by police and is immobile. Spanish police may not impound or immobilize the car and then search it at their leisure; they must have a warrant for that, and the defendant is required to be present, with counsel.⁵

The American system also has an automobile exception to the warrant requirement, if they have probable cause to search. However, this exception differs from the Spanish system by extending even to when the car is immobilized by police. The Supreme Court reasoned, in Chambers v Maroney, that once probable cause is found to search the vehicle, it doesn’t matter if the car is immobile and exigent circumstances don’t apply. The time and location of the search are irrelevant. Therefore, the automobile exception to judicial warrants is broader in America than Spain.

House

Judicial warrants to search houses, supported by probable cause, are required both in the Spanish and American system. However, Spanish law differs slightly from American law in two broad areas, consent and accuracy. First, Spanish arrestees have the right to counsel for interrogations. However, that right to counsel also extends to asking a suspect for consent to search his house. The Spanish Supreme Court threw out evidence that was obtained after the arrestee gave written consent to search the house. Because the arrestee had not been informed of his right to counsel and his right to refuse consent, the Spanish Court refused to accept the search as admissible.⁶ That is in stark contrast to the United States, where cops can lie, trick, and otherwise resort to common interrogation techniques in an attempt to garner consent, so long as it is not “coerced”. A suspect can of course refuse consent and invoke silence, but the police have no duty to wait for counsel before attempting to receive permission.

Secondly, the Spanish system requires the suspect or his lawyer or designee to be present at all searches of dwellings. §569 of the Spanish Criminal Code sets out a procedure where the suspect or his lawyer must be present to witness searches. If they cannot or will not be present, then it will be done in the presence of an adult family member, or two witnesses from the same town. Finally, the clerk of the magistrate judge issuing the warrant must also be present. If not, the Spanish courts

⁴ *Comparative Criminal Procedure*, pg. 52

⁵ Decision of Oct. 25, 1993. *Comparative Criminal Procedure*, pg. 52

⁶ Decision of July 8, 1994. *Comparative Criminal Procedure*, pg. 55

have held this to be a violation of due process.⁷ Accuracy of the search is preferred over expedience of investigation. The United States has no such requirement; all the police must do when searching with a valid warrant is knock and announce themselves. They are under no obligation to wait for witnesses to search.

In conclusion, there are major substantive similarities between Spanish and American search and seizure protections. Spain, perhaps out of a culture of historic police abuse, provide slightly more procedural rights for suspects than the United States does. The language of the Spanish Supreme Court sums it up best:

However [...], the truth which one pretends to ascertain in criminal procedure can only be achieved within the requirements, suppositions, and limitations by the judicial order. Actual truth may not be obtained at any price. Not everything is lawful in the discovery of the truth.

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⁷ *Comparative Criminal Procedure*, pgs. 59-60

⁸ Decision of June 25,1993. *Comparative Criminal Procedure*, pg. 67