

Search Warrant Laws

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Fourth Amendment

- **The Fourth Amendment protects persons, houses, papers and effects**
- **Two elements for the Fourth Amendment to apply:**
 - **Governmental intrusion**
 - **Reasonable Expectation of Privacy**


Search Warrant Rule

- A search requires a search warrant unless it falls under one of the exceptions.
- Katz rule



- Exclusionary Rule

- Evidence seized in violation of the Fourth Amendment will be suppressed.
- Purpose is to deter illegal police conduct.
- Good Faith Exception – Evidence will not be excluded if officers were acting in “good faith.”

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- The Michigan Constitution differs from the U.S. Constitution.
 - Michigan can grant more rights but not less.

Government Conduct

- **Police officer or an agent**
- **Does not include private citizens**
- **School authorities are considered part of the government**
 - **State law limits expectation of privacy in schools**

Reasonable Expectation of Privacy

- A reasonable expectation of privacy is one that society and the courts are prepared to recognize as reasonable.
- Physical manipulation of bag on bus

Open View

- Open to the public.
 - Aiding vision
 - Electronic tracking
 - Standing on patrol car
 - Use of dog
 - Garbage – Ready for pick up
 - VIN numbers
 - Helicopters
 - Thermal imaging
 - Rest area
 - Hospital room
 - Running plates
 - Open fields

Curtilage

- If within the curtilage of the house then protected by the Fourth.
- Test
 - Proximately to home
 - Area in enclosure surrounding the home
 - Nature of areas use
 - Steps taken to protect area from observation
- Technical trespass – Police may use the same route as any visitor would.

Crime Scenes

- There is no “Crime Scene” exception to the search warrant rule.
 - *Mincey v Arizona*
 - *Thompson v Louisiana*
 - *Flippo v West Virginia*

Crime Scenes

- **There is no “Crime Scene” exception to the search warrant rule. Officers may enter under the emergency but once situation stabilizes search warrant should be sought.**
- **Search warrant may have limited information**
 - **“Seize any evidence of a homicide” may be sufficient.**
 - **“Affiant believes there exists evidence of a homicide in the cottage or the automobile.”**

Standing

- A person must have standing to challenge the search.
- Overnight guest has expectation.

Private Conversations

- One party consent – As long as one party consents the Fourth Amendment is not violated.

- Pretext Stops
 - Will not look at officers subjective reason for stop but is there a legitimate reason for the stop.
- Pretext arrest
 - Does the officer have p.c.?
 - Is it a violation that allows for arrest

Protective Sweeps

- Officers may sweep a residence at the time of arrest if officers articulate a concern for safety.

Other Issues

- Fleeing from police – generally no seizure
- 48 hour rule – A warrantless arrest must be reviewed by a judge within 48 hours.

Search Warrants

- Warrants must be signed by a neutral and detached magistrate.
 - Magistrate was not neutral and detached where he had previously prosecuted the defendant and had been sued by him. *People v Lowenstein*
- Magistrate's signature must be on the warrant
 - A search warrant unsigned by magistrate or judge is presumed invalid. *People v Barkley*

Affidavit for Search Warrant

- The judge or district court magistrate's finding of probable cause shall be based upon all the facts related within the affidavit.
- Four corners of the affidavit
 - The facts establishing probable cause must be contained within the affidavit.
 - The recording may take various forms, including handwritten notes, video or audiotapes, or formal or informal transcripts of testimony.

Named or unnamed persons

- The affidavit may be based upon information supplied by a named or unnamed person if one of the following:
 - If the person is named, affirmative allegations that the person spoke with personal knowledge of the information. *People v Kalchik*
 - If the person is unnamed, affirmative allegations person spoke with personal knowledge and either that the unnamed person is credible or that the information is reliable.

MCL 780.651

- An affidavit for a search warrant may be made by any electronic or electromagnetic means of communication, including by facsimile or over a computer network, if both of the following occur:
 - The judge or district court magistrate orally administers the oath or affirmation.
 - The affiant signs the affidavit.
- A judge or district court magistrate may issue a written search warrant in person or by any electronic or electromagnetic means of communication.
- A judge or district court magistrate may sign an electronically issued search warrant when he or she is at any location in this state.

MCL 780.654

- A search warrant shall be directed to the sheriff or any peace officer to search the house, building, or other location or place, where the person, property, or thing for which the sheriff or peace officer is required to search is believed to be concealed.
- Each warrant shall designate and describe the house or building or other location or place to be searched and the property or thing to be seized.

Suppression of Warrant

- Upon a showing that it is necessary to protect an “ongoing investigation or the privacy or safety” of a victim or witness,
- The magistrate may order that the affidavit be suppressed and not be given to the person whose property was seized or whose premises were searched
- Until that person is charged with a crime or named as a claimant in a civil forfeiture proceeding involving evidence seized as a result of the search.

- On the fifty-sixth day following the issuance of a search warrant, the search warrant affidavit contained in any court file or court record retention system is public information unless,
- A peace officer or prosecuting attorney obtains a suppression order showing under oath that suppression of the affidavit is necessary to protect an ongoing investigation or the privacy or safety of a victim or witness.

Swear or Affirm

- The affiant for a search warrant must;
 - Swear or affirm that the information contained in the affidavit is true to the best of his or her belief
 - While holding up his or her right hand.

Anticipatory Search Warrants

- Anticipatory search warrants are constitutionally valid so long as;
 - The affidavit establishes probable cause that the triggering event will occur, and
 - Probable cause that the particular evidence will be found when the triggering event occurs.

What can be searched for?

- MCL 780.652
 - Stolen or embezzled property.
 - Designed and intended for use, or that is or has been used, as the means of committing a crime.
 - Possessed, controlled, or used wholly or partially in violation of a law of this state.
 - Evidence of crime or criminal conduct.
 - Contraband.
 - The body or person of a human being or of an animal that may be the victim of a crime.

Search Warrant for Person

- A warrant may be issued to search for and seize a person who is the subject of either of the following:
 - An arrest warrant for the apprehension of a person charged with a crime.
 - A bench warrant issued in a criminal case.

CSC warrants

- MCL 780.652a
 - If the court has probable cause to believe that an individual violated CSC sections, the court shall, upon proper petition for a search warrant, authorize the search and seizure of hair or tissue, or blood or other fluid samples from all of the following:
 - Any individual whom the court has probable cause to believe committed that violation.
 - If the court has probable cause to believe that the violation resulted in the birth of a child, that child.
 - If the court has probable cause to believe that the violation resulted in a pregnancy that was terminated before the birth of a child, the remains of that unborn child.

Descriptions of Buildings

- Type of structure, e.g. dwelling, apartment building, business, storage shed, etc.
- The number of floors or stories.
- The areas within to be searched.
- Type of construction; e.g. white brick, blue-gray aluminum, etc.
- The color of the exterior.
- Any other building within the curtilage to be searched.
- The street name and address.
- The side of the street the property is located.
- The intersecting roadways between which the property is located, e.g., on Canal between Lansing Road and Davis Highway.
- Any unique characteristics of the premises to be searched, e.g. with satellite dish located 20 feet south of dwelling house.

Descriptions of vehicles

- Year, make and model
- Body style
- Color
- Registration plate number, year, and state where issued.
- VIN #
- Any known owner, occupant or operator of vehicle.
- The usual or probable location of the vehicle.

Detailed Information

- Evidence of the cultivation and/or manufacture of the controlled substance marijuana, including but not limited to, a quantity of marijuana, both live plants and processed marijuana; growing devices and supplies, such as grow lights, heaters, reflectors, fans and blowers, motors, timers, irrigation tubs, hoses, pumps, potting soil, nutrients, fertilizers, carbon dioxide exchangers and tanks, and pots or planters; paraphernalia for processing, packaging, and distribution, including dryers, heaters, scales, baggies, and/or other packaging materials; evidence of bills, canceled envelopes, drivers licenses, keys, and deeds or other documents showing ownership; United States Currency, including pre-recorded bills, fingerprints, and palm prints; and weapons to protect the cultivation.

Mistakes on Warrants

- Test for the sufficiency for the description
 - The place to be searched is described with sufficient particularity to enable the officer to locate and identify the premises with reasonable effort.
 - Is there any reasonable probability her premises might be mistakenly searched.
- “A police officer is not granted immunity from liability where even a cursory review will reveal a glaring deficiency that any reasonable officer would have known was constitutionally fatal.” *Groh v Ramirez*

Other buildings

- “While it is recognized that rural property does not lend itself readily to precise description, property that is within the curtilage of any dwelling house must be described with specificity in a search warrant to justify a search of that property.” *People v Mackey*

Knock and announce

- Officers can break and enter after notice of authority and purpose and refused admittance.
- Do not have to wait if:
 - Dangerous
 - Would inhibit the investigation
 - Futile

Securing building pending warrant

- Building can be secured while attempting to get a warrant.
 - P.C. that house contained evidence
 - Reason to believe evidence will be destroyed
 - Reasonable efforts to reconcile their needs with privacy interests.
 - Limited period of time.

Tabulation – MCL 780.655

- When an officer seizes property, the officer shall make a “complete and accurate” tabulation of the property and things that were seized.
- The officer shall file the tabulation promptly with the judge or district court magistrate.
- The tabulation may be suppressed by order of the judge or district court magistrate.

Penalties

- Willfully exceed authority
- Unlawfully procuring search warrant
- 1 year misd.

- Scope – Officers may search where the item may be.
- A warrant does not automatically allow to search everyone at the premise.
- Private citizens may not be allowed into residence during search warrant unless needed. i.e. to identify stolen property.

Warrantless Searches

- The courts focus on 10 exceptions to the search warrant rule.
 - Incident to Arrest
 - Probable Cause and Exigent Circumstances
 - Plain View
 - Consent
 - Terry Stops
 - Inventory
 - Emergency
 - Hot Pursuit
 - Administrative Search
 - Border Searches