

# **SEARCH WARRANTS FOR DUMMIES**

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The [Fourth Amendment to the United States Constitution](#) provides:

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.

A similar guarantee is provided in [Article I, section 7 of the Tennessee Constitution](#):

That the people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures; and that general warrants, whereby an officer may be commanded to search suspected places, without evidence of the fact committed, or to seize any person or persons not named, whose offences are not particularly described and supported by evidence, are dangerous to liberty.

## **AUTHORITY TO ISSUE**

### **RULE 41 (a)**

A magistrate **with jurisdiction in the county where the property sought is located** may issue a search warrant authorized by this rule. The district attorney general, assistant district attorney general, criminal investigator or any other law-enforcement officer may request a search warrant.

### **Magistrate (T.C.A. 40-1-106)**

The judges of the supreme, appellate, chancery, circuit, general sessions and juvenile courts throughout the state, judicial commissioners, and county executives in those officers' respective counties, and the presiding officer of any municipal or city court within the limits of their respective corporations are magistrates within the meaning of this title.

*State v. David Ford*, M2007-00431-CCA-R3-CD (Tenn. Crim. App. Nashville, May 7, 2008) (city court judge)

- A warrant is void if signed by one without legal authority.
- General Sessions Court Judges are limited to issuing search warrants for property within their respective counties.

For an example of the different standard of review in federal prosecutions, see *United States v. Daniel Franklin*, 2008 U.S. LEXIS 14080 (6<sup>th</sup> Cir. 2008) Holding: the fact that an out of county general sessions court judge might not have been properly sitting by interchange was not material to the issue of whether the judge was a neutral and detached magistrate.

- Attorneys sitting by designation in substitution of absent judges????

## **PERSONS OR PROPERTY SUBJECT TO SEIZURE**

### **Rule 41 (b)**

A magistrate may issue a warrant under this rule to search for and seize any of the following:

- (1) evidence of a crime;
- (2) contraband, the fruits of crime, or items otherwise criminally possessed;
- (3) property designed or intended for use, or that has been used in a crime;
- (4) a person whose arrest is supported by probable cause; or
- (5) a person who is unlawfully restrained

## **CONTENT OF THE WARRANT**

### **Rule 41 (c)(2)**

If the magistrate is satisfied that there is **probable cause** to believe that grounds for the application exist, the magistrate shall issue a warrant as follows:

- (A) The warrant shall, as the case may be, **identify the property or place to be searched**, or name or describe the person to be searched; the warrant also shall name or **describe the property or person to be seized**.

### **T.C.A. 40-6-103**

A search warrant can only be issued on **probable cause**, supported by affidavit, naming or describing the person, and **particularly describing the property**, and the place to be searched.

# PROBABLE CAUSE

## What is Probable Cause?

Definitions: a reasonable ground for suspicion supported by circumstances indicative of an illegal act.

facts and circumstances sufficient to warrant a person of reasonable caution to believe that certain items are fruits of illegal activity and are to be found at a certain place.

- 1) Based upon evidence appearing in a written and sworn affidavit.
- 2) Affidavit must set forth **facts** upon which a neutral and detached magistrate, reading the affidavit in a common sense and practical manner, can find probable cause.
- 3) Must provide more information than just the conclusory allegations of the affiant to insure that the magistrate exercises independent judgment.  
e.g. “the confidential informant is reliable”
- 4) **Four Corners Doctrine:** When reviewed later, only the affidavit will be considered for the existence of probable cause. A court will not consider any other evidence known to the affiant or provided to or possessed by the issuing magistrate.

*See State v. Clark, 160 S.W. 3d 526 (Tenn. 2005) and State v. Henning, 975 S.W. 2d 290 (Tenn. 1998).*

## Sources of Probable Cause

- a) Personal observations and knowledge of the Affiant
- b) Hearsay information supplied by another
  - 1) Fellow officer
  - 2) Citizen informant / Bystander witness
  - 3) Criminal informant  
(from the “criminal milieu”)
  - 4) Anonymous tipster
  - 5) Hybrid informant (girlfriend **post** domestic violence arrest who tells of the drugs contained in the defendant’s home)  
*State v. Williams, 193 S.W. 3d 502 (Tenn. 2006)*

## **Fellow Officer**

Observations of fellow officers engaged in a common investigation are plainly a reliable basis for the basis of a warrant application. No special showing of reliability is necessary but an affidavit must be clear that the affiant is relying on information provided by other officers.

Where the affiant used the term “agent” alone, the affidavit did not clearly identify the unidentified source to be a law enforcement officer and therefore the information he provided was not presumed reliable.  
*State v. Smotherman, 210 S.W. 3d 657 (Tenn. 2006)*

## Citizen Informant

Information from a citizen informant who is known to the affiant is **presumptively reliable**. While the citizen informant's identity does not have to be disclosed in the affidavit, the affidavit must clearly establish that the informant is a concerned citizen and not one from the criminal element. *State v. Stevens*, 989 S. W. 2d 290 (Tenn. 1999) (affiant's detection of meth odors corroborated anonymous tipster's call)

- Definition: a witness to criminal activity who acts with an intent to aid the police because of a concern for society or his own safety and who does not expect any gain or concession for his information.
- While the information from a citizen informant is presumed reliable, the court will not presume a person to be a citizen informant simply because he is named in the affidavit or so classified by the affiant.
- An affidavit must contain a particularized showing or explanation of why the tipster is a citizen informant. Once shown, the affiant is not required to establish the credibility of the informant or the reliability of the information. The name of the informant does not have to be disclosed. See *Stevens*, 989 S.W. 2d at 293.

In *Stevens*, the reviewing court did not accept "concerned citizen source," "acted on civic duty," and "asked for no payment for information." Instead, the court wanted to know why a citizen was in a meth house and got some of the finished sample.

The fact that an informant is paid does not automatically disqualify him as a citizen informant. The court will look to see if the payment was made at or near the time the information was provided or later after the information had been provided.

The court rejected the finding that the informant was a citizen informant but upheld the search warrant finding that the informant's production of meth to the affiant sufficiently demonstrated the reliability of the information. *Id* at 265. See *Ballard v. State*, 836 S.W. 2d 560 (Tenn. 1992)-informant's description of unique jewelry established the reliability of the information.

## **Criminal Informant**

Information provided by a criminal informant will be examined under a two-part analysis. The affidavit must show

- (1) the basis for the informant's knowledge and
  - (2)(a) a basis establishing the reliability of the informant or
  - (2)(b) a basis establishing the reliability of the information.
- State v. Jacumin, 778 S.W. 2d 430 (Tenn. 1989)*

**Basis of Knowledge:** How does the informant know what he/she knows?  
Personal knowledge (first hand) of what the informant has heard or seen as opposed to what the informant was told by others.

### **Reliability of the Informant or Information**

-Veracity or truthfulness of the informant or the information given. Generally, the informant's "track record" of providing reliable information that has been verified to be reliable.

-Assistance in other successful investigations will also suffice.

-Specific information showing the informant's reliability is more beneficial than general information or reliability.

-"Three prior successful investigations in which the informant was involved" sufficient showing of reliability.  
*State v. Johnson, 854 S.W. 2d 897 (Tenn. Crim. App. 1993)*

-"Informant is a reliable person who has provided information to this officer in the past which was proven correct" insufficient showing of reliability since the nature of the information was omitted (the court makes reference to "yesterday's weather") as well as the number of times the informant has provided information. Information of a nature that has led to the discovery of a murder weapon or the seizure of a shipment of Cocaine was needed by the reviewing court.

*State v. Stephen Udzenski, Jr., No. CO1-9212-CCA - 00380(Tenn. Crim. App. at Nashville, November 18, 1993)*

\*Udzinski later charged in 1996 based on drugs found during a search of his home based on a warrant that made reference to the invalid 1993 warrant. Upheld

despite the improper inclusion of the details of the prior search.

-Information leading to convictions is more reliable than information leading to arrests.

-Statements against penal interest should relate to the targeted criminal activity, the targeted premises, or the defendant. Statements against penal interest unrelated to the investigation will not suffice.

*State v. Moon, 841 S.W. 2d 336 (Tenn. 1992)*

*See State v. Charles Ricky Pipkin, Jr., No. W2007-01110-CCA-R3 –CD (Tenn. Ct. Crim. App. at Jackson, September 4, 2008)*

(While the named informant's admission of participating in the burglary sufficed for the knowledge prong, the fact the informant had possession of stolen property did not establish probable cause that other stolen property was in the defendant's residence)

- Probable cause will not be considered found until both prongs are independently considered and satisfied. Conclusory statements are not sufficient to sustain a warrant.
- **Independent Corroboration**
  - **Corroboration:** observations by the police that provide an unusual and inviting explanation even though the observations are consistent with innocent as with criminal activity. For example, “come and go traffic of known drug addicts” at a drug house.  
*See State v. Moon, 841 S.W. 2d at 341.*
  - Independent police corroboration may compensate for a deficiency in either prong. Corroboration of more than a few elements of the informant's information is necessary especially if the corroboration relates to non-suspect behavior.
    - Knowledge that a person resides at an address is not as valuable as knowledge of a prior and successful search warrant at the residence.  
*See Smotherman, 201 S.W. 3d at 664.*
  - The corroboration must be specific as to events, activities or allegations made by the informant thus allowing the magistrate to find that the informant is credible or the information reliable.

- Affiant's knowledge of the target's prior arrest and seizure of drugs combined with his productive surveillance of the target's home overcame the conclusory language of the informant's reliability. *State v. Henning*, 975 S.W. 2d 290 (Tenn. 1998) (good **detailed** facts of the surveillance)
- Consider controlled buys using an untested informant especially when a wire can be worn for monitoring by agents.
- Be aware of the use of unwitting informants. Statements made by an unwitting informant do not have the indicia of reliability that is required on an informant. Corroboration necessary. *State v. Marian Rosenboro*, No. 03C01-9203 –CR-00080 (Tenn. Crim. App. at Knoxville, March 18, 1993)

## **Anonymous Tipster**

Since the identity of the informant is unknown, problems will confront an affiant trying to satisfy the veracity prong of *Jacumin*. While the information provided might be of such detail so as to demonstrate personal knowledge, corroboration of more than a few minor details of the tip is required especially if the corroboration is of non-suspect behavior (description of a person and a location without more is insufficient )

### Considerations:

- The timing of the call in relation to the event. Immediate first-hand observations reported in a call contemporaneous or nearly contemporaneous with an event imply reliability and personal knowledge.
- Corroboration can include direct police observations of the predicted event, inquiry into the target's identity and reputation, and anything that shows the suspect to be involved in criminal activity.

## Hybrid Informant

Information may be provided by a person who is neither a criminal informant nor a pure citizen informant but is instead motivated to inform on a suspect out of personal bias or revenge. In such cases, the affidavit must satisfy the two-pronged “basis of information” and “reliability” test for information provided by a criminal informant.

- Girlfriend under arrest for domestic violence was not a citizen informant since she did not contact the police prior to her arrest to report her boyfriend’s criminal activity. See *Williams*, 193 S.W. 3d at 508.
- While the affidavit did not establish the reliability of the informant, it did establish the reliability of the **information** provided. The affiant’s knowledge of the defendant’s prior drug-related conviction, the girlfriend’s detailed information of where specific drugs would be found, and the girlfriend’s possession of a key to the home she shared with the boyfriend saved the search warrant. *Id.* at 508-09.

## Timeliness of Information

An affidavit must show that the contraband sought to be seized or the illegal activity in question **exists at the moment the search warrant is issued.**

Information cannot be stale: the time interval between the alleged criminal activity and issuance of the warrant may not be too great.

*State v. Norris, 47 S.W. 3d 457 (Tenn. Crim. App. 2000)* (40 day lapse did not render the information stale where target was engaged in a marijuana grow)

Considerations:

- Is the criminal activity ongoing or an isolated event
- The nature of the property sought
- The opportunity those involved would have had to dispose of incriminating evidence.
- Type of investigation (drugs, violent crimes or property type crimes)

Highly incriminating or consumable items of personal property are less likely to remain in one place for as long as an item not consumable or particularly incriminating. Weapons and clothing are likely to be retained for some time after a crime. *State v. Florence Smith, No. 01-CO1-9103-CC-00076 (Tenn. Crim. App. 1991)* (Search warrant 12 days following a murder based on timely information)

The absence of a specific date in the affidavit setting out when the illegal activity occurred or was observed is not fatal if there is probable cause to believe the activity is ongoing or the contraband is present at the time of the search warrant. *State v. Donald McCary, No. E2001-02726-CCA-R3-CD (Tenn. Crim. App., at Knoxville, January 10, 2003)*

Failure to state the time span between the burglary and the search warrant for the stolen property fatal:

“Because no dates, times or locations are specified in the affidavit, it is impossible to discern **from the four corners of the affidavit** whether one day, one month, or one year passed between the date of the burglary and the date the warrant was issued.”

*State v. Charles Ricky Pipkin, Jr., No. W2007-01110-CCA-R3-CD (Tenn. Crim. App., at Jackson, September 4, 2008)*

Rebuttable presumption that a warrant served within the statutory five day period retains the probable cause validity attributed to it by the issuing magistrate.  
*State v. Evans, 815 S.W. 2d 503 (Tenn. 1991)*

-Subject to an evidentiary hearing to the contrary.

-Defense has the burden to show:

1. That probable cause no longer existed **and**
2. Something objectively occurred in the interval to reasonably put the police on notice of the fact.  
(Target in jail or no longer resides at the location)

### **Suggestions:**

- Always put a date or time period if possible (within the past \_\_\_ hrs)
- Use expert knowledge to help establish the ongoing nature of the crime or the evidence sought (child pornography and pedophiles, drug trends, etc.)
- Corroboration by law enforcement can freshen up the information (surveillance, records checks, trash pulls)  
*State v. Stepherson, 15 S.W. 3d 898 (Tenn. Crim. App. 1999)*

-Though information from first informant was stale, undated information from second informant and affiant's verification that target often talked by phone with out of state indicted drug dealer showed ongoing activity)

## **Nexus between the Place to be Searched and the Property to be Seized**

An affidavit must contain facts that establish probable cause to believe that the evidence to be seized will be found in the place to be searched. The nexus between the place to be searched and the items to be seized may be established by

- (1) the type of crime
  - (2) the nature of the items sought, and
  - (3) the normal inferences where a criminal might hide the evidence.
- State v. Smith, 868 S.W. 2d 561 (Tenn. 1993)*

- Where the object of a search is a weapon used in a crime or clothing worn at the time of the crime and the perpetrator is unaware that he has been identified to police, there is an **inference** that the items are at an offender's residence.
- Where the defendant told police that after he left the victim's home, he went to his home before fleeing out of state, it was reasonable to conclude that the murder weapon, clothing worn at the time of the murder and other items of evidence would have been left at the defendant's trailer and would remain there. *Id at 572.*
- Where the victim was involved in a fight with the defendant, the victim was bonded out of jail by the defendant, and the victim's house which was in close proximity to the defendant's residence burns down the night of his murder, it was reasonable to conclude that the defendant was involved in the murder and the murder weapon might be at his home.  
*State v Dellinger, 79 S.W. 3d 458 (Tenn. 2002)*

## **DESCRIPTION OF PROPERTY TO BE SEIZED**

### **Standard**

*Article I, Section 7 of the Tennessee Constitution* prohibits general warrants.

A warrant must tell an officer what to search for as well as where to search. The Constitutional prohibition against general warrants is designed, in part, to **limit** the discretion of an officer conducting the search. Therefore, the description of the property to be seized must be of sufficient detail to preclude the possibility of seizing any other.

*State v. Henning, 975 S.W. 2d 290 (Tenn. 1998)*

- The nature of the items to be seized is to be considered when determining whether the description is sufficient.
  
- If an item sought can generally be found among items lawfully possessed, then a more specific description is required. “Cash, pocket books, firearms, jewelry, checkbooks and clothing items” insufficient. *State v. Meeks, 876 S.W. 2d 121, (Tenn. Crim. App. 1993)*
  - Court found the victim’s checkbook sufficiently described and severed it from the tainted items for use as evidence.
  
- Where the property to be seized is of a specified character which, by reason of its character, would be illicit, a description other than to its general character would be unnecessary and often impossible. *State v. Donald McCary, No. E2001-02726-CCA-R3-CD (Tenn. Crim. App., at Knoxville, January 10, 2003)* (evidence which pointed to an unlawful sexual relationship between juvenile victim and adult defendant)

See also *State v. Meadows, 745 S.W. 2d 886 (Tenn. Crim. App. 1987)* (“crack cocaine, illegal narcotics, ...(evidence) ... that tends to memorialize drug sales and proceeds thereof” sufficient)

- “Stolen property” and “drugs” insufficient standing alone. *State v. Johnson, 854 S.W. 2d 897 (Tenn. Crim. App. 1993)*
  
- The question of whether or not an officer can make an additional seizure depends on its reasonableness. There is no prohibition against

the seizure of other property not specifically mentioned in a valid search warrant if such is relevant to crimes suggested by the warrant.

Seizure of non-Remington Peters brand 12-gauge shells was a reasonable extension of search warrant for 12 gauge shotgun and Remington Peters brand shells.

*State v. Dellinger, 79 S.W. 3d 458 (Tenn. 2002)*

- **Do not allow detectives to search for items not described unless “inadvertently discovered” under the plain view exception.**

-Property crimes detectives accompanying vice detectives

While searching for drugs, officer opened a plastic bag and ran the serial # of a stolen car stereo. While mere inspection of property in plain view is permissible, the property may not be moved.

*State v. James Dickerson, 1989 Tenn. Crim. App. LEXIS 51 (January 25, 1989)*

-Can only look where items can reasonably found  
e.g. looking for a stolen firearm in a pill bottle

-Can always write a second warrant

-Unless the search warrant specifically addresses computers, officers should not seize or search computers found.

See *United States v. Payton, 2009 U.S. App. LEXIS 15969 (9<sup>th</sup> Cir. 2009)*

# DESCRIPTION OF PERSON OR PLACE

## Standard

The particular description of the place to be searched must:

- 1) point to a definitely ascertainable place so as to exclude all others
- 2) enable the officer to locate the place to be searched with reasonable certainty without leaving it to his discretion

Make sure the description in the warrant matches the description in the affidavit

- Insufficient address in the warrant will not be saved by sufficient address in the affidavit unless
  - affidavit accompanies the warrant
  - warrant expressly incorporates the affidavit by reference

Include as much information as possible

- Street address
- Description of the property including the type of structure, the color of the structure, distinguishing characteristics such as street numbers or signs posted on the structure, mailbox with name, etc.
- Attach a photograph of the structure if possible
- Name of the occupant if known.
  - old case law naming the owner of rural property on a certain road no longer applicable in 2009
  - John Doe warrant for a place and not a person is sufficient
  - wrong name not fatal if sufficient address is on the warrant
- General directions to the place within reason  
(Do not rely on GPS directions)

## Multi-unit dwellings

- A search warrant directed to a multi-unit dwelling without more is insufficient.
- The description must be clear so as to exclude the search of unintended subunits

Where possible ambiguity, the court can consider the fact that the executing officer was the affiant and personally knew where the place to be searched was located.

*State v. Jackie Bostic*, 898 S.W. 2d 242, (Tenn. Crim. App. 1994)

## Curtilage

**Defined** as “the space of ground adjoining the dwelling house, used in connection therewith in the conduct of family affairs and for carrying on domestic purposes.”

**Common law:** intimate activity associated with the sanctity of a man’s home and the privacies of life and therefore considered part of home itself for Fourth Amendment purposes. Courts have extended Fourth Amendment protection to the curtilage.

Fourth Amendment protection afforded – Search Warrant or exception required

- Include the wording to expand the search beyond the primary residence or building.
- Use “curtilage” or “buildings, outhouses, and vehicles found therein”. See *State v. Gerald Hood*, 1985 Tenn. Crim. App. LEXIS 2999
- Include probable cause to justify the expanded search if possible. For example, a connection of the target to any vehicles found on the property.

## **Search Warrant for Evidence From a Suspect**

Two procedural methods exist for obtaining samples from a suspect:

- (1) Officers may obtain a search warrant (ex parte)
- (2) Officers may go through the adversarial process by having a motion filed and heard in the trial court seeking the entry of an order permitting the officers to obtain the samples.  
*State v. Baker, 956 S.W. 2d 8 (Tenn. Crim. App. 1997)*

A post-presentment, ex parte search warrant proceeding to obtain a blood sample from the defendant is not a critical stage of the prosecution thus requiring the presence of counsel since the defendant may later contest by a motion to suppress the search as well as the nature of an effective search warrant process requires secrecy, confidentiality, and the exclusion of the person under investigation.  
*State v. Blye, 130 S.W. 3d 776 (Tenn. 2004)*

## ISSUANCE AND CONTENT

### ENDORSEMENT

#### **Rule 41 (c)(2)(D)**

The magistrate **shall** endorse on the search warrant the hour, date, and the name of the officer to whom the warrant was delivered for execution.

The magistrate shall endorse upon the search warrant the hour, date, and name of the officer to whom the warrant was delivered for execution; and the exact copy of the search warrant and the endorsement thereon shall be admissible evidence. Failure of the magistrate to make said original and two copies of the search warrant or ***failure to endorse thereon the date and time of issuance and the name of the officer to whom issued***, or the failure of the serving officer where possible to leave a copy with the person or persons on whom the search warrant is being served, ***shall make any search conducted under said search warrant an illegal search*** and any seizure thereunder an illegal seizure.

- Intent: To secure the citizens against carelessness and abuse in the issuance and execution of search warrants by ensuring that if a search warrant is executed prior to its issuance, the discrepancy will be apparent on the face of the warrant.
- Failure to endorse the hour of search warrant issuance **fatal**.  
*State v. Bobadilla, 181 S.W. 3d 641 (Tenn. 2005)*
- Failure to designate a.m. or p.m. **fatal** despite evidence that clearly showed the warrant was issued before the execution.  
*State v. David Wayne Jones, No. M. 2007-01163-CCA-R3-CD, (Tenn. Crim. App., at Nashville, March 28, 2008)*

## COPIES AND RECORD OF WARRANT

### Rule 41(d)

The magistrate shall prepare an original and two exact copies of each search warrant. The magistrate shall keep one copy as a part of his or her official records. The other copy shall be left with the person or persons on whom the search warrant is served. The exact copy of the search warrant and the endorsement are admissible evidence.

### Magistrate's copy

- The magistrate's copy of the warrant enables review of the original boundaries of a search; without an exact copy of the warrant, review is compromised because the critical facts and details of the warrant cannot be precisely determined. It is for these reasons that it is important that the magistrate retains an exact copy of the warrant identifying the property or person to be searched
- The judicial commissioner's failure to **make** and **retain** a copy of the search warrant so that a record of the precise limits of the search could be maintained required suppression of the evidence seized.  
*State v. Coffee, 54 S.W. 2d 231 (Tenn. 2001)*
- Executing officer who took possession and control of the original warrant and all existing copies of the warrant impermissibly influenced the purity of the search process. Evidence suppressed.  
*State v. Brewer, 989 S.W. 2d 349 (Tenn. Crim. App. 1997)*
- Personal copy in the judge's records v. filing a copy under seal in the clerk's office

## Target's copy

- Upon execution, a signed, exact copy of the warrant shall be left with the person or persons on whom the warrant is served. There is no statutory law or rule mandating that a signed, exact copy of the **supporting affidavit** must also be served with the warrant. *State v. Lowe, 949 S.W.2d 300, (Tenn. Crim. App. 1996).*

The presumption is that an affidavit is not part of a search warrant, even if the two documents are served together, or are both found on the same sheet of paper. If, however, there is explicit reference to the affidavit in the search warrant, the affidavit may be considered part of the warrant.

Caveat: a referenced affidavit may cure a deficiency in a warrant

- Where copies did not contain the magistrate's endorsement of the time of issuance, an exact copy was not served on the defendant. Search invalid. *State v. Steele, 894 S.W. 2d 318 (Tenn. Crim. App. 1994)*
- Where magistrate's copy did not include the full date (this the 15 day of Nov., 19\_\_) and the defendant's copy did, no exact copy. *State v. Grapel Simpson, No. 02C01-9508-CC-00240 (Tenn. Crim. App., at Jackson, September 30, 1996)*
- Where the copies of the search warrant each bore original signatures of the magistrate, compliance with Rule 41(c) shown. *State v. James Calvin Harvill, No. 01-C-01-9011-CR-00289, (Tenn. Crim. App., at Nashville, June 6, 1991)*
- Where the magistrate's copy contained barely legible portions that were capable of enhancement and **comparison**, copy retained was exact. *State v. Gambrel, 783 S.W. 2d 191, (Tenn. Crim. App. 1989)*

## EXECUTION

### **Rule 41 (e)(1) Who May Execute**

The search warrant may **only** be executed by the law enforcement officer, or one of them, to whom it is directed. Other persons may aid such officer at the officer's request, but the officer must be present and participate in the execution.

### **40-6-101. Search warrant defined.**

A search warrant is an order in writing in the name of the state, signed by a magistrate, **directed to the sheriff, any constable, or any peace officer of the county**, commanding the sheriff, constable or peace officer to search for personal property, and bring it before the magistrate.

### **40-6-105. Issuance of warrant.**

The magistrate, if satisfied of the existence of the grounds of the application, or that there is probable ground to believe their existence, shall issue a search warrant signed by the magistrate, **directed to the sheriff, any constable or any peace officer**, commanding the sheriff, constable or peace officer immediately to search the person or place named for the property specified, and to bring it before the magistrate

### **Rule 41(c) (2)(D)**

The magistrate shall endorse on the search warrant the hour, date, and **name of the officer** to whom the warrant was delivered for execution.

- Standard language: **To the Sheriff or any lawful officer of the said County**
- Magistrate's error in designating the wrong officer as having received the warrant for execution (magistrate's certificate stated the warrant was delivered to an officer who was not present but later assisted the affiant in the search) **fatal**.  
*State v. Stepherson, 15 S.W. 3d 898 (Tenn. Crim. App. 1999)*
- Warrant **valid** where out of county detective, who procured and executed the warrant in another county, was accompanied by an in county detective who was present when the warrant was obtained and actually executed the return  
*State v. Smith, 868 S.W. 2d 561 (Tenn. 1993)*
- Issuance of warrant to a federal officer and his participation in it did not invalidate warrant where local officers assisted at the federal agent's request. There is no statutory restriction on the class of persons to whom a warrant must physically be issued.  
*State v. Pickford, 572 S.W. 2d 921 (Tenn. 1978)*
- Make sure that officers from the county where the property to be searched is located are present and assist the affiant in the search.  
See *Logan v. State, No. 03C01-9808-CR-00287 (Tenn. Crim. App. at Knoxville, November 10, 1999)*

### **Rule 41 (e) (2) Authority for Forcible Entry.**

If, **after notice** of his or her authority and purpose, a law enforcement officer is not granted admittance, or in the absence of anyone with authority to grant admittance, the peace officer with a search warrant may break open any door or window of a building or vehicle, or any part thereof, described to be searched in the warrant to the extent that it is reasonably necessary to execute the warrant and does not unnecessarily damage the property.

- A law enforcement officer who is charged with the execution of a search warrant must give (a) notice of his authority and (b) the purpose of his presence at the structure to be searched. The failure to comply with this rule, absent exigent circumstances, results in the exclusion of any evidence seized under color of the warrant.  
*State v. Curtis, 964 S.W. 2d 604 (Tenn. Crim. App. 1997)*  
no announcement based on “belief” execution compromised
- The knock and announce rule serves three purposes.
  - (a) The rule provides a form of protection from violence and assures the safety and security of both the occupants of the dwelling and the officers executing the search warrant.
  - (b) The rule protects the privacy of the occupant living in the dwelling.
  - (c) The rule prevents needless destruction of property.
- The knock and announce rule requires officers to wait a reasonable period of time before they break and enter and provides that the occupant of the dwelling be given a reasonable opportunity to surrender his privacy voluntarily. The act of knocking as the officer opens the door and enters the premises does not comply with the rule.
- State has the burden of establishing exigent circumstances to excuse a failure to comply with knock and announce
  - (a) Person within the dwelling knows of the officer’s authority and purpose.
  - (b) Officers have a justified belief that someone in dwelling is in immediate peril of body harm.
  - (c) The officers have a justified belief that those inside the dwelling are aware of their presence and are engaged in escape or the destruction of evidence.
  - (d) A person inside the dwelling is armed and is either likely to use the weapon or become violent.
  - (e) A person within the dwelling has threatened an officer’s safety, possesses a criminal record reflecting violent tendencies, or has a verified reputation of a violent tendencies.

- Knock and announce is limited to only those buildings where police officers have no right to be absent the issuance of a valid search warrant thus requiring a forced entry.  
*State v. Jack Rodgers Norton, No. E2001-01903-CCA-R3-CD (Tenn. Crim. App. Knoxville, July 18, 2002). (Tavern open to the public)*
- Knock and announce only pertains to the initial entry into a dwelling and does not apply to interior doors.  
*State v. Starks, 658 S.W. 2d 410 (Tenn. Crim. App. 1983)*
- “No knock” warrant justified where the defendant had a surveillance system at his home that allowed him the ability to monitor activity outside his home as well as the time to destroy evidence.  
*State v. Perry, 178 S.W. 3d 739 (Tenn. Crim. App. 2005)*  
(good testimony at the suppression hearing re: how the system worked)
- Upon observing the defendant carrying **the** red briefcase when they arrived to execute the search warrant, officers asked to speak with the defendant. When he ran into the church and hid under some choir robes, compliance with the "knock and announce" rule was not required.  
*State v. McCary, 119 S.W. 3d 226 (Tenn. Crim. App. 2003)*
- Information possessed by the officers regarding guns in the house and the defendant’s prior failure to answer her door when summons by the police excused a 4 second knock and announce.  
*State v. Stepherson, 15 S.W. 3d 898 (Tenn. Crim. App. 1999)*
- Five seconds sufficient time for knock and announce given the size of the home and the presence of the defendant in the hallway. Photographs of the home and diagram of the interior introduced as **exhibits** at the hearing.  
*State v. James Lee Ivory, No. M2000-02145-CCA-R3-CD, (Tenn. Crim. App. Nashville, January 10, 2003).*
- If an officer executing a warrant hears sounds indicative of flight or destruction of evidence -- running, scuffling, or toilet flushing -- the officer need not complete the announcement procedure before breaking in.  
*State v. Fletcher, 789 S.W. 2d 565 (Tenn. Crim. App. 1990)*  
**(educate swat team members on knock and announce restrictions)**
- **Win the battle at the trial court level on exigency so that the case goes up with the presumption of correctness.**  
*Contrast State v. Curtis, Id. v. State v. Howard Kareem Atkins, No. 02CO1-9809-CC-00295 (Tenn. Crim. App. Jackson, March 26, 1999)*  
Upon seeing the approaching police, someone inside dwelling quickly leaves the window leading police to suspect destruction of evidence

### **Rule 41 (e)(3) Timely Execution**

The warrant must be executed within five days after its date.

### **40-6-107 Return date**

(a) A search warrant shall be executed and returned to the magistrate by whom it was issued **within five (5) days** after its date, after which time, unless executed, it is **void**.

- Probable cause must exist at the time of the execution of a search warrant just as it must at the time of its issuance.
- Rebuttable presumption that a warrant served within the statutory five (5) day period still retains the original probable cause ( subject to a proper evidentiary showing to the contrary)
- Execution of a warrant beyond the outer limits fixed by the statute renders the warrant impermissibly **void**.  
*State v. Evans, 815 S.W. 2d 503 (Tenn. 1991)*
- A search warrant can be returned unserved.

## **Rule 41 (e) (4) Leaving Copy of Warrant and Receipt**

The officer executing the warrant shall:

(A) give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property; or

(B) shall leave the copy and receipt at a place from which the property was taken.

- Where the defendant was in jail at the time the search warrant was executed, the officers properly left the warrant at his residence, the place from where the property was taken.  
*State v. Reid, 91 S.W. 3d 247 (Tenn. 2002)*
- The delivery of a copy of the search warrant with the attached inventory to the defendant at the jail (**put into his property**) satisfied the requirements of Rule 41(c) and (d). The defendant was shown the search warrant at the scene but the inventory was not complete at the time he was taken to jail.  
*State v. Johnny Ray Roach, Lexis 191 (Tenn. Crim. App. 1989)*
- A copy does not have to be given to every resident but only to one person who resides at the premises searched.  
*State v. Tommy L. Woods, Lexis 704 (Tenn. Crim. App. 1989)*
- Document by photograph the copy left at the premises searched

## SECURING THE RESIDENCE

Police may secure a residence pending the issuance and arrival of a search warrant if immediate police action is necessary to prevent the destruction of evidence (exigent circumstances).

*Illinois v. McArthur*, 531 U.S. 326, 12, S. Ct. 946, 148 L. Ed. 2d 838 (2001)

- Four factors to be considered by a reviewing court
  1. Probable cause to believe the home contains evidence of a crime.
  2. “Good reason” to believe the defendant, unless restrained, will destroy evidence.
  3. What reasonable efforts were made to reconcile the needs of law enforcement with the demands of personal privacy?
  4. Were the restraints imposed for a reasonable period of time?
- Exigent circumstances justifying a warrantless entry may not be created by the actions of law enforcement. Deputies responding to a suspected meth lab created the exigent circumstances by approaching the residence and alerting the defendant to their presence. *State v. Carter*, 160 S.W. 3d 526 (Tenn. 2005)
- Based upon the victim’s statement that the target would destroy evidence if she did not ride the school bus home, the police secured the home for 5 hours while corroborating the victim’s information. The target was allowed limited access to enter his home under supervision. Police action upheld. *State v. Stacy N. Mooneyhan*, No. M2006-01330-CCA-R3-CD (Tenn. Crim. App., at Nashville, October 30, 2007)
- Court comments on the degree of freedom afforded the target in his home while the officers obtained a search warrant for his **computer** in finding the officer’s actions to be necessary to preserve evidence. *State v. Cheryl Bass*, No. M2006-02563-CCA-R3-CD (Tenn. Crim. App., at Nashville February 28, 2008)
- Officers’ actions in sitting outside the target’s residence for an hour before entering the home gave the target ample time to destroy evidence. The Court found the officers created the exigent circumstances by unlawfully entering the residence and detaining the target. *State v. Abby L. Mills*, No. W2008-00984-CCA-R3-CD (Tenn. Crim. App., at Jackson May 11, 2009)

## SEARCHING OCCUPANTS

### Occupants

- A search warrant need not name all of the persons who may happen to be present on the property at the time of the search. There is no constitutional requirement that the warrant even name the owner or the occupier of the described premises.  
*State v. Donna Smith, No.03C01-9209-CR-00321 (Tenn. Ct. App., at Knoxville June 29, 1994)*
- A warrant to search a place does not authorize a search of each individual in that place. The relationship between the person and the place is the critical consideration.  
*State v. Thomas, 818 S.W. 2d 315 (Tenn. Crim. App. 1991)*  
Where search warrant affidavit made no mention of defendant and the defendant did nothing suspicious upon entry by police, no basis for searching the defendant since mere companionship to the target even at the time of the criminal activity is not enough.
- Police may permissibly detain a target if he is present at his residence during the execution of the warrant. *Michigan v. Summers, 452 U.S. 692, 101 S. Ct. 2587, 69 L. Ed. 2d 340 (1981)*, or perhaps even seized the defendant outside his residence in order to properly execute the warrant, *see Illinois v. McArthur, 531 U.S. 326, 121 S. Ct. 946, 148 L. Ed. 2d 838 (2001)*. However, where the probable cause in the search warrant affidavit only referred to the defendant's residence and not his person, police unlawfully seized and searched the defendant located far away from his residence.  
*State v. Anthony E. Collier, No. M1999-01408-CCA-R3-CD (Tenn. Ct. App., at Nashville, March 28, 2001)*
- An occupant of the place has no greater privacy interests in his personal belongings than in his residence.
- A visitor continues to have an expectation of privacy in personal effects regardless of where they have been temporarily placed. However, police cannot realistically be expected to avoid searching the property of a mere visitor unless they are aware of its ownership. Therefore, without notice of ownership, the police may assume that objects found within the premises are part of the premises for purposes of executing the warrant. *Id. at 359.*

## Transient Visitors

Definition: a person who

1. arrives at the premises being searched while the search is in progress
2. does not reside inside the dwelling or have a property interest in the dwelling, and
3. is not named in the search warrant as a party to be searched under color of the search warrant.

- As a general rule, an officer does not have a right to **search** a transient visitor.  
*State v. Curtis, 964 S.W. 2d 604 (Tenn. Crim. App. 1997)*  
Language in the opinion suggests that if the person is known to be involved in drugs, a **stop and frisk** could be appropriate.
- Other grounds such as consent, reasonable suspicion, and probable cause may lead to a legal search  
(Where officers observed known drug dealer at a vehicle in the front yard of a home about to be searched and upon approaching the dealer, observe him to throw down a bag of dope, the officers had probable cause to detain and search despite the dealer's claim of being a transient visitor.  
*State v. Calvin Renard Steel, No. W2006-02032-CCA-R3-CD (Tenn. Crim. App., at Jackson, October 2, 2007)*

## RETURN

### **Tenn. R. Crim. P. 41 (f) (1) Return and Inventory.**

The officer executing the warrant shall promptly make a return, accompanied by a written inventory of any property taken. Upon request, the magistrate shall cause to be delivered a copy of the return and the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

- The return is a ministerial function and does not affect the validity of the warrant and its execution by the officer.
- The return is not governed by the five day requirement and should be done within a reasonable time period.
- Failure to return to the issuing magistrate is not fatal.  
*Bowman v. State*, 362 S.W. 2d 255 (Tenn. 1962)  
*State v. Hilliard*, 906 S.W. 2d 466 (Tenn. Crim. App. 1995)



## Independent Source Doctrine

The exclusionary rule may bar the admission of evidence obtained from an unconstitutional search or seizure, however, the "rule does not apply to evidence obtained by means independent of the constitutional violation." *Id.* (citing [Wong Sun v. United States](#), 371 U.S. 471, 485-87, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963)). To expound:

Pursuant to the independent source doctrine, an unconstitutional entry does not compel exclusion of evidence found within a home if that evidence [\*17] is subsequently discovered after execution of a valid warrant obtained on the basis of facts known entirely independent and separate from those discovered as a result of the illegal entry. Further, even "plain view" evidence observed during the warrantless entry will not be excluded so long as (1) the evidence is later discovered during a search pursuant to a valid warrant, (2) this valid warrant was obtained without reference to evidence uncovered during the illegal search, and (3) the government agents would have obtained the warrant even had they not made the illegal entry.

In order for the subsequent warrant and search to be found genuinely independent of the prior unconstitutional entry, the . . . information obtained during the illegal entry may not have been presented to the issuing Magistrate.

[State v. Clark](#), 844 S.W.2d 597, 600 (Tenn. 1992) (citations omitted).

"The underlying policy of the independent source doctrine is that 'while the government should not profit from its illegal activity, neither should it be placed in a worse position that it would otherwise have occupied.'" [Carter](#), 160 S.W.3d at 532 (citing [Murray v. United States](#), 487 U.S. 533, 542, 108 S. Ct. 2529, 101 L. Ed. 2d 472 (1988)).

Where the affiant received an anonymous tip of a meth cook and the affiant smelled odors that he recognized as being consistent with a cook, sufficient probable cause existed independent of observations made during the illegal entry into the home. *Carter id.*

## **Motion to Suppress and Beyond**

### **Tenn. R. Crim. P. 41(g) Motion for Return or Suppression of Property.**

A person aggrieved by an unlawful or invalid search or seizure may move the court pursuant to Rule 12(b) to suppress any evidence obtained in the unlawful search or seizure. If property was unlawfully seized, the aggrieved person may move for the return of the property. The motion shall be granted-except as to the return of contraband-if the evidence in support of the motion shows that:

- (1)** the search or seizure was made illegally without a search warrant or illegally with an invalid search warrant, or in any other way in violation of the constitutional protection against unreasonable searches and seizures;
- (2)** a search warrant was relied on, but the search warrant or supporting affidavit is legally insufficient on its face and hence invalid;
- (3)** the search warrant relied on was issued on evidence consisting in material part of willful or reckless misrepresentations of the applicant to the issuing magistrate, resulting in a fraudulent procurement;
- (4)** the search warrant does not describe the property seized, and the seized property is not of such a character as to be subject to lawful seizure without a warrant;
- (5)** the magistrate did not:
  - (A)** make an original and two copies of the search warrant; or
  - (B)** did not endorse on the warrant the date and time of issuance and the name of the officer to whom the warrant was issued; or
- (6)** the serving officer-where possible-did not leave a copy of the warrant with the person or persons on whom the search warrant was served.

## Standard of review

- Whether the magistrate had a substantial basis for concluding that a search warrant would uncover evidence of wrongdoing
- Determinations of probable cause are factually specific and must be dealt with on a case-by-case basis.
- A magistrate's probable cause determination is to be accorded "great deference" by a reviewing court.

*Jacumin id*

Burden upon the accused to prove by a preponderance of the evidence

- 1) Standing- the existence or a legitimate expectation of privacy in the place or property from which the items sought to be suppressed were seized.
  - 2) The identity of the items sought to be suppressed.
  - 3) The existence of a constitutional or statutory defect in the search warrant or the search conducted pursuant to the warrant.
- Probable cause challenges – state's evidence is limited to the affidavit supporting issuance of the warrant.
  - Challenges as to how the search was conducted such as knock and announce violations will require evidence.

*State v. Henning, 975 S.W. 2d 290 (Tenn. 1998)*

Two circumstances that authorize the impeachment of an affidavit on its face:

- **False statement made with the intent to deceive** the court, whether material or immaterial to the issue of probable cause.
- False statement, essential to the establishment of probable cause **recklessly made.**  
(statement was false when made and the affiant did not have reasonable grounds to believe it at that time)

Defense has burden of showing by a preponderance of the evidence an allegation of perjury or reckless disregard. Once proven, the false material is set to one side and the affidavit's remaining content is evaluated to determine if standing alone probable cause is shown.

*State v. Little, 560 S.W. 2d 403 (Tenn. 1978)*

*State v. Tidmore, 640 S.W. 2d 879 (Tenn. Cr. App. 1980)*

A defense motion attacking the warrant beyond the face of the document requires a detailed motion that points out specifically the basis for the claim (not couched in conclusory allegations) and the defense must be prepared to offer evidence in support of the claims raised.

No hearing is required unless the motion contains affidavits or otherwise reliable statements of witnesses containing the same reliability required of an affiant **seeking to obtain a search warrant**.

*State v. Evans, 815 S.W. 2d 503 (Tenn. 1991)*

Unless the defense alleges fraud in the procurement of the warrant or the absence of the informant as set out in the affidavit, the affiant is not required to produce the informant.

*State v. Brown, 618 S.W. 2d 325 (Tenn. Cr. App. 1981) (Crabtree)*

Defendants have a heavy burden when seeking disclosure of an informant. Mere speculation is insufficient. Unless the informant has participated in the crime, is a witness to the crime, or has knowledge favorable to the defendant, disclosure is not required. Since the defendant was charged with offenses arising from the execution of the search warrant and not with his earlier possession as observed by the informant, disclosure was not required.

*State v. Brandon Keith Ostein, 2009 Tenn. LEXIS 520 (Tenn. August 20, 2009)*

Appellate courts (and trial courts on motions for a new trial) in evaluating the correctness of a ruling on a pre-trial motion to suppress may consider the proof adduced at both the suppression hearing and trial. Testimony at the trial explaining the officer's seizure of the defendant as he fled into his home justified the failure to knock and announce. *Henning id.*

## **Preparing for the Hearing**

- Hold the defense to their burden regarding a sufficiently pled motion and to establishing standing.
- Be prepared with legal authority supporting your position.
- Have your witnesses present that will be needed to establish a sufficient record for appellate review.
- Make sure all necessary exhibits including certified copies of the search warrant, affidavit and attachments are available for introduction. For example, when the defense is contesting the execution of a search warrant on claims that the knock and announce requirement was not complied with, photographs, diagrams and swat officers might be needed.

## **Additional Resources**

Searching and Seizing Computers and Obtaining Electronic Evidence in Criminal Investigations

Published by Office of Legal Education Executive Office for  
United States Attorneys

<http://www.usdoj.gov/criminal/cybercrime/s&smanual2009.pdf>

## **EXAMPLES OF LANGUAGE USED FOR SEARCH WARRANT APPLICATIONS**

### **CONTROLLED BY BUYS**

Within the past seventy-two hours, the CI, acting at the direction of your affiant, has been to the residence at 330 Godsey Rd. Apartment #17, herein referred to as the residence to be searched and made a controlled purchase of cocaine from Marco Mendoza. The CI met with a Bristol Tennessee Detective before the controlled purchase and he/she was personally searched to insure the CI was not in possession of any contraband. The vehicle used by the CI was also searched and found to be free and clear of all contraband. The CI was monitored by surveillance officers as he/ she traveled directly to the residence at 330 Godsey Rd. Apartment #17. The CI made no stops on the way to the residence to be searched. The CI was observed meeting with Marco Mendoza in a location directly outside the residence to be searched. The CI handed Mendoza the recorded money that was provided to him/her by your affiant. Mendoza was then observed by surveillance officers to walk into the residence to be searched then return shortly thereafter to the location of the CI where he handed the CI a substance that was later field tested and shown to be positive for the presence of cocaine. The CI left the apartment complex and was monitored until he/she met back with a detective of the Bristol Tennessee Police Department's Street Crimes Unit. The CI made no stops or met with anyone while traveling from the residence to be searched. The CI turned over to the detective a quantity of a substance that the informant purchased from Mendoza. The substance was field tested and showed to be positive for the presence of cocaine. The CI as well as his/ her vehicle was searched again and no contraband or recorded money was found.

## **BIOGRAPHY**

Affiant, Detective Ray Hayes, having been duly sworn, states the following:

Your Affiant has been employed at the Sullivan County Sheriff's Office since August of 2005. Prior to your affiant's employment with the Sullivan County Sheriff's Office, your affiant was employed by the Bristol Virginia Sheriff's Office from April of 1999 until April of 2002 at which time your affiant gained employment with the Bristol Virginia Police Department and was so employed from April of 2002 until April of 2005. Your Affiant attended a sixteen week basic police academy in Bristol, VA, which contained some training in the recognition and investigation of illegal drugs. After gaining employment with the Sullivan County Sheriff's Office, your affiant received his TN P.O.S.T. certification by taking a comprehensive exam at the Police Academy in Donelson, TN. This exam covered all facets of law enforcement studied in the basic police academy. Immediately thereafter, your affiant went through a rigorous, hand on field training program with the Sullivan County Sheriff's Office. Your Affiant also went through a similar program with the Bristol, VA Police Department while employed with them. Your affiant was assigned to the Patrol Unit of the Sullivan County Sheriff's Office from August of 2005 until June of 2007. During my tenure with the Patrol Division of the Sullivan County Sheriff's Office, your affiant initiated numerous drug arrests. In June of 2007, your affiant was assigned to the Sullivan County Sheriff's Office Special Operations Unit. In my current assignment with the Sullivan County Sheriff's Office Special Operations Unit, your affiant has assisted the 2<sup>nd</sup> Judicial Drug Task Force, Bristol, TN Vice Unit and the Kingsport Police Department Vice Unit on numerous drug investigations. Your affiant has been through multiple classes held by the Regional Counterdrug Training Academy in Meridian, MS. Your affiant has also acted in an undercover capacity in the purchase of illegal narcotics on several occasions since being assigned to the Sullivan County Sheriff's Office Special Operations Unit. Through my experience and training, your affiant has become familiar with the packaging of drugs for resale and the illegal drug activity that exists within Sullivan County, TN and the surrounding area. Your affiant has also authored numerous applications for search warrants that upon execution have resulted in the seizure of illegal narcotics leading to the convictions of individuals illegally possessing or selling controlled substances in Sullivan County.

## **SEARCH WARRANT BASED ON USE OF NARCOTICS DOGS**

Both Kingsport Police K-9 handlers Officer Kevin Hite and Officer Mike Burnette, attended the eight-week basic police academy at the Walter State Basic Police Recruit School during which time both received basic training on narcotics identification and narcotics investigation. Both Officers Hite and Burnette have been assigned various duties while working at the Kingsport Police Department and each have made numerous drug related arrests where illegal narcotics have been seized and each have followed through with successful prosecutions of known drug offenders within the Kingsport area. Through their individual training and experiences, each have become familiar with illegal narcotics, narcotics investigations, and the illegal drug trade within the Kingsport area as well as the use of their certified narcotics detection dogs in the detection of the odor of illegal narcotics.

Officer Hite was assigned police service dog Odus in 2005. K-9 Odus is a “full-blooded” German Shepherd from the Republic of Czechoslovakia. K-9 Odus was trained to indicate on the odors of narcotics beginning at the age of 11 months. K-9 Odus has been trained to indicate on the odors of cocaine, marijuana, heroin, and methamphetamine. Both K-9 Odus and Officer Hite are members of the United States Police Canine Association and have been certified by same in the areas of patrol work and narcotics detection. Officer Hite and K-9 Odus are also certified by the American Working Dog Association and Tarhell Kennels in the area of narcotics detection. Officer Hite and K-9 Odus have maintained their certification by the United States Police Canine Association in narcotics and patrol work since becoming a working dog team for the Kingsport Police Department. They have periodically participated in several seminars to enhance their ability as a team to detect illegal narcotics.

Since becoming a team, Officer Hite and his K-9 Odus have made numerous narcotics finds during vehicle stops, residential searches, and area searches. These drug finds have lead to the arrest and successful prosecution of numerous drug offenders. Officer Hite and K-9 Odus have assisted many other agencies to include the 2<sup>nd</sup> Judicial Drug Task Force, the United States Postal Service, the Tennessee Highway Patrol and the Sullivan County Sheriff’s Office. K-9 Odus has located as little as 7/10<sup>th</sup> of a gram of crack cocaine, and as much as 11 pounds of marijuana.

Officer Burnette’s K-9 training began in 2007 when he was partnered with K-9 Macho. Officer Burnette has received specific training in the area of K-9 applications and case law concerning the use of a K-9 during police operations. Officer Burnette along with his K-9 Macho received an approximate accumulative 200 hours of training in various areas of K-9 operations from Rivanna K-9 Academy in Fluvanna County, Virginia where both were certified in the areas of narcotics detection and patrol. Officer Burnette and his K-9 Macho were certified by the United States Police K-9 Association in the area of patrol tactics and narcotics detection. During the above mentioned training, Officer Burnette and his K-9 Macho have successfully detected and located as little as 2.1 grams of crack cocaine and as much as 5 pounds of marijuana. Officer Burnette along with his K-9 Macho have received specific training in the areas of narcotics detection and specific training in techniques wherein the K-9 is used to locate then alert Officer Burnette when the odor of illegal narcotics are detected.

It is the independent opinion of both Officer Hite and Officer Burnette, as told to your affiant, that the positive and independent alerts as indicated by each of their K-9 detection dogs to unit C-11 located at Alstel Storage Units which is located at 5234 Memorial Boulevard Kingsport, Tennessee 37664, indicates the presence of an odor of illegal narcotics coming from the unit to be searched thus leading to probable cause that illegal narcotics are being stored within the unit to be searched.

## **CORROBORATION OF ANONYMOUS TIP**

On January 5, 2009 agents of the 2<sup>nd</sup> Judicial Drug Task Force received an anonymous letter that stated that James Poole is growing and selling marijuana from his home on Sumpter Road in Kingsport. The author of the letter indicated that James Poole resides with Robin Poole and that they live in a house that sits on the side of a hill with a small cinder block house across the road. The letter mentioned that there are greenhouses around the land. The author also indicated that James Poole is a landscaper and that the address is near 576 or 546 Sumpter Road, Kingsport. The author indicated that James Poole was sent to prison several years ago for growing and selling marijuana.

As a result of the information provided in the letter, agents with the 2<sup>nd</sup> Judicial Drug Task Force opened an investigation into the allegations against James Poole. Following is a list of items mentioned in the anonymous letter that, through the independent observation and investigation of your affiant, have been determined to be factual:

- 1) James Poole resides on Sumpter Road in a house located at 546 Sumpter Road Kingsport, Tennessee 37663 and the property is in fact near 576 Sumpter Road as mentioned in the letter.
- 2) James Poole's house, 546 Sumpter Road, Kingsport, TN 37663, sits on a hill directly across the street from a small cinder block structure.
- 3) There is a greenhouse type structure located on the adjacent land which is 576 Sumpter Road and property records indicated that James and Robin Poole do own the said adjacent property.
- 4) James Poole receives mail for Native Stock Nursery & Landscaping at 546 Sumpter Road, Kingsport, TN 37663.
- 5) Sullivan County official criminal records confirm that James B. Poole having a D.O.B. of 5/18/1958 of Sumpter Road in Kingsport has been convicted of various marijuana offenses in the past to include manufacturing as follows:
  - a. On May 5, 1978 James B. Poole having D.O.B 5/18/1955 pled guilty to manufacturing marijuana.
  - b. On February 21, 1989 James B. Poole having D.O.B. 5/18/1955 pled guilty to delivery of marijuana, manufacturing marijuana and possession of marijuana for resale.

On Wednesday, January 14, 2009 agents with the 2<sup>nd</sup> Judicial Drug Task Force traveled to 546 Sumpter Road Kingsport, Tennessee 37663 and discovered that a Waste Management trashcan was sitting in front of 546 Sumpter Road, Kingsport, Tennessee 37663 at the edge of the roadway in such a manner which is consistent with known trash collection service practices.

At that time, your affiant collected five bags of trash from the trashcan located at the edge of the road in front of 546 Sumpter Road Kingsport, Tennessee 37663 and the five bags were then taken to a secure location and inspected by your affiant. The following items were collected by your affiant as evidence from said trash.

Hammonds Bag # 1

- 1) A piece of mail addressed to Robin Poole 546 Sumpter Road Kingsport, Tennessee 37663
- 2) A piece of mail addressed to Jim Poole 546 Sumpter Road Kingsport, 37663
- 3) A piece of mail addressed to Native Stock Nursery & Landscaping 546 Sumpter Road Kingsport, Tennessee 37663
- 4) Two plant stems
- 5) Portion of a drinking straw containing white residue on it
- 6) Opened pack of rolling papers

Hammonds Bag # 5

- 7) Greyhound bus ticket
- 8) Vehicle tag receipt with Ashley Poole's name on it
- 9) Piece of paper with handwriting on it.

Note: A small portion of leafy material from item # 4 collected from bag #1 (plant stems) did "Field-Test" positive for the presence of marijuana. Your Affiant was also able to identify the stems to be Marijuana stems based upon your Affiant's experience and training.

## **RELIABILITY OF INFORMANT**

Your Affiant has confirmed the information provided by the confidential informant to be reliable through your affiant's personal knowledge, investigation, surveillance, and other investigative avenues. The reliable information provided by the informant included, but was not limited to, names and nicknames of persons dealing in controlled substances (including Marijuana, Lortabs and Percocets), locations of residences, and descriptions of vehicles used by known individuals involved in illegal drug activities, amounts, prices, and types of drugs sold, as well as methods of operation, arrests, and other activities of persons in the illegal drug trade. The CI is familiar with Marijuana, Lortabs and Percocets and its appearance from personal experience and his/her cooperation with law enforcement during this investigation and prior investigations with the First Judicial Drug Task Force. The CI has provided information as well as assistance to narcotics agents with the First Judicial Drug Task Force who have further corroborated the reliability of the informant. Charges against individuals from whom the CI has purchased controlled substances during controlled buys for the First Judicial Drug Task Force are pending presentment to the Washington County Grand Jury. A search warrant based upon the informant's assistance was obtained by the First Judicial Drug Task Force and resulted in the seizure of felony amounts of Cocaine, Oxycodone, Marijuana, and other drugs.

Within the past seventy-two (72) hours, the reliable confidential informant has been in the residence to be searched. The reliable confidential informant viewed two pounds of marijuana, two bottles of hydroponic marijuana, 10 to 15 Lortabs, and 10 to 15 Percocets in the possession of Joseph Ward. The reliable confidential informant viewed drug paraphernalia consisting of rolling papers, blunts, grinders, bongs, pipes, and pill crushers. Also viewed were two loaded handguns located in the same room in which the narcotics were stored as well as a surveillance camera.

STATE OF TENNESSEE, SULLIVAN COUNTY

Before \_\_\_\_\_, Judge, Division \_\_\_\_\_ Court of General Sessions, Sullivan County, Tennessee

AFFIDAVIT FOR SEARCH WARRANT

The undersigned being duly sworn deposes and says: That he has reason to believe that \_\_\_\_\_ (suspect) \_\_\_\_\_, who resides in or occupies and is in possession of the following

Address, directions, and description of residence to be searched \_\_\_\_\_

said premises being located in \_\_\_\_\_ (City) \_\_\_\_\_, Sullivan County, Tennessee, now has in his/her/their possession on said premises certain property, namely, \_\_\_\_\_

See Exhibit A \_\_\_\_\_

which the said \_\_\_\_\_ (suspect) \_\_\_\_\_ is unlawfully keeping in his/her/their possession and under his/her/their control in violation of law as made and provided in such cases.

And that the facts tending to establish the foregoing grounds for issuance of a search warrant are as follows:

See Exhibit B

Wherefore, as a duly appointed and qualified peace officer in Sullivan County, Tennessee, acting in the performance of my duties, I pray that a search warrant issue for the person of the said \_\_\_\_\_ (suspect) \_\_\_\_\_ and the premises herein described, for the aforescribed property and that such search to be either by day or night.

\_\_\_\_\_  
Affiant

Detective, Sullivan Co. Sheriffs Office  
\_\_\_\_\_  
Official Title

Sworn to and subscribed before me this the \_\_\_\_\_ day  
of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Judge

STATE OF TENNESSEE  
SULLIVAN COUNTY

**SEARCH WARRANT**

THE STATE

VS

Suspect  
Address

Issued in triplicate this \_\_\_\_\_ day of \_\_\_\_\_,

and the original and one copy delivered to \_\_\_\_\_  
**(officer)**

and one copy being retained by the undersigned  
on this \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_ , at \_\_\_\_\_ o'clock am/pm  
for execution.

\_\_\_\_\_, Judge

**JUDGMENT ON WARRANT**

Due and proper return having been made of the  
within warrant, the property seized as described  
in the said return shall be retained, subject to the  
orders of the \_\_\_\_\_ Court  
of \_\_\_\_\_ County, and the  
within warrant, affidavit, and return shall be filed  
in the office of the Clerk of said Court.

This \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_.

Signed: \_\_\_\_\_

**SEARCH WARRANT**

State of Tennessee, Sullivan County

Before \_\_\_\_\_, Judge, Division \_\_\_\_\_ Court of General  
Sessions, Sullivan County, Tennessee.

To the Sheriff or any lawful officer of said County:

Proof having been made before me under oath by \_\_\_\_\_ **(officer)**

Whose affidavit is attached hereto and is hereby referred to for its contents, that certain property, to wit: \_\_\_\_\_

**See Exhibit A**

is now located on the premises hereinafter described, said premises being resided in or occupied and possessed by \_\_\_\_\_  
**(suspect)** ; and from the proof it is adjudged that probable

cause exists to believe same; you are hereby commanded in the name of the State to make immediate search for said  
property, by day or night, of the person of said defendant and of the premises used and occupied by him/her/them located  
and described as follows:

**Address, Directions, description of residence to be searched**

said premises being located in \_\_\_\_\_ **City ?** \_\_\_\_\_, Sullivan County, TN.

If you find aid property as a result of said search, take charge of and bring the same before me, then deliver such property  
to the Sheriff of said County and make due return to me within five day of your action in the premises.

This the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Judge

**OFFICERS RETURN**

Came to hand same day issued, executed as commanded by searching the within described premises and the defendant and by reason of  
such search I seized the following \_\_\_\_\_

\_\_\_\_\_ which were taken before the Judge and then by his order retained by this officer.

This the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Officer

Exhibit A  
Page 1

- 1) Any and all controlled substances to include but not limited to (Narcotic).
- 2) All Drug Paraphernalia, to include any and all items used in conjunction with the packaging, and the sale of Marijuana and/or other controlled substances.
- 3) Books, records, receipts, notes, ledgers and other papers relating to the transportation, ordering, purchase and distribution of controlled substances.
- 4) Books, records, invoices, receipts, bank statements, and related records, certificates of deposits, passbooks, money drafts, letters of credit, money orders, bank drafts, cashier's checks, bank and other items evidencing the obtaining, secreting, transfer and/or concealment of assets expenditure of moneys illegally obtained through the distribution of narcotics and also monies used in drug purchases at the residence.
- 5) Address and/or telephone books, written or typed by hand as opposed to printed, rolodex indexes and any papers reflecting names, addresses, telephone numbers, fax numbers and/or telex numbers or co-conspirators, sources of supply or customers.
- 6) Indicia of occupancy, residence, rental and/or ownership of the premises described herein including, but not limited to purchase or lease agreements, and keys.
- 7) Any and all firearms including handguns, pistols, revolvers, shotguns, rifles, and other weapons.
- 8) Electronic Data Storage devices, computer data storage diskettes or CD-ROMs, or any other electronic equipment capable of storing, retrieving, and/or accessing data or necessary to assist in the accessing of said electronic data pertinent to the investigation.
- 9) Surveillance cameras and personal computer.

Officer \_\_\_\_\_  
Sullivan County Sheriff's Office

Judge \_\_\_\_\_

Time \_\_\_\_\_