

Writing Effective Search Warrants

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SEARCH WARRANTS

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*This handbook is intended to be a **summary** of search warrant case law. It is not intended as legal advice. It should direct you to other cases which might be applicable to the facts of your case.*

SEARCH WARRANTS

ILLINOIS CASE LAW & STATUTES

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 warrant shall issue, but upon probable cause, supported by oath and affirmation, and particularly describing the place to be searched and the persons or things to be seized.**

Fourth Amendment, U.S. Constitution.

I. GENERAL RULE: If possible, always obtain a search warrant.

Because a search warrant provides that detached scrutiny of a neutral magistrate, ... we have expressed a strong preference for warrants and declared that in a marginal case a search under a warrant may be sustainable where without one it would fail.

U.S. v. Leon, 82 L.Ed.2d 677 (U.S. Sup. Ct., 1984)

II. DRAFTING THE SEARCH WARRANT

A. AFFIANT

- ① who is it? Introduce yourself to the judge:
- ② numbers of years experience as police officer
- ③ number of years investigating this type of crime
- ④ number of investigations of this type you have participated in
- ⑤ specialized training you have received

[see **EXHIBIT #1**]

B. SOURCES OF INFORMATION

1. The ordinary citizen

a. Witnesses to a crime

People who supply information only after being interviewed by police, or who are witnesses to crime, are not "informants", but ordinary citizens.

Jones, 75 Ill.Dec. 105 (1st Dist., 1983)

b. Private citizen

one who hasn't given information to police in the past and isn't a paid or "professional" informant is **presumed to be reliable**

Chambers v. Maroney, 26 L.Ed.2d 419

(U.S. Sup. Ct., 1970)

Earley, 156 Ill.Dec. 513 (5th Dist., 1991)

Fisher, 32 Ill.Dec. 107 (1st Dist., 1979)

c. Information from victim/private citizen
police may rely on it without first verifying it.

Earley, 156 Ill.Dec. 513 (5th Dist., 1991)

d. No prior reliability

prior reliability and independent corroboration are not necessary for one who is not part of the "criminal milieu".

Hoover, 189 Ill.Dec. 835 (1st Dist., 1993)

Jones, 75 Ill.Dec. 105 (1st Dist., 1983)

e. Opinion of officer

regarding reliability, in and of itself, is insufficient to establish reliability.

U.S. v. Unger, 469 F.2d 1283 (7th Cir., 1972)

f. Not a paid informant

where there is no indication that the person was paid, it is presumed he was an ordinary citizen.

Chambers, 146 Ill.Dec. 311 (1st Dist., 1990)

2. The informant

a. "Information leading to convictions"

"his past information has led to the arrest and conviction of numerous persons for delivery of controlled substance".

Schaefer, 88 Ill.Dec. 815 (2nd Dist., 1985)

b. Information leading to "pending arrests" has been upheld but is not preferred

Thomas, 62 Ill.2d 375 (Ill. Sup. Ct., 1975)

c. "Reliable informant has given reliable information"

Held to be sufficient. Don't have to set forth arrests and convictions resulting from the informant's cooperation, but it is still preferable.

Payne, 180 Ill.Dec. 481 (5th Dist., 1993)

d. Where informant appears before judge

Where informant ("John Doe") appears personally before the judge, is under oath and the judge is able to personally assess informant's demeanor and credibility, additional evidence relating to the informant's reliability is unnecessary.

Hancock, 235 Ill.Dec. 82 (4th Dist., 1998)

BETTER PRACTICE

1. If the person is a "**private citizen**", tell the judge that - "I spoke with John Doe, a private citizen, and he told me that John Doe is not a police informant, does not have a criminal history, and does not regularly provide information to this police department.

2. Write it in the **first person** - it's easier to write and to understand than third person

Bien, 202 Ill.Dec. 176 (1st Dist., 1994)
Skinner, 91 Ill.Dec. 117 (3rd Dist., 1985)
O'Neal, 352 N.E.2d 282 (Ill., 1976)

Trial court is not required to produce the informant unless defendant makes a *preliminary showing of falsity*.

Phillips, 202 Ill.Dec. 176 (App. Ct., 1994)
See section D (pages 4,5)

e. No prior reliability

may establish reliability with 3 "controlled buys"
Exline, 74 Ill.Dec. 610 (Ill. Sup. Ct., 1983)

f. When information was given

Don't have to say when informant gave the information, as it has been held to be sufficient to give a general time frame.

Hicks, 7 Ill.Dec. 279 (1st Dist., 1977)

3. Use of police officer / affiant's opinion as to drugs kept at residence

To establish the nexus between defendant's criminal activity and his home, affiant may rely on his own experience that drug dealers ordinarily keep their supply, records, and profits at home.

Affiant is not required to show facts to establish the nexus.

"Based on my experience and training as a narcotics officer, I know that narcotics traffickers commonly keep records of narcotics transactions and customers they provide cocaine to, and that those records are usually kept in a place that is readily accessible, such as the individual's residence...."

Beck, 239 Ill.Dec. 66 (1st Dist., 1999)

4. Hearsay

a. Hearsay is sufficient to establish probable cause as long as there is a sufficient basis for crediting the hearsay.

McCray v. Illinois, 18 L.Ed.2d 62 (U.S. Sup. Ct., 1967).

b. Identify the source of the hearsay unless it is an informant.

c. Include a catch-all phrase, such as "the facts contained in this complaint are based on my own personal observations, as well as on information I have received from other police officers working with me on this investigation."

5. Anonymous tips

a. Illinois v. Gates, 76 L.Ed.2d 527 (U.S. Sup. Ct., 1983)

(1) Police received anonymous letter:

- the Gates's were selling drugs
- Mrs. G was driving to Florida on 5/3/78 to load the car with drugs
- Mr. G would fly down in a few days to drive the drugs back to Illinois
- the car trunk would be loaded with drugs

BETTER PRACTICE

1. "the confidential informant has supplied information in the past 12 months that has led to the arrest of 3 people for narcotics offenses and multiple seizures of cocaine. In those 3 cases, one defendant has been convicted of delivery of controlled substance, the other cases are pending in court"
2. Include any criminal convictions of the informant, rather than later face the allegation that the information was deliberately withheld from the judge

(See p.13)

- Gates's had over \$100,000 in drugs in their house
- Police were able to corroborate the following:
- Mr. G made a reservation for a flight to Florida
- Mr. G spent the night in Florida
- Mr. G left the next morning with a woman in a car with Illinois license plates issued to Mr. G, heading north on an interstate highway

(2) Search warrant was issued for the house and car.

(3) Affidavit must provide **substantial basis** for determining the existence of probable cause, based on the “**totality of the circumstances**”

b. When drafting affidavit, think fact + corroboration of the fact

c. No presumption of reliability applies to anonymous informant

There is no presumption of reliability where an anonymous informant provides information for the search warrant.

Damien, 233 Ill.Dec. 528 (1st Dist., 1998)

6. Multiple affidavits

may use more than one affidavit, such as police officer's and informant's, to establish probable cause.

Fiorito, 166 N.E.2d 606 (Ill. Sup. Ct., 1960)

C. ALIAS / FICTITIOUS NAMES

1. Tell the judge it's an alias

Use of alias name for informant in search warrant affidavit is acceptable where issuing judge is told name is fictitious.

[informant signed as "Larry Wayne (alias)"].

Manuel, 228 Ill.Dec. 472 (1st Dist., 1997)

2. Affiant's true identity must be known to the judge

Use of false name may render warrant void unless made known to the judge. Permissible to use false name, but best practice is to clearly inform judge.

Stansberry, 268 N.E.2d 431 (Ill. Sup. Ct., 1971)

O'Kiersey, 263 N.E.2d 488 (Ill. Sup. Ct., 1970)

Freeman, 460 N.E.2d 125 (1st Dist., 1984)

BETTER PRACTICE

When drafting a search warrant, don't include:

- Exact times - it is sufficient to state that the controlled buy took place within the last 24 hours, or 12 hours, etc. (look for the possible impeachment)
- Exact amount of drugs
- Unnecessary details that might result in impeachment

D. "JOHN DOE" WARRANT

1. Where informant appears before judge

Where the informant appears personally before the judge, is under oath and the judge is able to personally assess the informant's demeanor and credibility, additional evidence relating to the informant's reliability is unnecessary.

Hancock, 235 Ill.Dec. 82 (4th Dist., 1998)

Skinner, 91 Ill.Dec. 117 (3rd Dist., 1985)

O'Neal, 352 N.E.2d 282 (Ill. Sup. Ct., 1976)

Bien, 202 Ill.Dec. 176 (1st Dist., 1994)

“John Doe” must appear before judge and should be identified to judge.

Should use 2 affidavits - police officer's and John Doe's

(Note - this is not the same as a "fictitious name warrant".)

[EXHIBIT #2]

2. Multiple affidavits

may use more than one affidavit, such as police officer's and informant's, to establish probable cause.

Fiorito, 166 N.E.2d 606 (Ill. Sup. Ct., 1960)

E. DESCRIPTION OF PLACE TO BE SEARCHED

Leave no discretion as to which building is to be searched.

1. multi-family building

particularity requirement is not met where only a general description of a *multi-family* building is provided.

Lockett, 210 Ill.Dec. 366 (1st Dist., 1995)

2. Use of street address

with a description of the type of house, color and side of street was sufficient.

U.S. v. Barnes, 909 F.2d 1059 (7th Cir., 1990)

3. "... to the exclusion of all others"

Warrant must identify the place to be searched to the exclusion of all others.

Thomas, 26 Ill.Dec. 940, (2nd Dist., 1979)

4. Lack of address on warrant

Search warrant was properly quashed & evidence suppressed where search warrant did not contain address and referred to "said premise", even though address was contained in "case caption" at top of page, and contained in Complaint for Search Warrant affidavit. Good faith exception did not apply, as the description was "facially deficient" - such a fundamental defect that the officer's reliance upon it was not objectively reasonable.

Mabry, 237 Ill.Dec. 824

(2nd Dist., 1999)

5. Vehicle inside of garage

search of garage includes search of car found in garage, if it could hold the object of the search.

U.S. v. Evans, 92 F.3d 540

(7th Cir., 1996)

U.S. v. Motz, 936 F.2d 1021

(9th Cir., 1991)

U.S. v. Giwa, 831 F.2d 538

(5th Cir., 1987)

U.S. v. Percival, 756 F.2d 600

(7th Cir., 1985)

6. Use of "boilerplate" language as to affiant's opinion

To establish the nexus between defendant's criminal activity and his home, affiant may rely on his own experience that drug dealers ordinarily keep their supply, records, and profits at home. Not required to show facts to establish the nexus.

BETTER PRACTICE

Identify the building by:

color, type of building - "white brick single-family ranch"

street address - "commonly known as 213 Main St.,"

multi-family - Must be more specific "unit to be searched is #404, located on the fourth floor, southeast corner, with the number 404 on the door"

motor vehicles - identify by year, make, model, color, license number and/or VIN #

"and detached garage" - attached garage is already included - specifically state "... and detached garage"

"Based on my experience and training as a narcotics officer, I know that narcotics traffickers commonly keep records of narcotics transactions and customers they provide cocaine to, and that those records are usually kept in a place that is readily accessible, such as the individual's residence...."

Beck, 239 Ill.Dec. 66 (1st Dist., 1999)

[EXHIBIT #3]

7. Name of hotel

name of major hotel without an address was sufficient.

Hicks, 7 Ill.Dec. 279 (1st Dist., 1977)

8. Federal Express envelope

search warrant that commanded search of Federal Express envelope addressed to:

" A. McPhee
Southside Paralegal
253 E. 141st St.
Dolton, IL"

did not extend to house where envelope was delivered.

(Court found that even if it did, the warrant did not particularly describe the residence)

McPhee, 195 Ill.Dec. 59 (1st Dist., 1993)

9. White house, trailer, storage sheds & outbuildings

not overly broad to list "white house, trailer, storage sheds and outbuildings and garden"

Wagers, 194 Ill.Dec. 401 (3rd Dist., 1994)

10. Locked bedroom within residence

search warrant for residence authorized search of bedroom where bedroom door was padlocked, even though cannabis sought in warrant had already been seized in the living room.

Siegwarth, 674 N.E.2d 508 (3rd Dist., 1996)

11. Wrong address

warrant for apt. #604 at 2300 S. State St., where 2310 S. State St. was first building in 2300 block and had apt. #604, was sufficiently descriptive.

Watson, 186 N.E.2d 326 (Ill. Sup. Ct., 1962)

F. DESCRIPTION OF PERSON TO BE SEARCHED

Leave no discretion as to what person is to be searched.

1. Unidentified male/white

"unidentified male/white, approximately 5'-8", 10 lbs., bro hair, bro eyes, med. complexion, approximately 22 years of age" - was too general - must be more specific.

Simmons, 155 Ill.Dec. 410
(1st Dist., 1991)

BETTER PRACTICE

Identify person as specifically as possible.

- Name and/or nickname
- sex/race
- DOB
- Height, weight, eyes, hair, tattoo.
- Also state in affidavit **where** you obtained the physical description.

2. **Must describe person specifically**

"John Doe" is not specific enough. Must describe person specifically so that executing officer has no discretion.

Hicks, 7 Ill.Dec. 279 (1st Dist., 1977)

3. **"Harrington and other persons present" in the bar**

unconstitutionally over-broad, as it permits a search of all person in a public place during normal business hours. No good faith exception.

Reed, 147 Ill.Dec. 829 (3rd Dist., 1990)

G. DESCRIPTION OF ITEMS TO BE SEIZED

Leave no discretion as to what item is to be searched.

1. **Although generic description of items to be seized** can be satisfactory when a more specific description is available, if the officer had more specific knowledge, then the general description is not sufficient.

Wright, 236 Ill.Dec. 30 (1st Dist., 1998)

Allbritton, 103 Ill.Dec. 936 (1986)

2. **"Any and all stolen items"**

"Jewelry, U.S. Currency, golf clubs, firearms, any and all stolen property" - held to not be specific enough, evidence suppressed - affirmed on appeal.

Capuzi, 242 Ill.Dec. 41 (2nd Dist., 1999)

"any and all items of stolen railroad property" - held to not be specific.

Harmon, 46 Ill.Dec. 27 (4th Dist., 1980)

3. **Proof of residency**

police may seize items which indicate ownership, occupancy, or control of premises - not sufficiently over broad.

U.S. v. Reed, 726 F.2d 339 (7th Cir., 1984)

4. **"firearms and wiretapping equipment**

sufficient description

U.S. v. Pritchard, 745 F.2d 1112 (7th Cir., 1984)

5. **books and publications**

must describe items such as books with greater particularity.

Stanford v. Texas, 13 L.Ed.2d 431 (U.S. Sup. Ct., 1965)

6. **"jewelry, chains, cuff-links and U.S. Currency"**

not sufficiently specific to distinguish between stolen and legitimate & all are items commonly kept in residences

Allbritton, 103 Ill.Dec. 936 (3rd Dist., 1986)

7. **"crossbred piglets"**

piglets of approximately 6 to 8 weeks in age, crossbreeds of Yorkshire & Hampshire breeds was sufficient.

Raicevich, 377 N.E.2d 1266 (1978).

8. **"items taken from Donovan Grade School"**

nothing limits the scope of the property to be seized, leaving the officers with total discretion

Thiele, 70 Ill.Dec. 147 (3rd Dist., 1983)

CAUTION:

Before seizing any publication, check to see if it meets the statutory definition set forth in *the Privacy Protection Act*.

42 USC 2000aa

[EXHIBIT #4]

9. "Lladro figurines"

was sufficiently descriptive, as it was a specific brand-name product.
Rende, 191 Ill.Dec. 734 (2nd Dist., 1993)

10. documents -

describe as particularly as possible.

"Financial records" is a conclusion -
don't use that term.

Specify the documents to be seized:

mortgage documents

anceled checks

telephone bills

check stubs

rental car receipts

money order receipts

airline tickets

income tax returns

trust agreements

cashier's check receipt

installment sales contracts

loan documents

indicia of residency

credit card receipts

safe deposit box keys

computers and computer discs

(see attachments)

deeds

safes

leases

monthly bank account statements

personal telephone directories

[EXHIBIT #]

11. Use of police officer / affiant's opinion as to drugs kept at residence

Affiant may rely on his own experience that drug dealers ordinarily keep their supply, records, and profits at home. Not required to show facts to establish the nexus.

"Based on my experience and training as a narcotics officer, I know that narcotics traffickers commonly keep records of narcotics transactions and customers they provide cocaine to, and that those records are usually kept in a place that is readily accessible, such as the individual's residence...."

Beck, 239 Ill.Dec. 66 (1st Dist., 1999)

[EXHIBITS #3, #5]

BETTER PRACTICE

1. List everything you need to work up a financial case, including the items set forth in #10. (page 8) (cashier's check receipts, indicia of residency, records of narcotics transactions, deeds, leases, checking account statements, etc.)

2. Include serial numbers and model numbers, where available - attach copy of police report with list of stolen property, serial numbers, etc.

H. CORROBORATION

Independent of informant

Officer can independently corroborate information to rely less on the informant. Surveillance, records, police reports of other incidents, other arrests, convictions, other informants, etc.

Jones, 75 Ill.Dec. 105 (1st Dist., 1985)

① Telephone subscriber information

② Secretary of State or Division of Motor Vehicle records - address, vehicle, description

③ State Police/FBI/Chicago Police Department records - prior arrests, convictions, description

- ④ field test and subsequent lab analysis confirms informant's statement
- ⑤ informant's use of drug & receiving similar physiological effects
- ⑥ defendant's general reputation in the community
- ⑦ surveillance reports of numerous known addicts going in and out of residence for short periods of time

I. REFERENCE TO OTHER DOCUMENTS

Proper to refer to other documents, but **attach it as an EXHIBIT**
 "search warrant of December 19, 1995, attached as
 EXHIBIT #1, is incorporated herein by reference."

J. UNUSUAL CIRCUMSTANCES - "TAINTED" INFORMATION

1. Open apartment after manager found door kicked in

where police were called by apartment manager & observed door kicked in, initial entry was lawful & observations of drugs in apartment provided probable cause for warrant. While subsequent entry by detective was unlawful, the initial entry provided probable cause and the warrant should not have been quashed.

Bielawski, 194 Ill.Dec. 373 (2nd Dist., 1994)

2. Entry into defendant's apartment allowed by janitor

Where police were called by maintenance man who saw cannabis plants in defendant's apartment and police waited inside the apartment for the defendant to arrive home, to seek a consent search or to apply for search warrant, entry was unlawful, therefore search was unlawful, even though search warrant was obtained.

Carter, 672 N.E.2d 1279 (5th Dist., 1996)

3. Police hold residence and wait for search warrant

Where buy money was used to buy drugs from crack house, police acted properly in entering residence without warrant and seizing control of residence and then obtaining search warrant based *solely* on what was known prior to entering apartment.

(Residence was not searched prior to arrival of warrant and occupants were ordered to one room.)

Durgan, 217 Ill.Dec. 641 (4th Dist., 1996)

4. Entry into business by police at night/building check

Information obtained in warrantless entry of business, where police entered to see if any unauthorized person had gained entry, may be used to obtain search warrant.

Gardner, 76 Ill.Dec. 761 (2nd Dist., 1984)

5. Entry onto defendant's property

to view boat registration numbers after viewing boat from road didn't require suppression, where other facts established probable cause.

U.S. v. Johnston, 876 F.2d 589 (7th Cir., 1989)

6. Court must decide whether lawfully obtained evidence

establishes probable cause after excluding the tainted evidence.

U.S. v. Alexander, 761 F.2d 1294 (9th Cir., 1985)

7. Search warrant may still stand

Where probable cause was established without tainted information and neutral magistrate would have signed search warrant without the tainted information, the

search warrant may still stand.

Murray v. U.S., 101 L.Ed.2d 472 (U.S. Sup. Ct., 1988)

K. PLAIN VIEW OBSERVATIONS

1. **Observations made while lawfully in a residence**
officer's observations of evidence of a crime, made while in a place the officer has a right to be, can be used to establish probable cause.

Segura v. U.S., 468 U.S. 796 (U.S. Sup. Ct., 1984)

2. **Evidence of a crime observed in "plain view"**
If scope of search exceeds that permitted by warrant, seizure of items found is generally unconstitutional.

Items found in plain view are admissible, even where discovery of the items was not inadvertent - important fact is whether the search was within the *scope* of the warrant.

Horton v. California, 110 L.Ed.2d 112 (U.S. Sup. Ct., 1990)

3. **Moving item to look**

Moving stereo to look at serial number is a *search*, not a plain view.

Arizona v. Hicks, 107 S. Ct. 1149 (U.S. Sup. Ct., 1987).

4. **Spiral notebook**

police could examine notebook (drug records), as cocaine could be concealed inside.

U.S. v. Barnes, 909 F.2d 1059 (7th Cir., 1990)

5. **Safe deposit box keys**

Where police observed 5 safe deposit box keys while searching residence for cocaine and drug paraphernalia, police are entitled to infer that defendant had a safe deposit box that might well contain cocaine or money.

Kytka v. Washington, 921 F.Supp. 499 (N.D. Illinois, 1996)

PLAIN VIEW is defined as that which is *open to view*, not made open to view, either intentionally or inadvertently.

L. USING PRIVILEGED INFORMATION

Attorney-client privilege

police may use information obtained in violation of attorney-client privilege in affidavit for search warrant, even though it can't be used at trial. (No right to counsel violation.)

Shiflet, 80 Ill.Dec. 596 (2nd Dist., 1984)

M. PROBABLE CAUSE

1. **Totality of circumstances**

Judge should make practical, common-sense decision whether there is a "**fair probability**" that evidence of a crime will be found.

Illinois v. Gates, 76 L.Ed.2d 527 (U.S. Sup. Ct., 1983)

2. **Look to evidence as a whole**

look to evidence as a whole to determine if there is a substantial basis for judge's finding of probable cause.

"A negative attitude by reviewing courts toward warrants is inconsistent with encouraging the use of search warrants by the police."

Mass. v. Upton, 80 L.Ed.2d 721 (U.S. Sup. Ct., 1984)

3. Probable cause determination entitled to "great deference"

Judge's determination of probable cause is entitled to great deference, even where original search warrant issued in 1967 could not be located in 1995. No per se rule that the warrant must be produced to prove existence of warrant.

Wells, 231 Ill.Dec. 311 (Ill. Sup. Ct., 1998)

Wells, 210 Ill.Dec. 43 (5th Dist., 1995) (same case at Appellate Court level)

4. Consider all facts in affidavit as a whole

affidavit shouldn't be evaluated as to whether each segment establishes probable cause, but whether affidavit, as a whole, establishes "fair probability" that evidence of a crime will be found.

Loera, 189 Ill.Dec. 251 (2nd Dist., 1993)

5. Preliminary DNA match

Preliminary DNA match from data bank established probable cause for issuance of search warrant for defendant's blood sample.

Hickey, 227 Ill.Dec. 428 (Ill. Sup. Ct., 1997)

6. Informant with no prior reliability

3 controlled buys, using an informant with no prior reliability, established probable cause.

Exline, 74 Ill.Dec. 610 (Ill. Sup. Ct., 1983)

7. Consider complaint & affidavit as a whole

Court should consider whether complaint, considered as a whole, established probable cause. Sufficiency of complaint doesn't rest on whether each portion independently establishes probable cause.

Gacy, 82 Ill.Dec. 391 (Ill. Sup. Ct., 1984)

8. Statement of accomplice

Probable cause [to arrest] may be based on the statement of an accomplice.

Jordan, 217 Ill. Dec. 905 (1st Dist., 1996)

9. Material facts

Material facts must be disclosed to issuing judge if there is substantial possibility that the facts would have altered judge's determination of probable cause.

Medina, 140 Ill.Dec. 765 (2nd Dist., 1990)

10. Test isn't whether affidavit could be stronger

Test is whether, taken as a whole, affidavit establishes probable cause, not whether it could be stronger.

Hammond, 143 Ill.Dec. 599 (1st Dist., 1990)

BETTER PRACTICE

1. If the informant has no prior reliability, the generally accepted rule is that 3 controlled buys (informant buys) are required to establish that reliability

2. If there is prior reliability and sufficient corroboration, or if a police officer makes the buy, one buy is sufficient

3. include lab results or field test results to corroborate the informant's statement as to the drugs purchased

N. ANTICIPATORY SEARCH WARRANTS

1. Makes the execution of the search warrant **contingent on the occurrence of a specific event**, such as a third buy inside the residence, the supplier bringing the drugs to

the location, or the package being delivered to the apartment and taken inside.

Anticipatory search warrants are constitutionally valid.

Validity of search warrant is dependent on the conditions being met.

Unless that event happens, the search warrant must be returned unserved.

- Prevents delay while waiting for search warrant to be prepared.
- May file affidavit after warrant is served, stating that the conditions were met.

Carlson, 236 Ill.Dec. 786 (Ill. Sup. Ct., 1999)

Martini, 202 Ill.Dec. 751 (2nd Dist., 1994)

Galdine, 156 Ill.Dec. 595 (2nd Dist., 1991)

U.S. v. Skaff, 418 F.2d 430 (7th Cir., 1969)

NOTE: People v. Ross, 213 Ill.Dec. 672 (Ill. Sup. Ct., 1995), found anticipatory search warrants statutorily invalid, not unconstitutionally invalid. The statute, 725 ILCS 5/108-3(a)(1), was amended, effective 1995, which permits anticipatory warrants.

2. Specify the conditions in the warrant

Better practice is to explicitly spell out the conditions for its execution both in the search warrant and in the affidavit.

U.S. v. Moetamedi, 46 F.2d 225 (2nd Cir., 1995)

EXHIBIT #7]

3. Old statute invalid (725 ILCS 5/108-3)

Anticipatory search warrants, although constitutionally permissible, violated statute, as Sec. 108-3 requires that a crime be committed before search warrant is issued.

Ross, 213 Ill.Dec. 672 (Ill. S. Ct., 1995)

4. Amended statute is valid and constitutional

Where conditions of search warrant were (1) delivery of the package of cannabis to the defendant's apartment, and (2) acceptance of package inside apartment, and both were complied with, anticipatory warrant was permissible.

Carlson, 236 Ill.Dec. 786 (Ill. Sup. Ct., 1999)

Favala, 224 Ill.Dec. 267 (3rd Dist., 1997)

Nwosu, 219 Ill.Dec. 858 (4th Dist., 1996)

O. STALENESS OF INFORMATION

1. General Rule: Passage of time negatively affects existence of probable cause.

While there is no hard and fast rule as to when probable cause no longer exists, *the older the facts, the more stale the probable cause.*

Facts that show a continuing course of conduct may outweigh the passage of time.

2. Drugs - 6 weeks time lapse - stale

When 6 weeks passed from the informant's controlled buy from the defendant and the issuance of the search warrant, and there was no evidence to suggest defendant was engaging in a continuing course of conduct, the information was stale.

Damian, 233 Ill.Dec. 528 (1st Dist., 1998)

CONTINUING COURSE OF CONDUCT

- The single most important factor in determining whether probable cause is valid or stale is whether the defendant was engaged in a continuing course of criminal conduct.

People v. Beck, 239 Ill.Dec. 65 (1st Dist., 1999)

3. drugs - 14 day time lapse - held not stale.

Hawthorne, 258 N.E.2d 319 (Ill. Sup. Ct., 1970)

4. weapons - 40 day time lapse

40 days between when weapon observed and warrant signed not stale.

Morrison, 300 N.E.2d 325 (App., 1975)

McCoy, 90 Ill.Dec. 493 (2nd Dist., 1985)

III. MISREPRESENTATION OF FACTS

A. GENERAL RULES

1. "Four Corner" Rule

the court is limited to an examination of the face of the complaint and the warrant itself ("*the four corners*" of the document).

Bak, 258 N.E.2d 341 (Ill. Sup. Ct., 1970)

2. Search warrant is presumed valid

Cunningham, 243 Ill.Dec. 475 (1st Dist., 1999)

Coss, 186 Ill.Dec. 899 (1st Dist., 1993)

Agyei, 173 Ill.Dec. 722 (1st Dist., 1992)

B. *Franks* EXCEPTION

1. If the defendant can show a knowing and intentional false statement or a reckless disregard for the truth on the part of the affiant, the search warrant may be suppressed.

U.S. v. Franks, 57 L.Ed.2d 667 (U.S. Sup. Ct., 1978)

Defendant must:

a. allege more than mere conclusions

b. allege deliberate falsehoods or reckless disregard for the truth

c. specify which part of affidavit he claims is false

d. present affidavit that rebuts the false allegations

2. AFFIDAVITS

a. "Substantial preliminary showing"

necessary to trigger a *Franks* hearing requires more than an unsubstantiated denial but less than proof by a preponderance of the evidence. Largely within the trial court's discretion.

Thompkins, 204 Ill.Dec. 147 (Ill. Sup. Ct., 1994)

b. Must be sufficiently detailed

so as to subject the affiant to perjury if his statements are untrue.

Lucente, 107 Ill.Dec. 214 (Ill. Sup. Ct., 1987)

c. Affidavits filed by interested parties

where defendant and wife filed the only affidavits saying that defendant was not home when informant said defendant was there, *Franks* hearing not warranted.

Pavone, 182 Ill.Dec. 372 (App., 1993)

Tovar, 120 Ill.Dec. 267 (App., 1988)

d. Affidavits must establish that defendant could not have committed the offense.

Phillips, 202 Ill.Dec. 176 (App., 1994)

Tovar, 120 Ill.Dec. 267 (App., 1988)

e. Affidavits from interested parties tend to be weaker support for a motion to quash the search warrant.

Phillips, 202 Ill.Dec. 176 (App., 1994)

f. Affidavit must cover entire time period

Affidavits must cover entire time period in question, to establish that defendant could not have committed the offense.

McCoy, 230 Ill.Dec. 78 (1st Dist., 1998)

g. Second search warrant within 1½ hours of "dry" search

Where officer applied for second search warrant within 1½ hours after he completed the paperwork for the first warrant, *which resulted in no recovery of drugs*, and officer failed to tell second judge of first search warrant, defendant made a substantial preliminary showing and the trial court was justified in ordering Franks hearing.

Chaney, 222 Ill.Dec. 191 (1st Dist., 1997)

h. blatant lie by informant

defendant may be entitled to evidentiary hearing if informant, rather than affiant, is the source of false statements in the affidavit - if there is evidence that the informant blatantly lied to the affiant.

Taylor, 207 Ill.Dec. 193 (1st Dist., 1995)

i. oral offer of proof

Oral offer of proof is insufficient to warrant *Franks* hearing. Defendant must file written affidavits.

Coss, 186 Ill.Dec. 899 (1st Dist., 1993)

3. DEFENDANT MAKES A "SUBSTANTIAL PRELIMINARY SHOWING"

a. Court must excise from the complaint the false material. If the remaining portion of the complaint is sufficient to support a finding of probable cause, then no hearing is required.

Eyler, 139 Ill.Dec. 756 (Ill. Sup. Ct., 1989)

LeShoure, 93 Ill.Dec. 856 (4th Dist., 1985)

McCoy, 90 Ill.Dec. 493 (2nd Dist., 1985)

b. Where *Franks* hearing has been granted, trial court has discretion to require production of the informant or the informant file for an in-camera inspection if, under all the circumstances, the trial court doubts the credibility of the affiant.

Vauzanges, 199 Ill.Dec. 731 (Ill. Sup. Ct., 1994)

4. DEFENDANT'S BURDEN

a. false statement essential to probable cause

If, after hearing, defendant proves by preponderance of the evidence that a false statement was knowingly included in the affidavit by affiant and false statement was necessary for finding of probable cause, then search warrant must be voided.

Vauzanges, 199 Ill.Dec. 731 (Ill. Sup. Ct., 1994)

b. preponderance of the evidence

Defendant's burden to prove by preponderance of the evidence that false statement

Under **Franks**:

If the defendant can make a substantial preliminary showing that the affiant made a ①knowing and intentional false statement or ②a reckless disregard for the truth, the evidence may be suppressed.

was knowingly, intentionally, or with reckless disregard, included by the affiant. Whether the informant told the officer the truth is not an issue.

Lucente, 107 Ill.Dec. 214 (Ill. Sup. Ct., 1987)

Adams, 197 Ill.Dec. 717 (1st Dist., 1994)

5. DETAILS OF AFFIDAVIT

a. "I didn't do it"

defendant isn't entitled to an evidentiary hearing on Franks motion where defendant just denied the allegations of the search warrant. Must provide "convincing proof the allegations could not have taken place"

Maiden, 155 Ill.Dec. 120 (1st Dist., 1991)

Martine, 87 Ill.Dec. 905 (Ill. Sup. Ct., 1985)

b. warrant based solely on informant

where warrant was based solely on information supplied by the informant and detective did not independently investigate and corroborate anything, and defendant's affidavit provided an air-tight alibi, defendant made a substantial preliminary showing.

Pearson, 208 Ill.Dec. 102 (1st Dist., 1995)

6. BASIC DENIAL OF ALLEGATIONS IS INSUFFICIENT

a. Insufficient to file affidavit stating defendant didn't live on the premises and wasn't there on date of purchase

Maiden, 155 Ill.Dec. 120 (1st Dist., 1990)

b. Mere denial of facts alleged in affidavit was not sufficient to overcome presumption of validity of affidavit. Use of "boiler plate" language does not establish untruthfulness of affidavit in present case

Sutton, 197 Ill.Dec. 867 (1st Dist., 1994)

7. MUST BE MATERIAL TO PROBABLE CAUSE

defendant must show omitted information was material to determination of probable cause and was omitted for purpose of misleading the judge.

Stewart, 85 Ill.Dec. 422 (Ill. Sup. Ct., 1984)

Medina, 140 Ill.Dec. 765 (2nd Dist., 1990)

8. MINOR INACCURACIES

Minor inaccuracies don't taint the entire warrant, if the court can excise the tainted part from the balance and determine that probable cause still exists.

Rugendorf v. U.S., 11 L.Ed.2d 887 (U.S. Sup. Ct., 1964)

(NOTE: a pre-*Franks* case)

9. OMISSIONS OF INFORMATION

Franks applies to omissions of relevant facts, as well as misrepresentations.

10. OMISSION OF NON - RELEVANT INFORMATION

affiant's omission of 10 occasions where informant's tips didn't result in a seizure did not show reckless disregard for truth, where it wasn't due to false information by the informant.

Elworthy - 158 Ill.Dec. 614 (1st Dist., 1991)

While <u>Franks</u> does not apply to <i>minor inaccuracies</i> , it does treat OMISSIONS of relevant facts as misrepresentations of fact.
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11. DISCOVERY

a. Defendant not entitled to production of informant

Defendant does not have a right to production of informant prior to making substantial preliminary showing.

Martine, 87 Ill.Dec. 905 (Ill. Sup. Ct., 1985)

LeShoure, 93 Ill.Dec. 856 (4th Dist., 1985)

O'Toole, 115 Ill.Dec. 131 (2nd Dist., 1987)

b. Subpoena of police records

court properly refused/quashed defendant's subpoena for other affidavits/reports in which officer relied on same informant.

Elworthy, 158 Ill.Dec. 614 (1st Dist., 1991)

Herron, 161 Ill.Dec. 664 (2nd Dist., 1991)

O'Toole, 115 Ill.Dec. 131 (2nd Dist., 1987)

Holmes, 124 Ill.Dec. 926 (1st Dist., 1988)

Rodriguez, 75 Ill.Dec. 168 (1st Dist., 1983)

c. All reports filed by affiant

Court properly denied defense request for all reports filed by affiant within past three years.

Gomez, 177 Ill.Dec. 632 (1st Dist., 1992)

d. All search warrants obtained by affiant

Court properly denied defense request for all search warrants obtained by affiant in past seven months.

Franks hearing ought not to be used for mere discovery.

The use of "boiler plate" language does not establish the untruthfulness of the affidavit.

Sutton, 197 Ill.Dec. 867 (1st Dist., 1994)

IV. OBTAINING JUDICIAL APPROVAL

A. ON - CALL vs. WORKING HOURS

Follow Circuit Court administrative orders as to obtaining the proper judge to sign the warrant. ("Duty Judge" procedures, etc.)

B. ORAL STATEMENTS MADE TO ISSUING JUDGE

1. State may offer independent evidence of probable cause

If additional facts were brought to the attention of the issuing judge at the time the affidavit/complaint and search warrant were signed, the State may offer it as evidence in hearing.

Dahler - 15 Ill.Dec. 430 (2nd Dist., 1978)

2. Make a notation of any question asked by the issuing judge and answers given the judge - include in case report

C. SWORN AFFIDAVIT

where affiant testified at motion to suppress that he was not sworn at time he signed

affidavit, search warrant was properly suppressed.
Kleinik, 174 Ill.Dec. 631 (5th Dist., 1992)

D. INADVERTENT OMISSION OF TIME, DATE & SIGNATURE

Search warrant not rendered invalid where issuing judge inadvertently failed to write time and date and failed to sign search warrant, where written complaint/affidavit was presented to judge and judge signed and dated it.

Purpose of time/date requirement is to permit officers to determine whether it has expired.

Blake, 203 Ill.Dec. 658 (2nd Dist., 1994)

[But see Taylor, 144 Ill.Dec. 699 (3rd Dist., 1990), which held that absence of time, date and judge's signature were "obvious defects that precluded good faith reliance" and affirmed suppression of evidence.]

E. STAMP vs. SIGNATURE OF JUDGE

not necessary for judge to physically sign the warrant.

Stephens, 297 N.E.2d 244 (2nd Dist., 1973)

F. TELEPHONE CORRECTIONS

Police telephoned judge

Where police informed him of wrong address on search warrant in telephone call and Judge told them to change it and initial the changes, motion to quash properly denied.

Trantham, 13 Ill.Dec. 512 (3rd Dist., 1977)

G. FAXED SEARCH WARRANTS - 725 ILCS 5/108-4

search warrant may be transmitted via fax machine and has the same validity as a written search warrant.

[EXHIBIT #6]

H. PRIOR REFUSAL OF JUDGE TO SIGN WARRANT

May be a factor in a motion to suppress, but doesn't require suppression.

U.S. v. Pace, 898 F.2d 1218 (7th Cir., 1990)

I. APPLICATION FOR 2nd SEARCH WARRANT WITHIN 2 HOURS

Where officer applied for second search warrant within 1½ hours after he completed the paperwork for the first warrant, *which resulted in no recovery of drugs*, and officer failed to tell second judge of first search warrant, Franks hearing was warranted.

Chaney, 222 Ill.Dec. 191 (1st Dist., 1997)

J. MISCELLANEOUS

any handwritten notations or changes added to search warrant at time of signing should be initialed by complainant and judge.

Once the search warrant is signed by the judge, do not add or delete any facts - do not change it in any respect - without the judge's specific approval. All such

V. EXECUTION

A. TIMELINESS

1. 725 ILCS 5/108-13 [EXHIBIT #6]

May be executed day or night.

2. 725 ILCS 5/108-6 [EXHIBIT #6]

Must be executed *within 96 hours* or returned "unexecuted"

The search warrant becomes void after 96 hours.

A search warrant must be executed within **96** hours or returned "unexecuted".

B. SEARCH PRIOR TO ARRIVAL OF WARRANT

Not necessary to have warrant in hand

Officer may execute search warrant he is not in possession of, once it has been signed by the judge. Affiant may call officers on the scene and tell them warrant has been signed. Jeffries, 203 N.E.2d 396 (Ill. Sup. Ct., 1964)

C. SECURING THE PREMISES TO WAIT FOR SEARCH WARRANT

1. **Officer may secure the premises to obtain search warrant - defendant present**

Police properly prevented defendant from entering trailer where the officer was told by defendant's wife that there was cannabis inside, and one officer went with wife to sign affidavit for search warrant while the other officer remained with the defendant. Defendant was told he would have to remain out of the trailer unless accompanied by officer. Defendant was permitted to enter for cigarettes, however officer accompanied him inside the door to observe. Trailer was not searched until approximately 2 hours later, when officer returned with search warrant. Defendant testified that had he been allowed inside alone, he would have destroyed the cannabis. Illinois v. McArthur, 531 U.S. 326 (U.S. Supreme Court, decided February, 2001) reversing People v. McArthur, 238 Ill.Dec. 847 (4th Dist., 1999) see also 3 W. LaFave, Search & Seizure §6.5(c) at 362 (3rd ed. 1996)

2. **Securing the premises when defendant is not present**

Police arrested defendant in the lobby of his building, then went to his apartment, entered the apartment and arrested everyone present. Two officers remained inside the apartment for 19 hours, until a search warrant was obtained, while defendant remained in custody at the police department.

As there was little actual interference with the defendant's possessory interests in the apartment, as he was in custody, the seizure of the premises did not violate the Fourth Amendment.

Segura v. United States, 104 S.Ct. 3380, 82 L.Ed.2d 599 (U.S. Sup. Ct., 1984)

Cases where courts have upheld securing the residence until a search warrant is obtained:

United States v. Crespo de Llano, 838 F.2d 1006 (9th Cir., 1987)

Commonwealth v. Yesilciman, 550 N.E.2d 378 (Mass. Sup. Ct., 1990)

D. KNOCK & ANNOUNCE RULE

1. The "knock and announce" rule is constitutionally required, absent a reasonable law enforcement interest to the contrary, such as
 - (1) threat of violence to police officers,
 - (2) escaped prisoners &
 - (3) specific reason to believe that evidence will be destroyed if knock and announce.

Wilson v. Arkansas, 115 S. Ct. 1914 (U.S. Sup. Ct., 1995)

Wright, 231 Ill.2d 908 (Ill. Sup. Ct., 1998)

see Krueger, 221 Ill.Dec. 409 (Ill. Sup. Ct., 1996)

see Condon, 170 Ill.Dec. 271 (Ill. Sup. Ct., 1992)

2. No blanket exception to rule for drug search warrants

While there is no blanket exception for drug search warrants, a no-knock entry is justified when police have a "reasonable suspicion" that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime.

Where the defendant opened the door for officers posing as maintenance men and then quickly slammed it when he saw one officer in uniform, a no-knock entry was justified.

Richards v. Wisconsin, 137 L.Ed.2d 615 (U.S. Sup. Ct., 1997)

3. "One knock per residence"

Where police knocked at outer vestibule door and defendant's girlfriend let them into vestibule, officers were not required to knock at upstairs door to individual apartment when girlfriend tried to alert defendant in the apartment to the presence of the police. (Two apartments shared common entry & vestibule.)

Woods, 242 Ill.Dec. 507 (2nd Dist., 1999)

U.S. v. Bragg, 138 F.3d 1194 (7th Circ., 1998)

4. 5 - 10 - 15 second wait

Testimony that police waited 10 seconds after announcing their office was sufficient in drug case.

Saechao, 136 Ill.Dec. 59 (Ill. Sup. Ct., 1989),

Mathes, 25 Ill.Dec. 582 (1979) (15 seconds)

Boykin, 22 Ill.Dec. 614 (1978)

Testimony that police waited 5 to 15 seconds after announcing their office before making forced entry was sufficient in bank robbery case.

U.S. v. Leonard, 2000 U.S. App. Lexis 3681 (7th Circ., 2000)

5. Possession of gun two years prior

The fact that defendant possessed handgun twice in last two years was insufficient to waive knock & announce rule, where there was no evidence that defendant used or carried the weapons within reasonable period of time. Mere fact that drugs can be destroyed easily is not enough, unless affiant can show specific information that drugs are always kept near toilet, or that buckets of water are kept near toilet, etc.

Ouellette, 36 Ill.Dec. 666 (Ill. Sup. Ct., 1979)

6. Use of battering ram

Use of ram or sledgehammer, without knocking & announcing, violated 4th Amendment.

Clark, 98 Ill.Dec. 239 (3rd Dist., 1986)

Richard, 339 N.E.2d 400 (2nd Dist., 1975)

7. Unlocked door -

cannot enter unlocked door without knocking & announcing

Rogers, 16 Ill.Dec. 902 (App., 1978)

8. "No one home"

entry by sledgehammer was approved after defendant's roommate responded to agent's knock on door, then retreated into house without opening it.

Songer, 171 Ill.Dec. 553 (3rd Dist., 1992)

9. Subterfuge

a. "My car broke down"

may use subterfuge to cause defendant to open door, then announce authority.

Sunday, 65 Ill.Dec. 461 (App., 1982)

b. "Mailman with package"

no problem, as long as officer announces authority.

Bargo, 21 Ill.Dec. 789 (1st Dist., 1978)

c. Activating defendant's car alarm

proper to lure defendant outside by activating car alarm.

Witherspoon, 160 Ill.Dec. 76 (1st Dist., 1979)

NOTE: forced entry is not justified if officer is not allowed inside when attempting a ruse.

The "knock and announce" rule is constitutionally required, absent a reasonable law enforcement interest to the contrary, such as
(1) threat of violence to police officers,
(2) escaped prisoners, &
(3) specific reason to believe that evidence will be destroyed.

Wilson v. Arkansas (U.S. Supreme Court - 1995) (see p. 19)

E. "NO - KNOCK" ENTRY -

725 ILCS 5/108-8(b) [EXHIBIT #6]

1. Issuing judge may make a finding, based upon specific facts set forth in the affidavit, of the existence of one of the following exigent circumstances :

① That the officer reasonably believes that if notice were given a weapon would be used:

(a) against the officer executing the search warrant

(b) against another person.

② That if notice is given, there is an imminent "danger" that evidence will be destroyed.

Judge makes specific finding that the circumstance exists and then orders a "no-knock" entry.

"THIS IS A NO-KNOCK WARRANT" should be typed on the face of the warrant

NOTE: Circumstances must still exist at the time the warrant is served [EXHIBIT #9]

2. **No-knock statute is unconstitutional as to "presence of accessible firearms" within the residence**
725 ILCS 5/108-8(b)(1)
The mere presence of accessible firearms within the residence does not constitute exigent circumstance that justifies no-knock entry. Officers must have *reasonable belief that an occupant will use a firearm against them* if they knock and announce.
Wright, 231 Ill.2d 908 (Ill. Sup. Ct., June 1998)
3. **No-knock statute unconstitutional as to "recent possession of a firearm"**
725 ILCS 5/108-8(b)(2)
Mere presence of firearms in building does not constitute exigent circumstance - must have a reasonable belief that the weapon will be used against the police.
Krueger, 221 Ill.Dec. 409 (Ill. Sup. Ct., 1996)
4. **The "knock and announce" rule is constitutionally required**, absent a reasonable law enforcement interest to the contrary, such as
 - (1) threat of violence to police officers,
 - (2) escaped prisoners &
 - (3) specific reason to believe that evidence will be destroyed if knock and announce.Wilson v. Arkansas, 115 S. Ct. 1914 (U.S. Sup. Ct., 1995)
5. **No blanket exception to rule for drug search warrants**
While there is no blanket exception for drug search warrants, where the defendant opened the door for officers posing as maintenance men and then quickly slammed it when he saw one officer in uniform, a no-knock entry was justified.
Richards v. Wisconsin, 137 L.Ed.2d 615 (U.S. Sup. Ct., 1997)
6. **Where defendant was a convicted felon, his apartment had a steel door** and a large amount of crack cocaine and 2 loaded handguns were inside, the no-knock entry was held lawful. (Information was only a few hours old)
U.S. v. Stowe, 100 F.3d 494 (7th Cir., 1996)
7. **Absent above circumstances, must knock & announce**
purpose of rule is to notify defendant of presence of police, give defendant time to respond to avoid violence & to protect his "privacy".
Marinez, 112 Ill.Dec. 193 (3rd Dist., 1987)
8. **Mere presence of barricades**
Barricades blocking the doors of the residence do not constitute an exigent circumstance that justifies a no-knock entry. There must be a reasonable belief that the barricades pose a danger to the police.
Aaron, 230 Ill.Dec. 815 (2nd Dist., 1998)
9. **Mere presence of guns & surveillance equipment**
presence of guns, not immediately accessible, video surveillance equipment, outside lighting, and recent arrest for UUW was not sufficient to justify "no-knock" entry, where it wasn't specifically requested or ordered in search warrant.
Condon, 170 Ill.Dec. 271 (Ill. Sup. Ct., 1992)
10. **Better Practice -**
 - a. know defendant's history, including violence & weapons charges
 - b. include weapons & acts of violence or arrests so judge is aware

c. specifically request "no-knock" entry

F. DETENTION OF PERSONS ON PREMISES - 725 ILCS 5/108-9

[EXHIBIT #6]

1. Person executing warrant may detain any person **in the place at the time of the search** to
 - a. protect himself from attack, or
 - b. prevent the disposal or concealment of items described in the warrant
2. **May detain occupants while searching**
police may detain occupants while search is conducted.
Defendant here was leaving premises, walking down front steps when police arrived.
Police may not search those present on the premises absent independent probable cause to do so.
Michigan v. Summers, 69 L.Ed.2d 340 (U.S. Sup. Ct., 1981)
3. **Cannot detain person not "in the place at the time"**
person leaving the first floor of building where second floor apartment was to be searched cannot be detained.
Merriweather, 199 Ill.Dec. 522 (2nd Dist., 1994)

G. SEARCHES OF PERSONS DETAINED ON PREMISES

725 ILCS 5/108-9 [EXHIBIT #6]

1. **Cannot search patrons of bar**
absent **independent probable cause**, police may not search patrons of bar being searched pursuant to warrant.
Illinois v. Ybarra, 444 U.S. 85 (U.S. Sup. Ct., 1979)
2. **Cannot search purse of visitor in residence**
police cannot search purse of **non-resident not named in search warrant** who was present when warrant was executed - unless he acts in suspicious or threatening manner or gave police reason to believe contraband/weapon was in purse. Cannot search purse under Terry.
Purse of resident is part of premises and may be searched.
Gross, 80 Ill.Dec. 328 (3rd Dist., 1984)
3. **Cannot search guest arriving at house**
without showing a connection the guest has with the house, a person who merely arrives while warrant is being executed cannot be searched.
Dukes, 6 Ill.Dec. 533 (1st Dist., 1977)
4. **Guest who opens the door**
Defendant who opened the door when police approached and was a baby sitter could not be searched merely because he was present.
Coats, 207 Ill.Dec. 595 (3rd Dist., 1995)

While 725 ILCS 5/108-9 permits the police to detain (to search) any person present at the time the search warrant is executed, the officer should be looking for articulable factors that are indications of guilty knowledge before conducting a full search of the person who is merely present at the scene.

5. Cannot search person present but not named in warrant

police cannot search person not named in search warrant merely because he is on premises when warrant is executed, absent **independent probable cause**.

Guttierrez, 92 Ill.Dec. 799 (Ill. Sup. Ct., 1985)

Independent probable cause:

- person answered door and attempted to prevent entry
- person nervous & unable to sit still
- bulges in person's pants pocket
- drugs just found on another person

6. Person asleep in bed

could be searched during execution of search warrant where police saw drugs in plain view near bed, even though person was not the resident, nor was he named in the search warrant.

In Re C.K., 189 Ill.Dec. 601 (2nd Dist., 1993)

H. SCOPE OF SEARCH

1. Plain view/incriminating nature

If items in plain view are of **incriminating nature**, police may seize them, even though not named in warrant.

- numerous pieces of mail addressed to other people at other address gives rise to inference of stolen mail
- gold bar & coins - reasonable to infer it was drug proceeds
- guns - reasonable to infer they were involved in drug trafficking.

U.S. v. Reed, 726 F.2d 339 (7th Cir., 1984)

2. Property of third party merely on the premises

The presence of a third party on the premises brought the third party's tool box within the scope of the search warrant.

Llanos, 224 Ill.Dec. 283 (1st Dist., 1997)

3. Incriminating evidence not practical to sort

police may seize items not named in warrant where they have evidentiary value and it is impractical to sort through the evidence on the premises.

Ingram, 98 Ill.Dec. 221 (3rd Dist., 1986)

- warrant for fingerprints left in premises by victim was OK
- seizure of guns in residence and removal of guns to lab for fingerprinting was OK

4. Size of item sought

CB radio suppressed where warrant specified "any and all items of railroad property". Officers were looking for large railroad items, none small enough to be hidden behind TV, where CB was found.

Harmon, 46 Ill.Dec. 27 (4th Dist., 1980)

Better Practice -

If there is any question as to who lives at residence, clothing found in the closet or the dresser in the bedroom where the drugs were found can be evidence as to the ownership of the drugs. Anything that has the appearance of containing or being evidence of a crime may be seized.

5. Warrant for person

where warrant was for defendant's person, police could search defendant's purse.
U.S. v. Graham, 638 F.2d 1111 (1981)

6. Two day search of business

two-day search of business was unreasonable.
Van Note, 20 Ill.Dec. 1 (1st Dist., 1978)

7. Containers for drugs

search for drugs justifies entry into any containers where the drugs would fit and might reasonably be found.

U.S. v. Ross, 72 L.Ed.2d 572 (U.S. Sup. Ct., 1982)

8. Vehicles found in attached garage

search of garage includes search of car found in garage, if it could hold the object of the search.

U.S. v. Evans, 92 F.3d 540 (7th Cir., 1996)

U.S. v. Motz, 936 F.2d 1021 (9th Cir., 1991)

U.S. v. Giwa, 831 F.2d 538 (5th Cir., 1987)

U.S. v. Percival, 765 F.2d 600 (7th Cir., 1985)

9. Common wall

cannot search on other side of common wall that has hole knocked in it, where it had separate address.

Sanchez, 139 Ill.Dec. 128 (1st Dist., 1989)

I. "SERVING" THE SEARCH WARRANT

Leave a copy of the search warrant at the premises which was searched or with the person from whom evidence was seized.

725 ILCS 5/108-6 [EXHIBIT #6]

J. EVIDENCE HELD BY THIRD PARTY

1. Newspaper photographer

search warrant may be issued for evidence held by someone other than defendant, in this case, a newspaper photographer.

Zurcher v. Stanford Daily, 436 U.S. 547 (U.S. Sup. Ct., 1978)

2. 725 ILCS 5/108-3(b) [EXHIBIT #6]

Search warrant for

a. things that are work product of or used in the ordinary course of business, and

b. are in the possession/custody of a person known to be in the news media,

Requires probable cause to believe that:

(i) the items are evidence of a crime,

(ii) the person in custody of the material has committed/is committing an offense,

or

(iii) the items to be seized will be destroyed or removed from the State if search warrant is not issued.

K. WARRANT EXECUTED AT WRONG ADDRESS

Search of wrong apartment

Search of wrong apartment was not improper, where officer who obtained warrant believed the person whose apartment was to be searched was the only tenant on that floor
AND

police discovered the error only **after they entered** and found drugs in the apartment.

(two separate residences were contained within what police thought was one third-floor apartment)

Maryland v. Garrison, 107 S. Ct. 1013 (U.S. Sup. Ct., 1987)

L. COUNTY OF EXECUTION

Search warrant may be executed anywhere in State of Illinois search warrant may be executed in any county in State.

Fragoso, 25 Ill.Dec. 138 (App., 1979)

M. WHO MAY ENTER

1. **Allowing victim inside to identify property** - Police may take victim inside building to view & identify his property.

People v. Superior Court (Meyers), 598 P.2d 877 (Cal., 1979)

[Permission to allow victim inside should be requested of judge.]

2. **Allowing media to be present** - Police may not allow reporter inside during execution of search warrant to photograph the incident. Violates the Fourth Amendment to bring media or other third parties into residence during execution of search warrant when their presence would not aid in the execution.

Wilson v. Layne, 119 S.Ct. 1692, 143 L.Ed.818 (U.S. Sup. Ct., 1999)

VI. INVENTORY

A. SHALL BE MADE PROMPTLY

Search warrant return shall be made **without unnecessary delay** to judge issuing the warrant or any court with jurisdiction

725 ILCS 5/108-10 [EXHIBIT #6]

Affiant need not personally make return & issuing judge need not take the return & inventory.

B. FAILURE TO MAKE RETURN & INVENTORY

technical violation that did not require suppression of evidence.

Griffiths, 68 Ill.Dec. 73

(4th Dist., 1983)

Smith, 278 N.E.2d 73

(Ill. Sup. Ct., 1972)

Better Practice -

- Affiant should make return, if possible.
- The return should be made to the same judge - if unavailable, then to a judge in the same courthouse where the issuing judge was assigned
- If a large number of items were seized, attach and refer to the inventory sheets in the police reports

VII. GOOD FAITH RELIANCE ON SEARCH WARRANT

A. **GOOD FAITH RELIANCE - no probable cause for issuance**

where officer acting in good faith obtains search warrant from judge, there is no violation of defendant's 4th Dist amendment rights, no suppression.

U.S. v. Leon, 82 L.Ed.2d 677 (U.S. Sup. Ct., 1984)

- Only where affidavit is so lacking in probable cause as to make reliance on it unreasonable, will court find an absence of good faith.

- **Facially valid warrant**

- **signed by neutral & detached judge = good faith reliance**

- Consulting with the State's Attorney & involving the prosecutor can be looked upon as a sign of good faith.

B. **WARRANT INVALID FOR TECHNICAL REASON**

Where officer acted in objectively reasonable reliance on a search warrant later found to be invalid for technical reason, no suppression.

[form warrant for controlled substance inadvertently used for murder investigation]

Massachusetts v. Shepard, 82 L.Ed.2d 737 (U.S. Sup. Ct., 1984)

C. **GOOD FAITH RELIANCE - unconstitutional statute**

1. U.S. Constitution does not require suppression for warrantless administrative search, made in reasonable reliance on statute later found to be unconstitutional. Illinois statute required auto parts sellers to allow police to inspect records.

(Statute declared unconstitutional after police had gone to defendant's junk yard, inspected records, found stolen vehicle, & obtained search warrant.)

Illinois v. Krull, 94 L.Ed.2d 364 (U.S. Sup. Ct., 1987)

2. But Illinois Constitution requires suppression of evidence seized in reliance on a statute later found unconstitutional (no-knock statute declared unconstitutional).

Krueger, 221 Ill.Dec. 409 (Ill. S. Ct., 1996)

D. **GOOD FAITH RELIANCE by local officers executing federal search warrant**

Local police officers' good faith reliance on search warrant issued by federal magistrate was reasonable, even though based on facts 13 months old (for silencer parts defendant ordered). Drugs found during execution of warrant were admissible.

Rehkopf, 106 Ill.Dec. 728 (2nd Dist., 1987)

E. **ILLINOIS' ADOPTION OF *Leon***

1. **725 ILCS 5/114-12(b)(2) [EXHIBIT #10]**

"Good faith" means whenever a peace officer obtains evidence:

(I) pursuant to a search or an arrest warrant obtained from a neutral and detached judge, which warrant is free from obvious defects other than non-deliberate errors in preparation and contains no material misrepresentation by any agent of the State, and the officer reasonably believed the warrant to be valid."

2. **officer's good faith belief**

Although mistaken, officer's good faith belief that search warrant was valid, prevents suppression.

Stewart, 85 Ill.Dec. 422 (Ill. Sup. Ct., 1984)

3. no probable cause

good faith exception permits use of evidence obtained by officers acting in good faith and in reasonable reliance on search warrant which is ultimately found to be unsupported by probable cause.

Hieber, 195 Ill. Dec. 927 (2nd Dist., 1994)

F. OBSERVATIONS MADE WHILE ON DEFENDANT'S PROPERTY

where officer was standing on what he thought was public property (it was in fact defendant's property), saw cannabis growing in defendant's backyard, and then obtained search warrant, officer's good faith reliance on search warrant prevented suppression.

Mashaney, 513 N.E.2d 615 (1987)

G. ABSENCE OF DATE, TIME, JUDGE'S SIGNATURE

Inadvertent omission of time, date & signature

Search warrant not rendered invalid where issuing judge failed to write time and date and failed to sign search warrant, where written complaint/affidavit was presented to judge and judge signed and dated it. Purpose of time/date requirement is to permit officers to determine whether it has expired.

Blake, 203 Ill.Dec. 658 (2nd Dist., 1994)

[But see Taylor, 144 Ill.Dec. 699 (3rd Dist., 1990), which held that absence of time, date and judge's signature were "obvious defects that precluded good faith reliance" and affirmed suppression of evidence.]

H. SEARCH WARRANT FOR "all others present on premises" (a bar)

good faith exception does not apply to search warrant for "all present" in a bar. Search warrant was too broad - evidence was properly suppressed.

Reed, 147 Ill.Dec. 829 (3rd Dist., 1990)

X. MISCELLANEOUS

A. PEN REGISTER

Search warrant is not required. Must obtain court order under Electronic Communications Privacy Act of 1986.

Smith v. Maryland, 61 L.Ed.2d 220 (U.S. Sup. Ct., 1979)

NOTE: Judges routinely require an affidavit setting forth facts sufficient to justify the use of the pen register, although probable cause is not required.

B. BEEPER/BEACON/TRANSPONDER

If vehicle in public place, no search warrant required

• search warrant is required to monitor beeper in a private place, not open to public view.

U.S. v. Karo, 82 L.Ed.2d 530 (U.S. Sup. Ct., 1984)

U.S. v. Knotts, 460 U.S. 276 (U.S. Sup. Ct., 1983)

C. IF IN QUESTION, always attempt to obtain judicial approval.