

Metropolitan Police Academy



10.3 Search Warrants

Approved 4/3/2023

10.3.1 Explain the legal principles governing search warrants

The Fourth Amendment of the US Constitution states: “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 person or things to be seized.” The Metropolitan Police Department has policies and procedures for obtaining and serving search warrants. The department is also required to abide by all constitutional requirements when conducting searches and when obtaining and serving search warrants.

Definitions

- **Affiant** – Person who signs an affidavit and swears to its truth before a judicial official or other person authorized to take oaths.
- **Affidavit** – Written statement of facts made by an affiant under oath or affirmation administered by a person authorized to do so by law.
- **De-confliction Tracking Numbers** – Event tracking numbers that are automatically generated from the HIDTA Case Explorer database.
- **High Intensity Drug Trafficking Area (HIDTA)** – Federal program managed by the Office of National Drug Control Policy (ONDCP) which facilitates cooperation between federal, state, and local law enforcement agencies in combating illegal drug trafficking and the violent crime associated with drug trafficking and distribution.
- **Oral Search Warrant** – Search warrants based on sworn oral testimony communicated to a judge or magistrate.

Probable Cause – Set of facts, circumstances, or reliable information that would lead a reasonable and prudent police officer to believe it is more likely than not that a crime has been committed or is about to be committed, and that a certain person committed it. In the case of a search warrant, evidence of that crime is contained in the specific location that the officer is requesting to search.

- **Reasonable** – Fair, proper, or moderate under the circumstances. Determining whether a member has behaved reasonably is an objective standard whereby the court will consider the circumstances, not the intent of the officer.
- **Reasonable Suspicion** – Minimal level of objective justification of a stop. Although reasonable suspicion is not capable of precise definition, it is more than a hunch or mere speculation but less than probable cause.
- **Search** – Intrusion of an individual’s person or property interest.
- **Warrant** – Court order issued by a judge or magistrate authorizing the police or some other body to make an arrest, search premises, or carry out some other action relating to the administration of justice.

10.3.2 Identify the forms necessary to obtain a search warrant

The key element for obtaining approval for search warrants is probable cause. The officer applying for a search warrant, known as the affiant, completes an affidavit. An affidavit is a written statement of facts signed under oath or affirmation, much like a Gerstein affidavit. In the search warrant affidavit, the court will consider facts known to the officer at the time of application. Some of the facts that the judge will consider are:

- Evidence from the member's own observation(s)
- Information from informants
- Information from non-criminal sources (e.g., community members or other MPD members)

When an officer is applying for a search warrant, he or she must corroborate the facts stated in the affidavit and determine their accuracy, validity, and truthfulness. Once an officer has completed the affidavit, the reviewing official will challenge the officer to determine whether he or she has verified these factors.

An **Affidavit in Support of an Application for Search Warrant** is the document that must contain the facts that support probable cause for the search warrant. When preparing an affidavit, officers must state the facts necessary to substantiate the issuance of a warrant in a clear, organized, and accurate fashion. Each paragraph contained in the affidavit, except for the heading, must be numbered and listed in chronological order, and is required to include a thorough explanation of the following:

- A full description of the place, item, or person to be searched. Include the specific address, color of the door/shutters, and what type of building it is. (e.g., apartment, row house, business name, etc.) Also, include a description of any detached buildings that you wish to include in your search. Without this description, you will be unable to search these places.
- The background and identifying information of the requesting member or agent (i.e., name, duty assignment, experience, training and any other relevant information about the requesting member).
- A full and complete delineation of the reliability of the confidential informant (if applicable). Include the informant's basis of knowledge of the information that he or she provided to you.
- A full and complete recitation of the facts establishing probable cause.
- Descriptive information of items to be seized. For example: 12" Butcher knife with a brown wood handle vs "a knife," cocaine in the form of a white rock or powder and clear zip bags for packaging vs "cocaine and bags,"

Once an officer has completed the search warrant affidavit, he or she must complete a **DC Superior Court Search Warrant (CD 1055)** or a **US District Court Search Warrant (AO106)** and certify the **Record of Review of Affidavit (PD Form 273)** by completing the appropriate section.

Groh v. Ramirez, 540 U.S. 551 (2004)

A search warrant that does not comply with the requirement that the warrant particularly describe the person or things to be seized is unconstitutional. The fact that the *application* for the warrant (but not the warrant itself) adequately described the things to be seized does not make the warrant valid.

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

“Search warrants are not directed at persons; they authorize the search of ‘place[s]’ and the seizure of ‘things,’ and as a constitutional matter they need not even name the person from whom the things will be seized.”

Searches of places belonging to third parties are permissible as long as probable cause exists to believe that evidence of someone’s guilt or other items subject to seizure will be found.

10.3.3 Construct an Affidavit in Support of an Application for Search Warrant

(Practical Exercise)

10.3.4 Construct a Superior Court of District of Columbia Search Warrant

(Practical Exercise)

10.3.5 Describe departmental policies and procedures for obtaining a search warrant

Once the search warrant forms have been completed, the officer must have a **Pre-Warrant Conference**. A Pre-Warrant Conference is held with an official the rank of lieutenant or above.

- Patrol District personnel *shall submit all drug/narcotic related affidavits* in support of search warrant(s) to their Patrol District’s Crime Suppression Team Lieutenant for review and approval. If the Crime Suppression Team Lieutenant is unavailable, a member the rank of captain or above shall review the affidavit.
- Patrol District personnel *shall submit all non-drug/narcotic related affidavits* in support of search warrant(s) to the Criminal Investigation Division, District Detectives Lieutenant within their Patrol District for review and approval. If the District Detective Lieutenant is unavailable, a member the rank of captain or above shall review the affidavit
- All other affiants shall submit all other affidavits to an official the rank of lieutenant or above within their unit.

Once the reviewing official has approved the warrant, the affiant will de-conflict the warrant through the High Intensity Drug Trafficking Areas (HIDTA) program case explorer (CE) database by contacting any on-duty member with CE access. The de-conflict ensures that the location does not conflict with another MPD element or outside agency’s current operations. A CE de-conflict tracking number will be provided to the affiant once the warrant is resolved of any conflicts. If conflicts cannot be reconciled, the affiant will notify his or her chain of command to find a final resolution.

Once the location has been cleared, affiants will complete the US Attorney’s Office (USAO) warrant submission form and email it to USADC.Felonywarrants@usdoj.gov. Each warrant submission needs to be emailed separately. Included with the search warrant must be a completed Giglio form, affidavit, case notes, statements, electronic evidence, and all record management system (RMS) reports. Upon USAO approval, the affiant will receive a signed and dated warrant for submission to the court.

Affiants will sign and date the approved warrant and affidavit and email it to DCCriminalWarrants.@dcsc.gov who will then forward it to a judge who will approve or deny the warrant. If a judge approves the warrant, he or she will email a signed copy to the warrant officer, USAO, and the affiant. If the warrant is denied, the affiant shall document the reason why on the **PD Form 273** and notify the approving official.

Threat Assessment

If the search warrant involves a structure, the affiant needs to prepare a **Pre-Warrant Execution Checklist** and provide any relevant documentation and risk factors obtained during the investigation to accompany the affidavit and/or **AO 93A**. A pre-warrant conference will be held with the affiant and the reviewing official to discuss risk factors and the affiant will complete the **Threat Assessment Matrix**.

High-risk warrants (HRW) need to be emailed to hrw.adminbox@dc.gov so the HRW panel can review. The HRW panel consists of the special operations division commander, violent crime suppression division captain, criminal investigations division captain, and a union representative.

All other warrants need to be emailed to ert.admindbox@dc.gov so a registry of all structure warrants being executed on a daily basis can be updated.

Examples:

Premises SEARCH WARRANT/ GC/ 555 4th Street NW/ CCN: 19123456
Cell Phone SEARCH WARRANT/ MC/ iPhone 6 Serial number 44555/ No CCN
Buccal Swab SEARCH WARRANT/ MC/ Doe, John/ CCN: 19123457

Emergency Search Warrants

Members requesting emergency search warrants after business hours shall contact the on-call AUSA via the mayor's command center who will contact the appropriate USAO supervisor.

Oral Search Warrants

Oral search warrants are only available within the US District Court for the District of Columbia. When applying for an oral search warrant under emergency circumstances, members shall complete the **AO 93A (Search Warrant upon Oral Testimony)** along with the affidavit which will be read to a judge or magistrate. Members shall inform the on-call AUSA of the oral warrant application and request that a judge or magistrate be advised that it will be a telephonic request. Upon approval of the request, the AUSA will contact the judge or magistrate and advise him or her that the affidavit has been prepared. The AUSA will arrange a recorded conference call with the judge or magistrate and the member who will be sworn in before reading the affidavit verbatim.

Search Warrants in Assigned Cases

When a search warrant is submitted in connection with a case or investigation already assigned to an AUSA, the warrant should be submitted directly to the assigned AUSA rather than the warrant reviewer.

10.3.6 Describe departmental policies and procedures for executing a search warrant

If the search warrant is approved, scanned, and numbered, the officer can begin the process of serving or having the warrant served. A DC Superior Court search warrant *must be executed within ten (10) days* of the date it was signed by the judge unless it is otherwise indicated on the warrant.

If in the pre-warrant conference it was determined that ERT would serve the warrant, the warrant and all supporting information *will* be forwarded to ERT.

If it was determined that the warrant will be served by the originating officer's district, the officer *will* contact his or her official and begin pre-execution planning.

When engaged in pre-execution planning, it is important to remember that no civilians may be present at any phase of a search warrant unless he or she possesses specific needed expertise (e.g., an AUSA, animal control officer, locksmith).

After planning the execution, a pre-warrant execution briefing must be conducted. The official in charge, with the assistance of the officer/affiant, will conduct the briefing. A **Search Warrant Operational Plan (PD Form 296)** will outline the briefing. The Search Warrant Operational Plan must be carefully executed to maximize the element of surprise and the utilization of sound tactics. The plan will assign specific functions to team members in accordance with their special skills. The briefing will also give involved officers an opportunity to recognize each other if different agencies are working together.

There shall be at least one (1) uniformed BWC-equipped member present with an activated BWC at the time of the execution of the search warrant. The uniformed, BWC-equipped member shall be visibly present at the entry of location of the warrant premises when the knock and announce is initiated. It is important to remember that if giving commands, they should be simple and authoritative to avoid confusion. Both consent and the search shall be documented by the BWC equipped member.

Absent exigent circumstances, a BWC-equipped member on the entry team shall activate his or her BWC prior to and including entry. When categorizing BWC recordings in evidence.com, members shall use the BWC category **Search or Arrest Warrant** along with the BWC category of the original offense and any new offenses associated with the search warrant. If forcible entry was necessary, members shall also use the BWC category **Forcible Entry**.

A minimum of eight (8) sworn members must be present for the service of the search warrant unless an exception is granted by the element bureau chief or, when applicable, the respective commanding official or his or her designee. Members need to be dressed in apparel that makes them instantly recognizable as a member of law enforcement. An official the rank of civil service sergeant or higher must be present at the execution of the warrant.

It is important to remember when executing a search warrant that the safety of all persons in the area is of paramount importance. After entry, the initial consideration of the entry team must be safety and security, and not evidence gathering, although the original location of the occupants at the time of entry shall be noted.

Search warrants are normally executed during daytime hours (0600-2100 hours). If you wish to serve a search warrant outside of these hours, you must have extenuating circumstances articulated in your affidavit and seek special permission from the judge. If the judge grants permission, the warrant must include the language "at any time of the day or night."

Members shall follow policy from **GO 702.03 (Search Warrants)**. All occupants shall be patted-down and documented when there is reasonable suspicion that an individual is armed, pursuant to **GO OPS-304.10 (Field Contacts, Stops, and Protective Pat Downs)**. All arrested persons shall be searched, handcuffed, and closely monitored.

Members shall not subject each individual on the premises to a full-body search simply for being present at the premises at the time of the warrant execution. Members shall only search persons on the premises when the search warrant specifically authorizes a search of the person or when the member has probable cause that the person is concealing a weapon, contraband, or evidence of a crime.

Factors that may affect whether probable cause exists to conduct a full-body search at the time of execution of a search warrant include, but are not limited to:

- The members who have entered the premises have developed information that a particular person is involved in the criminal activity on which the search warrant is based.
- The type of crime being investigated and the specific information that the members have about the suspected offense, including whether there is reason to think that unidentified individuals on the premises will be involved.
- The connections between the individual and the premises being searched (e.g., whether the individual lives at the premises).
- The type of location being searched (e.g., a private residence where the individual would have to be invited, or a business establishment open to the public).
- The circumstances of the warrant's execution and any reaction by the individual to the members' notice of the warrant (e.g., there is failure or refusal to answer the door in a manner suggesting that the occupants may be attempting to conceal contraband).
- The members' observations upon entry while executing the warrant, including any behavior by the individual indicative of criminal conduct (e.g., the individual attempts to flee from the premises upon entry, the individual makes movements suggesting an attempt to conceal contraband, the individual makes inculpatory statements).
- The nature of the items being searched for and whether those items are easily concealed on or about the person.
- The individual was found in immediate proximity to contraband in that is in open view.

Michigan v. Summers, 452 U.S. 692 (1981)

A search warrant carries with it the limited authority to detain the occupants of the premises while the search is conducted.

Muehler v. Mena, 544 U.S. 93 (2005)

Detaining occupants of the premises in handcuffs for a certain period of time while executing a search warrant *does not* by itself violate the Fourth Amendment prohibition against unreasonable searches and seizures.

U.S. v. Reid, 977 F.2d 1576 (D.C. Circuit 1993)

Police executing a warrant for a private residence where drug activity is suspected may conduct a pat-down frisk of visitors.

NOTE: As explained above, a warrant to search the individuals in the residence or probable cause must exist to search persons present in the residence.

When executing a search warrant, the search and seizure phase is the most critical. The mission cannot be considered successful if the evidence is seized in a technically defective manner, thereby preventing its use in court. The members assigned to search for evidence must locate evidence with the goal of preserving any potential fingerprints or needed trace evidence for the Department of Forensic Science (DFS) to obtain/print. They must also avoid touching or handling the evidence.

Upon discovering items of evidence, searching members must safeguard it until it can be photographed and recovered by the evidence seizure member. The member designated as the seizing member is required to complete a seizing list, document the time of entry, and if forced entry was made. The seizing member must also document the time of exit from the premises by the execution team and the transfer and removal of all evidence. Once that has been completed, the seizing member must prepare a detailed inventory of the items seized and submit a copy to the official in charge.

Additionally, a copy of the search warrant (*not* including the affidavit) must be left at the location searched. This copy must include an inventory of all items seized during the execution. To simplify this step, the officer should bring an extra copy of the search warrant. The bottom portion of the search warrant contains lines to record this information (known as the return section). In the return section, record the time and date that the warrant was served. If the copy is left with a person on the property, record his or her name and otherwise document where you left the copy, such as “kitchen table.” Then list all items seized and record the names of all the members who executed the warrant.

In addition, officers must complete an incident report for execution of a search warrant any time they search a location. This report must be completed on the day of execution and it must include the element of the unit serving the search warrant, the court that issued the search warrant, and the items seized during the execution of the search warrant. This report is also where, if a person in the premises is searched but not named in the warrant, the probable cause for the search must be articulated.

Returning Search Warrants

Members shall file a return by the end of the next business day by signing the return portion and emailing it along with a complete itemized inventory of all seized property to DCCriminalWarrants@dcsc.gov. Members shall ensure that their contact information is included in the body of the email but not on the affidavit since the affidavit is a public document. The member returning the warrant shall ensure that follow-up information is updated in the CE database.

Summary

In this lesson, we discussed DC Superior Court search warrants and the policies and procedures regarding application for them and their execution. You should be able to explain the legal principles governing search warrants. You should also have a working grasp of the process to obtain a search warrant.

REFERENCES

GO 702.03 Search Warrants

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Walker, Jeffery T.; del Carmen, Rolando V. (2015-04-23). Briefs of Leading Cases in Law Enforcement: - (Briefs of Leading Cases In...). Elsevier Science (book series). Kindle Edition.

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