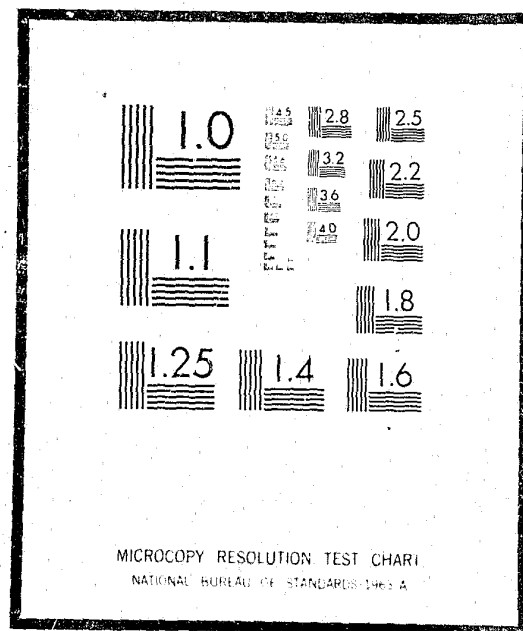


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U.S. DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE
WASHINGTON, D.C. 20531

Date filmed, 2/5/76



Los Angeles County Sheriff's Department Peter J. Pitchess Sheriff

TELEPHONIC SEARCH WARRANTS

A search warrant is an order in writing, in the name of the People, signed by a magistrate, directed to a peace officer, commanding him to search for personal property, and bring it before the magistrate (1523 P.C.). In lieu of the written affidavit, the magistrate may take an oral statement under oath which shall be recorded and transcribed (1526 b P.C.).

Telephonic search warrants are available through the District Attorney's Command Post when field conditions necessitate a warrant during non-business hours, and when circumstances preclude delaying the request until the next court day. Since courts generally disfavor warrantless searches, unless excused by the necessities of the situation, it is recommended that Deputies attempt to obtain a telephonic search warrant whenever doubt exists as to the legality of the contemplated search.

Search warrants may be issued to seize property which is STOLEN OR EMBEZZLED, or USED TO COMMIT A FELONY, or INTENDED TO BE USED FOR THE COMMISSION OF A PUBLIC OFFENSE, or to seize any evidence which TENDS TO SHOW A FELONY OR WHO COMMITTED IT (1524 P.C. and People v. Thayer (1965) 47 Cal. Rptr. 780).

BACKGROUND INFORMATION REGARDING SEARCH WARRANTS

Experience has shown that officers who appear otherwise prepared to recite adequate probable cause, are less fluent in doing so in the presence of a magistrate and an activated tape recorder. This lack of fluency frequently results in the omission of critical facts which are noted only after the conversation is transcribed and is later reviewed. As a result of these unfortunate omissions, the District Attorney's attitude toward telephonic search warrants is such that he makes them available only when insufficient time exists for the on-call Deputy D.A. to respond to the station and assist the requesting officers and their secretarial staff in the preparation of a written affidavit and search warrant.

In order to raise the level of "fluency" and thereby assure the expanded use of oral (telephonic) search warrants during the non-court hours, a Search Warrant Check List has been reproduced below, which should be useful in assuring that critical omissions are not made in the affidavit petitioning the issuance of a search warrant.

METHOD TO BE USED WHEN SEEKING A SEARCH WARRANT AFTER NORMAL COURT HOURS

- First: Complete the Search Warrant Check List.
- Second: Call the District Attorney's Command Post (974-3607), advise the on-duty D.A. Investigator that you wish to secure a search warrant, and request that he have his on-call Deputy D.A. call you at once.
- Third: Advise the Deputy D.A. of the circumstances, the probable cause, other pertinent data as requested from the Search Warrant Check List, and of the reasons why a telephonic affidavit is required.

If the Deputy D.A. concurs that the telephonic search warrant is desirable, and that the officer is sufficiently "fluent" to deliver a cogent oral affidavit without omissions or oversights, the Deputy D.A. will arrange a conference call between the officer, the Command Post recording equipment, himself, and a magistrate.

DURING THE CONFERENCE CALL, THE ENTIRE CONVERSATION WILL BE RECORDED. This oral affidavit will later be transcribed, and may become available to the defense. Although CONFIDENTIAL INFORMANTS NEED NOT BE IDENTIFIED, they must satisfy the "Aguliar Two Prong Test," i.e., there must be a showing of how the informant acquired his information, and the Deputy's reason for believing the informant's information to be reliable.

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If the magistrate authorizes the warrant, he will direct the officer to complete the attached warrant, and affix the Judge's name to it -- and will simultaneously complete and sign his own duplicate original copy. Although the warrant will remain valid for ten days, it would probably never be issued during non-court hours unless immediate service was contemplated.

GENERAL INFORMATION

If any items are seized pursuant to the warrant, a receipt for their seizure must be left at the location. Only specified items, and/or contraband may be taken. The seized evidence must be delivered to the issuing magistrate, along with the completed warrant return form (see page 8) during the first available court day following the warrant service.

If the search is contemplated between 2200 hours and 0700 hours, the warrant must be specifically ENDORSED FOR NIGHT SERVICE and must be supported by probable cause as to need in the affidavit. (See "Attachment No. 7" on page 6.)

The presence of a search warrant shifts the burden of proof to the suspect to show that the search was illegally conducted, Williams v. Justice Court (1964) 40 Cal. Rptr. 724. Without the warrant, the burden is on the officers to show that the search was legal.

Generally, before making a forcible entry, police officers must knock or employ some other means reasonably calculated to notify the occupants of their presence, make some statement of their authority, and state the purpose for demanding admittance (1531 P.C. and People v. S (1971) 98 Cal. Rptr. 439). Exceptions to the requirement that officers announce their authority and purpose, and be refused admittance prior to breaking open a door or window in the execution of a search warrant pertain only to emergency situations existing at the time of the entry. Parsley v. Superior Court of Riverside County (1973) 109 Cal. Rptr. 563. Noncompliance with "KNOCK AND NOTICE" may be excused when the officer acts on a reasonable and good faith belief that compliance would increase his peril, frustrate an arrest, or permit destruction of evidence, People v. Clay (1969) 78 Cal. Rptr. 56.

SEARCH WARRANT CHECK LIST

Item 1: Description of PERSON to be searched

Name _____ Age _____
Address _____ Sex _____
Height _____ Weight _____ Race _____
Color Hair _____ Color eyes _____ Complexion _____
Other distinguishing features _____
Place where person believed to be _____

Item 3: Description of VEHICLE to be searched

Make _____ Year _____ No. of doors _____
License number and State _____
Registered to: _____
Primary color _____ Secondary color _____
Location of dents _____
Other marks of identification _____

Item 2: Description of PLACE to be searched

House () Apartment () Office ()
Number _____ Floor _____
Other structure (i.e., garage, carport) _____
Address _____ City _____
Side of street _____ Nearest intersection _____
If no address, describe location _____
Name of business or building _____
Location _____
General description of building _____
Number of floors _____
Primary type of construction _____
Primary color _____ Color of trim _____

Item 4: Description of PROPERTY

Enter description of property to be seized

- a. Narcotics (example)
 - 1) HEROIN
"Heroin, a narcotic, and narcotic paraphernalia including, but not limited to: hypodermic syringes, spoons, cotton, milk sugar, weighing devices, measuring devices; containers of various types commonly associated with the storage or use of said narcotic; and articles of personal property tending to establish the identity of persons in control of areas where narcotics are found."

2) MARIJUANA

"Marijuana, and paraphernalia including, but not limited to: pipes, alligator clips and other devices used to assist in the smoking of marijuana; containers of various types commonly associated with the storage or use of said contraband and articles of personal property tending to establish the identity of persons in control of areas where contraband is found."

b. Drugs (example)

"Amphetamine and barbituric acid, LSD, and derivatives of same, consisting in part of and including, but not limited to: benzadrine, seconal, and drug paraphernalia, including, but not limited to: containers of various types, commonly associated with the storage, use, or manufacture of said drugs; and articles of personal property tending to establish the identity of persons in control of areas where restricted dangerous drugs are found."

c. Bookmaking (example)

"Papers, pencils, racing information, bets registrations, and all other bookmaking property and paraphernalia used or capable of being used for the purpose of recording or registering bets and wagers upon race horses and sporting events, and other property tending to establish the identity of persons in control of areas where bookmaking paraphernalia are found."

d. Other (describe) _____

Item 5: Grounds for search warrant (check one or more)

- a. () Stolen or embezzled property
- b. () Property used to commit a felony
- c. () Property in possession of a person who intends to use it to commit a felony, or Property in the possession of another to whom it has been given by the felon for the purpose of concealment.
- d. () Property tending to show that a felony was committed, or Property which tends to show a particular person committed a felony.

Item 6: Facts establishing probable cause for issuance

- a. Observations of affiant
Give specific facts, including reliable hearsay, which standing alone or in conjunction with other information establish probable cause to believe that the property to be seized is at the location to be searched. Give time and date observations made.
- b. Opinion of affiant
Give specific facts upon which affiant bases his opinion which standing alone or in conjunction with other information establishes probable cause to believe that the property to be seized is at the location to be searched. Describe expert qualifications.
- c. Information received from reliable informant
 - 1) Date information received _____
Approximate time _____
 - 2) Name of informant _____
 - 3) If confidential:
 - () Disclosure endangers safety
 - () Disclosure impairs future usefulness
 - () Identity is unknown
 - 4) Reliability based on information given by him in the past
 - a) Which resulted in the arrest of _____ persons (s) under circumstances which verified the information received in that _____
 - b) Which resulted in _____ person (s) being held to answer at preliminary hearing
 - c) Which resulted in _____ person (s) being convicted
 - d) Which resulted in no arrest but verified the information given in that _____
- 5) Observations of informant
Give specific facts, including reliable hearsay, which standing alone or in conjunction with other information establish probable cause to believe that the property to be seized is at the location to be searched. Give time and date observations made. Informant must express his personal knowledge.

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d. Information received from untested informant

- 1) Date information received _____
Approximate time _____
- 2) Name of informant _____
- 3) If confidential
 - () Disclosure endangers safety
 - () Disclosure impairs future usefulness
- 4) Observations of informant
Give specific facts, including reliable hearsay, which in conjunction with corroborating information establish probable cause to believe that the property to be seized is at the location to be searched. Give time and date observations made.

5) Where corroboration not required

- a) In case of emergency, no corroborative facts are required. Detail the existence of an emergency _____

- b) Observations of informant who gives information while not in custody to affiant and is unaware of affiant's official position need not be corroborated.
Give specific facts, including reliable hearsay, which standing alone or in conjunction with other information establish probable cause to believe that the property to be seized is at the location to be searched. Establish informant speaks from personal knowledge, implicates himself and statement made under circumstances when he had no opportunity or apparent reason to fabricate a false story. Ming v. Superior Court, 13 Cal. App. 3d 206.

e. Information received from citizen informant

- 1) Date information received _____
Approximate time _____
- 2) Name of informant _____
- 3) Status of informant
 - () Citizen informant is a victim of a crime
 - () Citizen informant has no personal interest in the matter and is openly acting to assist law enforcement in that _____

- 4) Employment of informant _____

5) Observations of informant

Give specific facts, including reliable hearsay, which standing alone or in conjunction with other information establish probable cause to believe that the property to be seized is located at the place to be searched. Give time and date observations made. Information must be based on citizen's personal knowledge.

f. Information received through official channels

- 1) Describe with particularity the official sources which affiant used to gain the information and the content of what he learned.

- 2) State the underlying source which gave information to the "official channel".

Item 7: Request for nighttime service

Describe reasons for good faith belief that property to be seized may be destroyed or taken from the jurisdiction if search is delayed until daytime.

Use "Attachment No. 7" on page 6.

This form is patterned after the District Attorney's Search Warrant Check List, and is intended to be used as an aid by field Deputies in the preparation of requests for telephonic search warrants. In attempting to keep this Bulletin brief, it has been necessary to limit the space available for writing in responses, particularly for those areas requiring lengthy statements of affiant's observations. It may be necessary to supplement this material with additional writing paper.

Items one through six of the Search Warrant Check List must be completed in every case. These must be supported by details of how the officer, reliable informant, or untested informant acquired his information, and the affiant's reason for believing the information to be true. This information may be added adjacent to "attachment No. 7," on page 6 of this material.

The AFFIDAVIT is shown in two parts on page FIVE.
The SEARCH WARRANT is shown in two parts on page SEVEN.
The RETURN to search warrant is shown in two parts on page EIGHT.

Search Warrant No.

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
AFFIDAVIT FOR SEARCH WARRANT

On the basis of his personal knowledge, as set forth in the attachments hereto, and on the basis of the information contained in those attachments,
being duly sworn deposes and (name) says, that the property described hereinafter falls within those grounds indicated below by "x"(s) in that it:

- _____ was stolen or embezzled
 - _____ was used as the means of committing a felony
 - _____ is possessed by a person with the intent to use it as a means of committing a public offense or is possessed by another to whom he may have delivered it for the purpose of concealing it or preventing its discovery
 - _____ is evidence which tends to show that a felony has been committed or a particular person has committed a felony;
- and requests the issuance of a warrant to SEARCH

for the following property:

The following attachments are incorporated by reference as though set forth herein haec verba:
Probable cause for search (see Attachment(s) No(s). _____)
Nighttime service request (see Attachment No. _____)
Request that compliance with Penal Code Section 1531 be excused (see Attachment No. _____)

Subscribed and sworn to before me
this _____ day of _____, 197 .

Magistrate
Judge of the _____ Court _____
Superior/Municipal Judicial District

WHEREFORE, it is prayed that a Search Warrant be issued.

JOSEPH P. BUSCH
District Attorney

By

Deputy District Attorney

1 Based on the information contained in Attachment(s) No(s).
2 your affiant believes the following:
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1 REQUEST FOR NIGHTTIME SERVICE
2
3 Your affiant requests that this warrant contain a direction
4 that it may be served at any time of the day or night, good cause
5 appearing therefore in that:
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Search Warrant No.

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
SEARCH WARRANT

1
2
3
4 PEOPLE OF THE STATE OF CALIFORNIA to any sheriff,
5 policeman or peace officer in the County of Los Angeles:
6 PROOF by affidavit having been made before me by
7 _____ that there is probable cause
8 (name) to believe that the property described herein may be found at
9 the locations set forth herein and that it falls within those
10 grounds indicated below by "x" (s) in that it:
11 _____ was stolen or embezzled
12 _____ was used as the means of committing a felony
13 _____ is possessed by a person with the intent to use it as a
14 means of committing a public offense or is possessed by
15 another to whom he may have delivered it for the purpose
16 of concealing it or preventing its discovery
17 _____ is evidence which tends to show that a felony has been
18 committed or a particular person has committed a felony;
19 you are therefore COMMANDED to SEARCH

1 for the following property:

2
3
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10 and to SEIZE it if found and bring it forthwith before me, or this
11 court, at the courthouse of this court.
12 Good cause having been shown by affidavit, you may do such of
13 the following as bear my initials.
14 _____ You may serve this Warrant at any time of the day or night,
15 according to Penal Code Section 1533.
16 _____ You need not comply with Penal Code Section 1531.
17 GIVEN under my hand and dated
18 this _____ day of _____ 197 .

19
20 Judge of the _____ Court _____
21 _____ Superior/Municipal _____ Magistrate
22 _____ Judicial District
23
24
25
26

Search Warrant No.

1 COUNTY OF LOS ANGELES
 2 RETURN TO SEARCH WARRANT
 3 The personal property listed below (listed on the inventory
 4 attached hereto) was taken from the premises located and described
 5 as
 6
 7
 8 and from the vehicle(s) described as
 9
 10
 11 and from the person(s) of
 12
 13
 14
 15 by virtue of a search warrant dated the day of
 16 197 , and executed by Judge
 17 of the below-entitled court:

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R-1

1
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 10 I,
 11 by whom this Warrant was executed, do swear that the above
 12 (attached) inventory contains a true and detailed account of
 13 all the property taken by me under the warrant, on
 14 , 197 .
 15 All of the property taken by virtue of said warrant will
 16 be retained in my custody subject to the order of this court
 17 or of any other court in which the offense in respect to which
 18 the property or things taken, is triable.

19
 20
 21 _____
 Affiant
 22 Subscribed and sworn to before me
 23 this day of , 197 .
 24 _____
 Magistrate
 25 Judge of the Court _____
 Superior/Municipal Judicial District

R-2

END