

The search warrant process philosophy essay



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In this paper, there will be explanations on the Search Warrant, what it is, how to write one. Also along with the Search Warrant there will be affidavits, what it is, expert opinions, and even examples. Along with the examples of affidavits there will also be examples of Search Warrants but not just state from state but also what Search Warrants look like from other countries such as China, Russia, and England. Also there will be Return to the Warrant explaining what it is and examples.

Search Warrant

We see them every day when watching our favorite TV shows such as CSI, Law & Order, and Criminal Minds. These are the Search Warrants and we see in the shows that it gives officers the right to search what the warrant says and nothing more. It shows also the consequences of not following the search warrant and what it could do for a case. These are TV shows but they speak some truth about search warrants and what they are meant for.

First off people must ask the simplest of questions. What are search warrants? Well, it is said search warrants are " A search warrant is an order signed by a judge that authorizes police officers to search for specific objects or materials at a definite location at a specified time. For example, a warrant may authorize the search of " the premises at 11359 Happy Glade Avenue between the hours of 8 a. m. to 6 p. m." and direct the police to search for and seize 'cash, betting slips, record books, and every other means used in connection with placing bets on horses'" (Bergman, & Berman, 2010). This means that search warrants are something signed by a judge that gives police the right to search for specific objects or materials in a location that is

defined by the specific time. Another definition is " An official order authorizing a search of someone's home or other location. The controlling principles governing search warrants are generally provided by the U. S. Constitution's Fourth Amendment.

The procedure for obtaining a search warrant involves an ex parte presentation to the magistrate of an affidavit by the law enforcement officer seeking the warrant and requesting the magistrate to issue the warrant based on 'the probability, and not a prima facie showing, of criminal activity'(" Legal definition of," 2010). This also speaks of the same thing as the other definition but speaks of how it gives an official the right to search someone's home or other location such as another home or even a car. That this is provided under the Fourth Amendment of unreasonable searches because without this an officer would not need a warrant and could come into the home anytime and takes whatever they please without the person saying otherwise.

Also to explain is how an officer or official gets a search warrant and this is such as: " Police officers obtain search warrants by convincing a judge or magistrate that they have " probable cause" to believe that criminal activity is occurring at the place to be searched or that evidence of a crime may be found there. Usually, the police provide the judge or magistrate with information in the form of written statements under oath, called " affidavits," which report either their own observations, or those of private citizens or police undercover informants. If the magistrate believes that the affidavit establishes probable cause to conduct a search, he or she will issue a warrant" (Bergman, & Berman, 2010). Before anyone can even go on there

must be an explanation of probable cause and that can be defined as: " The amount and quality of information police must have before they can search or arrest without a warrant. Most of the time, police must present their probable cause to a judge or magistrate, whom they ask for a search or arrest warrant. Information is reliable if it shows that it's more likely than not that a crime has occurred and the evidence sought exists at the place named in the search warrant, or that the suspect named in the arrest warrant has committed a crime" (Bergman, & Berman, 2010). This means that probable cause is information gathered by the officer or official and is presented by this person to a judge or magistrate to get a search warrant.

Another question that is asked by those who are new to law enforcement is, how do you write a search warrant? Writing a search warrant is explained by " submitting a search warrant affidavit in court to a judge. A law enforcement officer presents a search warrant affidavit to a court magistrate. The police must provide sufficient specific and reasonable probable cause before a judge will grant a search warrant" (Gaia, 2009). This means that the police officers, who are trying to get a search warrant, must have information and solid information to a court magistrate to get a court magistrate to sign off on it. " Verify law enforcement training and experience at the beginning of the probable cause statement. The Salt Lake City District Attorney's Office explains that the officer who writes a search warrant affidavit swears under oath that the information in the search warrant is true" (Gaia, 2009). This means, at least for the Salt Lake City, that the officer must be sworn under oath and that his training and experience is put under a microscope as to see if they are doing the right and they know what they are doing. This is

needed because experience shows that they can know what they are doing.

" Finish a search warrant affidavit with a probable cause statement.

According to the Salt Lake City District Attorney's Office, this is the most substantive part of the affidavit. The person requesting the warrant gives reasons for believing that a crime has taken place. The officer explains the nature of the evidence, and must establish a link between the location of the intended search and suspected criminal activity. Probable cause does not mean that a warrant will be issued just because a person is suspected of criminal behavior" (Gaia, 2009). This means that while asking for the search warrant affidavit the officer should provide the belief that a crime has taken place and should explain the evidence and other such effects to get the warrant. " Write a probable cause statement succinctly, without complicated sentences. When referring to more than one person in a sentence, use proper names rather than pronouns such as 'he' or 'she.' As in all professional writing, use proper spelling and grammar." This means that when the officer is writing the affidavit that he should write it briefly and with not sentences that complicate the way it will be understood and as always use proper grammar.

Also explained is " describing the premises"(Biggs, 2008) which means " description of the premises to be searched must be so complete that any peace officer could pick up the warrant, read the address, and be able to find the location to be searched" (Biggs, 2008). This means that anyone can find this address and house just by looking at the search warrant, " this can be accomplished by describing the premises with the address, city, county, and stated followed by a physical description of the property, including style of

construction, color, where the address numbers are attached to the building, and the geographical location of the structure in relation to fixed reference points" (Biggs, 2008). Not only do the officers have to describe the premises but they also have to describe an open field, remote area, vehicles, and business records, telephone records (Biggs, 2008). Also, the most important is "describing what you are looking for" (Biggs, 2008). Which means that not only does the search warrant need the address but also what they need to find when they are on the premises looking for the evidence.

As explained in the few last paragraphs will be explained in more detail in the following paragraphs and that is the Affidavit. Affidavit is defined as "a written declaration upon oath made before an authorized official" ("Affidavit | define," 2010) which has been explained in the above paragraphs as when the officer goes to court to swear under oath about the information he is going to provide as truth to his knowledge to get a warrant for a person or a search warrant to gather more evidence against a person. Also another definition for affidavit is "An affidavit is voluntarily made without any cross-examination of the affiant and, therefore, is not the same as a deposition, a record of an examination of a witness or a party made either voluntarily or pursuant to a subpoena, as if the party were testifying in court under cross-examination. A pleading-a request to a court to exercise its judicial power in favor of a party that contains allegations or conclusions of facts that are not necessarily verified-differs from an affidavit, which states facts under oath" (Farlex, 2010). This is explained that while it is done in court and is used against another person there is no cross-examination for the person to question or contest the evidence that is being used against them. Also "An

affidavit is based upon either the personal knowledge of the affiant or his or her information and belief. Personal knowledge is the recognition of particular facts by either direct observation or experience. Information and belief is what the affiant feels he or she can state as true, although not based on firsthand knowledge" (Farlex, 2010). This means that it is the officer or the person who is testifying; it is their best knowledge of information that they are providing. This means it is the truth to the best of their knowledge.

Along with that " Any person having the intellectual capacity to take an oath or make an affirmation and who has knowledge of the facts that are in dispute may make an affidavit. There is no age requirement for an affiant. As long as a person is old enough to understand the facts and the significance of the oath or affirmation he or she makes, the affidavit is valid. A criminal conviction does not make a person incapable of making an affidavit, but an adjudication of Incompetency does. Someone familiar with the matters in question may make an affidavit on behalf of another, but that person's authority to do so must be clear. A guardian may make an affidavit for a minor or insane person incapable of doing so. An attorney may make an affidavit for a client if it is impossible for the client to do so. When necessary to the performance of duties, a Personal Representative, agent, or corporate officer or partner may execute an affidavit that indicates the capacity in which the affiant acts. A court cannot force a person to make an affidavit, since, by definition; an affidavit is a voluntary statement" (Farlex, 2010). This means anyone of any age, gender, race and even conviction can make an affidavit and it is not looked at any different but if they are known to be

incompetent they cannot make one because incompetency means they do not understand everything or anything that is happening around them. Also, it must be voluntary and they cannot be forced into giving an affidavit. " Any public officer authorized by law to administer oaths and affirmations-such as city recorders, court clerks, notaries, county clerks, commissioners of deeds, and court commissioners-may take affidavits. Justices of the peace and magistrates are sometimes authorized to take affidavits. Unless restricted by state law, judges may take affidavits involving controversies before them. An officer cannot take affidavits outside of the particular jurisdiction in which he or she exercises authority. The source of this authority must appear at the bottom of the affidavit. A notary, for example, would indicate the county in which he or she is commissioned and the expiration date of the commission. An official seal is not essential to the validity of the affidavit but may be placed on it by the proper official" (Farlex, 2010). This means that anyone who is authorized by the law can take the affidavit unless the law says otherwise and that even the judges who are in the controversy can take the affidavit but an officer cannot take the affidavit outside of their authority meaning an officer from another state cannot take an affidavit of another officer from the state he is giving the affidavit to.

" Unless otherwise provided by statute, an oath is essential to an affidavit. The statement of the affiant does not become an affidavit unless the proper official administers the oath. When religious convictions prevent the affiant from taking an oath, he or she may affirm that the statements in the affidavit are true" (Farlex, 2010). This means that there is an oath that must be taken first before the affidavit is given and cannot be given till the oath is taken or

that the affiant must state that the affidavit is true. " There is no standard form or language to be used in an affidavit as long as the facts contained within it are stated clearly and definitely. Unnecessary language or legal arguments should not appear. Clerical and grammatical errors, while to be avoided, are inconsequential. The affidavit usually must contain the address of the affiant and the date that the statement was made, in addition to the affiant's signature or mark. Where the affidavit has been made is also noted. When an affidavit is based on the affiant's information and belief, it must state the source of the affiant's information and the grounds for the affiant's belief in the accuracy of such information. This permits the court to draw its own conclusions about the information in the affidavit. An affiant is strictly responsible for the truth and accuracy of the contents of the affidavit. If false statements are made, the affiant can be prosecuted for perjury" (Farlex, 2010). This means that while there is no language standard or form there must not be any clerical or grammatical errors as they could mean much when it comes to someone else's life. It contains many things such as the address of the affiant and the date along with a signature. They are also responsible for everything that is said in this affidavit and it should be true. " Affidavits are used in business and in judicial and administrative proceedings. Business: generally affidavits are used in business whenever an official statement that others might rely upon is needed. Statements of the financial stability of a corporation, the pedigree of animals, and the financial conditions of a person applying for credit are examples of affidavits used in the commercial world. Judicial Proceedings: Affidavits serve as evidence in civil actions and criminal prosecutions in certain instances. They are considered a very weak type of evidence because they are not taken in

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court, and the affiant is not subject to cross-examination. Their use is usually restricted to times when no better evidence can be offered. If a witness who has made an affidavit is not available to testify at a trial, his or her affidavit may be admitted as evidence. If the witness is present, his or her affidavit is inadmissible except when used to impeach the witness's testimony, or to help the witness with past recollection of facts.

Affidavits are also used as evidence in ex parte proceedings such as a hearing for the issuance of a Temporary Restraining Order or an order to show cause. The expeditious nature of such proceedings is considered to substantially outweigh the weak Probative value of the affidavits. In addition, there is normally a subsequent opportunity in the course of litigation for the opposing party to refute the affidavits or cross-examine the affiants. An affidavit based on the knowledge of the affiant is accorded more weight than one based on information and belief. When admissible, affidavits are not conclusive evidence of the facts stated therein. Administrative Proceedings Affidavits are frequently used in administrative and Quasi-Judicial proceedings as evidence when no objection is made to their admission and there is an opportunity for cross-examination" (Farlex, 2010). This is stating that affidavits are used in these following proceedings and before we go on we should also explain what Quasi-Judicial means and it means " The action taken and discretion exercised by public administrative agencies or bodies that are obliged to investigate or ascertain facts and draw conclusions from them as the foundation for official actions" (Farlex, 2010). This means these are complaints against administration and when this affidavit is used there can be cross-examination. As we are explaining the affidavit it comes clear

that these are oaths taken by agencies to the facts they are saying before getting their search warrant. These states are true to their knowledge and anyone can give an affidavit and that their past actions are not used against them such as being a convict.

When the search warrant is done there is a "Return to the Warrant" (Biggs, 2008) which is explained as "fill-in-the-blanks type of face sheet and a listing of the property and evidence seized during the search" (Biggs, 2008). This means it is a listing of the property that was seized during the search for evidence purposes and can consist of money, guns, and drugs. "The main thing to remember is that the description of the evidence and property must be so good that the average person could read your description and pick the item out from several similar items" (Biggs, 2008). This means that your description of the evidence can be just like a line up a witness does and that like the witness can pick out the suspect, a person should be able to pick out the item described just by what the person has written on the report. For example if an officer just writes that it is a large black DVD player, there are many DVD players out there just like that DVD player described and the person won't be able to find it. Now if the officer wrote that it is a Sony Black DVD R+/- with several scratches on the face of the DVD player and also gave the serial number, the person will be able to pick it out from several different DVD players.

This following paragraph will show Search Warrants from different places and even different countries:

as shown in this search warrant it is from the District Court of the State of Florida and is for the Southern District of Florida. It gives the location, the person's name along with the signatures of the Judicial officer.

This brightly pink search warrant is from the court of Barbados, they seem to not have a lot of information on their warrants.

As seen by these two search warrants, they are very different from each other not just by the very color of them but also by the very content of each of them. One is from the United States, specifically Florida and the other is from Barbados. This shows a lot that is done by the police forces and government agencies.

In conclusion, we see them every day when watching our favorite TV shows such as CSI, Law & Order, and Criminal Minds. These are the Search Warrants and we see in the shows that it gives officers the right to search what the warrant says and nothing more. It shows also the consequences of not following the search warrant and what it could do for a case. These are TV shows but they speak some truth about search warrants and what they are meant for.