Search Warrants

AGENDA

01 Background

02 Who can issue a search warrant and what should the warrant entail.

03 Warrant Procedures/ Checklist

04 Case Law on good warrants.

01

Background
THE FOURTH AMENDMENT

What does the Fourth Amendment do?

Bars unreasonable searches and seizures

Requires that a search warrant obtain probable cause, oath/affirmation, and particularity before a search

Applies to government actors

Breaking Down the Fourth Amendment

- Which things are protected?
  - Persons, houses, papers, and effects
- What are effects?
  - All things that people own
- What does Fourth Amendment protect against?
  - Unreasonable searches and seizures from the Government

Tennessee Article 1, § 7 and the Fourth Amendment

- Article 1, § 7 almost mirrors the US Constitution's 4th Amendment.
- Neither constitution allows generalized warrants. Each requires specific evidence of a crime and particularity on where the search occurs and what may be seized.
- Article 1, § 7 is often interpreted more strictly than the 4th Amendment. (Favoring right against search over search.)

02

WHO CAN ISSUE A SEARCH WARRANT & WHAT THE WARRANT SHOULD ENTAIL

Who may request a search warrant?

Tenn. R. Crim. P. 41(a):

The district attorney general, assistant district attorney general, criminal investigator, or any other law-enforcement officer may request a search warrant.

Who may sign a search warrant?

- Tenn. R. Crim. P. 41(a): **Authority to Issue Warrant.** A magistrate with jurisdiction in the county where the property sought is located may issue a search warrant authorized by this rule.

Who can issue a search warrant and what is seizable?

- A magistrate may issue a warrant to search and seize any of the following:
- (1) evidence of a crime
- (2) contraband, the fruits of the crime, or items otherwise criminally possessed
- (3) property designed or intended for use, or that has been used in a crime
- (4) a person whose arrest is supported by probably cause
- (5) a person who is unlawfully restrained

Tenn. R. Crim. P. 41

What should a search warrant entail?

- A warrant SHALL
  - (1) Identify the property or place to be searched
  - (2) Name or describe the person to be searched
  - (3) Name or describe the property or person to be seized
  - (4) Must endorse on the warrant the hour, date, and name of the officer to whom the warrant was delivered for execution

Tenn. R. Crim. P. (c)(2)

WHO MAY SERVE THE WARRANT? Tenn. R. Crim. P. (e)(1)

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

Is the officer your friend?

- In Tennessee, a judicial commissioner or magistrate must be neutral and detached.
  - Warrants must be issued by someone "capable of determining whether probable cause exists." State v. Henning, 975 S.W.2d 290, 294 (Tenn. 1998).
  - Former law enforcement officers acting as magistrates may not be neutral when authorizing warrants for ex-colleagues.
  - Under Tenn. Sup. Ct. Rule 10, Canon 2.11 (A)(1)- A judge **shall** disqualify himself or herself where the judge has a personal bias or prejudice concerning a party . . .
  - The magistrate must make a neutral and detached determination of probable cause – so that the magistrate does not serve merely "as a rubber stamp for the police." State v. Moon, 841 S.W.2d 336, 338 (Tenn. Crim. App. 1992) (quoting United States v. Ventresca, 380 U.S. 102, 108, 85 S. Ct. 741, 746, 13 L. Ed. 2d 684 (1965)).

03

SEARCH WARRANT PROCEDURES/CHECKLIST

Search Warrant Checklist#1

DO **NOT** DISCUSS THE FACTS WITH THE OFFICER BEFORE REVIEWING THE AFFIDAVIT (you can discuss why it was rejected but may not help the officer re-draw it).

Search Warrant Checklist#2

IF YOU REJECT THE WARRANT, **DON'T** GIVE IT BACK UNLESS YOU WRITE "REJECTED" or "DENIED" ON IT (To prevent FORUM SHOPPING).

Search Warrant Checklist#3

MAKE SURE THE OFFICER **DOES NOT** SIGN THE AFFIDAVIT UNTIL SWORN.

Suggested oath: "Do you solemnly swear or affirm that the information in this affidavit is true to the best of your knowledge, information and belief?"

*WHAT ABOUT EMAILED WARRANTS? REALLY? NO SIGNATURE?!

Search Warrant Checklist#4

- MAKE SURE THE AFFIDAVIT **PARTICULARLY** DESCRIBES THE CONTRABAND OR EVIDENCE TO BE SEIZED

Search Warrant Checklist#5

MAKE SURE THE PERSON, PROPERTY OR PLACE TO BE SEARCHED IS **SUFFICIENTLY DESCRIBED** IN THE WARRANT (and that the officer has developed a nexus in the affidavit).

Search Warrant Checklist#7

MAKE SURE THE AFFIDAVIT, IF BASED ON HEARSAY, SETS OUT THE INFORMANT'S :

1) BASIS OF KNOWLEDGE AND

2) CREDIBILITY.

SEARCH WARRANT #7
CONT. "WHO IS CREDIBLE?"

- Law enforcement is presumed credible.
- Ordinary citizens or bystanders are presumed credible.
- Those with a grudge against the suspect "may have personal reasons for giving shaded or otherwise inaccurate information to law enforcement officials …" Analyze using **totality of the circumstances**. Rejecting is okay

WHAT IS TOTALITY OF THE CIRCUMSTANCES?

- Totality of the Circumstances is a flexible standard courts use to determine whether probable cause exists for a search or arrest.
  - "The task of the issuing magistrate is simply to make a practical, common-sense decision whether there is a fair probability that contraband or evidence of a crime will be found." Illinois v. Gates, 462 U.S. 213, 238 (1983).
  - TOTC is not a rigid checklist but must look at all available facts such as: (1) nature of the crime; (2) time, place, behavior; (3) corroborating evidence, etc.
  - Tennessee adopted "Totality of the Circumstances" in State v. Tuttle, 515 S.W.3d 282, *305* (Tenn. 2017)

TOTALITY OF THE CIRCUMSTANCES CONT.

- Before TOTC we used a two-prong test called "**The Aguilar-Spinelli Test**." Aguilar v. Texas, 378 U.S. 108 (1964) and Spinelli *v. United States*, 293 U.S. 410 (1969) which required (1) basis of knowledge or how the informant knew the information and (2) veracity or why the informant was trustworthy.
- Under the new totality test the magistrate has more discretion and may consider partial corroboration. Common sense is emphasized over mere technicalities.

Search Warrant Checklist#8

IF BASED ON THE STATEMENT OF A CRIMINAL INFORMANT, MAKE SURE THE AFFIDAVIT SETS OUT **(1)** THE BASIS FOR THE INFORMANT'S KNOWLEDGE,

AND

(2)(a) A BASIS ESTABLISHING HIS/HER CREDIBILITY OR

(2)(b) A BASIS ESTABLISHING HIS/HER INFORMATION IS RELIABLE.

Search Warrant Checklist#9

WHEN SIGNING THE WARRANT, **WRITE ON IT THE DATE AND TIME, AND THE NAME OF THE OFFICER** TO WHOM DELIVERING THE WARRANT.

Search Warrant Checklist#10

GIVE THE **ORIGINAL** AND **ONE EXACT COPY TO THE OFFICER**, AND **KEEP ONE EXACT COPY UNTIL RETURN IS MADE**.

This Rule is designed to protect against any post-issuance alteration.

Search Warrant Checklist#11

REMIND THE OFFICER TO EXECUTE THE WARRANT **WITHIN 5 DAYS.**

CALL THE OFFICER IF NO RETURN MADE PROMPTLY.

*No remedy for failure to comply . . .

*Any magistrate can sign a return.

Search Warrant Checklist #12

WHEN YOU SIGN AND DATE THE RETURN, MAKE SURE THE OFFICER HAS SIGNED IT FIRST, AND THAT IT IS FILED WITH **YOUR** COURT CLERK'S OFFICE.

REQUIRE THAT THE OFFICER ITEMIZE WHAT WAS SEIZED.

Search Warrant Checklist #13

FILE YOUR EXACT COPY OF THE WARRANT IN YOUR **PERMANENT FILES** AFTER IT IS RETURNED.

04

CASE LAW ON WARRANTS

GOOD SEARCH WARANTS

State v. McLawhorn, 636 S.W.3d 210 (Tn.Ct.App. 2021)

- In 2017, Tiffany Ferguson was murdered in her Nashville Apartment.
  - Police later identified Chirstopher McLawhorn, a homeless man, as the suspect.
- McLawhorn broke in, stole items, and fatally stabbed Ferguson after she awoke.
- Investigators recovered a bloody knife and the victim's laptop near the scene.
  - Surveillance footage showed McLawhorn returning to the apartment multiple times. DNA and other physical evidence linked him to the murder.

McLawhorn Continued

- Police obtained a warrant to search McLawhorn's phone
  - The warrant lacked particularity under the Fourth Amendment and Art 1 §7 of the Tennessee Constitution.
  - The court held the search violated the Fourth Amendment, but the error was harmless beyond a reasonable doubt due to the overwhelming amounts of other evidence.
  - The Court held the officers could not have reasonably believed the warrant was valid, and therefore, the good-faith exception did not apply.

McLawhorn Headnotes

- A supporting affidavit for search warrant must establish a nexus between the criminal activity, the place to be searched, and the things to be seized. U.S. Const. Amend. 4; Tenn. Const. art. 1, § 7.
- The privacy rights of a cell phone owner compel that the Fourth Amendment's particularity requirement . . . be observed by defining the limits of the scope of a search to allow a search of only that content that is related to the probable cause . . . . U.S. Const. Amend. 4.
- A search warrant satisfies the particularity requirement of the Fourth Amendment if it leaves nothing about its scope to the discretion of the officer serving it. U.S. Const. Amend. 4.
- Reach of good-faith exception to exclusionary rule for invalid search warrant [applies] in limited circumstances involving technical flaws in otherwise valid warrants, and when police mistakes were result of negligence rather than systemic error or reckless disregard of constitutional requirements. U.S. Const. Amend. 4; Tenn. Const. art. 1, § 7.

McLawhorn – Points of Interest

- The affidavit must state facts and not merely conclusory allegations. *State v. Tuttle*, 515 S.W.3d 282, 300 (Tenn. 2017)
- "Probable cause generally requires reasonable grounds for suspicion, supported by circumstances indicative of an illegal act." *Williams*, 193 S.W.3d at 506 (citing *State v. Stevens*, 989 S.W.2d 290, 293 (Tenn. 1999)).
- The determination of probable cause is made based upon consideration of the totality of the circumstances. *Tuttle*, 515 S.W.3d at 299.
- A supporting affidavit must establish a nexus between the criminal activity, the place to be searched, and the things to be seized.
- The Fourth Amendment requires a search warrant to contain a particular description of the things to be seized. Article I, Section 7 of our state Constitution prohibits general warrants and T.C.A. § 40-6-103 specifically requires search warrants to describe the property to be seized with particularity.
- The particular description requirement is meant to leave little discretion to the officer conducting the search in order to prevent general searches and to prevent the seizure of items upon the mistaken assumption that they fall within the warrant's authorization. 2 Wayne R. LaFave, *Search and Seizure*, § 4.6(a) (2d ed. 1987). "A general order to explore and rummage through a person's belongings is not permitted."

McLawhorn – Points of Interest Continued

- The items to be seized may be described either as being of a specific identity or as being of a specific character.
- **SPECIFIC IDENTITY EXAMPLE**: Mossberg shotgun serial number A682019 or . . . Silver Necklace with turtle pendant or . . . Briefcase full of cash
- **SPECIFIC CHARACTER EXAMPLE**: Illegal drugs and drug paraphernalia, or . . . Stolen merchandise, or . . . Illegal weapons, or . . . Car parts (chop shop)
- The Supreme Court has recognized the ubiquitous presence of cell phones in modern life and the fact that they "place vast quantities of personal information literally in the hands of individuals." *Riley v. California*, 573 U.S. 373, 386, 134 S.Ct. 2473, 189 L.Ed.2d 430 (2014). "Modern cell phones, as a category, implicate privacy concerns far beyond those implicated by the search of a cigarette pack, a wallet, or a purse."
- In reality, much of the personal information stored on cell phones is likely unrelated to the crime being investigated and is subject to an individual's Constitutionally protected privacy rights.

McLawhorn – Points of Interest Continued

- Thus, the privacy rights of a cell phone owner compel that the Fourth Amendment's particularity requirement be observed by defining the limits of the scope of a search "to allow a search of only that content that is related to the probable cause that justifies the search." *Id.* at 289, 854 N.W.2d 616. To that end, "[a] warrant satisfies the particularity requirement if it leaves nothing about its scope to the discretion of the officer serving it."
- The court concluded that a warrant for the search for "any and all" data was beyond the scope of the Fourth Amendment's particularity requirement.
- ("[P]robable cause to believe drug trafficking communication may be found in [the phone's] mail application will not support the search of the phone's Angry Birds application.").

McLawhorn Specific

- The affidavit did not, however, identify any factual basis for the affiant's belief that the cell phone had been used after the homicide, the manner in which the cell phone was believed to have been used afterward, and any connection between the post-homicide usage and evidence of the homicide.
- Although it identified items to be seized, that is, any and all data, the affidavit was deficient in establishing a nexus between "any and all data," the cell phone, and the crime.
- Although the affidavit alleged usage of the cell phone's flashlight function contemporaneously with the crime, the affidavit also sought the authority to search "any and all data," without demonstrating a connection between the data and the crimes. In our view, the broad scope of the warrant, without specific information showing that information relevant to the crime would be contained in *all* of the cell phone's data, is problematic.

State v. Jones & Motion to Suppress

- Police detained Jones in 2019 during robbery investigation and officers seized his cell phone before obtaining a warrant.
- The next day detectives searched the phone pursuant to a warrant and geotag data tied Jones to 3 aggravated robberies.
- The defense argued that the seizure lacked particularity and violated the 4th Amendment and Art 1 §7 of the Tennessee Constitution and asked the court to suppress all phone evidence as *fruit of the poisonous tree*.

Jones Continued

- The court found the warrantless seizure was reasonable under the circumstances (the totality of the circumstances).
  - Officers feared destruction of the evidence and the court compared the case to Illinois v. McArthur, 532 U.S. 326 (2001) which held that temporary seizure to preserve evidence can be lawful with probable cause.
  - The court also emphasized that the phone was held for only a day before a search warrant was obtained.

Jones Continued; Search v. Seizure- What is the difference?

- Seizure = taking control or possession
  - "A meaningful interference with an individual's possessory interest in property." See United States v. Jacobsen, 466 U.S. 109, 113 (1984)
- Search = intruding into private places or things
  - "A government intrusion into an area where a person has a reasonable expectation of privacy." See Katz v. United States, 389 U.S. 347 (1967)
- Think of it like this:
  - *Seizure = Grabbing the Box*
  - *Search = Opening the Box*

BAD SEARCH WARRANTS

Continuation of Affidavit for Search Warrant

[redacted]Needle Pine Dr., Cordova, TN 38016

Marijuana, Drug Proceeds, Drug Notes, Drug Paraphernalia

On 02/05/20 detectives with SCSO Narcotics conducted a controlled delivery of approximately five pounds of marijuana which was being delivered to [redacted]Ball Rd. Detectives delivered the package to the address and left it at the front door. Approximately five minutes later a male black later identified as [redacted]Witherspoon stepped out of the house and put the box inside the house. A short time later Witherspoon and another male black left with the package occupying a Gray Nissan Altima. Detectives keep constant surveillance on the vehicle as it travelled to [redacted]Haledale. Witherspoon was taken into custody at the Haledale address and the parcel was located in the vehicle Witherspoon was read his Miranda Rights by Det.[redacted]in the presence of Det.[redacted] Witherspoon advised officers that he was paid to get the marijuana for his uncle, [redacted] Williams who lives at [redacted]Needle Pine Dr in Cordova., TN. He also advised that he has gotten numerous packages in the past year for Williams and that he always takes the boxes to the Needle Pine address. Witherspoon also advised detectives that he has been in [redacted]Needle Pine Dr. in the past few days and has seen large amounts of marijuana in the residence. The marijuana tested positive for THC by Det.[redacted]

AFFIDAVIT for Search Warrant For: Marijuana, Drug Proceeds, Drug Notes, Drug Paraphernalia

STATE OF TENNESSEE, SHELBY COUNTY

Personally appeared before me, Det. J. [redacted] and made oath that he/she has good ground and belief, and does believe that [redacted] Williams is/are in possession of the following described property, to wit::

Marijuana, Drug Proceeds, Drug Notes, Drug Paraphernalia

contrary to the laws of the state of Tennessee, upon the following described premises, to wit:

A residence more commonly known as [redacted] Needle Pine Dr., Cordova, TN 38016, all automobiles and outbuildings associated with said residence on premises to be included. The same being located in Memphis, Shelby County, Tennessee and his/her reasons for such belief are that affiant has *SEE ATTACHED*. He/She therefore asks that a warrant be issued to search the person(s) and premises of the said [redacted] Williams as above described in said County where he/she believes said

Marijuana, Drug Proceeds, Drug Notes, Drug Paraphernalia

is/are now possessed, contrary to the Laws of Tennessee.

While youre at it

Search my house.

[redacted]

[redacted]

Affiant Signature

Sworn to and subscribed before me this 5th day of February, 2020

Juc

Why was this warrant bad?

- Did Witherspoon become a CI in a magic instant?
- Witherspoon's statement doesn't qualify as credible.
- How does Wilson become a credible suspect?
- Investigators never went to Needle Pine, therefore never conducted surveillance/investigation.
- This is POSSIBLE case, NOT PROBABLE cause.

Affidavit for Search Warrant for: Automobile parts, vehicle personal safety system electronic data, trace evidence, and any item(s) that would assist in the reconstruction of a motor vehicle crash

STATE OF TENNESSEE,

SHELBY COUNTY

Personally appeared before me Sergeant A[redacted] and made oath that he has good ground and belief, and does believe that the City of Memphis Vehicle Impoundment Lot located at 465 Klinke in Memphis, Shelby County, Tennessee is in possession of the following described property, to wit: Automobile parts, vehicle personal safety system electronic data, trace evidence and any item(s) that would assist in the reconstruction of a motor vehicle crash contrary to the laws of the State of Tennessee, upon the following described vehicle, to wit: 2007 Dodge Ram, blue in color, TN. Tag[redacted], VIN# [redacted], registered to[redacted]Luna, [redacted]Memphis TN. 38134 , and his reasons for such belief are: On ,Saturday, March 19, 2022, at or near 7:15 pm p.m. a critical crash occurred on South Perkins Road near Wooddale Avenue. Driver[redacted]Rodriguez was northbound on South Perkins Road north of Wooddale Avenue when the vehicle driven by[redacted] Brown crossed the median from southbound Perkins Road and into the lane of traffic occupied by[redacted]Rodriguez. The right side of the 2013 Kia Optima driven by[redacted] Brown struck the front end of the 2007 Dodge Ram driven by[redacted]Rodriguez. Driver[redacted] Brown sustained critical injuries from this accident. This crash did occur in Memphis, Shelby County, Tennessee.

Based on your affiant's experience, it is your affiant's belief that the 2007 Dodge Ram, blue in color, TN. Tag[redacted] VIN#[redacted] will contain evidence that will assist your affiant in reconstructing the crash that led up to the critical injuries of[redacted]Brown. He therefore asks that a warrant be issued to search the vehicle belonging to[redacted]Luna,[redacted] [redacted]Street, Memphis TN. 38134, as above described in said County, where he believes said 2007 Dodge Ram, blue in color, TN. Tag[redacted], VIN#[redacted], which is located at the City of Memphis Vehicle Impoundment Lot, 465 Klinke, Memphis, Tennessee is now located, contrary to the Laws of the State of Tennessee.

DENIED

Signature: [redacted]
Commissioner of Criminal Courts

Sgt A. [redacted]
(Affiant)

Sworn to and subscribed before me this ____ day of ____, 2022

Why was this warrant bad?

No crime is articulated.

No evidence is linked to a crime.

No particularized facts support the need to search.

Conclusory and boilerplate language cannot provide probable cause.

Personally appeared before me [redacted] and made oath that he has good grounds and belief, and does believes that The Regional One Health Medical Center is in possession of blood from - [redacted]

The following describe property (blood) to be seized from Regional One Health Center (877 Jefferson, Memphis, TN 38103) that is needed in a critical crash investigation. On 03/19/2022, at 19:15hours, the Special Traffic Investigation Squad responded to a critical crash at Perkins Road and Wooddale Avenue involving a 2013 Kia Optima, 4 doors, with TN tag 4Z24T0, Maroon in color, being driven by [redacted] Brown. [redacted]Brown sustained critical injuries related to the crash and was transported to Regional One Health Center at 877 Jefferson, Memphis, TN 38103 and remained in critical condition at the hospital with trauma #467.

I am requesting a seizure of the blood sample collected from [redacted]Brown [redacted], by Regional One Hospital staff, on 03/19/2022, to be tested for the presence of alcohol and drugs, constituting evidence of violations of the laws of the State of Tennessee. This offense occurred in Memphis, Shelby County, TN.

Why was this warrant bad?

- No crime is articulated.
- No evidence is linked to a crime.
- No particularized facts support the need to search.
- Conclusory and boilerplate language cannot provide probable cause.

Sgt. [redacted] made oath that he has good ground and belief and does believe that all subscriber information (to also include billing and payment information), all call detail records (outgoing and incoming calls), all text message records (SMS and MMS) for phone number **901- 292-[redacted] and its related ICCID number,** on **Sunday, October 1, 2017 from 0000 hours - Friday, November 30, 2017 2330 hours and** cell site information regarding the location of towers accessed . . . with RTT, NELOS, PCMD or REVEAL files, azimuth/sectors/bandwidth or directional from this target number information, are under the care, custody or control of **Sprint** Subpoena Compliance Center, **6480 Sprint Parkway, Overland Park, KS 66251, 800- 877-7330 (Opt.#3);** that such information constitutes relevant and material evidence regarding the **homicide investigation of Roy [redacted]** located in the jurisdiction of Shelby County, Tennessee and his reasons for such belief are that: **On Wednesday, October 25, 2017, police were called to 712 [redacted] in Memphis, TN, and found that Roy [redacted] was found unresponsive and bleeding heavily from multiple gunshot injuries and a motor vehicle accident. [redacted] succumbed to the injuries he received during the shooting and was pronounced deceased by the Memphis Fire Department. Jordan [redacted] (a.k.a. Jordan "Drug Lord" [redacted]) was identified as one of the individuals responsible for the shooting death of [redacted] The phone (901-292-[redacted]) belongs to Jordan [redacted] The records are needed in the attempt to determine phone location and to corroborate information obtained during the investigation.** These phone records are needed in the ongoing investigation of this homicide to help **confirm or impeach** statements made by any witnesses or suspects and/or place any suspects at or near this homicide . . . .

Why was this warrant bad?

* Conclusory and boilerplate language cannot provide probable cause.

* Is "confirm or impeach" (confirm or dispel) PC to search a phone?

* How about we just identify you as one of the suspects? Is a law enforcement officer's statement "was identified as one of the suspects" strong enough to look in your phone?

On Friday, July 1, 2022, Memphis Police Officers responded to a shooting call at 1648 Oakwood Street, Save Market corner store. Officers located a male suffering from defects to his chest, back and elbow. The Memphis Fire Department made the scene and pronounced the male deceased on the scene.

On Saturday, July 2, 2022, I received a Crime Stoppers tip stating [redacted] Carpenter was responsible for the shooting. The tip stated Carpenter was seen driving down the street and spotted the victim before he was shot and killed.

On Wednesday, August 8, 2022, Investigators received Carpenter's phone number from a person who wished to remain anonymous.

Why was this warrant bad?

* A crime stoppers tip is usually associated with a reward $$$. Also, maybe there is animosity between the tipster and the suspect.

* Does a tip relieve the police of an investigation and corroboration?

* The tip stated that the suspect was driving by and saw the victim before he was shot and killed – how does driving by and seeing a victim before a homicide occurs make one a suspect of a crime? Under that logic there should be many more suspects.

* If that is not enough to deny this warrant, how do we know the number is actually the suspect's number?

On August 2, 2021, the Memphis Resident Office (DEA) Task Force Officer [redacted] was contacted by DEA Special Agent [redacted] who is assigned to the Oklahoma City, Oklahoma District Office (DO). SA [redacted] advised his target ([redacted]-CAMACHO) who is currently under investigation is currently in Memphis, Tennessee. SA [redacted] advised [redacted] CAMACHO has been organizing a multi kilogram Cocaine/Methamphetamine Drug Trafficking Organization (OTO) in Memphis, Tennessee.

SA [redacted] advised his target ([redacted] CAMACHO) was in contact with an Unknown Hispanic who utilizes **(901-314-[redacted]).** SA [redacted] stated [redacted] CAMACHO was currently in Memphis, Tennessee area to pick up $l05,000.00 USC in drug proceeds from the Unknown Hispanic.

Your Affiant therefore requests that a search warrant be issued for the call detail records for cellular telephone number **(901) 314-[redacted]** and the use of the GPS Locator Tool/E-911 Location System. The call detail records, including the historical cellular tower information and real time GPS location information, will aide your Affiant, and other investigators, with the identification of other co-conspirators in this drug trafficking investigation as well as identifying the locations of drug shipments, drug transaction locations, drug storage locations, and the locations of assets gained through narcotics trafficking.

Why was this warrant bad?

* The only PC of a crime is one officer's word to another. While officers are presumed credible, they can't just say "he's a suspect" or "I have probable cause" as a substitute for necessary language.

Attachement (B)

LIST OF ITEMS TO SEIZED

Target Telephone Number: 901-264-7211

1. Subscriber information to include
   a. Name
   b. Date of Birth
   c. Mailing Address
   d. Alternate Phone Numbers and any other Numbers on the account

2. All Communication for the wireless number 901-264-7211 from the time period of 7/1/2022 to 07/02/2022 to include cellular calls, SMS and MMS messages, and data communications; include:
   a. Cell Tower locations and azimuth for the sectors accessed during the communication for all NEID / Repoll's accessed
   b. Indicate if the tower was Lucent, Nortel, Samsung, Motorola or Ericsson
   c. Provide a three (3) sector layout as well as possible maximum ranges
   d. Cell Tower locations (LAC / CID or LTE site ID) to include switch / MSC / BSC

3. Per Call Measurement Data (PCMD) for the date range of 07/01/2022 to 07/02/2022 to include reliability factors for the communication

4. **TDOA /Timing Advance Information for a time period July 1, 2022, through July 2, 2022.**

5. Provide a detailed definitions page which identifies all the information in the records

6. Provide the information in excel, PDF, or TXT format

7. Provide this information in electronic format to Sgt. Cornell McKinnie at email address: cornell.mckinnie@memphistn.gov.

The following cellular telephones records being held by T-Mobile USA, Law Enforcement Relations, 4 Sylvan Way, Parsippany, NJ 07054.

Why was this warrant bad?

It's not necessarily bad, but a stronger affidavit is one a that inspires confidence of meeting legal standards.

Try to get officers to write "to show" behind each item requested.

Attachment (B)
LIST OF ITEMS TO BE SEIZED/SEARCHED

The following documents, records, materials (including drafts and/or modified documents), and items in whatever manner stored in the Target Devices and identified in Attachment (A):

1. Any telephone number or other identification number assigned to the Target Device (used in identification of any suspects regarding motor vehicle theft, burglary motor vehicle, aggravated assault and/or possession/distribution/sell of prohibited weapons)

2. Records of calls and messages placed and received through the Target Device (used to identify possible locations, times, and events regarding motor vehicle theft, burglary motor vehicle, aggravated assault and/or possession/distribution/sell of prohibited weapons)

3. Internal address books and contact numbers (used to identify possible suspects regarding motor vehicle the ft, burglary motor vehicle, aggravated assault and /or possession/distribution/sell of prohibited weapons)

4. Internal calendars (used to identify appointments regarding motor vehicle theft, illegal drug possession, illegal drug manufacture/distribution/sell, illegal chop shop operations, and/or possession/distribution/sell of prohibited weapons)

5. Stored records of electronic communications through the Target Device (such as text messages, e-mails, and electronic messages transmitted via other systems that could have correspondence regarding motor vehicle theft, burglary motor vehicle, aggravated assault and /or possession/distribution/sell of prohibited weapons)

STATE OF TENNESSEE
SHELBY COUNTY

WARRANT

TO ANY LAWFUL OFFICER OF THE STATE:

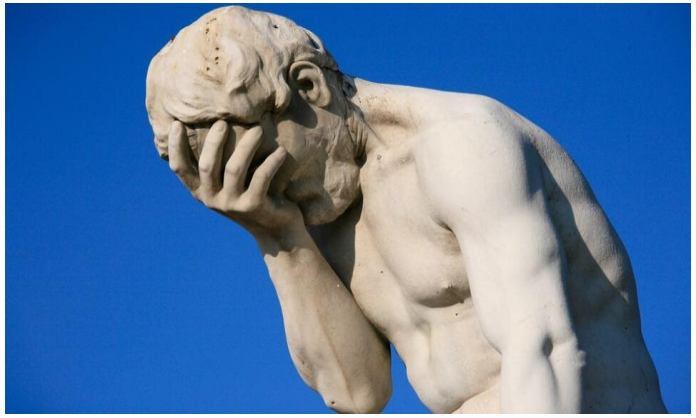
Information on oath having been made that the offense (s) of **Possession Controlled Substance with intent Manu/Del/Sell T.C.A. 39-17-417 to wit Marijuana** and have been committed, and accusing **Lee Johnson** thereof, YOU ARE HEREBY COMMANDED IN THE NAME OF THE STATE TO ARREST said defendant and bring him/her before me or any Judge of the General Sessions Criminal Court State of Tennessee, Shelby County.

This 20 day of May, 20___.

Bond is set at $ BTBS

Judicial Commissioner, General Sessions Criminal Court of Shelby County, Tennessee

Oopsie Daisy



Why is this warrant bad?

The warrant was strong; but it is missing the year.

This is an arrest warrant – but search warrants also require a date.

ALWAYS CHECK AND DOUBLE-CHECK YOUR WORK – AND TELL THE OFFICER TO DOUBLE-CHECK YOUR WORK.

Affidavit For Search Warrant To Seize: Blood Sample

STATE OF TENNESSEE, SHELBY COUNTY

[redacted]

Personally appeared before me **Sgt. A.**[redacted] and made oath that he has good grounds and belief, and does believes that The Regional One Health Medical Center is in possession of blood from – [redacted] **Brown (DOB 01/05/1999, age 23,** [redacted]).

The following describe property (blood) to be seized from Regional One Health Center (877 Jefferson, Memphis, TN 38103) that is needed in a critical crash investigation. On 03/19/2022, at 19:15hours, the Special Traffic Investigation Squad responded to a critical crash at Perkins Road and Wooddale Avenue, involving a 2013 Kia Optima, 4 doors, with TN tag [redacted], Maroon in color, being driven by [redacted] Brown. [redacted] Brown sustained critical injuries related to the crash and was transported to Regional One Health Center at 877 Jefferson, Memphis, TN 38103 and remained in critical condition at the hospital with trauma [redacted]

I am requesting a seizure of the blood sample collected from [redacted] Brown [redacted], by Regional One Hospital staff, on 03/19/2022, to be tested for the presence of alcohol and drugs, constituting evidence of violations of the laws of the State of Tennessee. This offense occurred in Memphis, Shelby County, TN.

Why is this warrant bad?

- No facts showing a crime occurred.
- No signs of intoxication or impairment stated.
- Fails to establish probable cause for blood draw.
- No discussion of consent or exigency.
- TCA § 55-10-406 still requires PC!

SHELBY COUNTY THE 30th Judicial District (UNDER SEAL)

IN RE: CRIMINAL INVESTIGATION
AT&T and Any Other Telecommunications or Electronic Communications Service Provider

IN THE MATTER OF THE APPLICATION OF THE STATE OF TENNESSEE FOR AN ORDER AND SEARCH WARRANT: (1) AUTHORIZING THE INSTALLATION AND/OR USE OF A PEN REGISTER AND TRAP AND TRACE DEVICE AND CELL SITE SIMULATOR AND (2) AUTHORIZING THE RELEASE OF CALL DETAIL, SUBSCRIBER INFORMATION, HISTORICAL AND PROSPECTIVE GLOBAL POSITIONING SYSTEM INFORMATION, HISTORICAL AND PROSPECTIVE CELL SITE LOCATION INFORMATION, AND OTHER RECORDS.

Why is this warrant bad?

OVERLY BROAD

There are nearly 3,000 internet service providers in the US.

There are almost 1,000 wireless telecommunications carriers in the US.

There are 30 fixed-base mobile network operators in the US.

There are numerous cable companies and broadcast networks in the US.

Internet/Podcasts, social media, radio stations, etc.

Questions?

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