

The Initial Contact!

1. What was your reason for the contact?
2. If your initial contact was not good everything after that is Fruit of a poison tree.

1

A Persons rights

- A person can always challenge the legality of a search of his person.
- Why did you search? High crime area, seen a bulge, what was your PC. You must be able to **articulate** your reason.
- Due to my training and experience!!!! Make sure you have it and can back it up.

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A Persons rights

- A person has the legitimate expectation of privacy in a search of his home or vehicle.
- A passenger in a car who does not own the car in general do not have the right to object to a search of the car. US v Crippen 627 F.3d 1056. Passenger does not have legitimate expectation of privacy under the seat of a vehicle.

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US v Mendenhall 446 US 544

- Mendenhall objective test where one looks at whether a reasonable person would believe that he was free to decline the officers requests or otherwise terminate the encounter. (ask them to accompany you, search and advised them they are free to leave) Other factors, at office, locked door
- A person in a car during a traffic stop would not be free to leave.

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State V Martin 892. SW 2nd 348

- An accused can not invoke the 4th amendment where the illegal search and seizure is to another person property. (passenger in vehicle.)

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Us V. Best 135 F.3d 1223

- Accused has the expectation of privacy in a rental car , rented in someone elses name if it was loaned to him.

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State v. Toolen 945 SW 2nd 629

- Suspicious car call officers found vehicle unoccupied with rental plates. Defendant located in nearby house admitted driving the car but it was not his it had been rented by someone else. Police search and find drugs. Court ruled: the defendant had no reasonable or legitimate expectation of privacy. Car was owned by Hertz no evidence defendant was authorized driver and no permission by owner

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Rakas two part test

- Rakas v. Illinois
- an individual has exhibited an [actual](#) (subjective) expectation of privacy
- the expectation is one that society is prepared to recognize as reasonable
- If both of these requirements have been met, and the government has taken an action which violates this "expectation," then the government's action has violated the individual's Fourth Amendment rights.

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has the Fourth Amendment been violated or satisfied?

- A warrantless search can violate the Fourth Amendment in two different ways. (1) It can violate the Fourth Amendment because the Defendant manifested a subjective expectation of privacy in the place searched and it is one that society accepts as objectively reasonable. Katz v. United States, 389 U.S. 347 (1976) (warrantless wiretapping of defendant's telephone conversation in public telephone booth).

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has the Fourth Amendment been violated or satisfied

- It can violate the Fourth Amendment because the police have trespassed or otherwise violated the property interests of the Defendant to an unreasonable extent:
- (a) Florida v. Jardines, 133 S. Ct. 1409 (2013). Police took a drug-sniffing dog to defendant's front door (within curtilage of his home) without a warrant.
- (b) United States v. Jones, 132 S. Ct. 945 (2012). Police put GPS tracking device on defendant's car without a warrant.
- (c) Silverman v. United States, 365 U.S. 505 (1961). Police drilled hole through wall of defendant's apartment to eavesdrop on conversations with a "spike mike."
Remember: "A man's home is his castle"—U.S. v. Tobin, 923 F.2d 1506 (11th Cir. 1991).

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Scope of Search

- Even if the initial intrusion is good, the SCOPE of search is limited. A general rummaging around, fishing expedition is prohibited. Constitutional law says MINIMIZE. Get in and find what you are looking for and get out. Look only where it could be. You can't look for an elephant in a bread box! The Fourth Amendment's "particularly described" wording requires some specification as to what officers are looking for. If looking for a TV set, look everywhere it could possibly be found, but nowhere smaller.

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Two Types of Searches – Those With Warrants and Those Without Warrants.

- In general, a search without a warrant is unreasonable and the evidence will not be admissible; always get a warrant, unless you cannot. Why Get a Warrant in the First Place? The idea is as American as the game of baseball. You can't call the balls and strikes if you are a player; the umpire does it. In the real world, the judge is the umpire. The defendant's home is his castle. The decision of when police have probable cause to look into a person's home is left to the judge, a neutral and detached magistrate, who will be fair to both sides

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Burden of Proof

- As a practical matter, when a warrant has been issued the burden of proof is on the defendant to show the warrant bad; if no warrant was involved, the burden of proof is on the State to show probable cause. The burden of proof is the tie-breaker; the person who has it loses the tie. A warrant is presumptively good. U.S. v. Ventresca, 380 U.S. 102 (1965). The Court said that even though a search warrant might be flawed, the court should bend over backwards to find it good and not be hyper-technical in construing it, because the larger purpose of having a neutral magistrate decide probable cause was served. This encourages police to follow the preferred procedure of getting a warrant.

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Searches Without Warrants— Exceptions to the Need to Obtain a Search Warrant

- There are several exceptions to the search warrant requirement. These exceptions include at least ten categories, and are often described as “jealously and carefully drawn, well-recognized exceptions to the search warrant requirement.”

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Exceptions to the Need to Obtain a Search Warrant

- 1. Search Incident to Lawful (Constitutionally Permissible) Arrest 2. Automobile Searches Upon Probable Cause 3. Suitcase Exception /Container Exception 4. Exigent Circumstances/ Emergency/Hot Pursuit 5. Stop and Frisk

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Exceptions to the Need to Obtain a Search Warrant

- Plain View Doctrine 7. Consent 8. Inventory Searches
- NOTE: Under the "Payton-Steagald Rule" an arrest warrant carries with it the authority to search that person's home for him or her, but not to enter or search a third party's home.

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Probable Cause

- In determining probable cause, the Court is to look to the "totality of the circumstances and make a common sense practical decision whether there is a fair probability that contraband or evidence of crime will be found in a particular place." Illinois v. Gates, 462 U.S. 213, 238 (1983); State v. Roggenbuck, 387 S.W.3d 376 (Mo. banc 2012).

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Illinois v. Gates, 462 U.S. 213, 238 (1983)

- Illinois v. Gates, 462 U.S. 213, 238 (1983). The police received an anonymous letter: "This letter is to inform you that you have a couple in your town who strictly make their living on selling drugs. They are Sue and Lance Gates, they live on Greenway, off Bloomingdale Rd. in the condominiums. Most of their buys are done in Florida. Sue his wife drives their car to Florida, where she leaves it to be loaded up with drugs, then Lance flies down and drives it back. Sue flies back after she drops the car off in Florida. May 3 she is driving down there again and Lance will be flying down in a few days to drive it back. At the time Lance drives the car back he has the trunk loaded with over \$100,000 in drugs. Presently they have over \$100,000 worth of drugs in their basement. They brag about the fact they never have to work, and make their entire living on pushers. I guarantee if you watch them carefully you will make a big catch. They are friends with some big drug dealers who visit their house often.

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Action Taken

- . After getting the letter, the police corroborated it by: (1) Revenue records showed driver's license to Lance Gates giving his street address on Bloomingdale Rd; (2) Confidential Informant with access to financial records confirmed that Lance Gates had made a reservation on an airplane from his home here in Bloomingdale, Illinois, to West Palm Beach, Florida, for May 5 at 4:15 p.m.; (3) An Illinois officer watched Gates board the flight; (4) Florida officers saw him arrive and take a taxi to a Holiday Inn and take a room registered to Susan Gates; (5) Florida officers saw him leave at 7:00 the next morning with an unidentified female in a Mercury bearing Illinois plates checking to Gates. A search warrant was issued for their house and automobile.

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The old Aguilar and Spinelli two-prong test was rejected

- the totality of circumstances test replaced it. (The old two-prong test was that an informant's veracity and basis of knowledge both had to be specifically shown and separately satisfied, usually by the informant having been used successfully in the past and by his opportunity to see or get the reliable information now being supplied.)

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Ruling

- This was sufficient probable cause even though the letter was completely anonymous. While an effort to fix some general numerically precise degree of certainty corresponding to 'probable cause' may not be helpful, it is clear that only the probability and not a prima facie showing, of criminal activity is the standard of probable cause." Id. at 235.

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Anonymous Calls - Try to Corroborate as Much as Possible.

- When a warrant will be based on an anonymous tip, as much information as possible should be corroborated.

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How to Corroborate

- Always ask specific questions to include personal questions.
- Where does he live? Confirm by drive by run vehicles in driveway keep dated and timed return as evidence. Check with electric company whose name are utilities in.
- Who owns property? If they rent? Assessor!!! Personal Property records!!
- Can you give me driving directions? Follow directions given!
- What is color of house? Go check
- Anything specific about house or property? FI the give details corroborate by going a checking
- Have them describe inside of house! Indicates first hand knowledge. Describe layout. Anything unusual in house? Can be corroborated by past Law Enforcement Officer calls. (Blanket)
- Who all lives there? Who frequents there? Do surveillance!!

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How to Corroborate

- Who are parents? Indicates past personal knowledge! (Federal case over information on out of state family)
- Do the leg work and corroborate as much as possible.
- IF YOU DON'T DO YOUR LEG WORK YOU WILL GET BURNT

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State v. Berry, 801 S.W.2d 64 (Mo. banc 1990)

- A deputy received an anonymous phone call that the caller had been in Melissa Berry's mobile home the day before as Berry transferred marijuana from four or five large freezer bags into smaller plastic baggies. The caller described the exterior of the mobile home and its location in detail. The deputy verified the details of the exterior in detail (including small deck, above-ground swimming pool, single-wide trailer, tan in color, located at intersection of Highway D and County Road 463, large model two-tone GMC or Chevrolet pickup parked in front of trailer). All in all, there was not much corroboration, but the caller had proclaimed personal knowledge. The judge issuing the warrant found probable cause and issued it.

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Ruling

- Although the call was anonymous, the caller gave details indicating personal knowledge. The exterior details were corroborated so there was a fair probability that the details about the marijuana being inside were also true. It was error to grant the motion to suppress. See also: State v. Meyers, 992 S.W.2d 246 (

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United States v. Jackson, 898 F.2d 79 (8th Cir. 1990).

- An anonymous tip where the caller claimed to have personally seen four-foot-tall growing marijuana plants and bags of marijuana in the suspect's home.

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Ruling

- Even though the caller was anonymous, the description of the house and the name on the utilities could be verified. The call had the “richness in detail of first hand observation.” Corroboration sufficient.

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State v. Williams, 9 S.W.3d 3 (Mo. App. W.D. 1999)

- Police apply for search warrant based on an anonymous Crime-stopper call saying defendant was selling cocaine and had just received a large shipment. The corroboration for the hearsay tip was that a person of that name did live at that address and police records show he had been arrested one year ago for sale of cocaine and four months ago for possession of cocaine.

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Ruling

- The hearsay tip was sufficiently corroborated. “An affidavit which relies on hearsay is sufficient as long as there is a substantial basis for crediting the hearsay . . . The concepts of veracity and reliability and basis of knowledge are relevant considerations but they are not entirely separate and independent requirements to be rigidly applied in every case ... Corroboration from other witnesses and from independent observations of police officers creates a substantial basis for crediting the hearsay statements in an affidavit . . .”

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Ruling

- The fact the informant may not have actually observed criminal activity or contraband is not fatal to establishing probable cause . . . A suspect’s past criminal behavior can be considered in determining whether probable cause exists to justify a search.”

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Drug Cases

- In drug cases, be sure to show the time the drugs were seen. Search warrants are held invalid, and sometimes not even saved by good faith, when they say drugs were seen, but don’t say when. If the source was anonymous, corroborate as much as possible. Maybe the suspect has a prior. Maybe his name has come up in other investigations. Keep a drug file. Get as many details as possible from the caller and check them out as much as possible.

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Staleness

- A. Informant’s seeing stolen items in Defendant’s hotel room 16 days earlier is not too stale. *United States v. Golay*, 502 F.2d 182 (8th Cir. 1974).
- B. Month-old information about meth manufacture going on at defendant’s home was too stale. *People v. Miller*, 75 P.3d 1108 (Colo. 2003).

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Staleness

- C. 48 hour delay for marijuana where no indication of smoking going on, not too stale. *United States v. Schauble*, 647 F.2d 113 (10th Cir. 1981). A 5-day delay for marijuana ("over 40 grams") was not too stale. *State v. Hodges*, 705 S.W.2d 585 (Mo. App. 1986). A 17-day delay for drugs was not too stale where the defendant had been actively dealing drugs on a regular basis during the 30 days prior to 45 police receiving the information 17 days earlier, and he was known to keep his drugs in a safe at his house. *State v. Valentine*, 430 S.W.3d 339 (Mo. App. E.D. 2014).
- D. Offer to sell drugs 3 days earlier revitalized probable cause information from 90 days earlier. *State v. Abbott*, 499 A.2d 437 (Conn. App. 1985).
- E. 30 day delay OK with respect to warrant for hand grenades. *U.S. v. Dauphinee*, 538 F.2d 1 (1st Cir. 1976).

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Search of Suspect's Home, Not Because Contraband Seen There, but Because of Probable Cause He Committed the Crime and this is His Home.

- *U.S. v. Dresser*, 542 F.2d 737 (8th Cir. 1976). The only reason to search defendant's residence for evidence of robbery (gun and stolen property) is the fact he was identified as the robber and this is where he lives. No one saw any of the stolen items in his house. Nevertheless, this is sufficient probable cause.

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State v. Miller, 14 S.W.3d 135 (Mo. App. E.D. 2000).

- Defendant is being prosecuted for possession of methamphetamine with intent to manufacture. The search warrant for his house was issued upon an affidavit showing he had very recently purchased a large quantity of lithium batteries and lots of ephedrine pills (27 bottles at 50 pills each) under a fake name. Defendant claims the affidavit did not show probable cause because it did not expressly state that anyone had ever seen the items at his residence.

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Ruling

- Sufficient probable cause. The state need not prove by its affidavit that drug activity was seen at Defendant's residence. "Only the probability of criminal activity, not a prima facie showing is the standard of probable cause." The issuing judge may draw reasonable inferences, and it is reasonable to assume that evidence of drug-dealing is likely to be found where the dealer lives. "Observations of illegal activity occurring away from the suspect's residence can support a finding of probable cause to issue a search warrant for the residence if there is a reasonable basis to infer from the nature of the illegal activity observed that relevant evidence will be found in the residence."

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Confidentiality of Informant

- Probable cause for search warrant may be established by information provided by an informant and it is not necessary to name the informant. State v. Rohrer, 589 S.W.2d 121 (Mo. App. S.D. 1979).
- Rule 25.10 of the Missouri Rules of Criminal Procedure provides that an informant's identity may remain a prosecution secret.

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Surveillance Location

- United States v. Green, 670 F.2d 1148 (D.C. Cir. 1981). Where officer testified he observed an on-the-street drug transaction using binoculars, the court upheld his refusal to disclose his location. "We believe the policy justifications analogous to the well-established informer's privilege also protect police surveillance locations from disclosure."

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Kessler (Anonymous info)

- On December 30, 2016 I received information from an anonymous phone call that Chuckie Kessler AKA Charles Kessler was living at the end of A Highway in the Rome area. The caller stated that Kessler was dealing in pounds of methamphetamine and the caller had personally seen a pound of meth at Kessler's residence on December 27, 2016. The caller further stated Kessler will take stolen items in on trade for the methamphetamine for people. I asked the anonymous caller to provide driving directions to Kessler's. The caller stated you go to the end of A Highway and when the pavement ends there is a trailer that sits close to the road and Kessler's trailer is directly behind it. The callers stated that Kessler does not own the property and the owner lives just up the road on A. Highway and the owners name is Bob.
- The caller further stated Kessler is affiliated with a large scale drug distribution ring in Wright County

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Kessler (Anonymous info)

- This anonymous caller also stated Kessler is on probation and reports to Probation Officer Pam. The caller further stated that Kessler had provided several dirty urine tests to his Probation Officer and he was going to abscond to Illinois where he has family once a P &P warrant is issued.

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Kessler Corroboration

- I contacted the Douglas County Assessor's Office and was able to confirm that the property is owned by Robert Twedt and Mr. Twedt does own additional property just up the road on A Highway.
- .I contacted Wright County Sheriff Glenn Adler who confirmed that the subjects the caller stated are involved in illegal drug activity.

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Kessler Corroboration

- I was able to confirm that Kessler does indeed have family in Illinois and is on P & P though Probation Officer Pam Burnett.

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Deputy Roberts Anonymous info

- On January 1, 2017, Deputy Kobby Roberts received information from an anonymous subject that stated Erin Nichols was staying at Chuckie Kessler's. The caller stated Erin Nichols is on methamphetamine really bad and has a warrant for her arrest out of Douglas County. The caller further stated Kessler drives an extended Cab Chevy pickup. When asked, the anonymous caller stated that the trailer Kessler is living at is in the Rome area.

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Coroboate Roberts info

- Just prior to Christmas, Deputies with the Douglas County Sheriff's Office were going to accompany Probation Officer Burnett to this residence located at the above describe location, however there was a scheduling conflict.
- I obtained a copy of a report that Trooper Mendez had prepared report # R004862904. Medez had stopped Charles Kessler driving a black Cadillac and one of the passengers was Erin Nichols. Subsequently, Nichols was arrested after being found in possession of methamphetamine. It should be noted that Charles Kessler has a 1992 Cadillac registered in his name

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Corroborate info on residence

- On January 3, 2017, I drove by and observed a green extended cab Chevy pickup parked in the drive way of the lower trailer that I had recognized as one that Charles "Chuckie" Kessler's used to drive

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Summarize case law

- I find the information received from the first anonymous caller to be in compliance with State v. Berry, even though the caller was anonymous, the driving directions to the residence provided by the caller was accurate and I was able to corroborate this information by following those directions and driving to the residence where I observed a green Chevy pickup that I had prior knowledge belonged to Charles Kessler indicating there was a fair probability about the methamphetamine being in the residence was true. Furthermore, the caller was able to provide personal information about Kessler's probation status and his family in Illinois which was corroborated as well.

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Summarize case law

- I find the information provided by the first anonymous caller to be in compliance with United States v. Jackson, in that even though the caller was anonymous the driving direction to the residence, the layout of the trailers and which one Kessler lived in, as well as the first name of the owner of the property and the fact the owner had additional property down the road showed the richness in detail of first hand observation and knowledge about Kessler, his residence and his illegal drug activity. I was able to corroborate through Sheriff Adler the information provided by this anonymous caller regarding illegal drug activity in Wright County to be accurate as well.

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Summarize case law

- I find the information provided by the 2nd anonymous caller to also be in compliance with United States V. Jackson in that even though the caller was anonymous they were able to provide personal information about Erin Nichols staying at Kessler’s residence, the general location of Kessler’s home, a description of his Chevy pickup and the personal knowledge that Nichols was using methamphetamine and had an active warrant out of Douglas County

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Criminal History case law

- I believe that the past criminal behavior of Charles Kessler and those visiting Kessler to include Erin Nichols should be considered pursuant to State v. Williams and State v. Ford:
- Charles Kessler is currently on Felony Probation for drug related offenses
- The following are a list of Kessler’s criminal behavior
- 2/05/2015 Arrested Wright County
- 1. Distribution, Delivery, Manufacturing a controlled substance
- 2. Felony possession of a controlled substance
- 3. Felony possession of Drug Paraphernalia
-
- Erin Nichols
- 1. 7/08/2015 misdemeanor possession of marijuana
- 2. 07/08/2015 unlawful use of drug paraphernalia
- 3. 06/25/2016 Possession of Controlled Substance
- 4. 06/25/2016 Possession of Marijuana misdemeanor
- 5. 06/25/2016 unlawful use of drug paraphernalia
-
- It should be noted that Erin Nichols does had an active Felony warrant out of Douglas County for Possession of a Controlled Substance 16DGCR00709.

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Kessler to Sheets

- On January 5, 2017 the Douglas County Sheriff’s Office served the search warrant at Kessler’s residence where a large amount of cash and approximately 40 grams of methamphetamine which corroborated the information provided by the anonymous caller. It also should be noted that upon Kessler’s arrest he confirmed that Erin Nichols had been staying there the previous week.

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Kessler to Sheets

- The caller further stated Kessler is affiliated with a large scale drug distribution ring in Wright County which is ran by Mike Sheets who resides at 612 U Highway Mansfield Mo. I contacted Wright County Sheriff Glenn Adler who confirmed that the subjects the caller stated are involved in illegal drug activity.

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Kessler to Sheets

- Information was found in Kessler's phone after consent to search was obtained where a text from 417-225-2378. I recognized this number as belonging to Mike Sheets and his girlfriend Dawn. This message was sent to Kessler on January 4, 2017 stating "We are out of everything now. Delivery is scheduled for tomorrow night sometime."
-
- The anonymous caller also stated that they personally saw several pounds of methamphetamine at the Sheets residence at 612 U Highway on December 28, 2016. My informant stated that they had knowledge that the Sheets were expecting a large delivery of methamphetamine from the Mexican Cartel. I also observed a phone number in the phone with the name Gio. I had received information from my original informant that Gio was the Mexican cartel supplier.

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Kessler to Sheets

- The anonymous caller also stated that they personally saw several pounds of methamphetamine at the Sheets residence at 612 U Highway on December 28, 2016. My informant stated that they had knowledge that the Sheets were expecting a large delivery of methamphetamine from the Mexican Cartel. I also observed a phone number in the phone with the name Gio. I had received information from my original informant that Gio was the Mexican cartel supplier.

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Summarize case law

- I find the information received from the first anonymous caller to be in compliance with State v. Berry, even though the caller was anonymous, the driving directions to the residence provided by the caller was accurate and I was able to corroborate this information by following those directions and driving to the residence where I observed a green Chevy pickup that I had prior knowledge belonged to Charles Kessler indicating there was a fair probability about the methamphetamine being in the residence was true. Furthermore, the caller was able to provide personal information about Kessler's probation status and his family in Illinois which was corroborated as well. Furthermore the confidential informant provided accurate information that lead to a large amount of cash and methamphetamine that was seized at Charles Kessler's residence in Douglas County on January 5, 2017.

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Summarize case law

- I find the information provided by the first anonymous caller to be in compliance with United States v. Jackson, in that even though the caller was anonymous the driving direction to the residence, the layout of the trailers and which one Kessler lived in, as well as the first name of the owner of the property and the fact the owner had additional property down the road showed the richness in detail of first hand observation and knowledge about Kessler, his residence and his illegal drug activity. I was able to corroborate through Sheriff Adler the information provided by this anonymous caller regarding illegal drug activity in Wright County to be accurate as well. The information provided by the anonymous caller proved to be accurate when a search warrant was served at the Kessler residence in Douglas County on January 5, 2017

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Summarize case law

- I find the information provided by the anonymous caller to also be in compliance with United States V. Jackson in that even though the caller was anonymous they were able to provide personal information about Erin Nichols staying at Kessler's residence, the general location of Kessler's home, a description of his Chevy pickup and the personal knowledge that Nichols was using methamphetamine and had an active warrant out of Douglas County.

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Criminal Histories

- I believe that the past criminal behavior of Charles Kessler and those visiting Kessler to include Erin Nichols should be considered pursuant to State v. Williams and State v. Ford:
- Charles Kessler is currently on Felony Probation for drug related offenses
- The following are a list of Kessler's criminal behavior
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- Erin Nichols
- 1. 7/08/2015 misdemeanor possession of marijuana
- 2. 07/08/2015 unlawful use of drug paraphernalia
- 3. 06/25/2016 Possession of Controlled Substance
- 4. 06/25/2016 Possession of Marijuana misdemeanor
- 5. 06/25/2016 unlawful use of drug paraphernalia

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Criminal Histories

- Michael Sheets
- 03/21/2011 Felony Tampering Springfield PD
- 09/10/2012 Stealing Felony Springfield PD
- 3/23/2012 Stealing Felony Springfield PD
- 03/06/2002 Felony Possession Dangerous Drugs Jefferson County Sheriffs Office

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Search Warrant's Utilizing CaseLaw

- First- establish do I need a search warrant. le Payton v. New York
- 2. Do the leg work!!!!!!!!!!!! Whose name is electric in? What vehicles are there and who are they registered to? Check with County Assessor, whose name is property in? Did your target use that address for personal property?
- 3. Get Specific information from source. Color of house, color of car, full names, do they have kids, dogs what kind.
- 4. Keep good notes.

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Search Warrant's Utilizing Confidential Case Law

- 5. Be honest and accurate with information
- 6. Ask informant why they are giving the information. Are they mad at target? Did target sell to their family member?
- 7. How does your source know about drugs? Are they speaking the lingo? Do they know how much an 8 ball is? How do they know it is meth, marijuana etc? Where they in the drug trade, user, seller?
- 8. How much and when did they see it?

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"Payton-Steagald Rule

- Under the ***"Payton-Steagald Rule"*** an arrest warrant carries with it the authority to search that person's home for him, but not to enter or search a 3rd person's home.
- *Payton v. New York, 445 U.S. 573, 100 S. Ct. 1371, 63 L.Ed. 2d 639 (1980). For 4th Amendment purposes, an arrest warrant carries with it the limited authority to enter a dwelling where the suspect lives when there is reason to believe the suspect is inside. Absent exigent circumstances, though, officers may not enter a suspect's home to make an arrest without an arrest warrant.*
- *Steagald v. United States, 451 U.S. 204, 101 S. Ct. 1642, 68 L.Ed. 2d 38 (1981). Police may not enter a 3rd person's home without consent when looking for someone else for whom they have a valid arrest warrant.*

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Search Warrant Application shall:

- Application shall:
- a. Be in writing;
 - b. State the time and date of making application;
 - c. Identify the property, article, material, substance or person which is to be searched for and seized in sufficient detail and particularity that the officer executing the warrant can readily ascertain it;
 - d. Identify the person, place or thing which is to be searched in sufficient detail and particularity that the officer executing the warrant can readily ascertain whom or what he is to search;
 - e. State facts sufficient to show probable cause for the issuance of a search warrant;
 - f. Be verified by the oath or affirmation of the applicant;
 - g. Be filed in the proper court;
 - h. Be signed by the Prosecuting Attorney of the County where the search will take place; or one of his or her assistants.
- 5.

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Application

- **Application can be supplemented by a written sworn affidavit from witnesses for the judge to consider in determining whether there is probable cause. The judge is NOT to consider oral testimony.**
- **The judge shall determine whether sufficient facts have been stated to justify the issuance of a search warrant. The warrant shall be issued in the form of an original and two copies. Have the judge sign all three.**
- **The application and any supporting affidavit and a copy of the warrant shall be retained in the records of the court from which the warrant was issued.**

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Filling out Application for Search Warrant

- Fill in appropriate Judge or Division
- Check I am a Police Officer
- Check how you are submitting the application, hard copy, facsimile, electronically
- Is affidavit incorporated with in or is a an affidavit in support of application for search warrant attached.

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Application must be sworn

- Application for search warrant must be Signed by Applicant, Prosecuting attorney and either signed by a notary or Judge after applicant is sworn.
- Application must be dated and timed

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Describe in Detail what is to be searched

- Be thorough and descriptive on person, place or thing to be searched:
 - a. Vehicle color, VIN, License plate registered owner
 - b. House- address, physical description, owner, driving directions and or legal description
 - c. cell phones- color, make , model, phone number, serial number and owner if available.

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Property to be seized

- Describe in detail the property, article, material, substance, or person to be searched for and seized.
- Drugs-Methamphetamine and/or marijuana or other illegal drugs, precursors, equipment used in the manufacture of methamphetamine, money, cell phones used to assist in the distribution of methamphetamines or illegal drugs, papers and paraphernalia. Walkie Talkies and any other items where probable cause indicates it is stolen.
- Stolen Property must be descriptive about what it is.
- Cell phone-Records and information related to the crime of Possession or Distribution of a Controlled Substance, including but not limited to: Text messages, instant messages, call history, voice mail, contacts, IM screen names and email addresses, phone settings, notes or memos, document files, audio memos, calendar data, photographs, videos, Internet history.

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Affidavit in support of Search Warrant if applicable

- must include applicant Name.
- must list in detail the person place of things to be searched
- must list the property to be seized in detail
- information must match what is on search warrant and application for search warrant
- Applicant being duly sworn states that he has probable cause to believe that the above listed property to be searched for and seized, photographed or copied, is now located upon said described person, place or thing based upon the following facts, to wit

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The search warrant shall:

- a. Be in writing;
- b. Be directed to any peace officer in the state;
- c. State the time and date the warrant is issued;
- d. Identify the property, article, material, substance or person which is to be searched for and seized in sufficient detail and particularity that the officers executing it can readily ascertain what they are searching for.
- e. Identify the person, place or thing which is to be searched, in sufficient detail and particularity that the officer executing it can readily ascertain whom or what he is to search;
- f. Command that the described person, place or thing be searched and that any of the described property, article, material, substance or person found thereon or therein be seized and photographed or copied and that photographs or copies be filed with the

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The Search Warrant Shall

- court within 10 days after the filing of the application;
- Be signed by the judge with his/her title of office indicated
- Details of what is to be searched and what is to be seized shall be the same on Search Warrant and Application.

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Return

RETURN AND INVENTORY

I, Sheriff Chris DeGase, being a Sheriff within and for the State of Missouri, County of Douglas, hereby make this return to the above and within warrant as follows: that on XX day of XXXX2017 within ten days after issuance of said warrant, I went to the location on premises described therein, know and numbered as XXXXXXXXXXXXX and that upon said premises I discovered the following personal property described in the warrant, which I then and there took into my possession:

LIST ITEMS SEIZED

I delivered to that person an itemized receipt for the property taken, together with a copy of this warrant. I delivered a copy of this inventory and itemized receipt to the Office of the Prosecuting Attorney within two working days of the search.

Peace Officer

WITNESS my hand and the seal of this Court this ___ day of _____.

Notary

Note on Use
Under 542.293, a copy of the itemized receipt of any property taken shall be delivered to the office of prosecuting attorney in the county where the property was taken within two working days of the search.

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How to use case law in conjunction with information received to obtain search warrant.

74

Anonymous Calls

- Try to Corroborate as Much as Possible.
- State v. Berry, 801 S.W.2d 64 (Mo. banc 1990). A deputy received an anonymous phone call that the caller had been in Melissa Berry's mobile home the day before as Berry transferred marijuana from four or five large freezer bags into smaller plastic baggies. The caller described the exterior of the mobile home and its location in detail. The deputy verified the details of the exterior in detail (including small deck, above-ground swimming pool, single-wide trailer, tan in color, located at intersection of Highway D and County Road 463, large model two-tone GMC or Chevrolet pickup parked in front of trailer). All in all, there was not much corroboration, but the caller had proclaimed personal knowledge. The judge issuing the warrant found probable cause and issued it. HELD: Although the call was anonymous, the caller gave details indicating personal knowledge. The exterior details were corroborated so there was a fair probability that the details about the marijuana being inside were also true. It was error to grant the motion to suppress. See also: State v. Meyers, 992 S.W.2d 246 (Mo. App. E.D. 1999); State v. Corneliuss, S.W.3d 603 (Mo. App. S.D. 1999).*

75

Using State v. Berry

- *I find the information provide by the anonymous caller to comply with State v Berry. The was anonymous caller gave details indicating personal knowledge by describing the exterior of the house, provided driving directions, and the known drug users and dealers that frequented the residence. The exterior details were corroborated as well as those known drug user and dealers that were frequenting the residence so there was a fair probability that the details about the methamphetamine being inside were also true*

76

United States v. Jackson

- *An anonymous tip where the caller claimed to have personally seen four-foot-tall growing marijuana plants and bags of marijuana in the suspect's home. HELD: Even though the caller was anonymous, the description of the house and the name on the utilities could be verified. The call had the "richness in detail of first hand observation." Corroboration sufficient.*

77

Using United States v. Jackson

- *Even though the caller was anonymous, I find the information provided by the anonymous caller to meet the guidelines laid out by United States v. Jackson by providing the description of the house, the owner and the name on the utilities were verified. The call had the "richness in detail of first hand observation by providing driving directions to the house, the description of the house and those known drug users and dealers frequenting the house. Information must be corroborated by law enforcement*

78

State v. Beatty, 770 S.W.2d 387 (Mo. App. S.D. 1989).

State v. Beatty, 770 S.W.2d 387 (Mo. App. S.D. 1989). An anonymous call came into a crime stopper hotline concerning the robbery of a gas station. The caller suggested going to a restaurant and inquiring about a female who used to work there as being the person who did the robbery. The officer checked the description of the robber from reports and talked to the restaurant owner, who said it sounded like Sharon Beatty, a former employee. The MULES computer gave a similar description for her. A search warrant was obtained. HELD: This was sufficient corroboration for the anonymous tip. (It later turned out that the tip was from her psychiatrist.)

79

State v. Bordner, 53 S.W.3d 179 (Mo. App. W.D. 2001).

After getting tips in September and November that defendant was cooking meth at his home, the police pulled his trash bags the following May and discovered empty cans of acetone, empty cans of charcoal fluid, empty cans of "Heet," empty bottles of pseudoephedrine pills, coffee filters with red phosphorous, empty cans of lye, numerous used syringes, glass Mason jars with white residue, and rubber tubing. HELD: The search warrant was properly issued. Even though the police did not see the defendant carry out the trash, the bags in front of the house combined with the tips established a "fair probability" that evidence of a crime exists

80

State v. Williams, 9 S.W.3d 3 (Mo. App. W.D. 1999).

Police apply for search warrant based on an anonymous crimestopper call saying defendant was selling cocaine and had just received a large shipment. The corroboration for the hearsay tip was that a person of that name did live at that address and police records show he had been arrested one year ago for sale of cocaine and four months ago for possession of cocaine. HELD: The hearsay tip was sufficiently corroborated. "An affidavit which relies on hearsay is sufficient as long as there is a substantial basis for crediting the hearsay . . . The concepts of veracity and reliability and basis of knowledge are relevant considerations but they are not entirely separate and independent requirements to be rigidly applied in every case . . . Corroboration from other witnesses and from independent observations of police officers creates a substantial basis for crediting the hearsay statements in an affidavit . . . The fact the informant may not have actually observed criminal activity or contraband is not fatal to establishing probable cause . . . A suspect's past criminal behavior can be considered in determining whether probable cause exists to justify a search."

81

Using State v Williams

- I believed this application for search warrant has met the guidelines set forth in State v Williams. By first corroborating the information regarding the residence and its owners. Second, this Department has been conducting a covert drug investigation on this residence since obtaining this anonymous tip. We have observed 5 known drug users/dealers frequenting this residence during this time. I would request the court take into consideration the past criminal behavior of not only the owners of the residence but those frequenting the residence. (Note: in Affidavit you list name of each person and their criminal arrests)

82

Drug Cases

- In drug cases, be sure to show the time the drugs were seen. Search warrants are held invalid, and sometimes not even saved by good faith, when they say drugs were seen, but don't say when. If the source was anonymous, corroborate as much as possible. Maybe the suspect has a prior. Maybe his name has come up in other investigations. Keep a drug file. Get as many details as possible from the caller and check them out as much as possible.
- *State v. Wilbers, 347 S.W.3d 552(Mo. App. W.D. 2011). The search warrant affidavit for drugs did not say when the illegal drugs had been seen on the premises, thus no probable cause for warrant; but the good faith exception saved the warrant. Dixon v. State, 511 So. 2d 1094 (Fla. 1987) (same facts, but not saved by good faith).*

83

Staleness

- If the probable cause is not recent, it may be no probable cause at all.
- Informant's seeing stolen items in Defendant's hotel room 16 days earlier is not too stale. *U.S. v. Golay, 502 F.2d 182 (8th Cir. 1974).*
- 48 hour delay for marijuana where no indication of smoking going on, not too stale. *U.S. v. Schauble, 647 F.2d 113 (10th Cir. 1981).* A 5 day delay for marijuana ("over 40 grams") was not too stale. *State v. Hodges, 705 S.W.2d 585 (Mo. App. 1986).*

84

Staleness

- Offer to sell drugs 3 days earlier revitalized probable cause information from 90 days earlier. *State v. Abbott, 499 A.2d 437 (Conn. App. 1985).*
- d. 30 day delay OK with respect to warrant for hand grenades. *U.S. v. Dauphinee, 538 F.2d 1 (1st Cir. 1976).*
- *Standard for drugs is generally 10 days*

85

Using Case Law for staleness

- I find the information contained in this affidavit to meet the standards set forth in *ie. US b Galay, US v. Schauble, State v Hodges, State v Abbott*, by establishing recent information to establish probable cause.
- Note: List in affidavit when the item was observed.

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Confidentiality of Informant Or Surveillance Location

- Probable cause for search warrant may be established by information provided by an informant and it is not necessary to name the informant. *State v. Rohrer, 589 S.W.2d 121 (Mo. App. S.D. 1979).*
- Rule 25.10 of the Missouri Rules of Criminal Procedure provides that an informant's identity may remain a prosecution secret.

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**Confidentiality of Informant Or
Surveillance Location**

- *United States v. Green, 670 F.2d 1148 (D.C. Cir. 1981). Where officer testified he observed an on-the-street drug transaction using binoculars, the court upheld his refusal to disclose his location. "We believe the policy justifications analogous to the well-established informer's privilege also protect police surveillance locations from disclosure."*

88

Information

- You must keep a good log of received drug information.
- Get as much information as possible. Color of house driving directions, were bedrooms are in house, color of interior, unusual items ie blanket for door. Can person describe layout of house.
- Where are illegal drug kept in the house

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How to Corroborate

- From past observations of Law Enforcement that has been there.
- Drive by and observe
- Surveillance- sit and watch. Did they describe a certain vehicle that show up at a certain time.
- Maybe person leaves every day at same time.
- Who is visiting? Are they known drug users or dealers from your community. What is their criminal history?

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Post Search Warrant

- Leave copy of search warrant filled out with return in residence or give to owner. Note: DO NOT LEAVE APPLICATION. This is obtained by defense through discovery.
- Fill out search warrant return, leave copy for suspect or give to suspect
- Be sure to notate in your report the information your source gave you that was accurate.
- Seize, Photograph and number evidence.
- Return Search warrant, Application for search warrant and search warrant return to courts and Prosecutor within 2 working day.

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Court Preparation

- If you cite a case law in your affidavit know you case law when you go to court. You will be asked about it.

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Practical Participation

- Provide the students an anonymous tip and have them fill out a search warrant, search warrant application, search warrant affidavit and return using the appropriate case laws.

93

References

- Search and Seizure Law in Missouri State & Federal law Manual
- H. Morley Swingle Assistant United States Attorney Eastern District .
