

## SEARCH AND SEIZURE

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One of the most important amendments to our U. S. Constitution is without a doubt the Fourth Amendment, which preserves the sanctity of our homes, and prohibits invasion of our privacy without due process of law.

The Fourth Amendment: The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Our Oklahoma constitution, dealing with search and seizure, is almost identical to the Fourth Amendment of the United States Constitution.

Another very important part of our constitution provides that no State shall deprive any person of life, liberty, or property without due process of law. I quote a portion of the first section of the 14th Amendment:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

The Search and Seizure laws were designed to protect our citizens against unscrupulous law enforcement officers who might invade our homes and property without due process of law.

It is very important that any law enforcement officer be trained in the rights of citizens of the United States and know the Search and Seizure laws thoroughly. Lack of knowledge of these laws is responsible for many criminal cases never reaching the jury. As a young deputy sheriff almost 40 years ago, and working during the era of Prohibition and Moonshining, I had many good cases which never reached the jury because of illegal search and seizure, which led me, at that time, to the conclusion that our search and seizure laws were designed to protect the criminal and to hamper the operation of law enforcement officers.

When I began as an Oklahoma game ranger 23 years ago we had a law on our Statute books which specifically stated that a game ranger could search any person, box, bag, boat, locker or other personal effects for illegal game without a search warrant.

A valid search warrant must contain the name of the person who is to execute the warrant; an order to search a specified place and seize specified articles; a description of the place to be searched, and signature of the issuing magistrate.

A search warrant should be promptly executed. Constitutional guaranty is violated if a warrant is not executed within a reasonable time after it is issued. It is highly improper for an officer to hold a search warrant for an indefinite period.

The search warrant may specify the time within which it is to be executed, in which event it cannot be executed other than at that time, and some jurisdictions limit the time of execution by Statute. A search warrant should be executed in the daytime when practical or if daytime execution is determined by the warrant itself, however, where the warrant is silent it may be executed at any reasonable time of day or night.

In executing a search warrant where premises are occupied, the occupant should be informed of the intended search and ordinarily on the contents of the warrant, however, this is not required. The officer should have possession of the warrant at the time of its execution and it is desirable that the same be exhibited to the occupant.

The officer is not required to pass upon the sufficiency of the complaint or the evidence upon which a search warrant is based. He is, however, subject to liability where he executes a warrant which contains substantial irregularities on its face. And of course the things seized are therefore rendered inadmissible in evidence. It is therefore important that officers know the necessary elements of a valid warrant.

Any search and seizure which invades the privacy of an individual other than in accordance with definitely established legal rules is unreasonable.

In making entry the officer may use such force as is reasonably necessary. The officer should always bear in mind the search warrant invades the citizen's right of privacy, and while a thorough search is to be made, the officer should also be considerate of the comfort and convenience of the occupant.

An officer in executing a search warrant may call on private persons to assist him in executing the search warrant. The officer is authorized to seize only the articles described therein and may not seize other articles uncovered by his search which were not specified in the warrant. Upon execution of a search warrant the officer should file a return with the issuing magistrate. Such return should state all material facts clearly, giving date of search, and describe articles that have been seized.

The Constitution authorizes search and seizure which invades the privacy of an individual where the same is made pursuant to the terms of a duly issued search warrant. A search warrant is a judicial order directing a person named to enter a specified house, shop or other premises and look for, examine and seize specific personal property.

The Constitution requires that no warrant shall issue but upon probable cause, supported by oath or affirmation. Probable cause means cause to believe that a specific article which is subject to seizure is likely to be found at the place desired to be searched. Accordingly, before a magistrate may issue a search warrant by some person's sworn statement there must be probable cause to believe that such search is justified.

Entry into open fields of another, though technically a trespass, might not be considered an invasion of privacy as to render a search and seizure thereon illegal. Evidence obtained in open fields, away from enclosed area occupied by buildings has been held admissible. However, enclosed private yards should not ordinarily be entered without a search warrant.

From the standpoint of a game ranger or any State or Federal game agent such officers would be within their legal rights to search open fields for hunters or other game poachers without use of a search warrant, except that enclosed areas around dwellings would require a search warrant. Even though in some States such officers entering open fields for the purpose of seeking out game poachers might be technically guilty of trespassing, but any evidence obtained would be legal.

An accused person has no standing to question the constitutionality of a search and seizure where he does not possess some right in regard to the premises searched, or the property seized. In order to complain of an unconstitutional search and seizure, one must have an interest in the place searched or the property seized, an example being, a person driving a borrowed vehicle having illegal game. Said vehicle would be subject to search without a search warrant.

The Constitutions themselves in prohibiting unreasonable search and seizure, do not expressly prohibit the use in evidence of articles so obtained. This is done by court developed rules. The U. S. courts have refused to allow the admission of articles obtained in unreasonable search and seizure to be admitted in evidence. That is, those who enforce the so called exclusionary rule. The purpose of these rules is to make effective the protection and guaranty by the constitution. However, even in States which have not adopted the exclusionary rules, articles obtained by unreasonable search and seizure cannot be admitted in evidence at the State Court Trial. This is the result of a recent U. S. Supreme Court Decision which held that though the exclusionary rule is judicially applied it is none the less a constitutionally required safeguard to the States through the 14th Amendment.

The most sacred of places protected from searches and seizure is the home of an individual. Any intrusion into a dwelling without sanction of law is "abhorrent to our law." So specially regarded is the sanctity of a private dwelling that an officer cannot search the same even when he has probable cause to believe that certain articles subject to seizure are therein. Nor does entrance gained by fraud or subterfuge make a subsequent search or seizure any the less unconstitutional. Search of a dwelling and seizure of things therein is permissible only pursuant to a legally sufficient search warrant.

Not every observation made by an officer is a search. It is not a search to observe that which is open to view. Search implies invasion and quest, which in terms implies some sort of force. Nor is every taking into possession a seizure. For instance, it is not a seizure to take possession of property which has been abandoned. Seizure involves a forcible dispossession of the owner.

It is the general rule that no search and seizure may be undertaken in the absence of a duly issued search warrant. An established exception to this rule permits search and seizure incident to an arrest.

The purposes for which search incidental to arrest may be undertaken are:

To ascertain the presence of weapons or implements of escape; and,

To find things connected with the crime for which arrest was made, including fruits of the crime, and the means by which the crime was committed.

A perfect example of search and seizure incident to arrest is an Oklahoma Statute which provides that "Possession of firearms and spotlight or other powerful light at night in an area known to be frequented by deer shall be prima facie evidence that the person or persons possessing same are attempting to kill or capture a game animal in violation of this Act." Therefore, if an arrest were made for violation of the above act, and a subsequent search of the vehicle revealed that illegal game were present, such game could lawfully be introduced in evidence even though no search warrant were served.

It is important that any arrest by an officer meet all the requirements imposed by law, because otherwise the proceedings against the accused might be dismissed on the grounds of invalid arrest; the reputation of the enforcement agency would be made vulnerable to public criticism; and the arresting officer might subject himself to a civil action for damages and to discipline.

Compelling a suspect to stop for questioning, and making him answer questions is sufficient to be considered an arrest. The grounds for arrest must therefore be present. This situation puts a game ranger or warden in very bad position when stopping a vehicle where no hunting equipment or game is visible, and the driver refuses to give permission for search without a warrant. Even if two rangers or wardens are present, and there is probable cause to support request for search warrant, it is doubtful if one officer could lawfully detain the suspect while the other officer goes for a search warrant.

The constitution prohibition regarding search and seizure was enacted as a protection to the individual against undue invasions of his privacy. This guaranty being for the benefit of the individual, may only be waived by the individual. Search and seizure with the consent of the person affected thereby is just as lawful as search and seizure under a valid search warrant. However, such consent must be given freely and voluntarily. Consent is not present where permission is obtained through subterfuge or coercion.

Consent means voluntary accordance with, or concurrence in; acquiescence; approval, compliance, permission. In order to justify a search on the ground of waiver, "Consent" should probably amount to almost an "Invitation."

A person's constitutional rights cannot ordinarily be waived by another, so only the person whose privacy is invaded may give consent which will render legal a search and seizure without warrant and not incident to arrest.

In this enlightened age, with people becoming more and more aware of their constitutional rights, it behooves all law enforcement officers to act strictly within the law in order that our people will respect our laws. Let us all pray that the 4th Amendment will continue to protect our homes and privacy from being invaded without due process of law. When we lose this protection we will then know that Communism will have taken over where freedom and sanctity of our homes and property have prevailed for so long.