

JANUARY 1973

POLICE OFFICER'S HANDBOOK

ARREST, SEARCH, AND SEIZURE

1973

PART I

Airline Searches

Border Searches

Seizure of Items Not in Search Warrant

Failure to Make RETURN on Search Warrant

Routing Inspections

FLEMING'S NOTEBOOK...Chapter 84

Lie-Detector Evidence Admitted in Four

States and One Federal Court District

Prepared under the direction of E. Fleming Mason,
Producer of Crime-to-Court ETV Law Enforcement
Informational Programs in cooperation with SLED
and South Carolina Law Enforcement Officers'
Educational Television Training Program Committee.

17287

South Carolina

11

(Educational Television)

LAW ENFORCEMENT - ~~ETV~~ TRAINING PROGRAM

POLICE OFFICER'S HANDBOOK

ARREST, SEARCH, AND SEIZURE

1973

PART I

By

Joseph C. Coleman
Deputy Attorney General
State of South Carolina

Sponsored by

South Carolina Law Enforcement Division
in cooperation with
South Carolina Educational Television Network

Endorsed by

South Carolina Governor, John C. West
South Carolina Sheriffs' Association
South Carolina Enforcement Officers' Association
South Carolina Police Chiefs' Executive Association
South Carolina FBI National Academy Associates
South Carolina Southern Police Institute Associates



Hon. John Grimball
Resident Circuit Judge
Fifth Judicial Circuit
State of South Carolina

C O N T E N T S

	<u>Page</u>
Foreword...Honorable John Grimball	3
Airline and Border Searches	5
Seizure of Items Not Listed in Search Warrant	7
Drug Raids...Frisk Searches	10
Routine Searches of Business Places Dealing in Sensitive Goods	11
10-Day Search Warrants...Execution and Inventory Return	13
Fleming's Notebook...Chapter 84	16
New Lie-Detector Evidence Ruling	17
Comments by Judge Grimball	19

F O R E W O R D

The power to arrest in proper circumstances, to search for persons and things, and to seize persons and things, is absolutely essential to effective law enforcement. Without such power, the efforts of our police officers would be reduced almost to the point of total inability to cope with crime in any form.

Balanced against this necessary power to use force, however, is the right of all citizens, guaranteed by the Constitutions of our Nation and our State to be free at all times from unreasonable seizures of our persons and effects, and unreasonable searches of our persons, effects, homes, and places of business.

It is the necessity that this balance be maintained that has resulted in the tremendous volume of court actions on the subject that has cascaded from

our courts in the form of decisions almost since the founding of our Nation...and, particularly, during the last twenty years.

Tonight, we will have a brief look at a few areas of search and seizure that have been modified due to our changing times. Constitutional 'due process' is still the rock upon which our system of justice is maintained, but occasionally old guarantees previously afforded the individual must give way to new concepts made necessary by changing conditions.

Hon. John Grimball
Resident Circuit Judge
Fifth Judicial Circuit
State of South Carolina

AIRLINE AND BORDER SEARCHES

Normally, searches of luggage and the persons of passengers would not be permitted without good cause to believe that contraband or stolen goods were being secreted. No matter how much suspicion of unlawful activity there is, unless special conditions exist, routine, across-the-board searches are prohibited in the absence of facts tending to show the presence of such goods, known as probable cause.

Early in our history, an exception to this rule was made in the cases of persons coming into this Country...whether citizens of the United States or not. Goods moving into the Country were subject to tax. That was one reason for the right of Federal officers to search at the border without warrant or probable cause to believe that smuggling was in process. Another reason was to discover contraband, such as unlawful drugs or stolen items. This safe-

guarding activity, the courts said, did not constitute unreasonable search, and would be permitted.

It was seen early in our history that there must be relatively free right to travel over state borders ...otherwise, there could result a situation in which toll would be exacted by each state and free travel and commerce between the states would be severely hampered. For this reason, the warrantless search without probable cause is prohibited at state borders ...except in rare circumstances, such as for the emergency control of insect pests and like public health reasons.

For example, a state may not impose taxes or other regulations on travelers or commerce from other states that are not applicable to its own residents. This guarantee against discriminatory laws and regulations carries over to the fields of arrest, search, and seizure. The nonresident is as free from unlawful arrest and unreasonable searches and seizures as are residents.

ITEMS NOT LISTED IN SEARCH WARRANT

A search warrant is an order of a court to search a specific place for a specific thing or things. Unrestricted or 'shot-gun' search warrants are not lawful. A warrant to search for 'stolen goods and contraband' would be too broad to be lawful. The thing or things sought must be described in reasonable detail. Following are examples of 'good' and 'bad' descriptions:

BAD DESCRIPTION: "Television sets", "radios", "electric adding machines".

GOOD DESCRIPTION: Four 21-inch Zenith console television sets, two table-model General Electric radios, and seven Arco electric adding machines. (Include serial numbers if available).

The place to be searched must also be described in as much detail as is reasonably possible. If the place to be searched is a house, for example, the search warrant does not automatically give authority to search all grounds, outbuildings, or motor vehicles on the premises. The breadth of the search warrant depends upon the facts of the case. When it is desired that authority be granted to search the outbuildings or motor vehicles on the premises containing the residence to be searched, there should be a reason for the request, and it should be set out in the affidavit. An example:

"The stolen goods described above are such as are likely to be concealed in a garage, barn, or other outbuilding, or in a van truck (1970 Ford) belonging to the owner of the residence."

Based upon the foregoing information in the affidavit, the issuing judge could lawfully include in the warrant authority to search "garages, barns,

other outbuildings, and a 1970 Ford van truck, located on the premises."

Is the seizure authorized by the warrant restricted to the items listed? The search authorized may not extend to other items. In other words, the officers executing the warrant may not search for other things...but, in proper circumstances, they may seize items not contained in the warrant. This is known as the 'plain sight' rule. An officer is not required to close his eyes to contraband or stolen goods in plain sight, even though he might be searching for something else.

Once the item or items listed in the warrant have been found, the search must cease. Anything found as a result of further search will not stand the test of admissability at trial. On the other hand, if contraband or stolen goods are 'spotted' in plain sight, without further search, they may lawfully be seized.

The 'scope' of the search must be reasonable also. A warrant to search for a specific item may not be turned into general authority to rummage. There obviously is no valid purpose of searching a bathroom medicine chest or bureau drawer when the stolen goods sought are console television sets. Smaller items would justify a much more detailed search, of course.

DRUG RAIDS...FRISK SEARCHES

A 'drug-raid' search warrant does not carry with it the right to search everyone on the premises ...in the absence of probable cause to believe a certain person might have drugs secreted on his person. For example, a sudden movement upon view of the searching officers to place some object in the mouth or in the clothing would justify search of that person without further ado. But an immediate search of the persons of all those present is not justified.

When unlawful drugs are found, however, a 'frisk' search of those present for weapons is justified... for the protection of the officers. The searching police officer is not required to undergo the possibility of being killed or injured in those circumstances, when a simple 'weapons' search might protect him.

ROUTINE SEARCHES

Routine searches of places of business by police officers without search warrants are not lawful except in rare circumstances. Only when specially controlled items...guns, drugs, whiskey, wine, beer ...are involved, is such police activity lawful at all. And then...only if specifically permitted by statute.

The United States Supreme Court recently held lawful an unannounced, routine, warrantless search of a locked storage room of a Federally-licensed firearms importer by Federal enforcement officers. Two

illegal sawed-off rifles were found and the dealer was charged with unlawful possession of the rifles. He asked the court to suppress the rifles as evidence against him, alleging illegal search because the officers had no warrant. United States v. Biswell, 11 CRL 3024.

Although the searching officers were not armed with a search warrant, and the firearms dealer objected to the search, the court said the action of the officers was legal. REASON: Firearms are a strictly-controlled sales item and the Federal law providing for licensing of such dealers permits such searches. Without such statutory authority, the search would not have been lawful.

State and local officers may make unannounced, warrantless searches of business premises only when the law of the state specifically provides for such searches, and the state law would be constitutional only with regard to 'sensitive' items, such as guns,

explosives, drugs, liquor, beer, and wine.

The Biswell case is a step forward in law enforcement, however! Before that decision (May 1972), it was not clear that the Federal statute was constitutional as a reasonable search. The states are now free to pass laws permitting Biswell searches when dealing with sales of 'sensitive' items.

SEARCH WARRANTS;

EXECUTION AND RETURN

Section 17-271, Code of Laws of South Carolina, as amended, the State's principal search warrant law, provides that the warrant must be executed within ten days and that an inventory or list of goods seized must be made to the magistrate or recorder within the same time. The inventory is known as the return.

QUESTION: What is the result if the warrant is not executed or used within ten days?

COMMENT: The authority to search is limited to a period of time of ten days from the date of issuance of the warrant. It may be used at any time after issuance for ten days...the first day being the day after issuance. Thus, if the warrant is issued on the 1st day of the month, the last day on which it could be used would be the 11th day of the month. After that, the search warrant is no longer valid. Any search made by its authority would be unlawful. Evidence seized in such a search would be inadmissible at trial.

QUESTION: If the search warrant is executed within ten days, but the inventory of goods seized, or the return, is not made to the magistrate or recorder within ten days, or if it is never made at all, what is the legal result?

COMMENT: If the search warrant is executed within ten days after issuance, it is a good warrant and the search is valid. When something that is

required by law to be done later...the inventory of goods seized...is not done, such failure does not act to make the search and seizure unlawful. The inventory should be made and return made to the magistrate or municipal judge. If it is not made, the officers may be held accountable, but the failure does not make the evidence seized inadmissible at trial. See the recent Georgia case of State v. Lewis, 190 SE 2d 123.

FLEMING'S NOTEBOOK!



FLEMING'S NOTEBOOK...Chapter 84:

LIE-DETECTOR EVIDENCE

Another state has ruled that lie-detector evidence may be used in criminal trials in certain circumstances! The Supreme Court of New Jersey says that results of a lie-detector test will be admitted when there was a prior agreement between the State's prosecutor and defense counsel that the test be taken and the results used in evidence. The reliability of the polygraph has been sufficiently established, said the Court, to permit its use as evidence by agreement.

The States of California, Iowa, and Arizona, and one United States Court of appeals, have made similar rulings. South Carolina law does not permit such evidence at the present time.

All the courts that have so far permitted lie-detector evidence have cautioned that it must be shown clearly that the defendant was fully aware of his right to refuse the test, and the consequences of taking it. After the test has been taken, however, neither the State nor the defendant may object to its use as evidence. New Jersey Supreme Court, filed December 18, 1972.

COMMENTS BY HONORABLE JOHN GRIMBALL
ON DECEMBER, 1972, CRIME-TO-COURT
TELEVISION PROGRAM

Items Not Listed in Search Warrant

"Whenever a search is legal, and when it is not overdone, any contraband discovered may be seized and used in evidence on a charge related to the contraband. Authorities are not required to close their eyes to contraband simply because it is not the thing they were looking for originally!"

Overdoing a Search

"Anytime a search is being made, with or without a warrant, search activity is limited to what may reasonable be expected to uncover what is being sought. In other words, a search warrant issued for one thing may not lawfully be turned into a general authority to rummage."

Continuation of Search
After Listed Items Found

"Once the object named in the warrant has been found, anything discovered by a continuation of the search would be suppressed as evidence. After all, a search warrant is only an order of a court to search for a particular thing. When that thing has been found, the effectiveness of the order is cancelled, and the search must cease."

Inventory Return of Items
Seized on Search Warrant

"Failure of searching officers to make a return of items received, if required by the warrant, is a mighty sloppy way of doing business, and supervisory officers should crack down on that sort of thing! But I do believe that the RETURN requirement of Section 17-271 is what is called directory, rather than mandatory. It's something that should be done,

but, if it's not done, the failure does not make everything that occurred beforehand unlawful."

Frisk Searches in Drug Raids

"A warrant to search an apartment does not automatically convey the right to search all occupants, but there are circumstances in which a type of search is justified. Upon that discovery (of drugs on the premises) a pat-down search of the occupants was justified for the protection of the officers. The search permitted in such circumstances is a weapons search, however, and not a thorough evidence search."

Routine Inspection Searches

"The (United States) Supreme Court (has) recognized the necessity of unannounced, routine inspections by enforcement officers when dealing with closely regulated items like firearms, stating that

more often than not a requirement that a search warrant be obtained based on probable cause would render such control ineffective."

"The same rule would apply to state officers in cases where the right of routine inspection without a warrant is given by state law."

"When sale of certain sensitive items, such as firearms, drugs, liquor, beer and wine, things of that nature, is controlled strictly, and requires a special license, routine, warrantless searches of the dealer's premises may be made when permitted by statute. Otherwise, a search warrant is required to make a search of the premises."

RIGHT TO REFUSE CONSENT
TO SEARCH

It is well known that the owner of a building or motor vehicle has the right to refuse to give his consent to a search by officers in cases in which the officers have no search warrant or other right to search...but, does the owner have the right to be warned that he has such a choice? "No!", say the Federal Courts.

A defendant gave his consent to search by officers. Later he claimed that he should have been told by the officers that he had the right to withhold such consent. A United States Court of Appeals ruled that the police are not obligated to warn the owner that he has a right to refuse consent.

Ref.: Leeper v. US, 446 F2d 281; White v. US, 444 F2d 724.

ARREST FOR FELONY

WITHOUT WARRANT

A uniformed police officer in a squad car was stopped by non-uniformed narcotics agents and asked to stop another car and arrest the driver...He was told that the agents knew of their own knowledge that the subject possessed heroin...a felony. The officer stopped the subject car, arrested the driver, and searched him. Heroin was found. QUESTION: Was the search lawful?

A Federal court ruled the search and arrest lawful...because the uniformed officer had probable cause to believe the defendant was committing a felony...as a result of the information given him by the narcotics agents. Had the offense been a mis-demeanor, an arrest warrant would have been necessary. Ref.: US v. Pentado, 463 F2d 355.

SEARCH OF PACKAGE

BY CARRIER

Police suspected that a package shipped on an airline contained contraband. They notified employees of the airline, who opened the package without a warrant and discovered contraband. The defendant claimed illegal search.

The search was legal, said the Court. Airline employees had the right to open the package to inspect it for safety reasons. This was not a police search. US v. Cangiano, 464 F2d 320.

OFFICER ACTING ON

RADIO REPORT

Officer in squad car heard report on his police radio that a counterfeit bill had been passed at a toll-road station...a felony. A description of the car and occupants was included. Noticing a car

meeting the description, and seeing that the occupants also met the description broadcast, the officer stopped the car and searched it without a warrant. Counterfeit was found.

The search was OK! A felony was suspected, and there was probable cause to believe the defendants guilty. Merrill v. US, 463 F2d 521.

PROBABLE CAUSE

SHOWN BY APPEARANCES

Police officers on routine patrol duty heard shouts of 'stop, etc.' coming from the direction of a private club, and saw, at the same time, two men running away from the scene, one carrying a shopping bag! The officers gave chase, arrested the two men and searched them. Stolen goods were found. Robbery was later confirmed.

Arrest and Search were OK! Officers could act on appearances, and appearances were sufficient to indicate probable cause of felony. Ref.: US ex rel Frasier v. Henderson, 464 F2d 260.

STATEMENT MADE AFTER

ARREST...WITHOUT WARNINGS

The defendant was arrested, and, without warnings, made statements admitting guilt. RULING: Statements were admissible at trial. Statements were not made as a result of police questioning. Houle v. US, 463 F2d 1137.

END