



SEARCH WARRANTS AND EYE WITNESS IDENTIFICATION

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THE ANALYSIS OF A SEARCH WARRANT

I PREPARING FOR THE ATTACK

A. What Are The Necessary Documents?

1. The Warrant: is an order, signed by a magistrate, directed to a peace officer, commanding him to search for personal property, and bring it before the magistrate. Pen. C. §1523; Aguilar v Texas (1964) 378 US 108; Spinelli v U.S. (1969) 393 US 410; Pen. C. §1524.
2. The Affidavit: must set forth the facts tending to establish the grounds of the application, or probable cause for believing that they exist. Pen. C. §1527; Theodor v Superior Court (1972) 8 C.3d 77, 104 C.R. 226.
3. The Receipt: When the officer takes property under the warrant, he must give a receipt for the property taken (specifying it in detail) to the person from whom it was taken by him, or in whose possession it was found; or, in the absence of any person, he must leave it in the place where he found the property. Pen. C. §1535; People v Phillips (1958) 163 C.A.2d 541, 329 P.2d 621.
4. The Return: The officer must forthwith return the warrant to the magistrate, and deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they are present, verified by the affidavit of the officer at the foot of the inventory, and taken before the magistrate at the time, to the following effect: "I, R.S., the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant." Pen. C. §1537.
5. The Police Report: Usually will provide facts regarding probable cause and service of warrant which can be compared with facts obtained from client interview and facts set forth in affidavit.

B. How To Obtain The Necessary Documents.

1. Municipal Court
2. Superior Court
3. United States District Court

II THE STATUTORY SCHEME FOR ATTACK

A. In State Court (Pen. C. §1538.5)

1. Statutory Grounds - A defendant may move for the return of property or to suppress as evidence any tangible or intangible thing obtained as a result of a search or seizure on either of the following grounds:
 - a. The search or seizure without a warrant was unreasonable.
 - b. The search or seizure with a warrant was unreasonable because (i) the warrant is insufficient on its face; (ii) the property or evidence obtained is not that described in the warrant; (iii) there was not probable cause for the issuance of the warrant; (iv) the method of execution of the warrant violated federal or state constitutional standards; or (v) there was any other violation of federal or state constitutional standards. Pen. C. §1538.5(a).
2. When to attack
 - a. Municipal Court. Theodor v Superior Court (1972) 8 C.3d 77, 104 C.R. 226.
 - b. Superior Court. Theodor v Superior Court (1972) 8 C.3d 77, 104 C.R. 226; Pen. C. §1538.5(i).
 - c. Failure to bring during pretrial is fatal unless grounds unknown or unavailable. Pen. C. §1538.5(h); People v Superior Court (Edmonds) (1971) 4 C.3d 605, 94 C.R. 250; People v Triggs (1973) 8 C.3d 884, 887 n.2, 106 C.R. 408, 410 n.2.

3. Procedure for going behind affidavit to show untruthfulness. Theodor v Superior Court (1972) 8 C.3d 77, 104 C.R. 226; Pen. C. §1540.

B. In The Federal Court

1. Statutory Grounds

- a. Fed. R. Crim. P. 41 (same generally as state grounds)
- b. Fed. R. Crim. P. 12 (same generally as state grounds).

2. When to attack

- a. Fed. R. Crim. P. 12(b)(3) requires that all search and seizure motions be brought pretrial; if not, the trial court may allow the issue to be raised for good cause shown. Fed. R. Crim. P. 12(f).

3. Procedure for going behind affidavit

- a. Is there enough to make a "threshold" showing to obtain evidentiary hearing on veracity of the underlying facts? U.S. v Moore (9th Cir. 1975) 522 F.2d 1068.
- b. Is the perjurious affiant a law enforcement officer? U.S. v Morris (5th Cir. 1973) 477 F.2d 657.
 - (1) Are the falsehoods "material"? U.S. v Damitz (9th Cir. 1974) 495 F.2d 50.
 - (2) If perjurious affiant is not a law enforcement agent, is there still probable cause once the falsehoods are stricken?

III ILLEGALLY OBTAINED EVIDENCE BASIS FOR SEARCH WARRANT?

A. Standing?

1. State Rule: Kaplan v Superior Court (1972) 6 C.3d 150, 98 C.R. 649. Defendant can claim rights of another violated. People v Stoner (1967) 65 C.2d 595, 55 C.R. 897; People v Johnson (1969) 70 C.2d 541, 75 C.R. 401.
2. Federal Rule: Wong Sun v U.S. (1963) 371 US 471, only when personal rights are violated. Except in cases of joint defendants: derivative standing if inadmissible against co-defendant, it remains inadmissible. No standing can be claimed when third party's right violated. Alderman v U.S. (1969) 394 US 165; Coombs v U.S. (1972) 408 US 224. Note developing exception allows defendant to assert violation of quasi-personal right if violated at time of service. Mancusi v De Fort (1968) 392 US 364.

B. Illegal Search? Mapp v Ohio (1961) 367 US 643; People v Cahan (1955) 44 C.2d 434.

C. Service Of Subpoena Duces Tecum Or Civil Summons On Third Party?

1. State Rule: Kaplan v Superior Court (1972) 6 C.3d 150, 98 C.R. 649. But see People v Warbutton (1970) 7 C.A.3d 815, 86 C.R. 894 (defective subpoena on corporation commissioner for his official records no standing). New Rule: bank records: Burrows v Superior Court (1974) 13 C.3d 238, 118 C.R. 166 (personal bank records held by bank subject to reasonable expectation of privacy; court failed to rule on legality of Finan. C. §1917). See also Valley Bank v Superior Court (1975) 15 C.3d 652, 125 C.R. 553 (civil suit follows Burrows rationale). Same rule for telephone records: People v McKunes (1975) 51 C.A.3d 487, 124 C.R. 126 (followed Burrows expectation of privacy).

2. Federal Rule: U.S. v. Donaldson (1971) 400 US 517 (no standing re third party accountant's records of defendant); Couch v U.S. (1973) 409 US 322 (IRS summons to accountant to produce defendant's business records no violation of 4th or 5th Amendment), U.S. v Bisceglia (1975) 420 US 141 (John Doe summons to bank to discover identity of depositor of cash). Watch U.S. v Miller (5th Cir. 1974) 500 F.2d 751, cert. granted.

D. 5th and 6th Amendment Violations?

1. State Rule: People v Varnum (1967) 66 C.2d 808, 59 C.R. 108 (inmate questioned without Miranda rights, held admissible at trial of another). Note: different result under Kaplan v Superior Court (1972) 6 C.3d 150 on 4th Amendment grounds.
2. Federal Rule (same): Massiah v U.S. (1964) 377 US 201

E. Any First Amendment Violations ("Obscene Materials")?

1. Is a prior adversary hearing required to determine "obscene" nature of materials? Monica Theater v Municipal Court (1970) 9 C.A.3d 1, 88 C.R. 71 (saying \$1538.5 provides a prompt adversary hearing after seizure) and Cinema Classics, Ltd v Busch (C.D. Cal. 1972) 339 F.Supp. 43 (questioning constitutionality of \$1538.5 remedy).
2. Are the items "obscene"? In re Perlman (1971) 18 C.A.3d 178, 95 C.R. 599.
3. Is the description of the items exact? Stanford v Texas (1965) 379 US 476.
4. Are great quantities sought for seizure? A Quantity of Copies of Books v Kansas (1964) 378 US 205 (operates as a prior restraint before owner has opportunity to litigate).

F. Any Poison Fruit?

1. Physical Evidence: People v. Superior Court (Keithley) (1975) 13 C.3d 406, 118 C.R. 617 (finger prints), People v. Sessler (1968) 68 C.2d 418, 67 C.R. 409 (handwriting exemplars); People v Superior Court (Zolnay) (1975) 15 C.3d 729 (confession leads to contraband).

2. Testimonial Evidence: People v Johnson (1969) 70 C.2d 541, 75 C.R. 401; People v Dowdy (1975) 50 C.A.3d 180, 123 C.R. 155; Brown v Ill. (1975) 422 US 590; People v Paris (1965) 63 C.2d 541, 47 C.R. 370; People v Gregg (1974) 43 C.A.3d 137, 117 C.R. 496; People v Stoner (1967) 65 C.2d 595, 55 C.R. 897.
3. Taint of poisoned fruit attenuated by other action? Krauss v Superior Court (1971) 5 C.3d 418, 96 C.R. 455, People v McInnis (1972) 6 C.3d 821, 100 C.R. 618; People v Tenney (1972) 25 C.A.3d 16, 101 C.R. 419; People v Lockridge (1970) 3 C.3d 166, 89 C.R. 731; People v McDowell (1972) 27 C.A.3d 864, 104 C.R. 181; People v Carter (1972) 26 C.A.3d 862; People v Aylwin (1973) 31 C.A.3d 826, 107 C.R. 824; Mann v Superior Court (1970) 3 C.3d 1, 88 C.R. 380.
4. Tainted by poison fruit despite further action? Machado v Superior Court (1975) 45 C.A.3d 316, 119 C.R. 344, Shuey v Superior Court (1973) 30 C.A.3d 535, 106 C.R. 452; People v Shuey (1975) 13 C.3d 835, 120 C.R. 83; Raymond v Superior Court (1971) 19 C.A.3d 321, 90 C.R. 678.

IV THE SUBSTANCE OF THE AFFIDAVIT

A. Was The Information Supplied In The Affidavit Untruthful? (Pen. C. §§1539 and 1540.)

1. Prima facie burden on defense to reveal errors. Theodor v Superior Court (1972) 8 C.3d 77, 104 C.R. 226; Williams v Justice Court (1964) 230 C.A. 2d 87, 40 C.R. 724. For federal rule see Fed. R. Crim. P. 41(e) and U.S. v Roth (7th Cir. 1967) 391 F.2d 507; and U.S. v Bolton (9th Cir. 1972) 458 F.2d 377.
2. Theodor Rule: once factual accuracy challenged, burden shifts to prosecution to show falsehoods included as a result of reasonable misapprehension; if statements are false and affiant unreasonably believed statements to be true, excise false statements and decide probable cause without them. Theodor v Superior Court (1972) 8 C.3d 77, 104 C.R. 226.
3. Did affiant give false name? See King v U.S. (4th Cir. 1960) 282 F.2d 398.

B. Do The Factual Allegations Amount To Probable Cause?

1. Can a magistrate infer the probability that specific things needed as evidence are located at the particular place to be searched? People v Dickinson (1975) 43 C.A.3d 1034, 118 C.R. 213.
2. Are the affiant's observations of facts sufficient regarding location?
 - a. Is there a substantial nexus between the observations of the affiant and the presence of the evidence? People v Hill (1974) 12 C.3d 731, 117 C.R. 393. Officers who seize an article must be presently aware of some specific or articulable fact from which a rational link between the item seized and criminal behavior can be inferred.

C. Where Hearsay Observations Are Concerned, Ask These Questions:

1. Who is the source of the information in the affidavit?
 - a. Informant to Officer: Is a police officer affiant basing his information upon an informant's statements? Apply Aguilar v Texas (1964) 378 US 108.
 - (1) Affidavit must show underlying circumstances that information was reliable and based on personal knowledge;
 - (2) Affidavit must show reasons to believe informer reliable or information reliable (note mere affirmation that informer is "reliable" insufficient, Spinelli v U.S. (1969) 393 US 410, Cf. People v Alexander (1973) 9 C.3d 387, 107 C.R. 483.
 - b. Officer to Officer: Does the affiant officer rely on information supplied by another officer? U.S. v Ventresca (1965) 380 US 102 (warrant upheld if officer supplying information does so from direct observation).

- c. Informant to Officer to Officer: Does the affiant officer rely on information from another officer who received his information from an informant? Aguilar applies to test the information provided by informant. Price v Superior Court (1970) 1 C.3d 836, 841, 83 C.R. 369, 371; People v Scott (1968) 259 C.A.2d 268, 66 C.R. 257 (material witness informer must be disclosed).
- d. Does the affiant's information flow from a "citizen" or "victim"? People v Schulle (1975) 51 C.A.3d 809, 124 C.R. 585; Jaben v U.S. (1965) 381 US 214; People v Legard (1970) 12 C.A.3d 1006, 91 C.R. 257.
- e. Citizen to citizen informer to officer. People v Mardian (1975) 47 C.A.3d 16, ___ C.R. ___ holds Aguilar satisfied.
- f. Informer to magistrate. Magistrate's examination and determination of reliability of an informant approved. Theodor v Superior Court (1972) 8 C.3d 77, 104 C.R. 226, but must take an affidavit or record and transcribe. Aguilar-Spinelli do not require corroboration of informer's affidavit, given in presence of magistrate. Shelton v Superior Court (1969) 1 C.3d 144, 81 C.R. 613.

2. Where the affiant recites hearsay, ask these questions: U.S. v Harris (1971) 403 US 573.

- a. Is the knowledge attributed to the informant sufficient to establish probable cause?
- b. Does the informant have personal knowledge? Halpin v Superior Court (1972) 6 C.3d 885; 101 C.R. 375; Price v Superior Court (1970) 1 C.3d 836, 83 C.R. 369.

3. Does the affiant indicate that (1) the informant is reliable, and (2) give facts indicating the trustworthiness of the information? U.S. v Hamilton (9th Cir. 1974) 490 F.2d 598.

- a. Is the converse true? People v Price (1970) 1 C.3d 836, 83 C.R. 369; People v Halpin (1972) 6 C.3d 885, 101 C.R. 375.

- b. Even if both Aguilar prongs are met, ask: does this information amount to probable cause? People v Mesa (1975) 14 C.3d 466, 121 C.R. 473.
- c. Where either prong fails under Aguilar, ask: is the trustworthiness of the informant's information or his own reliability satisfied because of corroboration of his story and other sources? U.S. v Harris (1971) 403 US 573, Draper v U.S. (1959) 358 US 307.

D. Are The Things, Persons Or Places Specifically Described?

1. Specificity with regard to place.

- a. Multiple occupancy. People v Sheehan (1972) 28 C.A.3d 21, 103 C.R. 201; People v Coulon (1969) 273 C.A.2d 148, 78 C.R. 95 (old Cuadros Ranch regularly occupied by hippies); People v Garnett (1970) 6 C.A.3d 280, 85 C.R. 769 (all rooms and buildings of a commune); Hart v Superior Court (1971) 21 C.A.3d 496, 98 C.R. 565 (in and about premises).
- b. "All storage areas" sufficient to search auto on street? People v Dumas (1973) 9 C.3d 871, 109 C.R. 304.

2. Does the affidavit describe by name the persons to be seized and/or searched?

- a. Probable cause to search a particular place does not allow the police to search all persons found in it. U.S. v Di Re (1948) 332 US 581
- b. Does the affidavit speak in terms of unknown people? People v Tenney (1972) 25 C.A.3d 16, 101 C.R. 419.

3. Was the permissible scope of the search property restricted? Marron v U.S. (1927) 275 US 192.

4. Does the informer have the ability to recognize contraband? People v McChristian (1966) 245 C.A. 2d 891, 54 C.R. 324; U.S. v Santiago (1st Cir 1970) 424 F.2d 1047.

5. Property described with specificity?

- a. All books, records, accounts of an attorney too broad? Burrows v Superior Court (1974) 13 C.3d 238, 118 C.R. 166.
- b. Does "all papers" include money? Stern v Superior Court (1946) 76 C.A.2d 772, 174 P.2d 34.
- c. "Evidence of indebtedness" too broad? Griffin v Superior Court (1972) 26 C.A.3d 672, 103 C.R. 379.
- d. "Narcotics" different from "drugs"? People v Moore (1973) 31 C.A.3d 919, 107 C.R. 590.

E. Is The Information In The Affidavit Stale?

Schoeneman v U.S. (D.C. Cir. 1963) 317 F.2d 173, 177 (30 days too long); Sgro v U.S. (1932) 287 US 206; Hemler v Superior Court (1975) 44 C.A.3d 430; 118 C.R. 564; People v Hernandez (1974) 43 C.A.3d 581, 118 C.R. 53 (12 days is on "the fringes of unreasonableness"); People v Mesa (1975) 14 C.3d 466, 121 C.R. 473; People v Alexander (1973) 9 C.3d 387, 107 C.R. 483 (year stale); People v Hemler (1975) 44 C.A.3d 430, 118 C.R. 564 (34 days post narcotic purchase too stale to support probable cause of narcotics at sale location without more facts); People v Superior Court (Brown) (1975) 49 C.A.3d 160, 122 C.R. 459 (31 days after theft sufficient for search for stolen property).

V MECHANICAL SUFFICIENCY: AFFIDAVIT AND WARRANT

A. If A.State Warrant

1. Was there an oath or affirmation? Charney v Superior Court (1972) 27 C.A.3d 888, 104 C.R. 213, Powelson v Superior Court (1970) 9 C.A.3d 357, 88 C.R. 8.
2. Did affiant date and sign affidavit before search warrant issued? Subsequent execution is invalid. See People v Murgia (1974) 43 C.A.3d 85, 117 C.R. 564. Note exceptions for telephone "affidavits" below.

3. Does it name every person whose affidavit has been taken? Pen. C. §1529. (Not required under Fed. R. Crim. P. 41).
 4. Did a magistrate sign warrant, state his office, direct it to a peace officer in county? Pen. C. §1528(a).
 5. Pen. C. §1528(b). Magistrate may orally authorize officer to sign magistrate's name on duplicate original warrant and magistrate must enter on original exact time of issuance. Have both original and duplicate been filed?
 6. If telephonic, is the oral "affidavit" proper under Pen. C. §1526? Note: warrant still must be written. There is no federal counterpart.
 - a. Oath may be given after facts are stated. People v Aguirre (1972) 26 C.A.3d Supp. 7, 103 C.R. 153.
 - b. Although affidavit is given orally via telephone, was the warrant signed by the magistrate before the search? People v Aguirre (1972) 26 C.A.3d Supp. 7, 103 C.R. 153; People v. Bowyer (1974) 37 C.A.3d 151, 112 C.R. 266.
 - c. Inadvertent failure to sign search warrant not defective where affidavit sworn in presence of magistrate who added in signature and where magistrate exercised his discretion and found probable cause. Steinberg v Superior Court (1974) 41 C.A.3d 281, 115 C.R. 893.
 - d. "Oral affidavit" may be transcribed after search. People v Peck (1974) 38 C.A.3d 993, 113 C.R. 806.
 - e. Addendum to affidavit signed by magistrate not a valid transcript. Charney v Superior Court (1972) 27 C.A.3d 888, 104 C.R. 213.
- B. IF A Federal Warrant:
1. Is it directed to a civil law enforcement officer of the United States?
 2. Is there a ten day limit on execution? Fed. R. Crim. P. 41(c).

VI WAS THE WARRANT PROPERLY SERVED?

A. Knock Notice Requirement of Pen. C. §1531.

Can magistrate remove this requirement? Parsley v Superior Court (1973) 9 C.3d 934, 109 C.R. 563; 18 U.S.C. §3109.

B. Execution From 7 A.M. to 10 P.M. Unless Warrant Specifies Any Time On Good Cause. Pen. C. §1533.

Failure to strike portion of printed form "at any time of day or night" does not expressly authorize night search. Fowelson v Superior Court (1970) 9 C.A.3d 357, 88 C.R. 8. Daytime service after sunset? People v Bruni (1972) 25 C.A.3d 196, 100 C.R. 600, Fed. R. Crim. P. 41(c).

C. Execute Within 10 Days of Issuance. Pen. C. §1534.

But probable cause upon when the search warrant was issued must still exist. Burden on defendant to show execution within ten days not timely. People v Hernandez (1974) 43 C.A.3d 581, 118 C.R. 53. Fed. R. Crim. P. 41(c).

D. Can A Search Warrant Issue Before Affidavit Says Contraband Will Be At Place To Be Searched?

People v Shapiro (1974) 37 C.A.3d 1038, 113 C.R. 54.

EYEWITNESS IDENTIFICATION

I WHAT PROCEDURES ARE TO BE FOLLOWED IN A LINE UP?

U.S. v Wade (1967) 388 US 218; Gilbert v California (1967) 388 US 263; Kirby v Ill. (1972) 406 US 682; People v Fowler (1969) 1 C.3d 335; People v Williams (1971) 3 C.3d 853; People v Lawrence (1971) 4 C.3d 273; People v Chonjnacky (1973) 2 C.3d 759.

II ARE THE LINE UP PROCEDURES IMPERMISSIBLY SUGGESTIVE?

Stoval v Denno (1967) 388 US 293; Simmons v U.S. (1968) 390 US 377; Neil v Biggers (1972) 409 US 188; People v Bisheni (1971) 4 C.3d 582; People v Colgain (1969); 276 C.A.2d 118; People v Green (1973) 34 C.A.3d 662.

III COLLATERAL GROUNDS FOR REFUSING TO PARTICIPATE.

People v Stoner (1967) 65 C.2d 595, 55 C.R. 897.

IV CAN DEFENDANT DEMAND A LINE UP?

Evans v Superior Court (1974) 11 C.3d 617.

V PRACTICAL CONSIDERATIONS

A. Composition Consistent?

B. Uniformity in clothing, speech and modeling?

VI REMEDIES FOR FAILURE TO PARTICIPATE IN LINE UP.

VII CORPOREAL vs. PHOTOGRAPHIC IDENTIFICATION

VIII DANGER SIGNALS OF DEFECTIVE IDENTIFICATION

- A. Primary Denial of Ability to Identify.
- B. Witness Knew Defendant Before Crime, But Made No Accusation When Questioned.
- C. Discrepancy in Original Description and Actual Description.
- D. Prior Eroneous Identification.
- E. Failure of Others to Identify.
- F. Limited Observation.
- G. Failure to Identify Prior to Trial.
- H. Mixed Racial Identification.
- I. Failure to Identify Act Was Criminal Situation.
- J. Lapse of Time From View to Identification.
- K. Number of Defendants.
- L. Failure to Make Positive Trial Identification: Approaches to Court Identification.

MODEL SEARCH WARRANT FACT SHEET

On February 2, 1976, Rat Fink, called Detective Ed Davis, Mainline Police Department, Narcotics Division, and informed him of the following:

That on February 1, 1976, he was contacted by Joe Dealer who inquired whether Rat Fink knew anyone who wanted to buy \$10,000 worth of heroin. Rat Fink, presently under indictment for sales of heroin, immediately thought of Detective Davis as a possible purchaser.

Rat Fink is invited to the police station by Detective Davis and meets with the narcotic division task force. An arrangement is made for him to call Joe Dealer.

On February 2, 1976, at the Mainline Police station, at 2:00 p.m., a call is placed to telephone number 123-4567. Present are Rat Fink, Detective Davis and undercover officer Joe Mark. Detective Davis listens in and hears a conversation in which Fink states that he has a buyer. The person on the other end of the line states, "Fine, I've got the stuff here. When and where do you want delivery? The price is \$10,000 payable on delivery." The person further states that he will meet Fink at 8:00 p.m. at the apartment of Sam Dealer, Joe's brother, 290 Sin Street, Apartment C, Mainline, California.

Detective Davis withdraws from the Mainline Police Department general fund \$10,000 in \$1,000 bills with pre-recorded serial numbers 1-10. The money is given to Joe Nark.

On February 2, 1976, at 8:00 p.m., Fink, Nark and Davis proceed to 290 Sin Street. Davis surveils from across the street and observes Fink and Nark enter the apartment building and go out of sight. Fifteen minutes later three shots ring out. Davis runs into the building and hears retreating footsteps upstairs. He runs upstairs and seeks Fink and Nark lying in the doorway of Apartment C, dead. He examines Nark's body and notices his badge and Derringer pistol, serial number A12345, are missing. No suspects are found at the scene and neither is the \$10,000 cash.

Later that evening the coroner removes a .38 caliber slug from the heart of each victim.

On March 2, 1976, Ima Dicted walks into the Mainline Police Department and asks to speak with Detective Davis. She tells Davis that she has just read a story in the paper regarding the death of Officer Nark which occurred one month prior. The story related the facts surrounding the officer's death, including the loss of his badge, gun and the \$10,000 cash. She states to Davis that she immediately thought that her cooperation would help her work off the possession of heroin case that she has pending in court. She relates that three weeks ago, she contacted her source, Joe Dealer, at 700 Easy Street, regarding a purchase of heroin to feed her habit. Dealer offered a bulk sale of \$10,000 worth of heroin

for \$5,000 because he was hot; had just killed a cop during a \$10,000 rip-off; and needed to get out of town. When she expressed disbelief, Dealer showed her what appeared to be a police badge and removed what appeared to be heroin from under the mattress on his bed. She describes Joe Dealer as a male caucasian, five foot five inches, 220 pounds, brown eyes with a blonde natural hairdo. She states that she has observed him driving a 1957 tan Buick, license number ABC 123, which he parks in front of his residence at 700 Easy Street, Mainline.

Upon receiving this information, Detective Davis runs the license number ABC 123 through the Department of Motor Vehicles and it comes back registered to Joe Dealer at 700 Easy Street, Mainline. He also obtains a photostatic copy of Dealer's driver's license and notes the photograph on the license matches the description given by Dicted. Davis also checks telephone number 123-4567 through a reverse phone directory which shows the number listed to Joe Dealer at 700 Easy Street.

On March 5, 1976, Detective Davis contacts his usual stable of informants and learns from Honest Ike, who has previously given information leading to the conviction of 300 separate defendants, that he was told by a friend that Joe Dealer had sold two guns to Fred Fence on March 4, 1976, at Fence's business, (telephone number 333-3333). Davis checks telephone records which show that Fence's business is located at 300 Hot Place, Mainline. Ike also tells Davis that the same friend informed Ike that Dealer had deposited the \$10,000 ripped off from Nark into his business account.

On March 6, 1976, Davis spots Joe Dealer's vehicle parked at the Ptomaine Coffee Shop. He checks the door, determines it to be unlocked, and enters. In the glove compartment he finds a check with the imprint of Ace Mattress Stuffing Company and bearing the signature Joe Dealer, president. The check is drawn on an account at the Last Western Bank, Mainline Branch. He replaces the check, wipes off his fingerprints, and departs.

That afternoon, Davis contacts the manager of the bank, U.R. Safe, who informs him that it is the policy of the bank to refuse to disclose the names of any depositor. Safe also states that the bank's policy is to record the total amount of all deposits over \$1,000 and the serial numbers of all bills deposited over \$1,000. Furthermore, the bills themselves are impounded by the bank for 60 days. Davis asks to see the bank records relating to the Ace Mattress Stuffing account and the serial numbers and records pertaining thereto. Safe refuses to turn over any such information without a court order.

On March 7, 1976, Davis meets with Deputy D. A. B. Fair, and asks him to draft a search warrant in order to locate the evidence he needs.

Deputy D. A. Fair writes the warrant and affidavit for Davis and presents it to Judge Roy Bean for Bean's signature. Judge Bean signs both on March 7, 1976. Davis proceeds to 700 Easy Street in Mainline; knocks on the door; announces his occupation and purpose; demands entry; and receiving no response enters the unoccupied living room of the location. Davis's search of the living room is fruitless.

He then proceeds to enter the bedroom of the location by opening the closed door without further announcing his presence. Nark's badge and a large amount of heroin are recovered under the mattress in that room. No one is discovered in the location.

Davis then proceeds to the apartment house where Nark was killed. He knocks on the door of Apartment D; Linda Lovely opens the door; and Davis hands her a copy of the search warrant. She immediately states, "Hey, that double killing was next door in Apartment C." Davis realizes his mistake and turns reluctantly to leave when he sees a pile of hash over her exposed shoulder. He seizes it (the hash, not the shoulder) and arrests Miss Lovely. At 10:01 p.m., with Miss Lovely in tow, Davis goes to Apartment C; complies with 1531 P.C.; and is admitted to living room of the apartment by Joe Dealer's brother Sam. He searches Sam on the spot and recovers a blackjack from his right watch pocket. From the doorjamb of Apartment C, he removes a spent .38 caliber round.

At 11:00 a.m. the next day, Davis drives to 300 Hot Place, a one-story brick business establishment. and parks his car. He notices the 1957 Buick, belonging to Joe Dealer, parked immediately in front of the location. Ever vigilant, he then observes Joe Dealer asleep on the front step of the location and arrests him for the murders of Nark and Fink. Patting him down for weapons, Davis removes a .38 caliber revolver, a Derringer pistol, and a .22 caliber pistol. He then proceeds to enter the location, a pawn shop open for business,

and serves the warrant on Fence. He recovers a small amount of cocaine from an opaque envelope located inside Fence's desk. Davis also searches Dealer's Buick and recovers a Dealer deposit slip with an entry showing a \$10,000 deposit on February 3, 1976, at the Last Western Bank.

That afternoon Davis serves a copy of the warrant on U. R. Safe and Safe immediately turns over the records pertaining to Dealer's business account; a list of the serial numbers of all large denomination bills received after February 2, 1976; and \$10,000 in \$1,000 bills bearing serial numbers 1-10. Dealer's business account shows a \$10,000 deposit on February 3, 1976. The serial number list recorder shows that teller Mary Lou Smiles received the ten \$1,000 bills on February 3rd. Davis asks Mary Lou if she remembers the transaction, and she replies, "Yes, Mr. Dealer is our most attractive customer."

Davis lists in his return all the items recovered which he then files in court on March 9, 1976.