Magistration: Warrants

Bronson Tucker, General Counsel, TJCTC

1

Agenda

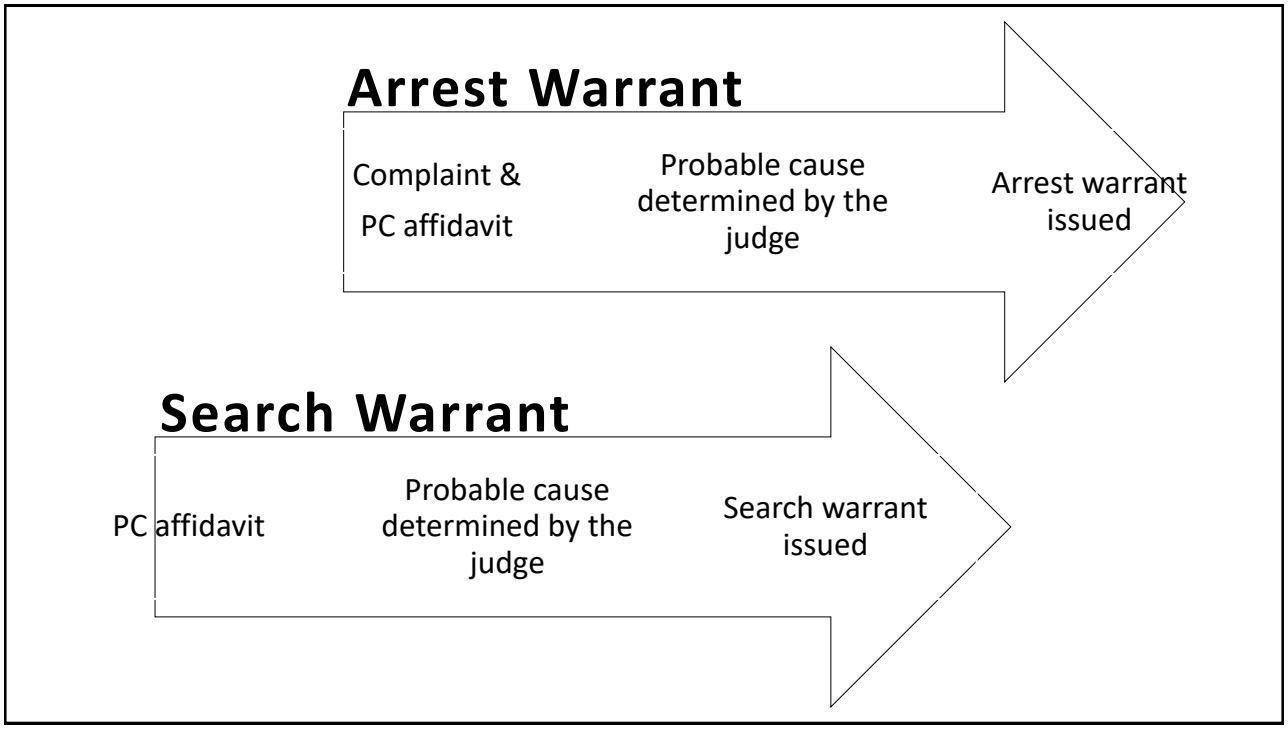
Issuing Arrest Warrants

Search Warrant Procedure

Types of Search Warrants & Limitations

Mental Detention Warrants

2



3

ISSUING ARREST WARRANTS

Code of Criminal Procedure Chapter 15

4

Who Prepares The Documents?

- Law enforcement **always** prepares the charging complaint and the probable cause affidavit.
  - You **cannot** create these documents.

- You, the judge, are legally responsible for preparing the **warrant**.
  - Often, the officer has already prepared the warrant, and you just need to sign it.
  - This is fine as long as you **read** the warrant and make sure there is probable cause before signing it.

5

6 Requirements of a Charging Complaint

1. Be in writing

2. State the name of the accused.

- If unknown, give a description of the accused that clearly identifies them from any other person.
- Does not have to be legally correct (nickname, aka, misspelled if sounds the same).

3. Allege the commission of an offense.

- Must state that the accused committed the offense or the affiant has good reason to believe, and does believe, the accused committed the offense.
- Must have enough information to put the accused on notice of what offense was committed & how, so the accused can prepare a defense.
- Should track the language of the statute.

6

6 Requirements of a Charging Complaint continued

4. State the time and place where the offense was committed.

- Time = date - "on or about" is sufficient.
- Place = county where the offense occurred.

5. Signed by the affiant (person swearing to the document).

- Writing his/her name, or
- Affixing his/her mark.

6. Under oath.

- Sworn to by the affiant.
- Oaths can be taken by: District attorneys, county attorneys, their assistants, or **magistrates**

7

Probable Cause – Definition

Chapnick v. State, 25 S.W.3d 875

Facts and circumstances that make it **more likely than not** that:

- A certain person has committed, or is committing, a certain crime, or
- A certain place contains specific items connected to a certain crime.

Probable cause exists where the police have reasonably trustworthy information that causes a reasonable person to believe a particular person has committed or is committing an offense.

8

Probable Cause Affidavit 101

- Does more than allege the commission of the offense, it contains *factual statements* which establish probable cause for the arrest of the accused.
- The affidavit must contain facts that establish *each element of the offense*.
- *Carroll v. U.S.*, 267 U.S. 132

Find the offense in the Penal Code and make sure the affidavit contains all those elements.

9

Probable Cause Affidavit: Requirements

- Does not need to track the exact statutory language defining the offense.
- Sworn to and signed by the officer before the magistrate.
  - May be in the magistrate's presence or may be over the phone.

10

"Four Corners" Rule

- A probable cause determination is based *only* on the affidavit.
- You can't rely on information told to you by the officer.
- If it's not in the affidavit, treat the information as if it doesn't exist.

11

- Evidence may be thrown out if the magistrate's conduct shows that he/she did not act in a **neutral, detached manner.**
- ***Do not*:**
  - Write or edit the affidavit supporting the warrant.
  - Tell the officer how to "fix" the affidavit supporting the warrant.

12

Combined Complaint and Affidavit

- Practice Tip: Often the complaint and PC affidavit are combined into one document.
- This is fine; however, the requirements of both documents must be met, or no warrant may be issued.

13

The warrant *must*:

1) Be issued in the name of "The State of Texas."
2) Name or describe the person to be arrested.
3) State the offense the accused is charged with.
4) Directed to a peace officer, or some other person specifically named,
5) Commanding them to take custody of a person accused of an offense.
6) Be signed by a magistrate whose office is either stated in the body of the warrant or in connection with the signature, and with their name clearly legible in type or print.

CCP Art. 15.01, 15.02

14

Arrest Warrant Procedure

1. Swear in the officer:

- ✓ Have the officer face you.
- ✓ Both raise your right hands.
- ✓ Administer the oath.
- ✓ Officer signs the charging complaint, PC affidavit, and arrest warrant application.

2. Review the Charging Complaint, PC Affidavit, and warrant application:

- ✓ Read each document.
- ✓ Make sure requirements are met.
- ✓ Determine whether there is PC.

3. If Probable Cause (PC) exists:

- ✓ Sign and date the documents.
- ✓ Make sure your office is listed next to your signature (if not included in the warrant).
- ✓ Affix your official seal (if not pre-printed).

15

Tips

Never sign an arrest warrant without having first read the charging complaint and probable cause affidavit.

If there is any kind of problem with any of the documents, refuse to sign unless and until the problem(s) is/are resolved.

16

SEARCH WARRANT PROCEDURES

17

Step 1 - Application

- Before a magistrate may issue a search warrant, a sworn probable cause affidavit must be filed.
  - We will discuss determining whether or not PC exists later!
  - CCP Art. 18.01(b)

18

Step 1 – Application: Confidential?

Except as provided by Article 18.011, which provides for the sealing of records, the affidavit establishing probable cause becomes public information **when the search warrant is executed.**

The magistrate's clerk must make a copy of the affidavit available for public inspection in the clerk's office during normal business hours.

- CCP Art. 18.01(b).

19

Step 1 – Application: Where?

- The magistrate issuing a warrant must have jurisdiction over the geographical area to be searched.
  - *Gilbert v. State*
- This means you can only issue warrants to search in your **county**.
  - You are issuing the warrant as a ***magistrate, not as a judge***, so your jurisdiction is county-wide

20

Step 1 – Application: How?

- The applicant must swear to the information, which may be done by:
- Being placed under oath
- Signing an "unsworn declaration"
- Signing the affidavit in front of officer authorized to administer oaths (you and your clerk qualify)
- The affidavit can be presented either in person **or** by telephone or other reliable electronic means.
  - CCP Art. 18.01(b-1)

21

Electronic Application

- Special procedures and requirements apply whenever the application is electronic.
- Please see Magistration Deskbook Chapter 3, Subchapter B, part 1 for details!

22

1

You, the judge, are legally responsible for preparing the warrant.

2

Often, the officer has already prepared the warrant and you just need to sign it.

3

This is fine as long as you read the warrant and make sure there is probable cause before signing it.

23

The search warrant must:

1. Be issued in the name of "The State of Texas";
2. Identify, as near as may be, that which is to be seized and name or describe, as near as may be, the person, place, or thing to be searched;
3. Command any peace officer of the proper county to search forthwith the person, place, or thing named;
4. Be dated (including hour) and signed by the magistrate; and
5. Have the magistrate's name appear in clearly legible handwriting or in typewritten form with the magistrate's signature.
   - Code of Criminal Procedure Art. 18.04.

24

Description of the Place

- The warrant should contain the specific street address, or a full description of the building and surrounding areas if no address is provided.
  - *Ex parte Flores*

25

Description of a Person

- If a person is to be searched, the warrant should describe the person to be searched including any or all of the following, although all need not be present:
  - proper name, nickname or street name;
  - age;
  - gender;
  - height and weight;
  - identifying marks; or
  - ethnic origin.

26

- A search warrant must be executed within "3 whole days"
  - This does not count the day of issuance or the day of execution
- ***Exception:*** 15 days if the warrant is issued solely to search for and seize specimens from a specific person for DNA analysis and comparison, including blood and saliva samples
  - CCP Art. 18.07(a).

27

Step 3 – Return of Warrant

- When the property to be searched for and seized is found, the officer shall take possession and bring it to the magistrate.
  - CCP Art. 18.09.
- The magistrate should review the search warrant return filed and determine if the warrant was executed, the manner of execution, and if any articles were seized.
  - CCP Art. 18.10.

28

Step 3 – Custody of Property

- The officer shall retain custody of the seized property until the magistrate enters an order directing the manner of safekeeping the property.
  - Code of Criminal Procedure Art. 18.10.
- The magistrate shall file the search warrant and return and record of any proceedings with the clerk of the court having jurisdiction of the case including the schedule of the property seized.
  - Code of Criminal Procedure Art. 18.15.

29

Types of Search Warrants

30

Types of Search Warrants

"Standard" Search Warrants

Combo Search & Arrest Warrants

Evidentiary Search Warrants

Contraband Search Warrants

Cell Phone Warrants

Administrative Warrants

Warrant to Photograph Injured Child

31

"Standard" Search Warrants

- Art. 18.02 lays out the items that can be the subject of a search warrant.
- These include:
- Property acquired by theft or in any other illegal manner.
- Property designed, made, or commonly used in the commission of a crime.
- Weapons kept or prepared for the purposes of insurrection or riot.
- Weapons prohibited by the Penal Code.
- Gambling devices, equipment, or paraphernalia.

32

"Standard" Search Warrants (cont.)

- Additional items "standard" search warrants may issue for:
- Obscene materials kept or prepared for commercial distribution or exhibition.
- Drugs or controlled substances kept, prepared, or manufactured in violation of the laws of this state.
- Any property which is illegal to possess.
- Instruments or items used to commit a crime.
- Electronic customer data held in electronic storage – remember location limits!

33

- People can be searched under a search warrant but not seized.
- However, if the facts presented for the issuance of a search warrant also establish probable cause that a person has committed an offense, the search warrant may also order the arrest of the person.
  - CCP Art. 18.03

34

Evidentiary Search Warrants

Under Art. 18.02(10) of the Code of Criminal Procedure, a search warrant may issue for something that may be lawful to possess but is evidence that a person did (or did not) commit a crime.

A warrant of this type is called an **evidentiary search warrant**.

The most common example is a warrant to take the blood of someone suspected of DWI and test it for its alcohol content. These **blood warrants** are discussed in more detail later.

35

Evidentiary Search Warrants – PC Affidavit Requirement

- A probable cause affidavit for an evidentiary search warrant must state:
  - - That a **specific offense** has been committed;
  - - That the specifically described property or items that are to be searched for or seized constitute evidence of that offense or evidence that a particular person committed that offense; **AND**
  - - That the property or items constituting evidence to be searched for or seized are located at or on the particular person, place, or thing to be searched.
- Code of Criminal Procedure Art. 18.01(c).

36

- A justice of the peace may only issue evidentiary or contraband search warrants if their county does not have:
- A county court-at law,
- A county judge who is a licensed attorney, **or**
- A municipal court of record with a judge who is a licensed attorney.
- *Code of Criminal Procedure Art. 18.01(i).*

37

- Additionally, any attorney JP may issue a search warrant to collect a blood specimen from a person who is arrested for an intoxication-related offense and refuses to provide a sample of his or her breath or blood.
- However, this authority **does not** extend to other evidentiary search warrants.
- *Code of Criminal Procedure Art. 18.01(j).*

38

Blood Warrants Executed in Adjoining Counties

- Blood search warrants may be executed by any peace officer in any county adjacent to the county in which the warrant was issued.
- Evidence seized under a blood search warrant may be removed from the county in which it was seized and returned to the county in which the warrant was issued without a court order.

Code of Criminal Procedure Art. 18.067, 18.10

39

Use Your Flowchart to Answer the Questions

Is a search warrant for a weapon that is illegal to possess that LE believes was used in a crime an "evidentiary search warrant"?

Judge Smith is a JP in Lone Star County. That county has no county court at law and has no municipal court of record. The county judge is a lawyer. Can Judge Smith issue an evidentiary search warrant?

Now assume Judge Smith is an attorney. An affidavit is presented for an evidentiary search warrant for saliva to compare to DNA samples. Can Judge Smith issue it?

40

Evidentiary Search Warrants – Other Limitations

- May not be issued to search for and seize property or items that are located in an office of a newspaper, news magazine, television station, or radio station.
- A **subsequent** evidentiary search warrant issued to search the same person, place, or thing subjected to a prior search may only be signed by a:
- District Court judge,
- Court of Appeals judge,
- Court of Criminal Appeals judge, or
- Supreme Court of Texas justice
- *Code of Criminal Procedure Art. 18.01(d), (e).*

41

- Contraband is:
- property that is used in the commission of certain crimes,
- proceeds gained from the commission of those certain crimes,
- property acquired with proceeds gained from the commission of those crimes, or
- property used to facilitate the commission of certain crimes.
  - CCP Art. 59.01(2).

42

Contraband Search Warrants – PC Affidavit Requirement

- The probable cause affidavit for a contraband warrant must include:
  - Sufficient facts to establish probable cause that a specific felony offense has been committed;
  - That the specifically described property or items that are to be searched for or seized constitute contraband as defined in Article 59.01 of this code; and
  - That the property or items are located at or on the particular person, place, or thing to be searched.
- Code of Criminal Procedure Art. 18.01(g).

43

Evidentiary Search Warrants are for property or items that constitute evidence of a crime or evidence that shows a particular person committed a crime (*wouldn't ordinarily be a crime to possess these items*)

- **Examples:** rope, pillowcase, blood, kitchen knife

Contraband Search Warrants are for property that is used in the commission of certain crimes, proceeds gained from the commission of those certain crimes, acquired with proceeds gained from the commission of those crimes, or used to facilitate the commission of certain crimes.

- **Examples:** suspected drug dealer's vehicle or cash found at their house, credit card maker (used for credit card abuse scheme)

44

Cell Phone Search Warrants

- A "cellular phone or other communication device (*iPad, laptops, etc.*)" may be the subject of a search warrant.
- Law enforcement must get a warrant before searching a cell phone.
- Such a warrant can only be issued by judge in judicial district of the law enforcement agency that has possession of the phone or where cell phone is likely located.
  - CCP Art. 18.0215.

45

- Note that the previous slide does not apply to a search warrant for electronic data held by phone servers, which are reachable by "standard" search warrants.
  - For more info on these "ping" warrants, take a look at *Sims v. State* (TX Court of Criminal Appeals) and *Carpenter v. U.S.* (U.S. Supreme Court).
  - Also keep in mind location restrictions!

46

- An administrative search warrant may be issued to a fire marshal, health officer, or code enforcement official of the state, county, city, or other political subdivision
- This warrant allows the inspection of specified premises to determine the presence of a fire or health hazard, unsafe building condition or a violation of any fire, health, or building regulation, statute, or ordinance.
- *Must be supported by probable cause.*
  - *Code of Criminal Procedure Art. 18.05.*

47

Warrants to Photograph Injured Child

- A search warrant may be issued to search for and photograph a child who is alleged to be the victim of the offenses of:

- injury to a child (Sec. 22.04, Penal Code);
- sexual assault of a child (Sec. 22.011(a), Penal Code);
- aggravated sexual assault of a child (Sec. 22.021, Penal Code); or
- continuous sexual abuse of young child or children (Sec. 21.02, Penal Code.)
  - Code of Criminal Procedure Art. 18.021(a).

See the Magistration Deskbook for important procedural restrictions.

48

Determination of Probable Cause

Secure from unreasonable searches and seizures.

49

Probable Cause Affidavit Requirements

The affidavit **must**:

1) Describe the person, place, or thing to be searched.
2) Name or describe the thing(s) to be seized.
3) Describe the location of the person, place, or thing to be searched in sufficient detail.

   Ask yourself: "Could I find this person, place, or thing using the information found in the affidavit?"
4) Provide facts that allow the magistrate to reasonably infer that the object(s) of the warrant are present at the suspected premises at the time the warrant is issued.

50

Supreme Court Description

- Must contain sufficient facts that when coupled with inferences from those facts, establish a fair probability that evidence of a particular crime will likely be found at the specific location.
  - *Illinois v. Gates, 462 U.S. 213 (1983)*

51

Facts and circumstances that make it **more likely than not** that:

- A certain person has committed, or is committing, a certain crime, or
- A certain place contains specific items connected to a certain crime.

Probable cause exists where the police have reasonably trustworthy information that causes a reasonable person to believe a particular person has committed or is committing an offense.

52

Stay Strong

- It's your signature and it's the accused's constitutional rights. If you don't have probable cause, the arrest or search will be illegal.

53

Insufficient Probable Cause

- If you determine the probable cause is insufficient, should you:
  - Explain to the officer what is missing and reconsider once they add the missing information?
  - Deny the issuance of a warrant without comment?
  - Does your answer depend on what is missing?

54

Review – In the Chat

- A search warrant is issued for Shayna's blood, to see if she committed DWI. How many days does the officer have to execute the warrant?
- True or false: Every search warrant must allege the commission of a specific criminal offense?
- True or false: Only a district judge can issue a warrant to seize and search a cell phone?
- What if there is hearsay in the affidavit?
- What if the defendant's name is misspelled?

55

PC Review – In the Chat

- Could you consider the following in a PC affidavit and if not, why not?
- Statement in sworn affidavit that "where there's smoke there has to be fire"
- Verbal statement by officer presenting written affidavit that "this guy's a really bad dude."
- Proof of purchase of scales and baggies when requesting search warrant for illegal drugs
- Statement from drug addict that they purchased drugs at an address where search warrant for illegal drugs is sought

56

Emergency Detention Orders (Mental Health Warrants)

57

- *Also called an **Emergency Detention Order (EDO)***
- Sometimes a person who has not been arrested is in mental health crisis and is *not seeking treatment on their own*.
- **Any person** may file an application to issue a warrant to have the person arrested and taken to a mental health facility for evaluation.
  - Applications are typically filed by a family member, neighbor or physician at a hospital or ER.

58

- The warrant may only be issued if there is an **imminent risk** (meaning it is about to happen) that the person will **seriously harm** themselves or someone else.
- There are additional requirements, please see the Magistration Deskbook for additional information.
  - A peace officer may also apprehend someone in this situation on their own if the officer does not have time to get a warrant before the person is likely to hurt themselves or someone else.

59

Available Forms

Access forms at:
https://www.texasjcmh.gov/technical-assistance/forms/jcmh-committee-forms-database/

60