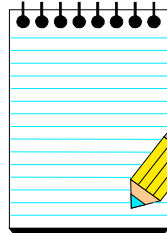


Search and seizure



The Constitution provides that the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce and particularly describing the place to be searched and the person or things to be seized (Article III, Section 2, 1987 Constitution).

A search warrant is an order in writing issued in the name of the People of the Philippines, signed by a judge and directed to a peace officer, commanding him to search for personal property particularly described thereof and to bring it before the court.



A search warrant may be issued for the search and seizure of personal property: (a) subject of the offense; (b) stolen or embezzled and other fruits of the offense; and (c) used or intended to be used as the means of committing an offense.

Probable cause is defined as such facts and circumstances which could lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place to be searched.

The determination of probable cause is a function of the judge. It is not for the public prosecutor (“fiscal”) to determine. Only the judge can make this determination.

An application for search warrant shall be filed with any court within

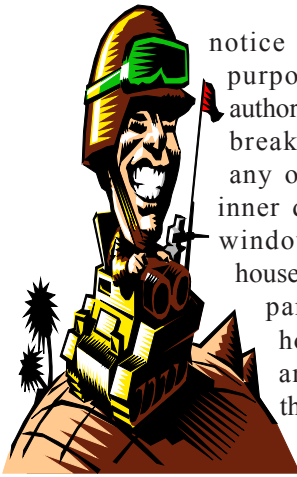
whose territorial jurisdiction a crime was committed, or for compelling reasons, any court within the judicial region where the crime was committed if known, or where the warrant shall be enforced (Section 2, Rule 126).

The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath, the complainant and any witnesses he may produce on facts personally known to them and attach to the record their sworn statements together with any affidavits submitted.

A **general warrant** is not valid since it vaguely describes and does not particularize the personal properties to be seized, and is without a definite guideline to the searching team as to what items might be lawfully seized

The officer implementing the search warrant if refused admittance to the place of the directed search after giving





notice of his purpose and authority, may break open any outer or inner door or window of a house or any part of a house or anything therein to execute

the warrant or liberate himself or any person aiding him when unlawfully detained therein.

No search of a house, room, or any other premise shall be made except in the presence of the lawful occupant thereof or any member of his family or in the absence of the latter, in the presence of two witnesses of sufficient age and discretion residing in the same locality.

The warrant must direct that it be served in the day time unless the affidavit asserts that the property is on the person or in the place ordered to be searched, in which case a direction may be inserted that it be served at any time of the day or night.

A search warrant shall be valid only for ten (10)

days from its date. Thereafter it shall be void.

The officer seizing the property under the warrant must give a detailed receipt for the same to the lawful occupant of the premises in whose presence the search and seizure were made, or in the absence of such occupant, must, in the presence of at least two witnesses of sufficient age and discretion residing in the same locality, leave a receipt in the place in which he found the seized property.



Rule 126

The officer must forthwith deliver the property seized to the judge who issued the warrant, toge-

ther with a true inventory verified under oath.

Checkpoints are valid for as long as they are limited to a visual search. The vehicle must not be subjected to search; the occupants must not be subjected to a bodily search. (Valmonte vs. De Villa)

A buybust is an entrapment operation made by police authorities against drug pushers.

A motion to quash a search warrant and/or to suppress any evidence obtained thereof may be filed in and acted upon only by the court where the case has been instituted. If no criminal action has been instituted, the motion may be filed in and resolved by the court that issued the search warrant. (Section 14, Rule 126 of the Revised Rules of Criminal Procedure)

WARRANTLESS SEARCHES

There are several settled exceptions to the rule on a warrantless search: (1) a search incidental to a lawful arrest; (2) a search on a moving vehicle; (3) seizure of evidence in plain view; (4) when there is consent given by the person searched.

As an incident of a lawful arrest, a warrantless search is subject to the following: (a) the arrest must be lawful; (b) the search and seizure must be contemporaneous with the arrest; and (c) it must be within a permissible area of search

A search done when there is consent is subject to these requisites: (a) there is a right; (b) there is knowledge of the existence of such right; and (c) there must be intention to waive the right.