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Civil Liability for Exceeding the Scope of a Search Warrant

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Introduction

The Fourth Amendment to the U.S. Constitution, and equivalent provisions in the Constitutions of each of the individual states, prohibits “unreasonable” searches and seizures, and contains a warrant requirement for many searches into private homes and businesses. The Fourth Amendment provides that:

“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.”

Searches and seizures that run afoul of these requirements may result in suppression of evidence under the exclusionary rule, and may also result, in some cases, in civil liability for officers, supervisory personnel, and municipalities under a federal civil rights statute, [42 U.S.C. Sec. 1983](#) or, in some instances, under applicable state law.

There are many exceptions to the warrant requirement, of course, including consent search, hot pursuit, exigent circumstances, etc. But in instances where a warrant is required, and is obtained, the existence of the warrant may be a necessary, but not always sufficient, barrier to a finding that a search was unreasonable and the imposition of civil liability.

Courts may examine a variety of questions after the search is conducted, including the veracity of the affidavits on the basis of which the warrants were issued, the manner in which entry was made into the premises (such as whether “knock and announce” was required), and the amount of force used against the occupants of the premises. A number of lawsuits have also focused on situations in which the wrong premises were mistakenly searched.

The focus of this article is on the legal impact of the last phrase of the Fourth Amendment, the requirement that search warrant not be “general” warrants authorizing “fishing expeditions” into anything and everything, but instead particularly describe, with specificity, “the place to be searched, and the persons or things to be seized.” In instances where either the warrant issued fails to do so, or the officers go further in their searches and seizures than the warrant authorizes, there may be civil liability for exceeding the warrant’s permissible scope.

At the conclusion of the article, a number of useful resources and references are listed.

Civil Liability for Exceeding the Scope of a Search Warrant

In [Groh v. Ramirez](#), #02-811, 540 U.S. 551 (2004), a civil liability case, the U.S. Supreme Court examined the particularity requirement of the warrant provision of the Fourth Amendment.

In this case, an ATF federal agent signed a search warrant application that sought permission to conduct a search of a Montana ranch for weapons, explosives, and records. The warrant was granted by a magistrate despite the fact that the warrant form section requiring a description of the “person or property” to be seized only described the house at the ranch, and did not list the weapons, explosives, or records being sought. Further, the warrant failed to incorporate by reference the detailed list of such items contained in the agent's application.

When the search was conducted, the items sought were not found to be present at the ranch. The occupants of the ranch, who had been left with a copy of the warrant only, and not the application, filed a federal civil rights lawsuit claiming that the search violated their constitutional rights.

The U.S. Supreme Court held, in a 5-4 split decision, that the warrant was clearly and plainly unlawful, and that the defendant agent was not entitled to qualified immunity from liability, upholding the decision of the U.S. Court of Appeals for the Ninth Circuit.

The Court majority found that the warrant was plainly invalid because it did not meet the Fourth Amendment's "unambiguous requirement" that a warrant "particularly describe ... the persons or things to be seized." The fact that the application adequately described those things does not save the warrant, the decision stated, as Fourth Amendment interests are not necessarily vindicated when another document says something about the objects of the search, but that document's contents are neither known to the person whose home is being searched nor available for inspection. The Court found it unnecessary to decide whether the Fourth Amendment permits a warrant to cross-reference other documents, since that did not happen in this case.

The Court majority also rejected the agent's argument that the search was still reasonable. It found that since the warrant did not describe the items at all, it was so "obviously deficient" that the search must be regarded as warrantless, and was therefore "presumptively unreasonable."

The majority of Justices--Stevens, O'Connor, Souter, Ginsburg, and Breyer--also found that the agent was not entitled to qualified immunity since "it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." Given the plain statement of the particularity requirement in the text of the Fourth Amendment, no reasonable officer could believe that a warrant that did not comply with that requirement was valid. Additionally, since the agent himself prepared the warrant, he could not argue that he reasonably relied on the magistrate's assurance that the warrant was valid and had an adequate description of the items to be searched for and seized.

A strong dissent by Chief Justice Rehnquist, and Justices Kennedy, Thomas, and Scalia argued that despite the defective warrant, the search was reasonable, and that, in light of the "confused state of our Fourth Amendment jurisprudence and the reasonableness" of the agent's actions, "even if the Court were correct that this search violated the Constitution" the agent should be entitled to qualified immunity.

In [Rivera Rodriguez v. Beninato](#), #05-2748, 461 F.3d 1 (1st Cir. 2006), the federal appeals court ventured an opinion on the "attached affidavit" issue unanswered in [Groh](#). Even though a search warrant for a home did not describe the property to be seized, a reasonable officer could have believed that it was sufficient because of its reference to an attached affidavit, which did mention the evidence sought. Accordingly, the officers were entitled to qualified immunity. And while the warrant authorized the search to take place any time between 6 and 10 a.m., the officers' minor deviation from this, in beginning the search at 5:50 a.m. did not violate the resident's constitutional rights

The presence of an attached affidavit did not save the constitutionality of the search in [Cassady v. Goering](#), #07-1092, 567 F.3d 626 (10th Cir. 2009), however. In that case, a sheriff was told that a farmer had some marijuana plants inside a Quonset hut on his property. Officers then searched the farm after obtaining a warrant. The farmer sued, claiming illegal search and seizure.

A federal appeals court held that the sheriff was not entitled to qualified immunity from liability. “Because the warrant permits a general search and seizure of ‘all other evidence of criminal activity,’ we hold it was a general warrant prohibited by the Fourth Amendment.” The fact that the affidavit for the warrant was incorporated into the warrant by reference, the court stated, did not save the warrant’s validity, since the officers only possessed probable cause to conduct a search for evidence concerning the cultivation of marijuana, but the warrant purported to authorize the seizure of any possible evidence of any crime in any jurisdiction.

The court reasoned that the warrant authorized exactly the type of “rummaging” through the farmer’s belongings seeking evidence of possibly unsuspected prior crimes, or of no crime at all, which it said the Fourth Amendment was intended to prevent.

Lack of specificity was similarly a problem in Williams v. County of Santa Barbara, #00-11122, 272 F. Supp. 2d 995 (C.D. Cal. 2003), ruling that warrants for the search of a residence were not supported by probable cause when the affidavit provided no basis to support the belief that evidence of crime would be found there and broadly sought “every conceivable kind of document” relating to the residents’ personal and business financial activities.

Affidavits submitted were used to obtain warrants for a total of 16 locations, with only the particular location or person to be searched altered in the last section. Officers were not entitled to qualified immunity for conducting the searches, as no reasonable officer would have believed that the affidavit provided probable cause.

Alleged excess in the scope of the property seized, destroyed, or damaged, and the purpose for which it was seized was a problem in San Jose Charter of the Hells Angels Motorcycle Club v. City of San Jose, #02-16329, 402 F.3d 962 (9th Cir. 2005), in which seven police officers and a deputy sheriff appealed from a decision of a federal trial court denying their motions for qualified immunity in a lawsuit arising out of the simultaneous execution of search warrants at the residences of members of the Hells Angels Motorcycle Club and at the Hells Angels clubhouse in San Jose, California.

While executing one of the search warrants at a residence, the officers shot two of the homeowner’s dogs, and while searching another person’s property, they shot and killed one of the dogs there. Also, during the searches at all of the locations, at the alleged direction of the deputy sheriff, the officers allegedly seized literally “truckloads” of personal property for the sole purpose of showing in a murder prosecution that the Hells Angels had “common symbols,” in order to qualify it as a criminal street gang and therefore support a sentencing enhancement under California law against the defendant in that case. In the course of seizing this “indicia” evidence, the officers allegedly seized numerous expensive Harley-Davidson motorcycles, a concrete slab, and a refrigerator door, causing significant damages to the items seized as well as to other property.

A federal appeals court upheld the denial of qualified immunity to the officers and sheriff's deputy on Fourth Amendment claims regarding these seizures.

The court held that the deputy's instructions to seize "truckloads" of personal property, including the motorcycles and a piece of concrete, for the sole purpose of proving that the Hells Angels was a gang was an unreasonable execution of the search warrants in violation of the Fourth Amendment, and that a reasonable officer, at the time, would have had notice that this conduct was unlawful.

The appeals court also held that the shootings of the dogs at both residences were unreasonable seizures and an unreasonable execution of the search warrants. The court found that exigent circumstances did not exist at either residence justifying the shooting of the dogs, as the police officers had a week to consider the "options and tactics available for an encounter with the dogs," but failed to develop a realistic plan for incapacitating the dogs other than shooting them. This, the unnecessary destruction of property during the execution of a search warrant, the court also found, would have been known to have been unlawful by any reasonable officer.

The search warrants authorized searches to attempt to recover a videotape thought to be relevant to the murder case, notes or records of Hells Angels meetings, and indicia of Hells Angels affiliation or membership. The videotape and meeting notes were not found, but numerous items of Hells Angels indicia were seized.

Viewing the facts in the light most favorable to the plaintiffs, the appeals court concluded that the authority to seize indicia evidence to support a sentencing enhancement against the defendant in the murder trial "did not justify the level of intrusion and excessive property damage that occurred during the search of the various locations." The search for indicia of Hells Angels affiliation, the court noted, served a limited purpose, and the property seized was not evidence of a crime, but merely support for a sentencing enhancement against one individual.

Further, none of the items seized, not even photographs of them, were ultimately presented at the murder trial, according to the court. Despite the lack of prior case law on the subject, the appeals court said, the unreasonableness of this would be "apparent" to a reasonable officer.

The grant of a warrant to search for one crime, even if valid, cannot be used as a subterfuge to search other locations or for evidence of other crimes not contemplated in the warrant. In Durfee v. Rich, #02-10041, 2007 U.S. Dist. Lexis 23340 (E.D. Mich.), for instance, an officer was not entitled to summary judgment in a property owner's lawsuit alleging that he obtained a search warrant for his house by use of an affidavit containing false information. While an informant allegedly told officers that there were stolen goods in a white shed near the plaintiff's home, the affidavit used to obtain the search warrant stated that the informant told the police that the stolen goods were in the house.

The plaintiff claimed that this false information was used in the affidavit on purpose in order to provide an opportunity to search his house for drugs without probable cause to do so. The trial judge found that there was evidence that the officer had an “ulterior motive” for searching the plaintiff’s house for drugs, as indicated by the fact that the search of the house continued for two hours after the stolen property sought was found in the shed.

Can officers engaged in the execution of a valid search warrant ever seize items not mentioned, or even contemplated, in the search warrant and its affidavit? Certainly, if the evidence is clearly an indication of a crime and is in plain view where the officers are lawfully present in the course of their search for the evidence that is specified. In searching for illegal weapons named in a warrant, officers need not, for instance, ignore marijuana in plain view on a living room table.

This is illustrated in [Russell v. Harms](#), #04-2065, 397 F.3d 458 (7th Cir. 2005), in which the court ruled that police officers who searched the home of suspects pursuant to a search warrant after purchasing VHS videotapes and Nintendo games suspected to be stolen from them in an on-line auction did not violate the Fourth Amendment. Seizure of DVDs, non-Nintendo videogames, and other related materials not specified in the warrant was proper under the plain view doctrine.

The appeals court rejected the argument that the warrant was not particular enough since it did not catalogue the individual movie and game titles allegedly stolen from the video store, and therefore would not enable an officer reading it to distinguish between items subject to the warrant and property lawfully possessed by the residents. While the Fourth Amendment requires that the search warrant describe the objects of the search with “reasonable specificity,” it “need not be elaborately detailed,” and in a case like this, it was sufficient to list the type of items to be seized. The officers had reason to believe that the suspects had stolen “hundreds” of videotapes and games, so that it would have been “impractical” to list all their titles.

The appeals court also found that the seizure of DVDS, CDs, blank videotapes, and non-Nintendo brand video games, in addition to VHS tapes and Nintendo games, while “broad,” was constitutionally permissible. Officers executing a search warrant may seize items named in the warrant, as well as evidence that, while not described in the warrant, are subject to seizure because it is in “plain view.”

Some of the CDs, DVDs and non-Nintendo brand games were found in the same boxes as the items specified in the warrant, and others were found nearby. In light of the volume of the suspected theft, the location of the items, and their similarity to the items named in the warrant, the officers were justified in seizing them based on a reasonable belief that they were also evidence of theft. It turned out, however, that the suspects had purchased the items from store closeouts, and no charges were pursued.

Similarly, in [DeArmon v. Burgess](#), #01-3096, 388 F.3d 609 (8th Cir. 2004), the officers lawfully seized what they reasonably could have believed were other “instruments” of the crime being investigated.

In that case, Missouri police officers executed a search warrant at a woman's house, where her son and her cousin also lived. The warrant authorized a search for “crack cocaine, marijuana, heroin, weapons, U.S. currency, drug transaction records and any other instruments of the crime.” The officers allegedly broke entry doors and locks on interior doors, damaged drywall and furniture, and seized a firearm, doorknobs and locks, photographs, personal papers, and jewelry, and failed to provide the residents with a copy of the search warrant or an itemized receipt for the seized property.

The three individuals were never charged with any crime, and filed a federal civil rights lawsuit challenging the issuance and execution of the search warrant. A federal appeals court found that the defendants were entitled to qualified immunity because the warrant was supported by probable cause and that the officers had not exceeded the scope of the warrant. It also ruled that the officers’ alleged violation of requirements that they provide the plaintiffs with a copy of the search warrant and an itemized receipt for the seized property did not violate clearly established constitutional law, so that they were also entitled to qualified immunity on that claim.

The appeals court rejected the argument that the officers exceeded the scope of the warrant, as the warrant authorized the seizure of “other instruments” of drug transactions. The officers reasonably could have believed that the items seized were of such an incriminating nature as to constitute evidence of criminal activity. The personal papers could have been drug records, the photographs could have depicted criminal activity, the jewelry could have been the fruits of a drug transaction, and the door locks and doorknobs could have carried fingerprints, the court reasoned.

In [Arkansas Chronicle v. Easley](#), #1:04-cv-110, 321 F. Supp. 2d 776 (E.D. Va. 2004), on the other hand, a search warrant for a journalist’s home, obtained in order to find videos and three still photographs concerning the terrorist bombing nine years earlier of the Oklahoma City Federal Building, was overbroad in violation of the Fourth Amendment, since it authorized the seizure of “virtually every” piece of computer equipment, every computer file or document, and other things in the home which could not contain the photographs or videos sought, including letters.

Additionally, the warrant was not supported by probable cause because the information on which it was based was “stale,” consisting of statements by a third party who told law enforcement officers that he had seen the photos and video six years before, and at a location other than the journalist's home. The journalist was not accused of any crime and had stated, before the warrant issued, that the material in question had been turned over by him to Congress. He was entitled to summary judgment on his Fourth Amendment claim that the officers lacked probable cause to search his home, and the officers who obtained the warrant were not entitled to qualified immunity.

The scope of a warrant may also be exceeded by officers searching persons on the premises not named in or contemplated in the warrant. In [Doe v. Groody](#), #02-4532, 361 F.3d 232 (3d Cir. 2004), four Pennsylvania police officers appealed from the denial of qualified immunity in a lawsuit alleging the unlawful search of occupants of a residence. The officers argued that they did not violate clearly established federal constitutional rights when they searched a mother and her ten-year-old daughter in the course of executing a search warrant for narcotics at their home.

Upholding the denial, a federal appeals court held that it is clearly established law that unless a search warrant “specifically incorporates an affidavit” in its language, the scope of the warrant may not be broadened by language in the affidavit. The court also found that, under any reasonable reading, the warrant in the case did not authorize the search of the mother and daughter, and nothing else otherwise justified their search.

The affidavit for the warrant stated that a reliable confidential informant had purchased methamphetamine on several occasions from John Doe, at Doe's “residence/office,” or from a Volkswagen automobile parked in front. It also stated that individuals with histories of prior narcotics use or drug gang affiliations had been observed entering or leaving the residence and that the most recent methamphetamine purchase by the informant had occurred within the preceding 48 hours. The typed affidavit requested permission to search Doe’s residence and his Volkswagen for drugs, paraphernalia, money, drug records and other evidence.

While the affidavit asked for permission to search visitors who might be present to purchase drugs, in the warrant itself, in a space for “specific description of premises and/or persons to be searched,” the attached affidavit was not mentioned, but rather it named only John Doe, giving his description, and identifying and describing his residence.

In executing the warrant, officers encountered John Doe, his wife, and their ten-year-old daughter, with no other visitors present. The officers used a female traffic meter patrol officer to search the females in an upstairs bathroom, including having their lift their skirts and drop their pants. No contraband was found. The females sued, claiming that these searches violated their rights, in the absence of a search of them being authorized in the text of the warrant.

The appeals court agreed, finding that the search warrant did not grant authority to search either the wife or daughter on its face, and the attached affidavit, which it could be argued sought authority to search anyone present was not incorporated by reference.

The appeals court, finally, found no other independent basis for the search of the females, as there was no probable cause to suspect the wife, let alone the 10-year-old daughter, of drug activity. See also, [Denver Justice Comm. v. City of Golden](#), #03-1470, 405 F.3d 923 (10th Cir. 2005), in which it was found that a police officer’s alleged pat-down search of protest organization’s office manager during execution of a search

warrant was unreasonable when carried out without any individualized reasonable suspicion that he was involved in criminal activity or possessed weapons. In light of the fact that the warrant was not for weapons or contraband, but rather for protest documents and photographs, it did not justify generalized detention and pat-down of all those present in the absence of such reasonable suspicion.

Also see [Owens Ex Rel. Owens v. Lott](#), # 03-1194, 372 F.3d 267 (4th Cir. 2004), holding that a search warrant for a residence which authorized a search of “all persons” present for drugs was not adequately supported by detailed information to support probable cause to believe that all occupants of the premises were involved in criminal activity. Officers who carried out the search pursuant to the warrant, and who strip-searched or pat-searched four adults and two minors in the home, were entitled to qualified immunity, however, because the law on the issue was not clearly established at the time of the search.

Qualified immunity provides a defense to individual civil liability in instances where a reasonable officer could have believed that his or her actions were not unlawful, because courts in that jurisdiction have not yet definitively spoken on the specific issue involved.

Officers seeking to carry out legal searches so that evidence found can be utilized in court and civil liability can be avoided, to the greatest extent possible, should take care to see that they limit the scope of searches conducted to the places and persons named in the warrant and seize only the items specifically described, or else other evidence of crime found in plain view in places where the warrant and the scope of its searches authorizes the officers to lawfully be and look.

Resources

The following are some useful resources related to the subject of this article.

- Findlaw Annotation on [Searches and Seizures Pursuant to Warrant](#).
- Wikipedia Article, [The Fourth Amendment](#)
- [The Constitution of the United States of America, Analysis and Interpretation: Analysis of Cases Decided by the Supreme Court of the United States](#) by the Congressional Research Service, Library of Congress is available in a series of online browseable tables. Includes sections on Fourth Amendment warrant issues.

References (chronological):

- Wayne R. LaFave, [Search and Seizure: A Treatise on the Fourth Amendment](#), 4th Edition, 2 vols. (West, 2004-2009)

- “[How to Tell When You Need a Search Warrant](#),” by Devallis Rutledge, Police Magazine (March 2008).
- “[Inferring Probable Cause: Obtaining a Search Warrant for a Suspect’s Home Without Direct Information That Evidence Is Inside](#),” by Edward Hendrie, FBI Law Enforcement Bulletin (Feb. 2002).
- Akhil Reed Amar, “[Fourth Amendment First Principles](#),” 107 Harvard Law Review No.4, 757 (Feb. 1994).
- William J. Stuntz, ”Warrants and Fourth Amendment Remedies.” Virginia Law Review 77 (August 1991): 881–2.

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Bernard J. Farber

Civil Liability Law Editor

P.O. Box 75401

Chicago, IL 60675-5401 USA

E-mail: bernfarber@aele.org

Tel. 1-800-763-2802

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