Executing Search Warrants

"An officer's conduct in executing a search [warrant] is subject to the Fourth Amendment's mandate of reasonableness from the moment of the officer's entry until the moment of departure." [1]

The execution of a warrant to search a home is, from start to finish, a frightening display of police power. After all, it is nothing less than an armed invasion into the sanctity of the home. And although most people can avoid such unpleasantness by simply not committing any crimes (or at least stop committing them), it is such an extreme intrusion that it is closely and scrupulously regulated by the courts.

These regulations fall into two broad categories. First, there is the basic Fourth Amendment requirement that warrants may be issued only if officers have demonstrated probable cause and have adequately described the place to be searched and the evidence to be seized.

The second requirement, while also based on the Fourth Amendment, is not as well known but it's just as important: Officers who are executing a warrant must carry out their duties in a reasonable manner.[2] As the court said in *Hells Angels v. City of San Jose,* "The test of what is necessary to execute a warrant effectively is *reasonableness*."[3]

This does not mean there are no absolute rules. On the contrary, as we will discuss, there are lots of them. But because the business of executing search warrants is so unpredictable and dangerous, the courts recognize that officers must be allowed some flexibility in interpreting and applying these rules. Thus, the Supreme Court noted that "it is generally left to the discretion of the executing officers to determine the details of how best to proceed with the performance of a search authorized by warrant."[4]

Before we begin, it should be noted that, although many of the legal issues we will discuss pertain to most types of warranted searches, we will focus on the most common and problematic variety: searches of homes, especially searches for illegal drugs and weapons, and also searches for information contained in documents and computers.

When Warrants May Be Executed

While most of the rules on executing search warrants restrict the *manner* in which officers enter the premises and carry out the search, there are certain rules on *when* warrants may be executed. By the way, a warrant is "executed" at the point officers enter the premises.[5]

TIME OF EXECUTION: A search warrant must be executed between the hours of 7 A.M. and 10 P.M. unless the judge authorizes night service, in which case it may be executed at any hour of the day or night.[6] Because a warrant is "executed" when officers entered, it is immaterial that they remained on the premises after 10 P.M. to complete the search.[7]

ENTRY WITHOUT PHYSICAL WARRANT: Officers may execute the warrant when they have been notified that the warrant had been signed by a judge. Thus, they need not wait for the warrant to be brought to the premises.[8] However, if the judge made any changes to the warrant that altered the scope or intensity of the search, the officers on the scene must be notified of the changes before they begin the search.[9]

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[1] *Lawmaster v. Ward* (10th Cir. 1997) 125 F.3d 1341, 1349.
[2] See *United States v. Ramirez* (1998) 523 U.S. 65, 71; *Wilson v. Arkansas* (1995) 514 U.S. 927, 934.
[3] (9th Cir. 2005) 402 F.3d 962, 971. Emphasis added.
[4] *Dalia v. United States* (1979) 441 U.S. 238, 257.
[5] See *People v. Zepeda* (1980) 102 Cal.App.3d 1, 7; *People v. Superior Court (Nasmeh)* (2007) 151 Cal.App.4th 85, 99.
[6] See Pen. Code § 1533; *People v. Kimble* (1988) 44 Cal.3d 480, 494.
[7] See *People v. Zepeda* (1980) 102 Cal.App.3d 1, 7; *People v. Maita* (1984) 157 Cal.App.3d 309, 322.
[8] See *People v. Rodriguez-Fernandez* (1991) 235 Cal.App.3d 543, 553-54; *U.S. v. Bonner* (1st Cir. 1986) 808 F.2d 864, 868-69 ["Courts have repeatedly upheld searches conducted by law enforcement officials notified by telephone or radio once the search warrant was issued."].
[9] See *People v. Rodriguez-Fernandez* (1991) 235 Cal.App.3d 543, 533; *Guerra v. Sutton* (9th Cir. 1986) 783 F.2d 1371, 1375.

ENTERING UNOCCUPIED PREMISES: Officers may execute a warrant to search a home even though they knew the residents were not inside.[10]

WHEN WARRANTS EXPIRE: A search warrant must be executed within 10 days after it was issued. After that, it is void.[11] In calculating the 10-day period, do not count the day on which the warrant was issued, although it may be executed on that day.[12] Again, because a warrant is "executed" when entry is made, officers who enter within the 10-day window do not need a new warrant if the warrant expires while they were conducting the search.[13]

This rule also applies if officers mailed or faxed the warrant to a bank or other third-party business. Consequently, the warrant remains valid despite any reasonable delay by employees in assembling the documents and sending them to officers.[14]

IF PROBABLE CAUSE DISAPPEARS: Even if the warrant had not expired, it automatically becomes void if officers learned that probable cause no longer existed. As the Tenth Circuit explained, "The Fourth Amendment requires probable cause to persist from the issuance of a search warrant to its execution."[15]

Entry Procedure

From the perspective of the officers and the occupans of the premises, the initial entry is the most uncertain, stressful, and dangerous operation in the entire process. For that reason, the courts have imposed certain restrictions that are intended to minimize the danger and provide an orderly and efficient transfer of control of the premises from the residents to the officers.[16]

Knock-notice

To fully comply with the knock-notice rule, officers must do the following before forcibly entering the premises:

(1) KNOCK: Knock or otherwise alert the occupants that someone is at the door. This also provides some assurance that the occupants will hear the officers' announcement.

(2) ANNOUNCE AUTHORITY: Announce their authority; e.g. "Police officers!"

(3) ANNOUNCE PURPOSE: Announce their purpose; e.g., "Search warrant!"

(4) WAIT FOR REFUSAL: Before breaking in, officers must give the occupants an opportunity to admit them peacefully. Thus, officers must not enter until it reasonably appears that the occupants are refusing to admit them.[17]

Although these requirements (or versions of them) are over 400 years old,[18] they are still generally viewed by officers as a perversion. Particularly, they question why, having a legal right to enter, they must engage in what is arguably a "meaningless formality" that provides the occupants with an opportunity to destroy evidence or arm themselves?[19]

But there is another view: Without an announcement, the occupants might conclude that their home is being invaded by a burglar, a robber, or a persistent door-to-door salesman—and start shooting. As the California Supreme Court pointed out, "[F]ew actions are as likely to evoke violent response from a householder as unannounced entry by a person whose identity and purpose are unknown to the householder."[20]

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[10] See *Hart v. Superior Court* (1971) 21 Cal.App.3d 496, 502; *U.S. v. Sims* (7th Cir. 2009) 553 F.3d 580, 584.
[11] See Pen. Code § 1534(a); *People v. Larkin* (1987) 194 Cal.App.3d 650, 656.
[12] See *People v. Clayton* (1993) 18 Cal.App.4th 440. 445.
[13] See *People v. Superior Court (Nasmeh)* (2007) 151 Cal.App.4th 85, 99; *People v. Larkin* (1987) 194 Cal.App.3d 650, 657.
[14] See *People v. Schroeder* (1979) 96 Cal.App.3d 730, 734.
[15] *U.S. v. Garcia* (10th Cir. 2013) 707 F.3d 1190, 1195-96. ALSO SEE *People v. Hernandez* (1974) 43 Cal.App.3d 581, 591.
[16] See *Wilson v. Arkansas* (1995) 514 U.S. 927, 934.
[17] See Pen. Code § 1531; *People v. Mays* (1998) 67 Cal.App.4th 969, 973. BUT ALSO SEE *People v. Peterson* (1973) 9 Cal.3d 717, 723 ["When police procedures fail to conform to the precise demands of the [knock-notice] statute but nevertheless serve its policies we have deemed that there has been such substantial compliance that technical and, in the particular circumstances, insignificant defaults may be ignored."]; *People v. Lopez* (1969) 269 Cal.App.2d 461, 469 [the argument that officers must announce their presence to people who already know they are officers is "patently frivolous"].
[18] See *Semayne's Case* (1603) 77 Eng Rep 194 ["Before the Sheriff may break the party's house, he ought to signify the cause of his coming, and make request to open doors."].
[19] See *People v. Gonzalez* (1989) 211 Cal.App.3d 1043, 1049.
[20] *Greven v. Superior Court* (1969) 71 Cal.2d 287, 293.

In an attempt to accommodate these competing interests, the courts have given officers a great deal of leeway in determining if they must comply with the knock-notice requirements and, if so, when and how they must do so.

NO-KNOCK WARRANTS: When officers apply for a search warrant, they can also seek authorization to enter without knocking or making an announcement. As the Supreme Court observed, "The practice of allowing magistrates to issue no-knock warrants seems entirely reasonable when sufficient cause to do so can be demonstrated ahead of time."[21] What is "sufficient cause"? It exists if the affidavit demonstrates reasonable suspicion to believe that compliance with the knock-notice requirements would (1) result in violent resistance from the occupants, (2) result in the destruction of evidence, or (3) be futile.[22]

Note that, even if the judge authorized a no-knock entry, such authorization terminates automatically if, before entering, the officers became aware of circumstances that eliminated the need for it.[23]

EXCUSED NONCOMPLIANCE: Even in the judge refused to issue a no-knock warrant, officers may dispense with the knock-and-announce procedure if, upon arrival, they reasonably believed there were circumstances that would have justified a non-knock entry; e.g., destruction of evidence.[24]

SUBSTANTIAL COMPLIANCE: In some cases the courts have ruled that compliance was unnecessary if it reasonably appeared that someone inside the residence was aware that officers were about to enter, and that their purpose was to execute a search warrant.[25]

AFFIRMATIVE REFUSALS: Officers may enter without waiting to be refused entry if the occupants said or did something that reasonably indicated they would not admit the officers peacefully, or that they were actually trying to prevent or delay the officers' entry; e.g., the occupants started running away from the front door,[26] an occupant "slammed the door closed,"[27] officers heard sounds that suggested "surreptitious movement."[28]

IMPLIED REFUSALS: In the absence of an affirmative refusal, a refusal will be implied if the officers were not admitted into the premises within a reasonable time after they announced their authority and purpose.[29] In fact, the Ninth Circuit observed that "[t]he refusal of admittance contemplated by the [knock-notice] statute will rarely be affirmative, but will oftentimes be present only by implication."[30]

There is, however, no minimum amount of time that must pass before a refusal may be inferred.[31] Instead, it depends on the totality of circumstances,[32] especially the following:

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[21] See *Richards v. Wisconsin* (1997) 520 U.S. 385, 394, 399, fn.7.
[22] See *United States v. Banks* (2003) 540 U.S. 31, 36, 37, fn.3.
[23] See *U.S. v. Spry* (7th Cir. 1999) 190 F.3d 829, 833.
[24] See *United States v. Banks* (2003) 540 U.S. 31, 36-37 ["if circumstances support a reasonable suspicion of exigency when the officers arrive at the door, they may go straight in"]; *Richards v. Wisconsin* (1997) 520 U.S. 385, 395-96, fn.7 ["[A] magistrate's decision not to authorize no-knock entry should not be interpreted to remove the officers' authority to exercise independent judgment"].
[25] See *Miller v. United States* (1958) 357 U.S. 301, 310; *People v. Tacy* (1987) 195 Cal.App.3d 1402, 1406; *People v. Brownlee* (1977) 74 Cal.App.3d 921, 929; *People v. James* (1971) 17 Cal.App.3d 463, 468; *People v. Peterson* (1973) 9 Cal.3d 717, 723-4; *People v. Franco* (1986) 183 Cal.App.3d 1089, 1094; *People v. Bigham* (1975) 49 Cal.App.3d 73, 80.
[26] See *People v. Pipitone* (1984) 152 Cal.App.3d 1112, 1116 ["I heard someone running, and I heard something—falling and rattling and saw a male through the doorway of the kitchen moving quickly."]; *People v. Stegman* (1985) 164 Cal.App.3d 936, 946 ["The people inside the house immediately began running away."]; *People v. Mayer* (1987) 188 Cal.App.3d 1101, 1112 [officers saw two men running inside the house]; *People v. Temple* (1969) 276 Cal.App.2d 402, 413 [officers "heard very fast movements toward the rear of the apartment."]; *People v. Pacheco* (1972) 27 Cal.App.3d 70, 78 ["[D]efendant got off the couch and started toward the rear of the apartment."]; *People v. Negrete* (1978) 82 Cal.App.3d 328, 336 [an officer "saw defendant approach the door, look at him in apparent recognition, and then run back toward the easily flushable heroin."].
[27] *Richards v. Wisconsin* (1997) 520 U.S. 385, 395.
[28] *Kinsey v. Superior Court* (1968) 263 Cal.App.2d 188, 191.
[29] See *People v. Elder* (1976) 63 Cal.App.3d 731, 739; *People v. Peterson* (1973) 9 Cal.3d 717, 723; *People v. Hobbs* (1987) 192 Cal.App.3d 959, 964; *People v. Gallo* (1981) 127 Cal.App.3d 828, 838; *People v. Neer* (1986) 177 Cal.App.3d 991, 996.
[30] *McClure v. U.S.* (9th Cir. 1964) 332 F.2d 19, 22.
[31] See *People v. Hobbs* (1987) 192 Cal.App.3d 959, 964 ["There is no convenient test for measuring the length of time necessary for an implied refusal."]; *People v. Neer* (1986) 177 Cal.App.3d 991, 996; *People v. Trujillo* (1990) 217 Cal.App.3d 1219, 1225.
[32] See *United States v. Banks* (2003) 540 U.S. 31, 36.

SIZE AND LAYOUT: Size and layout are important because they may affect the amount of time it will take the residents to answer the door.[33]

TIME OF DAY: A delay late at night might be expected if it reasonably appeared that the occupants had been asleep; e.g., the lights were out. Conversely, a delay might be more suspicious in the daytime or early evening.[34]

NO REASON FOR DELAY: Even a short delay may constitute a refusal if officers reasonably believed an occupant had heard their announcement but did not respond.[35] As the court observed in *People v. Elder,* "Silence for 20 seconds where it is known that someone is within the residence suggests that no one intends to answer the door."[36] In contrast, in *People v. Gonzales* the court ruled that a delay of five seconds was insufficient because the officers knew that the resident was a woman who was home alone with two children, and they also knew the woman could not see them from the door.[37]

TRICKS AND RUSES: Officers need not comply with the knock-notice requirements if an occupant consented to their entry—even if the officers lied about who they were or their purpose. As the Court of Appeal explained, "Officers who reasonably employ a ruse to obtain consent to enter a dwelling do not violate [the knock-notice requirement], even if they fail to announce their identity and purpose before entering."[38] Some examples:

- Wearing a U.S. Post Office uniform, an officer obtained consent to enter for the purpose of delivering a letter.[39]
- An officer was admitted after he said, "It's Jim, and I want to talk to Gail." (Gail was an occupant and suspect.)[40]
- The suspect's wife admitted an officer who claimed to be a carpet salesman sent by the welfare office to recarpet the house.[41]
- A drug dealer told an officer to come in after the officer claimed that "Pete" had sent him to buy drugs.[42]

Flashbangs

If there is a high threat of violent resistance or destruction of evidence, and if officers comply with certain requirements, they may employ "flashbangs" before entering the premises. A flashbang is an explosive device that is tosssed inside and which, upon ignition, emits a brilliant burst of light and a thunderous sound. This usually has the effect of temporarily disorienting and confusing the occupants, thereby giving officers a better chance of making a quick and safe entry.

Although officers are not required to obtain authorization from the judge to utilize flashbangs, the California Supreme Court has ruled their use may render an entry unreasonable unless the following circumstances existed:

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[33] See *United States v. Banks* (2003) 540 U.S. 40, fn.6 ["The apartment was 'small'"]; *People v. Hoag* (2000) 83 Cal.App.4th 1198, 1212 [small house]; *People v. Drews* (1989) 208 Cal.App.3d 1317, 1328 [one-bedroom apartment]; *U.S. v. Chavez-Miranda* (9th Cir. 2002) 306 F.3d 973, 980 [apartment 800 square feet or less].

[34] See *United States v. Banks* (2003) 540 U.S. 31, 40 ["The significant circumstances include the arrival of the police during the day, when anyone inside would probably have been up and around"]; *Greven v. Superior Court* (1969) 71 Cal.2d 287, 295 [the house was large and the warrant was executed at 1 A.M. when most people are asleep].

[35] See *People v. Gallo* (1981) 127 Cal.App.3d 828, 838-39 [officers saw four people seated at a table; for 30 seconds none of them responded to the officers' announcement]; *People v. McCarter* (1981) 117 Cal.App.3d 894, 906 [officers knew that someone was standing behind the closed door; for 20-30 seconds the person failed to respond]; *People v. Nealy* (1991) 228 Cal.App.3d 447, 450-51 [a car described in the warrant was in the driveway; for 20-30 seconds no one responded to their knocking and announcement]; *People v. Hobbs* (1987) 192 Cal.App.3d 959, 963-66 [officers saw a woman inside the house; the woman looked at the officers for five seconds but took no action to admit them]; *People v. Montenegro* (1985) 173 Cal.App.3d 983, 989 [an occupant looked out the window, officers announced "Parole," the suspect mouthed the words "Okay, okay," the doorknob moved but the door did not open; a second announcement, no response].

[36] (1976) 63 Cal.App.3d 731, 739.

[37] (1989) 211 Cal.App.3d 1043. ALSO SEE *People v. Abdon* (1972) 30 Cal.App.3d 972, 978; *Jeter v. Superior Court* (1983) 138 Cal.App.3d 934, 937 [five to 10 second delay not sufficient because the officers had no reason to believe the house was occupied].

[38] *People v. Kasinger* (1976) 57 Cal.App.3d 975, 978. ALSO SEE *Lewis v. United States* (1966) 385 U.S. 206, 211.

[39] *People v. Rudin* (1978) 77 Cal.App.3d 139.

[40] *People v. Constancio* (1974) 42 Cal.App.3d 533, 546.

[41] *People v. Veloz* (1971) 22 Cal.App.3d 499.

[42] *People v. Evans* (1980) 108 Cal.App.3d 193, 196.

(1) **REDUCED EXPLOSIVE POWER**: The explosive power of the flashbang must have been limited to minimize the risk of injury to the occupants.
(2) **ADMINISTRATIVE APPROVAL**: Before the warrant was executed, a police administrative panel must have determined that the use of flashbangs was the safest means of making a forced entry under the circumstances.
(3) **LOOK INSIDE**: To help ensure that the flashbang did not land on or near a person or on flammable material, officers must have looked inside the targeted room before deploying the device.[43]

In addition to the above, officers should consider whether there are children in the home who might be traumatized by such a violent entry.[44]

Motorized battering rams

Breaking down a door by means of a motorized battering ram (essentially a small, armored vehicle fitted with a steel protrusion) presents a high risk of danger to the occupants and may even cause a partial building collapse. For this reason, the California Supreme Court indicated that a motorized battering ram may be used only if the following circumstances existed: (1) a police administrative panel and the judge who issued the warrant expressly authorized its use based on facts that established probable cause to believe that its deployment was reasonably necessary; and (2), before utilizing the vehicle, officers saw nothing to indicate that such a violent entry was unnecessary.[45]

Note that in determining whether there was probable cause, and whether the use of the vehicle was reasonably necessary, judges and officers must consider "the reliability of the ram under the specific circumstances as a rapid and safe means of entry, the seriousness of the underlying criminal offense and society's consequent interest in obtaining a conviction, the strength of law enforcement suspicions that evidence of the crime will be destroyed, the importance of the evidence sought" and the possibility that the evidence could be recovered by less dangerous means.[46]

Securing the Premises

The first step after entering the home is to take complete control of the premises.[47] As the United States Supreme Court observed, "The risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation."[48] The Court also noted that, by assuming command, officers may reduce the risk that the occupants "will become disruptive" or otherwise "frustrate the search."[49]

Detentions

In most cases, the most effective means of securing the premises is to detain everyone on the premises. But, as we discuss, the length and intrusiveness of a detention will vary, as some people may be detained until the search is completed, while others may be held only briefly to determine whether a full detention is warranted or whether they must be released.

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[43] See *Langford v. Superior Court* (1987) 43 Cal.3d 21, 29. ALSO SEE *Boyd v. Benton County* (9th Cir. 2004) 374 F.3d 773, 779 ["given the inherently dangerous nature of the flash-bang device, it cannot be a reasonable use of force under the Fourth Amendment to throw it 'blind' into a room occupied by innocent bystanders absent a strong governmental interest, careful consideration of alternatives and appropriate measures to reduce the risk of injury"]; *U.S. v. Ankeny* (9th Cir. 2007) 501 F.3d 829, 836-37 ["the use of two flashbang devices, one of which seriously injured Defendant, weigh[s] in favor of a conclusion of unreasonableness"].
[44] See *U.S. v. Myers* (10th Cir. 1997) 106 F.3d 936, 940 ["The use of a 'flashbang' device in a house where innocent and unsuspecting children sleep gives us great pause."].
[45] *Langford v. Superior Court* (1987) 43 Cal.3d 21, 31-32.
[46] *Langford v. Superior Court* (1987) 43 Cal.3d 21, 31.
[47] See *Bailey v. United States* (2013) __ U.S. __ [133 S.Ct. 1031, 1038] ["When law enforcement officers execute a search warrant, safety considerations require that they secure the premises"]; *Los Angeles County v. Rettele* (2007) 550 U.S. 609, 615 ["Deputies were not required to turn their backs to allow Rettele and Sadler to retrieve clothing or to cover themselves with the sheets"]; *U.S. v. Fountain* (6th Cir. 1993) 2 F.3d 656, 663 ["When police obtain a warrant to search the home of a citizen, they concomitantly receive certain limited rights to occupy and control the property."].
[48] *Michigan v. Summers* (1981) 452 U.S. 692, 702-3.
[49] *Bailey v. United States* (2013) __ U.S. __ [133 S.Ct. 1031, 1038]. ALSO SEE *Michigan v. Summers* (1981) 452 U.S. 692, 702-3 [taking "unquestioned command" may be necessary to prevent "frantic efforts to conceal or destroy evidence"].

DETENTION BASED ON REASONABLE SUSPICION: Officers may detain any person pending completion of the search—regardless of whether the person was inside or outside the residence—if they reasonably believed he was involved in the crime under investigation or constituted a threat to them.[50] For example, in *U.S. v. Bullock* the court ruled that the detention of the defendant pending completion of the search was permitted because the "officers had articulable basis for suspecting that Bullock was engaged in drug activity from that residence."[51]

DETENTION BASED ON RESIDENCY OR OCCUPANCY: Even if officers lacked reasonable suspicion, they may, pending completion of the search, detain everyone who was inside the home when they arrived.[52] As the Court of Appeal explained, "[A] search warrant carries with it limited authority to detain occupants of a residence while a proper search is conducted."[53]

As with any type of detention, however, the detention of an occupant must be reasonable in its length and intrusiveness.[54] For example, in *Muehler v. Mena* the Supreme Court ruled that the handcuffing of an occupant pending completion of the search was reasonable because the warrant authorized a search for weapons in the home of a gang member. Such a situation, said the Court, was "inherently dangerous" and the use of the handcuffs "minimizes the risk of harm to both officers and occupants."[55] On the other hand, the Ninth Circuit noted that "[a] detention conducted in connection with a search may be unreasonable if it is unnecessarily painful, degrading, or prolonged, or if it involves an undue invasion of privacy."[56]

Note that if officers are searching a business that is open to the public, they may detain an occupant only if there was reasonable suspicion to believe *that* person was criminally involved.[57] In other words, a person cannot be detained merely because he was present in a place where evidence is located if that place was open to the public.

ARRIVING UNDER SUSPICIOUS CIRCUMSTANCES: Officers may also detain a person pending completion of the search if (1) he arrived on the premises while the search was underway, and (2) he said or did some-

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[50] See *Bailey v. United States* (2013) __ U.S. __ [133 S.Ct. 1031, 1039] ["where there are grounds to believe the departing occupant is dangerous, or involved in criminal activity, police will generally not need *Summers* to detain him at least for brief questioning, as they can rely instead on *Terry*"]; *People v. Glaser* (1995) 11 Cal.4th 354, 368 [such a detention is permitted if "there is reason to suspect the person of involvement in the criminal activities on the premises"].

[51] (7th Cir. 2011) 632 F.3d 1004, 1011.

[52] See *Bailey v. United States* (2013) __ U.S. __ [133 S.Ct. 1031, 1042-43]; *Muehler v. Mena* (2005) 544 U.S. 93, 100 ["An officer's authority to detain incident to a search is categorical; it does not depend on the quantum of proof justifying detention or the extent of the intrusion to be imposed by the seizure."]*; Michigan v. Summers* (1981) 452 U.S. 692, 705; *People v. Thurman* (1989) 209 Cal.App.3d 817, 823; *U.S. v. Davis* (9th Cir. 2008) 530 F.3d 1069, 1081 [because of the visitor's apparent connection to the premises, his detention was justified "in preventing flight in the event that incriminating evidence is found"]; *U.S. v. Fountain* (6th Cir. 1993) 2 F.3d 656, 663 [the concerns that justify the detention of people inside a house being searched for drugs "are the same regardless of whether the individuals present in the home being searched are residents or visitors"]; *U.S. v. Sanchez* (10th Cir. 2009) 555 F.3d 910, 918 ["[T]he authority to detain relates to all persons present on the premises."]; *U.S. v. Johnson* (8th Cir. 2008) 528 F.3d 575, 579 ["there is naturally an articulable and individualized suspicion of criminal activity that justifies the detention of the home's occupants"].

[53] *People v. Gabriel* (1986) 188 Cal.App.3d 1261, 1264.

[54] See *County of Los Angeles v. Rettele* (2007) 550 U.S. 609, 614-15; *People v. Gabriel* (1986) 188 Cal.App.3d 1261, 1265 [two hour detention not unreasonable considering there was no reason to believe the officers "in any way delayed the search"]; *People v. Glaser* (1995) 11 Cal.4th 354, 374 ["the officers may constitutionally detain him or her for the period of time required and in the manner necessary to make those determinations and to protect the safety of all present during the detention"]; *Meredith v. Erath* (9th Cir. 2003) 342 F.3d 1057, 1062 [handcuffing not justified because there was "no reason to believe that the occupants were dangerous"]; *Heitschmidt v. City of Houston* (5th Cir. 1998) 161 F.3d 834, 838 ["Heitschmidt was then detained in pain without a restroom break for more than four hours"]. ALSO SEE *Ganwich v. Knapp* (9th Cir. 2003) 319 F.3d 1115, 1120 ["it was not at all reasonable to condition the [detainee's] release on their submission to interrogation"]; *Burchett v. Kiefer* (6th Cir. 2002) 310 F.3d 937, 945 [detainee was confined in a police car with the windows rolled up in ninety degree heat for three hours].

[55] (2005) 544 U.S. 93, 100.

[56] *Franklin v. Foxworth* (9th Cir. 1994) 31 F.3d 873, 876.

[57] See *Ybarra v. Illinois* (1979) 444 U.S. 85, 91-93; *People v. Ingram* (1993) 16 Cal.App.4th 1745, 1752-53 ["[W]hen executing a search warrant at a business open to the public, law enforcement officers may detain those persons on the premises when the circumstances create a reasonable suspicion"].

thing that reasonably indicated he was more than a casual visitor; e.g., the person entered the house without knocking, or he inserted a key into the lock, or he fled when he saw uniformed officers.[58]

BRIEF DETENTIONS TO DETERMINE STATUS: Under certain circumstances, officers may briefly detain people near the home for the limited purpose of determining whether there are grounds to detain them pending completion of the search, or whether they must be released.

DETAINING PEOPLE WITHIN THE CURTILAGE: Officers may ordinarily detain people who were in the front, back, or side yards.[59]

DETAINING PEOPLE WHO ARRIVE: A person may be detained if he arrived at the residence during the execution of the warrant, even though he did nothing to indicate he was a detainable resident or occupant.[60]

DETAINING PEOPLE WHO DEPART: A person who left the premises just before officers arrived may be detained if he was in the "immediate vicinity" of the premises when the detention occurred.[61] However, if officers reasonably believed that the person had become aware of their presence as he left the premises, a brief detention a short distance away should be upheld to prevent him from alerting the occupants of the impending search.[62]

Other security precautions

In addition to detaining occupants and others, officers may take the following precautions if reasonably necessary.

SEIZING WEAPONS IN PLAIN VIEW: While inside the premises, officers may temporarily seize any weapon in plain view, even if the weapon was not contraband or seizable under the warrant.[63]

PAT SEARCHES: Officers may pat search any person inside or outside the premises if they reasonably believed the person was armed or dangerous.[64] In addition, officers who are executing a warrant to search for illegal drugs or weapons may pat search (1) all occupants of the premises,[65] and (2) anyone who arrived while the search was underway if the person entered in a manner that reasonably indicated he lived there or was otherwise closely associated with the residence; e.g., the person entered without knocking.[66]

OFFICER-SAFETY QUESTIONING: Even if an occupant had been arrested or was otherwise "in custody" for *Miranda* purposes, officers do not need a waiver to ask questions that are reasonably necessary to locate and secure deadly weapons on the premises, or to determine if there was someone on the premises who presented a threat to the officers.[67] Such a situation would exist, for example, if the officers were search-

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[58] See *People v. Huerta* (1990) 218 Cal.App.3d 744, 749; *People v. Fay* (1986) 184 Cal.App.3d 882, 892-93; *People v. Glaser* (1995) 11 Cal.4th 354, 372; *People v. Roach* (1971) 15 Cal.App.3d 628, 632; *People v. Tenney* (1972) 25 Cal.App.3d 16, 20; *U.S. v. Davis* (9th Cir. 2008) 530 F.3d 1069, 1081; *U.S. v. Hauk* (10th Cir. 2005) 412 F.3d 1179, 1192; *Burchett v. Kiefer* (6th Cir. 2002) 310 F.3d 937, 943-44; *U.S. v. Bohannon* (6th Cir. 2000) 225 F.3d 615, 617 ["James showed every intention of walking into the house"].

[59] See *Bailey v. United States* (2013) __ U.S. __ [133 S.Ct. 1031, 1038][citing the transcript of oral argument in *Summers*, the Court noted that Summers "was detained on a walk leading down from the front steps of the house"].

[60] See *People v. Glaser* (1995) 11 Cal.4th 354, 374; *Baker v. Monroe Township* (3rd Cir. 1995) 50 F.3d 1186, 1192; *U.S. v. Jennings* (7th Cir. 2008) 544 F.3d 815, 818-19; *U.S. v. Bohannon* (6th Cir. 2000) 225 F.3d 615, 616.

[61] *Bailey v. United States* (2013) __ U.S. __ [133 S.Ct. 1031, 1042] ["A spatial constraint defined by the immediate vicinity of the premises to be searched is therefore required for detentions incident to the execution of a search warrant."]. ALSO SEE *Croom v. Balkwill* (11th Cir. 2011) 645 F.3d 1240, 1250 [detainee was in the front yard after signing for a package addressed to the occupant]; *U.S. v. Sanchez* (10th Cir. 2009) 555 F.3d 910, 918 ["Although Mr. Sanchez may not have been inside the home, he was on the premises to be searched (which included the home's curtilage). He was clearly not just a passerby"].

[62] See *Bailey v. United States* (2013) __ U.S. __ [133 S.Ct. 1031, 1039] [Bailey was "apparently without knowledge of the search"].

[63] See *People v. Gallegos* (2002) 96 Cal.App.4th 612, 628, fn.13; *U.S. v. Humphrey* (9th Cir. 1985) 749 F.2d 743, 748; *U.S. v. Malachesen* (8th Cir. 1979) 597 F.2d 1232, 1234-35.

[64] See *Arizona v. Johnson* (2009) 555 U.S. 323, 332; *New York v. Class* (1986) 475 U.S. 106, 117; *Terry v. Ohio* (1968) 392 U.S. 1, 21-22.

[65] See *People v. Thurman* (1989) 209 Cal.App.3d 817, 822 ; *People v. Roach* (1971) 15 Cal.App.3d 628, 632; *People v. Valdez* (1987) 196 Cal.App.3d 799, 804. ALSO SEE *Michigan v. Summers* (1981) 452 U.S. 692, 702 ["[T]he execution of a warrant to search for narcotics is the kind of transaction that may give rise to sudden violence"].

[66] See *People v. Glaser* (1995) 11 Cal.4th 354, 367; *People v. Huerta* (1990) 218 Cal.App.3d 744, 750.

[67] See *New York v. Quarles* (1984) 467 U.S. 649; *People v. Simpson* (1998) 65 Cal.App.4th 854, 861; *U.S. v. Are* (7th Cir. 2009) 590 F.3d 499, 506 [after arresting a street gang member who had been previously arrested for drug and weapons offenses, an FBI agent asked if there were any weapons in the house].

ing for evidence of drug trafficking. As the Court of Appeal aptly put it:

> Particularly where large quantities of illegal drugs are involved, an officer can be certain of the risk that individuals in possession of those drugs, which can be worth hundreds of thousands and even millions of dollars, may choose to defend their livelihood with their lives.[68]

SHOOTING DOGS: Shooting a dog on the premises is permitted only if officers can articulate a reasonable basis for such an extreme action.[69] Furthermore, a court might find that such an action was unreasonable if officers knew there was a dangerous dog on the premises before they executed the warrant and failed to explore other options.[70]

Displaying the Warrant

After securing the premises, officers will ordinarily show the occupants a copy of the warrant. This is not, however, required under California law.[71] In fact, as noted earlier, officers at the scene are not even required to possess a copy of the warrant. Still, displaying a copy is considered a "highly desirable" practice as it demonstrates to the occupant that "there is color of authority for the search, and that he is not entitled to oppose it by force."[72]

As for warrants issued by federal judges, the United States Supreme Court ruled that, although officers must leave a copy of the warrant and a receipt at the scene, they are not required to serve an occupant with a copy at the outset of the search.[73]

What May Be Searched

A warrant must, of course, identify the home that officers may search. But warrants seldom specify every area and thing inside or on the grounds that may be searched. As the First Circuit observed, "The warrant process is primarily concerned with identifying *what* may be searched or seized—not how."[74] Thus, in *U.S. v. Aljabari* the court pointed out that the following:

> The execution of a warrant will often require some interpretation of the warrant's terms. A warrant that seems unambiguous to a magistrate in the confines of the courthouse may not be so clear during the execution of the search, as officers encounter new information not available when they applied for the warrant.[75]

As a result, the officers who are executing a warrant will often be required to exercise judgment in determining what places and things they may search. It is therefore the responsibility of the lead investigators to make sure—usually by means of a pre-search briefing—that all members of the search team understand the terms of the warrant, the parameters of the search, and any special restrictions.[76] As the Ninth Circuit pointed out, "Typically, of course, only one or a few officers plan and lead a search, but more—perhaps many more—help execute it. The officers who lead the team that executes a warrant are responsible for ensuring that [the others] have lawful authority for their actions."[77] Along these same lines, the D.C. Circuit noted that search warrants "are

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[68] *People v. Simpson* (1998) 65 Cal.App.4th 854, 862.
[69] See *Hells Angels v. City of San Jose* (9th Cir. 2005) 402 F.3d 962. 975; *Robinson v. Solano County* (9th Cir. 2002) 278 F.3d 1007, 1013 ["The killing of [a] dog is a destruction recognized as a seizure under the Fourth Amendment"].
[70] See *Hells Angels v. City of San Jose* (9th Cir. 2005) 402 F.3d 962. 976.
[71] See *People v. Calabrese* (2002) 101 Cal.App.4th 79, 85 ["the officers were not required to display the warrant or give Calabrese a copy of it"]; *Nunes v. Superior Court* (1980) 100 Cal.App.3d 915, 936 ["But we search in vain for California law requiring either reading or leaving copies of the warrants with the householder."]; *People v. Rodrigues-Fernandez* (1991) 235 Cal.App.3d 543, 553 ["there is no statutory or constitutional requirement that a search warrant be exhibited as a prerequisite to execute it"].
[72] *Nunes v. Superior Court* (1980) 100 Cal.App.3d 915, 935-36.
[73] *United States v. Grubbs* (2006) 547 U.S. 90, 98-99.
[74] *U.S. v. Upham* (1st Cir. 1999) 168 F.3d 532, 537.
[75] (7th Cir. 2010) 626 F.3d 940, 947.
[76] See *U.S. v. Whitten* (9th Cir. 1983) 706 F.2d 1000, 1009-1010 ["Officers executing a search should read the warrant or otherwise become fully familiar with its contents, and should carefully review the list of items which may be seized."]; *U.S. v. Wuagneux* (11th Cir. 1982) 683 F.2d 1343, 1352-53 ["most of the agents conducting the search were provided with as much preparation and information as was reasonable under the circumstances to enable them to carry out the warrant's complicated terms"]. COMPARE *Guerra v. Sutton* (9th Cir. 1986) 783 F.3d 1371, 1375 [the agents "were not given an advance briefing as to the source and extent of their authority to enter, search, and arrest"].
[77] *Motley v. Parks* (9th Cir. 2005) 432 F.3d 1072, 1081.

not self-executing; they require agents to carry them out. In order for a warrant's limitations to be effective, those conducting the search must have read or been adequately apprised of its terms."[78]

As we will discuss in more detail as we go along, a basic requirement is that officers confine their search to places and things in which one or more of the listed items of evidence could reasonably be found.[79] Thus, the United States Supreme Court explained that if a warrant authorizes a search for illegal weapons, it "provides authority to open closets, chests, drawers, and containers in which the weapon might be found."[80] More colorfully, the Seventh Circuit observed that if officers are looking for a "canary's corpse," they may search "a cupboard, but not a locket"; and if they are looking for an "adolescent hippopotamus," they may search "the living room or garage but not the microwave oven."[81]

Officers are not, however, required to confine their search to places and things in which the evidence is *usually* or *commonly* found. Instead, a search of a certain place or thing will be invalidated only if there was no reasonable possibility that the evidence would have been found inside.[82]

Before we begin, two other things should be noted. First, the descriptions of the places and things that may be searched "should be considered in a common sense manner," which means that the courts should not engage in "hypertechnical readings" of the warrant.[83] Second, *all* evidence obtained during the search will be suppressed if a court finds that the officers flagrantly disregarded the express or implied terms of the warrant as they conducted the search; i.e., if the officers conducted a "general search."[84] In the absence of flagrant disregard, a court will suppress only the evidence that was found in a place or thing that was not searchable under the warrant.[85]

Searching rooms and other interior spaces

If a warrant authorizes a search of a "single living unit"[86]—such as a single-family home, condominium, apartment, or motel room—it impliedly authorizes a search of the following:

COMMON AREAS: Unless the warrant says otherwise, officers may search all common areas, such as the living room, kitchen, bathrooms, hallways, recreation rooms, storage areas, basement, attic, and the yards.[87]

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[78] *U.S. v. Heldt* (D.C. Cir. 1981) 668 F.2d 1238, 1261.

[79] See *Florida v. Jimeno* (1991) 500 U.S. 248, 251 ["The scope of a search is generally defined by its expressed object."]; *People v. Sanchez* (1972) 24 Cal.App.3d 664, 679 ["The authorization to search for heroin necessarily included an authorization for a search of any place in which peyote or barbiturates might be hidden."]; *U.S. v. Neal* (8th Cir. 2008) 528 F.3d 1069, 1074 ["A lawful search extends to all areas and containers in which the object of the search may be found."]; *U.S. v. Sawyer* (11th Cir. 1986) 799 F.2d 1494, 1509 ["the search may be as extensive as reasonably required to locate and seize items described in the warrant"].

[80] (1982) 456 U.S. 798, 821.

[81] *U.S. v. Evans* (7th Cir. 1996) 92 F.3d 540, 543.

[82] See *People v. Kraft* (2000) 23 Cal.4th 978, 1043 [the officers "merely looked in a spot where the specified evidence of crime plausibly could be found, even if it was not a place where photographs normally are stored"]; *People v. Smith* (1994) 21 Cal.App.4th 942, 950 [drug dealers "usually attempt to secrete contraband where the police cannot find it"].

[83] *U.S. v. Rogers* (1st Cir. 2008) 521 F.3d 5, 10. ALSO SEE *People v. Minder* (1996) 46 Cal.App.4th 1784, 1788 [warrants must be interpreted "in a commonsense and realistic fashion"]; *People v. Balint* (2006) 138 Cal.App.4th 200, 207 ["officers executing a search warrant are required to interpret it, and they are not obliged to interpret it narrowly"].

[84] See *People v. Bradford* (1997) 15 Cal.4th 1229, 1306 ["Assuming that the remedy of total suppression is required when police conduct is in flagrant disregard of the limits of the warrant . . . the application of that extreme remedy was not warranted"]; *People v. Gallegos* (2002) 96 Cal.App.4th 612, 624 [suppression of all evidence is not required "unless the officers flagrantly disregard the scope of the warrant"].

[85] See *U.S. v. Whitten* (9th Cir. 1983) 706 F.2d 1000, 1010; *U.S. v. Aljabari* (7th Cir. 2010) 626 F.3d 940, 947.

[86] **NOTE**: The term "single living unit" is loosely defined as a place that is occupied by relatives or roommates who generally have express or implied authority to enter most or all rooms in the building, at least temporarily. See *People v. Gorg* (1958) 157 Cal.App.2d 515, 523 [Here, the living unit was one distinct unit occupied by three persons."]; *People v. Govea* (1965) 235 Cal.App.2d 285, 300 [court indicates that a house does not become a multi-occupant building merely because the owner has permitted a family to temporarily occupy a separate bedroom]; *Hemler v. Superior Court* (1975) 44 Cal.App.3d 430, 433 ["The rule that a search warrant for one living unit cannot be used to justify a search of other units within a multiple dwelling area does not apply where all of the rooms in a residence constitute one living unit."].

[87] See *U.S. v. Ferreras* (1st Cir. 1999) 192 F.3d 5, 10-11 [attic]; *People v. Barbarick* (1985) 168 Cal.App.3d 731, 740-41 [garden area]; *U.S. v. Becker* (9th Cir. 1991) 929 F.2d 442, 446 [yard]; *U.S. v. Gorman* (9th Cir. 1996) 104 F.3d 272, 274 [yard].

BEDROOMS: Officers may search all bedrooms, even bedrooms that are occupied by people who are not suspects in the crime under investigation.[88] As the Ninth Circuit observed, "A search warrant for the entire premises of a single family residence is valid, notwithstanding the fact that it was issued based on information regarding the alleged illegal activities of one of several occupants of the residence."[89]

For example, in *U.S. v. Kyles*[90] FBI agents obtained a warrant to search the apartment of Basil Kyles who was suspected of having robbed a bank the previous day. Basil's mother answered the door and, when asked about a locked bedroom, said it belonged to her other son, Geoffrey; and that Geoffrey had the only key. The agents forced open the door and found evidence that incriminated both brothers. On appeal, Geoffrey argued that the search of his bedroom was beyond the scope of the warrant because he was not a suspect in the robbery when the warrant was executed and his room constituted a "separate residence." The court disagreed, saying, "The FBI agents had no reason to believe that Geoffrey's room was a separate residence: it had neither its own access from the outside, its own doorbell, nor its own mailbox. Mrs. Klyes's statement that Geoffrey was the only person with a key to the room did not, by itself, elevate the bedroom to the status of a separate residential unit."

COMPARE MULTI-RESIDENTIAL STRUCTURES: In contrast to single living units are buildings that have been divided into two or more living units, each under the *exclusive* control of different occupants. The most common buildings that fall into this category are apartment buildings, condominium complexes, duplexes, motels, and hotels. Authorization to search all residences or units in a multi-residential structure will not be implied. Thus, officers who are executing a warrant to search such a building may search only the residences or units that are listed in the warrant; e.g., a certain apartment.[91]

Although it does not happen often, officers will sometimes enter a home to execute a warrant and discover that it is actually a multi-residential structure because it had been divided into separate apartments. This occurred in *Mena v. City of Simi Valley*[92] where officers obtained a warrant to search a house for a firearm that one of the residents, Romero, had used in a gang-related drive-by shooting. The officers knew that the residence was a single-family residence occupied by a large number of people, mostly unrelated. But when they entered, they saw that many of the rooms adjacent to the living room were locked, some with padlocks on the outside of the doors. Furthermore, when they started to force open some of the doors, they saw that the rooms "were set up as studio apartment type units, with their own refrigerators, cooking supplies, food, televisions, and stereos."

The owner of the house sued the officers, claiming the search was overbroad. The officers sought qualified immunity from the Ninth Circuit, but the court refused to grant it, saying, "the officers should have realized that the Menas' house was a multi-unit residential dwelling" and, thus, "the officers' search beyond Romero's room and the common areas was unreasonable."

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[88] See *People v. Gorg* (1958) 157 Cal.App.2d 515, 523 [after finding drugs in the named suspect's bedroom, the officers "acted as reasonable and prudent men in searching the other two bedrooms"]; *Hemler v. Superior Court* (1975) 44 Cal.App.3d 430, 433 ["At most, the evidence shows that three individuals lived in the residence, sharing the living room, bathroom, kitchen and hallways, and that defendant's bedroom opened onto the other rooms and was not locked."]; *U.S. v. Darr* (8th Cir. 2011) 661 F.3d 375, 379 ["officers did not exceed [the warrant's] scope by searching Darr's bedroom, even though the warrant was issued based on information about activities of Darr, Sr."]; *U.S. v. Whitten* (9th Cir. 1983) 706 F.2d 1000, 1006 ["But a warrant may authorize a search of an entire street address while reciting probable cause as to only a portion of the premises if they are occupied in common rather than individually, if a multiunit building is used as a single entity, if the defendant was in control of the whole premises, or if the entire premises are suspect."].

[89] *U.S. v. Ayers* (9th Cir. 1990) 924 F.2d 1468, 1480.

[90] (2nd Cir. 1994) 40 F.3d 519.

[91] See *People v. MacAvoy* (1984) 162 Cal.App.3d 746, 754; *People v. Estrada* (1965) 234 Cal.App.2d 136, 146 [warrant for apartment house or building is void unless there is probable cause to search each unit]; *People v. Joubert* (1983) 140 Cal.App.3d 946, 949-52 [a warrant authorizing a search of several buildings on a 28-acre parcel was overbroad because, among other things, "[t]he existence of multiple roads going to and from each of the residences and the existence of multiple dwellings" indicated there were several separate parcels].

[92] (9th Cir. 2000) 226 F.3d 1031.

Searching attached and detached structures

Although it is preferable that warrants identify all searchable buildings on the property,[93] officers may search attached and unattached structures that are ancillary to the residence or otherwise appear to be controlled by the occupants, such as garages and sheds (attached or detached).[94] As the Ninth Circuit explained, "The curtilage is simply an extension of the resident's living area, and we have previously held that such extensions become part of the residence for purposes of a search warrant."[95]

The courts have also ruled that authorization to search outbuildings on the property will be implied if the warrant authorized a search of "premises" or "property" at a particular address.[96] For example, in *People v. Grossman* the court ruled that a warrant to search "the premises located and described as 13328 Merkel Ave., Apt. A" impliedly authorized a search of a cabinet in the carport marked "A".[97]

On the other hand, express authorization to search an outbuilding will be required if it reasonably appeared to be a rental property under the control of a third party.[98]

Also note that officers may search receptacles on the property (such as a mailbox or garbage can) if it reasonably appeared to be controlled by one or more of the occupants.[99]

Searching personal property

The term "personal property" essentially means items that people ordinarily carry with them, such as purses, backpacks, briefcases, luggage, satchels, and bags. Because it is usually impractical or impossible to include in a warrant a list of all searchable personal property on the premises, there is a general presumption that all such things belong to a resident and may therefore be searched.[100] As the Court of Appeal explained, "The police may ordinarily assume that all personal property which they find while executing a search warrant is the property of a resident of the premises subject to a search."[101]

This presumption does not apply, however, if the officers had reason to believe that the property belonged to a visitor. In that situation, they may search it only if one of the following circumstances existed: (1) there was reason to believe the visitor was an accomplice in the crime under investigation (e.g., a visitor's purse was on a chair in a bedroom where a large quantity of methamphetamine had been found);[102] (2) the item belonged to a person who was more than a casual visitor;[103] or (3) there was reason to believe that "someone within the premises has had an opportunity to conceal contraband within the [item] immediately prior to the execution of the search warrant."[104]

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[93] See *People v. Smith* (1994) 21 Cal.App.4th 942, 949 [it would have "been preferable" for the officer to have expressly indicated that the premises included a certain outbuilding].

[94] See *People v. Smith* (1994) 21 Cal.App.4th 942, 950 [shed]; *U.S. v. Cannon* (9th Cir. 2001) 264 F.3d 875, 880 [storage rooms]; *U.S. v. Frazin* (9th Cir. 1986) 780 F.2d 1461, 1467 [attached garage]; *U.S. v. Paull* (6th Cir. 2009) 551 F.3d 516, 523 ["a warrant for the search of a specified residence or premises authorizes the search of auxiliary and outbuildings within the curtilage"]; *U.S. v. Aljabari* (7th Cir. 2010) 626 F.3d 940, 947 [loading dock]; *U.S. v. Asselin* (1st Cir. 1985) 775 F2 445, 447 [birdhouse]; *U.S. v. Principe* (1st Cir. 1974) 499 F.2d 1135 [storage cabinet located three to six feet from front door].

[95] *U.S. v. Gorman* (9th Cir. 1996) 104 F.3d 272, 274.

[96] See *People v. Dumas* (1973) 9 Cal.3d 871, 881, fn.5; *People v. Mack* (1977) 66 Cal.App.3d 839, 859; *People v. Weagley* (1990) 218 Cal.App.3d 569, 573; *People v. McNabb* (1991) 228 Cal.App.3d 462, 469; *People v. Minder* (1996) 46 Cal.App.4th 1784, 1788-89.

[97] See *U.S. v. Cannon* (9th Cir. 2001) 264 F.3d 875, 879.

[98] (1971) 19 Cal.App.3d 8, 12.

[99] See *People v. Estrada* (1965) 234 Cal.App.2d 136 [garbage can outside the apartment building]; *People v. Weagley* (1990) 218 Cal.App.3d 569 [mailbox]; *U.S. v. Cannon* (9th Cir. 2001) 264 F.3d 875, 880 ["If a search warrant specifying only the residence permits the search of closets, chests, drawers, and containers therein where the object searched for might be found, so should it permit the search of similar receptacles located in the outdoor extension of the residence"].

[100] See *People v. Saam* (1980) 106 Cal.App.3d 789, 794; *People v. Reyes* (1990) 223 Cal.App.3d 1218, 1224; *U.S. v. Gray* (1st Cir. 1987) 814 F.2d 49, 51; *U.S. v. Evans* (7th Cir. 1996) 92 F.3d 540, 543.

[101] *People v. McCabe* (1983) 144 Cal.App.3d 827, 830; *People v. Frederick* (2006) 142 Cal.App.4th 400, 411.

[102] *People v. Berry* (1990) 224 Cal.App.3d 162, 169. Also see *U.S. v. Gray* (1st Cir. 1987) 814 F.2d 49, 51 [defendant "was discovered in a private residence, outside of which a drug deal had just 'gone down' at the unusual hour of 3:35 A.M."].

[103] See *People v. Frederick* (2006) 142 Cal.App.4th 400, 411; *U.S. v. Giwa* (5th Cir. 1987) 831 F.2d 538, 544-45 [visitor was an overnight guest who was alone in the residence when officers arrived].

[104] *People v. McCabe* (1983) 144 Cal.App.3d 827, 830.

Searches for documents

If a warrant authorized a search for documents, officers may search any container on the premises in which such a document might reasonably be found.[105] Thus, a warrant that authorizes a search for one or more documents necessarily authorizes a broad search. As noted in *People v. Gallegos*, "Documents may be stored in many areas of a home, car, motor home or garage. It is not unusual for documents to be stored in drawers or closets, on shelves, in containers, or even in duffle bags."[106]

READING DOCUMENTS ON-SITE: If officers are authorized to search for documents, they may read any document they find to the extent necessary to determine if it is seizable.[107]

LABELS DON'T MATTER: Officers may search containers of documents (such as envelopes, CDs, files, and binders) even though the container displays a label indicating that it does not contain seizable documents.[108] As the Second Circuit observed, "[F]ew people keep documents of their criminal transactions in a folder marked 'drug records.'"[109]

SEEK OPINION OF LEAD INVESTIGATOR: Officers who are not sure whether a document is covered under the warrant, or whether an entire file, box, or other container of documents may be read or removed, should refer the matter to the lead investigator or other designated officer.[110]

REMOVING DOCUMENTS FOR OFF-SITE SEARCH: If officers know ahead of time that it will be necessary to read many documents to determine whether they are seizable under the warrant, they will ordinarily seek express authorization to remove the documents and read them elsewhere.[111] This is not only more convenient for the officers, it will reduce the intrusiveness of the search because they will be able to vacate the premises sooner.

In the absence of express authorization, officers may be impliedly authorized to remove documents if they discovered so many documents on the premises that it was not feasible to read them there.[112] Thus, when this issue arose in *U.S. v. Alexander,* the court responded, "[I]t would have been difficult, and possibly more intrusive to Alexander's privacy, for law enforcement to conduct an on-site review of each of more than 600 photographs to determine whether they were evidence of illegal conduct."[113] Another option in such a case is to seize the documents and seek a warrant that expressly authorizes a search of them off site.

When officers are removing documents for an off-site search, they may ordinarily take the entire file, folder, or binder in which the documents were stored. This not only serves to facilitate the search, it will help keep the files intact.[114] But massive seizures of documents for the sole purpose of establishing do-

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[105] See *People v. Eubanks* (2011) 53 Cal.4th 110, 135 [officers who were searching for indicia "were entitled to search through trash cans and to look at any paper items inside the home"]; *U.S. v. Romo-Corrales* (8th Cir. 2010) 592 F.3d 915, 920 ["[Indicia] can obviously fit into small spaces and containers and, therefore, could be hidden in numerous locations in a residence."].

[106] (2002) 96 Cal.App.4th 612, 626 [edited].

[107] See *Andresen v. Maryland* (1976) 427 U.S. 463, 482, fn.11 ["In searches for papers, it is certain that some innocuous documents will be examined, at least cursorily, in order to determine whether they are, in fact, among those papers authorized to be seized."]; *People v. Alcala* (1992) 4 Cal.4th 742, 799; *U.S. v. Bruce* (6th Cir. 2005) 396 F.3d 697, 710.

[108] See *U.S. v. Tamura* (9th Cir. 1982) 694 F.2d 591, 595.

[109] *U.S. v. Riley* (2nd Cir. 1990) 906 F.2d 841, 845.

[110] See *U.S. v. Wuagneux* (11th Cir. 1982) 683 F.2d 1343, 1352.

[111] See *U.S. v. Tamura* (9th Cir. 1982) 694 F.2d 591, 596.

[112] See *U.S. v. Santarelli* (11th Cir. 1985) 778 F.2d 609, 616 ["The district court estimated that a brief examination of each document would have taken several days. Under these circumstances, we believe that the agents acted reasonably when they removed the documents to another location for subsequent examination."]; *U.S. v. Horn* (8th Cir. 1999) 187 F.3d 781, 788 ["Since we think [the officers] could not practically view more than 300 videos at the search site, we hold that the officers did not exceed the scope of the warrant by seizing Mr. Horn's video collection in its entirety for examination elsewhere."].

[113] (8th Cir. 2009) 574 F.3d 484, 490.

[114] See *People v. Kraft* (2000) 23 Cal.4th 978, 1045; *U.S. v. Beusch* (9th Cir. 1979) 596 F.2d 871, 876; *U.S. v. Hay* (9th Cir. 2000) 231 F.3d 630, 637; *U.S. v. Wuagneux* (11th Cir. 1982) 683 F.2d 1343, 1353 ["It was also reasonable for the agents to remove intact files, books and folders when a particular document within the file was identified as falling within the scope of the warrant. To require otherwise would substantially increase the time required to conduct the search . . . ."].

minion and control (searches for indicia) would ordinarily be deemed excessive.[115]

TIME LIMITATIONS: Although search warrants become void 10 days after issuance, the clock stops when the warrant was executed. Thus, is doesn't matter that the off-site search took longer than 10 days to complete, so long as the officers were diligent. See "When Warrants May Be Executed," above.

Searching computers, cellphones . . .

By definition, any device with digital storage capability contains *information*. Consequently, if a warrant authorizes a search for information (such as financial documents, photos, indicia) officers may want to search for it in such devices. Apart from the various technical issues (and there are lots of them), there are some legal issues that officers must address. The following are fairly common.

IS EXPRESS AUTHORIZATION REQUIRED? To date, most courts have ruled that a warrant which includes authorization to search for information impliedly authorizes a search for the information in any digital storage devices on the premises.[116] For example, in *People v. Balint* the court ruled that it could "perceive no reasonable basis to distinguish between records stored electronically on the laptop and documents placed in a filing cabinet or information stored in a microcassette."[117] But because not all courts agree with this analysis,[118] and also because there is no downside, officers who are writing search warrants should almost always seek express authorization.

SEARCHING OFF SITE: Unless officers intend to conduct only a cursory search for information, they will usually seek express authority to seize digital storage devices on the premises and conduct the search at a location where they will have the time and tools for a thorough examination, such as a police station or forensic lab. As the First Circuit observed in a computer search case, "[I]t is no easy task to search a well-laden hard drive."[119]

If the warrant does not expressly authorize an off-site search but, upon executing the warrant, it become apparent that one will be necessary, there is authority for seizing the device without express authorization and searching it later.[120] But the better practice is to seize the equipment, then seek a warrant to search it off-site.

Two other things: First, if officers seized the device within 10 days after the warrant was issued, they do not need express authorization to begin or continue the search after the warrant expired. Officers should, however, seek court authorization if the seizure will

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[115] See *Hells Angels v. City of San Jose* (9th Cir. 2005) 402 F.3d 962. 972-74.

[116] See *People v. Rangel* (2012) 206 Cal.App.4th 1310, 1316 [phone's memory was "the likely container of [gang indicia]"]; *People v. Varghese* (2008) 162 Cal.App.4th 1084, 1103 ["it was reasonable to conclude the computer . . . might contain information relevant to [defendant's] control of the residence"]; *U.S. v. Giberson* (9th Cir. 2008) 527 F.3d 882, 888 ["While it is true that computers can store a large amount of material, there is no reason why officers should be permitted to search a room full of filing cabinets or even a person's library for documents listed in a warrant but should not be able to search a computer."]; *U.S. v. Hager* (8th Cir. 2013) __ F.3d __ [2013 WL 1274564] [warrant to search for child pornography impliedly authorizes a search of VHS tapes"]; *U.S. v. Upham* (1st Cir. 1999) 168 F.3d 532, 536 [the images "were inside" the computer]; *U.S. v. Aguirre* (5th Cir. 2011) 664 F.3d 606, 614-15 ["the cellular text messages, directory and call logs of Aguirre's cell phone searched by law enforcement officers can fairly be characterized as the functional equivalents of several items listed in Attachment A, including correspondence, address books and telephone directories"]; *U.S. v. Williams* (4th Cir. 2010) 592 F.3d 511, 523 ["the sheer amount of information contained on a computer does not distinguish the authorized search of the computer from an analogous search of a file cabinet containing a large number of documents"]; *U.S. v. Adjani* (9th Cir. 2006) 452 F.3d 1140, 1152, fn.9 ["The fear that agents searching a computer may come across such personal information cannot alone serve as the basis for excluding evidence of criminal acts."]; *U.S. v. Reyes* (10th Cir. 1986) 798 F.2d 380, 383 ["in the age of modern technology and commercial availability of various forms of items, the warrant could not be expected to describe with exactitude the precise form the records would take"].

[117] (2006) 138 Cal.App.4th 200, 209.

[118] **NOTE**: For example, in *U.S. v. Payton* (9th Cir. 2009) 573 F.3d 859, 864 the court refused to rule that "whenever a computer is found in a search for other items, if any of those items were *capable* of being stored in a computer, a search of the computer would be permissible." Said the court, "Such a ruling would eliminate any incentive for officers to seek explicit judicial authorization for searches of computers."

[119] *U.S. v. Upham* (1st Cir. 1999) 168 F.3d 532, 535.

[120] See *Guest v. Leis* (6th Cir. 2001) 255 F.3d 325, 334-37 ["[A] seizure of the whole computer system was not unreasonable, so long as there was probable cause to conclude that evidence of a crime would be found on the computer."]; *U.S. v. Alexander* (8th Cir. 2009) 574 F.3d 484, 490 ["it would have been difficult, and possibly more intrusive to Alexander's privacy, for law enforcement to conduct an on-site review of each of more than 600 photographs to determine whether they were evidence of illegal conduct"].

be prolonged, especially if a legitimate business would be adversely affected by the loss of the device.[121] Second, if officers determine that a certain device or file was not covered under the warrant or was not otherwise seizable, they should return it promptly.[122] This is especially important if it was needed for a legitimate business.[123]

Searching people on the premises

While evidence can often be found hidden in or under the clothing of people, officers are not permitted to search the occupants for evidence unless the warrant expressly authorized it and also identified each searchable person by name, description, or both.[124] As the First Circuit observed, "A search of clothing currently worn is plainly within the ambit of a personal search and outside the scope of a warrant to search the premises."[125] Or, as the U.S. Supreme Court put it, "[A] warrant to search a place cannot normally be construed to authorize a search of each individual in that place."[126]

Two other things should be noted. First, a warrant that authorizes only a search of a particular person does not impliedly authorize officers to enter a home for the purpose of locating the person.[127] Again, the warrant must contain express authorization for such an entry and search. Second, a warrant to search a person does not impliedly authorize a bodily intrusion of any sort.[128]

Searching vehicles on the premises

It is settled that officers do not need a warrant to search a vehicle if they have probable cause to believe it contains evidence of a crime.[129] But this rule generally applies only if the vehicle was located on a street or other public place. So, because criminals may be just as likely to store evidence in their cars as in their homes, officers who write warrants will normally insert language that expressly authorizes a search of any vehicles on the property which are registered to the suspect or are used by him.

IMPLIED AUTHORIZATION TO SEARCH: If officers neglect to seek express authorization, there are three circumstances in which such authorization may be implied. First, officers may search an unlisted vehicle on the property if (a) the vehicle was parked within the curtilage of the house (e.g., in the driveway or garage); and (b) it was owned by, registered to, or controlled by, one of the residents.[130]

Second, an unlisted vehicle may be searched if the warrant authorized a search of the "premises" at the address (e.g., "the premises at 123 Main St.") and the vehicle was in the driveway, a garage or other area within the curtilage of the residence.[131] Third, officers may search an unlisted vehicle if the warrant authorized a search of "storage areas" on the property, and the car was both inoperable and used solely for storage.[132] It is also possible that officers may search an unlisted vehicle that belongs to a visitor if they had probable cause to believe the visitor was involved in the crime under investigation.[133]

ENTERING PRIVATE PROPERTY: A warrant that authorizes a search of a certain vehicle—and nothing more—does not constitute authorization to enter private property for the purpose of locating the vehicle or searching it.[134] Thus, if probable cause is limited to a certain vehicle on private property,

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[121] See *U.S. v. Mutschelknaus* (8th Cir. 2010) 592 F.3d 826, 830.
[122] See *U.S. v. Tamura* (9th Cir. 1982) 694 F.2d 591, 597 ["it was highly improper for the Government to retain the master volumes as a means of coercing Marubeni employees to stipulate to the authenticity of the relevant documents"]; *Davis v. Gracey* (10th Cir. 1997) 111 F.3d 1472, 1477 ["A failure timely to return seized material . . . may state a constitutional or statutory claim."].
[123] See *U.S. v. Hunter* (D. Vt. 1998) 13 F.Supp.2d 574, 583.
[124] See Pen. Code § 1525.
[125] *U.S. v. Micheli* (1st Cir. 1973) 487 F.2d 429, 431. ALSO SEE *People v. Reyes* (1980) 223 Cal.App.3d 1218, 1225-26.
[126] *Ybarra v. Illinois* (1979) 444 U.S. 85, 92, fn.4. ALSO SEE *Wyoming v. Houghton* (1999) 526 U.S. 295, 303.
[127] See *Lohman v. Superior Court* (1977) 69 Cal.App.3d 894, 905.
[128] See *People v. Bracamonte* (1975) 15 Cal.3d 394, 401; *Jauregui v. Superior Court* (1986) 179 Cal.App.3d 1160, 1164.
[129] See *United States v. Ross* (1982) 456 U.S. 798, 809; *People v. Carpenter* (1997) 15 Cal.4th 312, 365.
[130] See *U.S. v. Pennington* (8th Cir. 2002) 287 F.3d 739, 745; *U.S. v. Patterson* (4th Cir. 2002) 278 F.3d 315, 318.
[131] See *People v. Gallegos* (2002) 96 Cal.App.4th 612, 626; *People v. Elliott* (1978) 77 Cal.App.3d 673, 688-89.
[132] See *People v. Childress* (1979) 99 Cal.App.3d 36, 42-43. COMPARE *People v. Dumas* (1973) 9 Cal.3d 871, 880.
[133] See *U.S. v. Evans* (7th Cir. 1996) 92 F.3d 540, 543-44.
[134] See *Lohman v. Superior Court* (1977) 69 Cal.App.3d 894, 903-905.

officers should seek a warrant that authorizes both a search of the vehicle and an entry onto the property.

OFF-SITE FORENSIC SEARCH: If officers have a warrant to search a vehicle for trace evidence or other evidence that can be detected only by means of special equipment, they may be impliedly authorized to remove the vehicle to a location where such a search can be carried out. As the court said in *People v. Superior Court (Nasmeh)*, "Discovery of blood on the automobile and other circumstances warranted transporting it for a later, more scientific examination."[135] Still, if officers anticipate an off-site forensic search, they should seek express authorization for it.

Intensity of the Search

Not only must officers confine their search to places and things they were expressly or impliedly authorized to search, the search itself must have been reasonable in its intensity. In other words, it must not have been unreasonably probing, destructive, or lengthy—the key word being "unreasonably."

THOROUGHNESS: A search will not be deemed unreasonably intensive merely because it was thorough. In fact, one court pointed out that a search must necessarily be thorough, otherwise it is "of little value."[136] Similarly, the court in *U.S. v. Snow* noted that the word "search" has "a common meaning to the average person" which includes "to go over or look through for the purpose of finding something; explore, rummage; examine, to examine closely and carefully; test and try; probe, to find out or uncover by investigation."[137]

LENGTH OF THE SEARCH: A search will not be deemed unduly intensive merely because it took a long time. Instead, what matters is whether the officers were diligent and whether there were circumstances that necessitated a prolonged search.[138] For example, in *People v. Gallegos* the court noted the following in rejecting an argument that a search took too long:

> [W]hile the search lasted approximately seven hours, this was not necessarily unreasonable given that officers searched the residence, truck, garage, and motor home. It goes without saying that the review of even a box of documents can take substantial time. . . . Moreover, the garage was cluttered, making a search more time consuming.[139]

DESTRUCTIVENESS: Because evidence is usually hidden, officers will sometimes need to damage property to find it. This is permitted so long as the intrusion was not "[e]xcessive or unnecessary."[140] As the Ninth Circuit observed:

> [O]fficers executing a search warrant occasionally must damage property in order to perform their duty. Therefore, the destruction of property during a search does not necessarily violate the Fourth Amendment. Rather, only unnecessary destructive behavior, beyond that necessary to execute a warrant effectively violates the Fourth Amendment.[141]

For example, in *U.S. v. Becker*[142] the court ruled it was reasonable for officers to use a jackhammer to break up a slab of concrete in the suspect's backyard because the officers had "ample reason" to believe that methamphetamine was buried under it. As the

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[135] (2007) 151 Cal.App.4th 85, 97. ALSO SEE *People v. Kibblewhite* (1986) 178 Cal.App.3d 783, 785-86 [impounding locked safe].
[136] *U.S. v. Torres* (10th Cir. 1981) 663 F.2d 1019, 1027. ALSO SEE *People v. James* (1990) 219 Cal.App.3d 414, 421 ["it was not unreasonable to double check the thoroughness of the earlier work"]; *Florida v. Jimeno* (1991) 500 U.S. 248, 251 ["Contraband goods rarely are strewn across the trunk or floor of a car."].
[137] (2nd Cir. 1995) 44 F.3d 133, 135.
[138] See *People v. Gabriel* (1986) 188 Cal.App.3d 1261, 1265; *People v. Superior Court* (*Nasmeh)* (2007) 151 Cal.App.4th 85, 98-99; *U.S. v. Squillacote* (4th Cir. 2000) 221 F.3d 542, 557; *U.S. v. Bach* (8th Cir. 2002) 310 F.3d 1063, 1067.
[139] (2002) 96 Cal.App.4th 612, 625.
[140] *United States v. Ramirez* (1998) 523 U.S. 65, 71. ALSO SEE *Dalia v. United States* (1979) 441 U.S. 238, 258 ["[O]fficers executing search warrants on occasion must damage property in order to perform their duty."]; *United States v. Ross* (1982) 456 U.S. 798, 818 [noting that in *Carroll v. United States* (1924) 267 U.S. 132 the Court ruled that prohibition agents did not violate the Fourth Amendment by ripping open the upholstery of Carroll's car because they had probable cause to believe contraband was hidden under the upholstery]; *United States v. Banks* (2003) 540 U.S. 31, 37 ["Since most people keep their doors locked, entering without knocking will normally do some damage"]; *People v. Kibblewhite* (1986) 178 Cal.App.3d 783, 786 [OK to damage safe to get it open]; *Liston v. County of Riverside* (9th Cir. 1997) 120 F.3d 965, 979 ["unnecessarily destructive behavior, beyond that necessary to execute a warrant, effectively violates the Fourth Amendment"].
[141] *Mena v. City of Simi Valley* (9th Cir. 2000) 226 F.3d 1031, 1041.
[142] (9th Cir. 1991) 929 F.2d 442.

court pointed out, the officers knew that the slab was poured shortly after an accomplice's home across the street had been searched, and that the slab was located next to a shop in the backyard in which officers had found evidence of methamphetamine production.

Note that officers may videotape the search to help protect themselves against false claims that they unnecessarily damaged or destroyed property.[143]

Seizing Evidence in Plain View

Officers may, of course, seize any items listed in the warrant and any items that were the "functional equivalent" of a listed item.[144] In addition, under the "plain view" rule, they may seize an item that was not listed if both of the following circumstances existed: (1) the item was discovered while they were conducting a lawful search for listed evidence, and (2) they had probable cause to believe the item was evidence in the crime under investigation or some other crime.

Lawful search: Scope of search

The "lawful search" requirement is satisfied if officers discovered the unlisted evidence while they were searching places or things in which any of the listed evidence could reasonably have been found.[145] It is "essential," said the U.S. Supreme Court, "that the officer did not violate the Fourth Amendment in arriving at the place from which the evidence could be plainly viewed."[146] This subject was covered above in the sections "What May Be Searched" and "Intensity of the Search."

Lawful search: Pretext searches

The question arises: Is a search "lawful" if it was conducted by an officer who was mainly interested in discovering unlisted evidence pertaining to some other crime? The answer is *yes* if both of the following circumstances existed: (1) the officer had been informed of the terms of the warrant, and (2) he restricted his search to places and things in which the listed evidence might reasonably be found. As the United States Supreme Court explained:

> The fact that an officer is interested in an item of evidence and fully expects to find it in the course of a search should not invalidate its seizure if the search is confined in area and duration by the terms of the warrant.[147]

Thus, regardless of the officer's motivation, if he observed evidence of another crime, he may seize it if he had probable cause to believe it was, in fact, evidence.

For example, in *People v. Carrington*[148] the defendant, Celeste Carrington, embarked on a one-woman crime spree along the San Francisco Peninsula, burglarizing businesses in which she had previously worked as a janitor. Because the crimes occurred in several cities, officers from these cities formed a task force and eventually developed probable cause to search Carrington's home for property that was taken in a burglary that occurred in Los Altos. Among the officers who took part in the search were two investigators from the Palo Alto Police Department who were primarily interested in finding evidence that linked Carrington to a murder in their city in which an employee of a company was shot and killed during

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[143] See *Wilson v. Layne* (1999) 526 U.S. 603, 613; *People v. Smith* (1994) 21 Cal.App.4th 942, 951, fn.3; *People v. Hines* (1997) 15 Cal.4th 997, 1041-42; *Marks v. Clarke* (9th Cir. 1996) 102 F.3d 1012, 1032, fn.37.

[144] See *People v. Balint* (2006) 138 Cal.App.4th 200, 208 ["In determining whether seizure of particular items exceeds the scope of the warrant, courts examine whether the items are similar to, or the functional equivalent of, items enumerated in the warrant, as well as containers in which they are reasonably likely to be found."]; *U.S. v. Aguirre* (5th Cir. 2011) 664 F.3d 606, 614 ["We have upheld searches as valid under the particularity requirement where a searched or seized item was not named in the warrant, either specifically or by type, but was the functional equivalent of other items that were adequately described."].

[145] See *Texas v. Brown* (1983) 460 U.S. 730, 737; *People v. Williams* (1988) 198 Cal.App.3d 873, 887; *Guidi v. Superior Court* (1973) 10 Cal.3d 1, 6 ["the legality of the seizure of an object falling within the plain view of an officer is dependent upon that officer's right to be in the position from which he gained his view of the seized object"]; *People v. Bradford* (1997) 15 Cal.4th 1229, 1295 ["The officers lawfully must be in a position from which they can view a particular area"].

[146] *Horton v. California* (1990) 496 U.S. 128, 136.

[147] *Horton v. California* (1990) 496 U.S. 128, 138. ALSO SEE Pen. Code § 1530 ["A search warrant may in all cases be served by any of the officers mentioned in its directors, but by no other person, *except in aid of the officer on his requiring it*, he being present and acting in its execution." Emphasis added.]. COMPARE *People v. McGraw* (1981) 119 Cal.App.3d 582, 602 ["It is clear that [the officer] was not on the premises to help execute the search warrant. . . . In fact, [he] never even read the warrant."].

[148] (2009) 47 Cal.4th 145.

the commercial burglary. In the course of their search, the Palo Alto investigators saw a pager that belonged to the murder victim and also a key to his workplace. So they froze the scene and obtained a second warrant that authorized the seizure of the pager and key, plus a search for additional evidence pertaining to the murder. During the search, they found the murder weapon.

On appeal, Carrington argued that the evidence should have been suppressed because it was apparent that the Palo Alto officers were using the warrant as a pretext to look for evidence in their murder case. The California Supreme Court ruled, however, that the legality of the search did not depend on the secret motivation of the officers, but on whether they had restricted their search to places and things in which some of the listed evidence could have been found. And, said the court, they had:

> In the present case, the police did not exceed the scope of the search authorized by the warrant, and they observed [the murder evidence] in plain view in defendant's home. These observations were lawful because the presence of the officers at the location where the observations were made was lawful, regardless of the officers' motivations.

Similarly, in *People v. Williams*[149] narcotics officers in Kern County obtained a warrant to search Williams' house for drugs. Before leaving, they called the burglary-theft detail and requested "two bodies" to assist with the search. It turned out that the "two bodies" who were assigned the job belonged to two detectives who had previously received a tip that Williams was dealing in stolen property. The tip paid off because, while searching for drugs, the detectives seized a "plethora of electronic equipment, silverware, clocks, and firearms." As a result, Williams was charged with possession of stolen property. On appeal, the court ruled the stolen property was discovered during a lawful search because "the officers did not move articles to get serial numbers or other indicia of ownership to any greater degree than one might expect in looking for hidden drugs pursuant to the warrant."

In contrast, in *People v. Albritton*[150] an auto theft investigator accompanied narcotics officers when they executed a warrant to search Albritton's home for drugs. The investigator knew that Albritton was a car thief, and when the search began he split off from the narcotics officers and went into Albritton's garage and backyard where he found 18 vehicles. He then searched for their VIN numbers and learned that eight of the cars were stolen. Albritton was subsequently convicted of possessing stolen vehicles, but the court ruled the evidence should have been suppressed because, by examining the VIN numbers, the officer was conducting "a general exploratory search for unlisted property."

Probable cause

As noted, officers may seize unlisted evidence under the plain view rule only if they had probable cause to believe it was, in fact, evidence of a crime.[151] In discussing the nature of such probable cause, the U.S. Supreme Court said that it exists if "the facts available to the officer would warrant a man of reasonable caution in the belief that certain items may be contraband or stolen property or useful as evidence of a crime; it does not demand any showing that such a belief be correct or more likely true than false. A practical, nontechnical probability that incriminating evidence is involved is all that is required."[152]

As we will now discuss, probable cause may be based on the knowledge of the officer who discovered the evidence, or the knowledge of civilians who have some special knowledge or expertise.

PROBABLE CAUSE ESTABLISHED BY OFFICERS: In most cases, probable cause to seize unlisted evidence will be based on the knowledge of the lead investigator or other officer who is familiar with the details of the crime. The following are some examples:

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[149] (1988) 198 Cal.App.3d 873.

[150] (1982) 138 Cal.App. 3d 79.

[151] See *Arizona v. Hicks* (1987) 480 U.S. 321, 326-28; *People v. Eubanks* (2011) 53 Cal.4th 110, 136; *People v. Kraft* (2000) 23 Cal.4th 978, 1050.

[152] *Texas v. Brown* (1983) 460 U.S. 730, 742. ALSO SEE *People v. Rios* (1988) 205 Cal.App.3d 833, 840-41; *People v. Stokes* (1990) 224 Cal.App.3d 715, 719; *People v. Holt* (1989) 212 Cal.App.3d 1200, 1204.

MURDER WARRANT: An investigator seized unlisted wire clippers because he knew that bailing wire had been used to bind the victims.[153]

MURDER WARRANT: An investigator seized unlisted "cut-off panty hose" because he knew that the murderers had worn masks and that cut-off panty hose are commonly used to make masks.[154]

BURGLARY WARRANT: An investigator seized unlisted bolt clippers because he knew that the burglars had used bolt cutters to gain entry.[155]

SOLICITATION OF MURDER WARRANT: While searching the home of a man who had solicited the murder of his estranged wife, an investigator seized an unlisted hand-drawn diagram of the wife's home.[156]

MURDER WARRANT: An investigator seized unlisted shoes with waffled soles because he knew that "waffled-like shoe prints" had been found at the crime scene.[157]

NARCOTICS WARRANT: An investigator seized unlisted guns because "they were in close proximity to a plethora of drugs and drug-related equipment."[158]

Note that, while all of the seized evidence in the above examples was relevant to the crime for which the warrant had been issued, officers may seize evidence pertaining to *any* crime if it was in plain view.[159]

PROBABLE CAUSE ESTABLISHED BY OWNER OF STOLEN PROPERTY: In many burglaries and other theft-related crimes, the victim will be unable to provide a complete description of everything that was taken. So if officers obtain a warrant to search the suspect's home for the stolen property, they may arrange to have the victim accompany them and notify them if he sees any property that was not listed in the warrant; and if he does, they may seize it.

For example, in *People v. Superior Court (Meyers)*[160] deputies in Marinwood developed probable cause to believe that Meyers had burglarized the home of his neighbors, Mr. and Mrs. Lane. The Lanes reported that "well over a hundred" items were stolen and they "could not recall everything that was taken." While executing a warrant to search Meyers' home, deputies asked the Lanes to watch and notify them if they saw any of their property. During the search, the Lanes identified several dozen unlisted items which the deputies seized. In ruling that this procedure was lawful, the California Supreme Court said:

> To require the victims of a massive burglary to recall every missing face-cloth and coffee pot is to require the impossible. The procedure which the police pursued in the present case reasonably accommodated the legitimate interests of effective law enforcement without seriously impinging upon defendant's right to be secure in his house and effects against indiscriminate governmental intrusion.

There are, however, two limitations on victim-assisted searches. First, the victims may not search—they may only *watch* and notify officers if they see any of their property. Second, if the victim identifies an item, officers may not seize it until the victim has explained how he was able to identify it. Although the victim need not provide a lengthy or elaborate explanation, something more than "That's mine" is required. For example, in one case the victim's statement "I recognize it because of the design" was deemed sufficient.[161]

PROBABLE CAUSE ESTABLISHED BY EXPERT: If a warrant authorizes a search for property that cannot be identified without assistance from an expert in some field, officers may arrange to have such a person accompany them when they execute the warrant.

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[153] *People v. Easley* (1983) 34 Cal.3d 858, 872.
[154] *People v. Hill* (1974) 12 Cal.3d 731, 763.
[155] *People v. Mack* (1977) 66 Cal.App.3d 839, 859.
[156] *People v. Miley* (1984) 158 Cal.App.3d 25, 35-36.
[157] *People v. Gillebeau* (1980) 107 Cal.App.3d 531, 553-54.
[158] *U.S. v. Rodriguez* (8th Cir. 2013) __ F.3d __ [2013 WL 1338116].
[159] See *Arizona v. Hicks* (1987) 480 U.S. 321, 325; *People v. Kraft* (2000) 23 Cal.4th 978, 1043; *People v. Gallegos* (2002) 96 Cal.App.4th 612, 623.
[160] (1979) 25 Cal.3d 67. ALSO SEE *U.S. v. Gregoire* (8th Cir. 2011) 638 F.3d 962, 967 ["It was objectively reasonable for the officers to turn to the Arnolds, owners and managers of Reed's, a theft victim, for help in confirming which items there was probable cause to believe had been stolen."].
[161] *People v. Superior Court (Meyers)* (1979) 25 Cal.3d 67, 75, fn.6.

Furthermore, unlike victim-assisted searches, the expert may, if necessary, actually conduct the search. For example, in *People v. Superior Court (Moore)*[162] officers in Santa Clara County were investigating a theft of trade secrets from Intel. During the course of the investigation, they obtained a warrant to search the suspect's business for several technical items, such as a "Magnetic data base tape containing Intel Mask data or facsimile for product No. 2147 4K static Ram."

The affiant knew that he would need an expert to identify most of these items, so he obtained authorization to have Intel technicians assist in the search. Actually, the technicians did the searching while the officers watched. As the court pointed out:

> [N]one of the officers present did any searching, since none of them knew what items described in the warrant looked like. Rather, at the direction of the officer in charge, they stood and watched while the experts searched.

In addition to finding some of the listed evidence, the experts found several unlisted items that they set aside. Afterward, officers obtained a second warrant that authorized the seizure of these items.

On appeal, Moore argued that the search by the Intel experts violated the rule (discussed above) that crime victims cannot actually conduct the search. But the court ruled that this restriction does not apply where, as here, the complexity of the search would have made it impossible or impractical to do so. Among other things, the court said,:

> [T]here is no requirement that such experts, prior to stating their conclusions [that the property was stolen], engage in the futile task of attempting to educate accompanying police officers in the rudiments of computer science, or art forgery, or any other subject of scientific or artistic enterprise.

It should be noted that officers may also utilize a dog who had been trained to detect an item listed in the warrant, such as explosives or drugs. Although the United States Supreme Court recently placed restrictions on walking a drug-detecting dog onto a person's front yard to sniff for narcotics,[163] that ruling pertained only to warrantless intrusions.

PROBABLE CAUSE TO "SEIZE" INCOMING PHONE CALLS: Under certain circumstances, officers who are executing a warrant may "seize" incoming phone calls under the plain view rule if they had probable cause to believe the caller would provide incriminating information. By "seizing" incoming phone calls, the courts mean answering the phone, posing as the suspect or an accomplice, and engaging the caller in a conversation about the crime under investigation. This is especially useful if the premises are being used for illegal activities such as drug trafficking, prostitution, and sales of illegal weapons.[164]

When to Seek a Second Warrant

Officers are not ordinarily required to obtain a second warrant to search a place or thing they could have lawfully searched under the terms of the first warrant. Thus, in *People v. Rangel* the Court of Appeal observed, "Federal cases have recognized that a second warrant to search a properly seized computer it not necessary where the evidence obtained in the search did not exceed the probable cause articulated in the original warrant."[165] As we will now discuss, however, there are three situations in which a second warrant may be required.

SEEKING EVIDENCE OF OTHER CRIMES: While conducting a search, officers will sometimes find evidence pertaining to a crime other than the one for which the warrant was issued. If, upon observing the evidence, the officers had probable cause to believe

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[162] (1980) 104 Cal.App.3d 1001. ALSO SEE *Forro Precision, Inc. v. IBM Corp.* (9th Cir. 1982) 673 F.2d 1045, 1054 ["A layman would not have had the expertise to identify the drawings containing IBM product specifications. Teams composed of police officers and IBM employees conducted the search. The IBM employees were accompanied by an officer at all times and acted under direct police supervision."].

[163] *Florida v. Jardines* (2013) __ U.S. __ [133 S.Ct. 1409].

[164] See *People v. Sandoval* (1966) 65 Cal.2d 303, 308; *People v. Ledesma* (2006) 39 Cal.4th 641, 704 [officers "had reason to believe that the incoming call would be from defendant and that, by answering it, they would obtain information leading to his imminent capture."]; *People v. Drieslein* (1985) 170 Cal.App.3d 591, 599-602; *People v. Vanvalkenburgh* (1983) 145 Cal.App.3d 163, 167.

[165] (2012) 206 Cal.App.4th 1310, 1317 [citations omitted]. ALSO SEE *People v. Superior Court (Nasmeh)* (2007) 151 Cal.App.4th 85, 97 ["taking Nasmeh's seized vehicle to the crime laboratory to search for and conduct a scientific analysis of trace items did not offend the Fourth Amendment"].

it was, in fact, evidence of a crime, they may seize it under the plain view rule (which we discussed earlier). But if the officers want to expand their search to look for more evidence of the new crime, they will need a second warrant that specifically authorizes it. For example, if officers are searching for evidence of drug trafficking, and if they open a container and find child pornography, that evidence will be admissible under the plain view rule. But they may not search for more evidence of child pornography unless they obtain a second warrant.[166]

WRONG DESCRIPTION: Upon arrival, officers may learn that the description in the warrant was incorrect. For example, the warrant might contain the wrong house number or the premises might consist of two separate residences instead of one. When this happens, the required procedure will depend on whether the error was discovered before officers made their presence known.

Specifically, if the officers had not alerted the occupants to the impending search, they will usually leave and seek a new warrant with a corrected description. Thus, when officers failed to do this in *U.S. v. Garcia*, the court said, "Obtaining a corrected warrant may have been the better choice, particularly since there was ample time to do so."[167] But if the error was discovered after the suspects became aware of the impending search, officers cannot simply leave the premises to seek a new warrant because the evidence will likely be gone when they return. Consequently, they will usually secure the premises while they promptly seek a corrected warrant.

"ONE WARRANT, ONE SEARCH" RULE: A search warrant authorizes only a single search. This means that, once officers have departed the scene, they will need a new warrant to re-enter the premises to search for additional evidence.[168]

Post-Search Procedure

After they have completed the search, officers must comply with the following post-search requirements:

LEAVE RECEIPT: Officers must leave a receipt for the property they seized.[169]

"RETURN" OF WARRANT AND INVENTORY: Within 10 days after the warrant was issued, the original signed warrant must be filed with ("returned" to) the judge along with a sworn inventory of all seized property.[170] Note that in calculating the 10-day period, do not count the day on which the warrant was issued.[171] Also note that, if reasonably necessary, officers may file a partial inventory, so long as they file a complete inventory when they are able to do so.[172]

OFFICERS MUST RETAIN THE EVIDENCE: Although Penal Code sections 1523 and 1529 say that the officers must bring the evidence to the judge, Penal Code sections 1528(a) and 1536 say the officers must retain the evidence pending further order of the court. Because judges do not want officers to deliver loads of drugs, stolen property, murder weapons and other sordid things to their chambers, the Court of Appeal has ruled the evidence must be retained by the officers unless the warrant directs otherwise.[173]

DISPOSITION OF EVIDENCE SEIZED BY MISTAKE: Officers who mistakenly seized property that was not listed in the warrant may release it to its owner without court authorization.[174]

INSPECTION OF DOCUMENTS BY OUTSIDE AGENCY: If officers from another agency want copies of seized documents, they should seek an order to examine and copy the documents.[175] This order should be supported by an affidavit establishing probable cause to believe the documents are evidence of a crime they are investigating. POV

[166] See *U.S. v. Galpin* (2nd Cir. 2013) __ F.3d __ [2013 WL 3185299]; *U.S. v. Giberson* (9th Cir. 2008) 527 F.3d 882, 88.
[167] (10th Cir. 2013) 707 F.3d 1190, 1197.
[168] See *People v. James* (1990) 219 Cal.App.3d 414, 418-20.
[169] See Pen. Code § 1535.
[170] See Pen. Code §§ 1534, 1537.
[171] See *People v. Clayton* (1993) 18 Cal.App.4th 440, 445.
[172] See *People v. James* (1990) 219 Cal.App.3d 414, 420; *People v. Schroeder* (1979) 96 Cal.App.3d 730, 733.
[173] See *People v. Superior Court (Loar)* (1972) 28 Cal.App.3d 600, 607, fn.3 [Pen. Code §§ 1528(a) and 1536 prevail over conflicting language in Pen. Code §§ 1523 and 1529]; *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703, 713.
[174] See *Andresen v. Maryland* (1976) 427 U.S. 463, 482, fn.11; *U.S. v. Tamura* (9th Cir. 1982) 694 F.2d 591, 597.
[175] See *Oziel v. Superior Court* (1990) 223 Cal.App.3d 1284, 1293 ["[T]he police held the videotape on behalf of the court and have *no authority to disclose it* or dispose of it except as the court may order." Emphasis added].