

Recent Case Report

Date posted: February 3, 2009

People v. Galland

(2008) 45 Cal.4th 354

Issue

What is the required procedure when a judge orders that all or part of a search warrant affidavit be sealed? In particular, how should the courts ensure that the information in sealed affidavits remains confidential?

Facts

An officer in Buena Park obtained a warrant to search Galland's mobile home for drugs and sales paraphernalia. In the course of the search, officers found methamphetamine and evidence that he was selling it.

Eight days later, the officer filed an inventory and return, and also requested that the judge seal a large portion of the affidavit that contained information that would disclose or tend to disclose the identity of a confidential informant. The judge granted the request, and also permitted the officer to keep the original sealed affidavit in the police property room.

Galland filed a motion to suppress the evidence on grounds that, among other things, the sealed affidavit should have been filed with the court, not kept by the police. The motion was denied, and Galland appealed to the Court of Appeal.

It was then discovered that the sealed affidavit had been destroyed when the police department purged its files. Although the Orange County District Attorney's Office was able to provide a "substitute" affidavit that the superior court ruled was identical to the original, the Court of Appeal ruled that the record was inadequate, and therefore granted Galland's motion to suppress. The People appealed to the California Supreme Court.

Discussion

In *Galland*, the Supreme Court addressed a recurring question: How can officers and prosecutors be sure that information in sealed search warrant affidavits is not inadvertently disclosed to defendants or the public? The problem has arisen because, although these documents are ordinarily kept by the courts, there is no standardized procedure for maintaining confidentiality.

While the court in *Galland* did not mandate a particular security procedure, as we will discuss, it set the wheels in motion; and it also made some rulings that should resolve the problem in the interim. First, it ruled that sealed search warrant affidavits must ordinarily be retained by the issuing courts. "In our view," said the court, "a sealed search warrant affidavit, like search warrant affidavits generally, should ordinarily be part of the court record that is maintained at the court. Such a rule minimizes the potential for tampering with the record and eliminates the need for time-consuming and cumbersome record-authentication procedures."

The court acknowledged, however, that problems may exist, that security measures may be inadequate in some courts. Consequently, it ruled that a superior court judge may permit the investigating law enforcement agency to retain custody of a sealed search warrant affidavit if the judge determined that the following circumstances existed:

- (1) **Inadequate court security:** The security procedures at the court or court clerk's office were inadequate to protect the affidavit against unauthorized disclosure.¹
- (2) **Adequate police security:** The affidavit security procedures at the investigating law enforcement agency were sufficient.
- (3) **Retention procedures:** The investigating agency has procedures in place that adequately ensure that affidavits are retained for 10 years after final disposition of non-capital cases, and permanently for capital cases.
- (4) **Record of reviewed documents:** The judge who issued the warrant should make "a sufficient record of the documents that were reviewed [for probable cause], including the sealed materials, so as to permit identification of the original sealed affidavit in future proceedings or to permit reconstructions of the affidavit if necessary."

The court also took steps to alleviate the problem by instructing the superior courts to institute adequate security procedures. Specifically it ruled that the courts "should endeavor to promptly address and resolve security concerns identified by the People so that those confidential records may be maintained securely at the court. This problem may merit consideration as a statewide policy matter, and we suggest to the Judicial Council that it establish a task force for that purpose."

Back to the case at hand: The court ruled that the Buena Park police should not have been given custody of the sealed affidavit because there was no showing that such a precaution was necessary. But it also ruled that suppression of the evidence was inappropriate for two reasons. First, the People had provided the superior court with an identical copy of the sealed affidavit, which meant that the Court of Appeal could have ruled on superior court's denial of the motion to suppress. Second, it turned out that the sealed affidavit was not, in fact, destroyed—it had been located in the files of the Orange County Superior Court. Consequently, the Supreme Court remanded the case back to the Court of Appeal for a ruling on Galland's motion to suppress. POV

(Note: In accordance with *Galland*, the court in Alameda County revised its security procedures per the memo below.)

¹ **NOTE:** Technically, the first requirement is that "disclosure of the information would impair further investigation of criminal conduct or endanger the safety of the confidential informant or the informant's family." But the affidavit could not have been sealed in the first place unless one of these circumstances existed. See Pen. Code §§ 1040, 1041.



**Superior Court
State of California**

CHAMBERS OF THE PRESIDING JUDGE
YOLANDA NORTHRIDGE

COUNTY OF ALAMEDA

COURTHOUSE
1225 FALLON STREET
OAKLAND, CALIFORNIA 94612
(510) 891-6040

**AMENDED
MEMORANDUM**

DATE: January 30, 2009

TO: All Judicial Officers
All Peace Agencies serving Search Warrants issued by Superior Court
Judges Assigned in Alameda County

FROM: Yolanda N. Northridge, Presiding Judge

SUBJECT: Amended Search Warrant Procedure

The following procedure outlines the manner in which Search Warrants issued by Judges presiding in the Superior Court, County of Alameda are handled by the Court and the Criminal Division Clerk's Offices:

- The officer prepares the warrant and the affidavit in support of the warrant and submits both to the judge for signature.
- After signing, the judge gives the original signed warrant to the officer and retains a copy. (A warrant issued via fax is labeled "Duplicate Original" by the officer upon receipt at the judge's direction).
- The judge retains the ORIGINAL SIGNED AFFIDAVIT (or copy received via fax) along with a copy of the warrant. A copy of the signed affidavit may be provided to the officer for the officer's records, if requested.
- If the judge has made an **order sealing documents** submitted in support of the warrant, those documents should be placed in a sealed envelope with a copy of the sealing order affixed to the front. (The DA's Office is recommending to law enforcement that they present both the order and an envelope to the judge at the time the warrant is requested.)
- **IMMEDIATE ACTION REQUIRED:** Immediately upon retaining the signed affidavit and a copy of the signed warrant, the judge must take affirmative steps to secure and file these highly sensitive documents. If the warrant and affidavit are signed during working hours, the judge should immediately transfer the documents to the designated manager in the Criminal Division Clerk's Office. If the documents are signed after normal working hours, the judge should keep the documents confidential and secure until the next court day and then immediately transfer the documents to the designated manager.

Search Warrant Procedure

January 30, 2009

Page 2

- The judge should call the designated manager in the Criminal Division Clerk's Office and make arrangements for immediate and direct transfer of the affidavit and any accompanying documents from the judge to the manager. The most secure transfer, and thus the best practice, is for the judge to personally deliver the documents to the manager either in the Clerk's Office, courtroom or chambers. Alternatively, the judge may direct his/her clerk or courtroom attendant to personally deliver the documents to the designated manager.
- Under no circumstances should the judge leave the affidavit or the copy of the search warrant in chambers or the courtroom unsecured. These documents should not be kept by the judge beyond the first opportunity to transfer them to the designated manager in the Clerk's Office. These documents should not be transferred through QIC code. These documents should not be handed to or dropped off with subordinate employees of the Clerk's Office. They must be given directly to the designated supervisor on duty to insure proper filing and security of these documents.
- The affidavit is assigned a Register Number and logged in the Unified Search Warrant Register.
- The officer serves the warrant, retaining the original warrant signed by the judge.
- Within three (3) days of service the officer returns the ORIGINAL WARRANT (or duplicate original) along with the ORIGINAL INVENTORY to the Criminal Division Clerk's Office. **NOTE:** The officer must sign the inventory under penalty of perjury. The magistrate need not administer an oath.
- If the warrant is served and nothing is taken in the search, the officer returns the original warrant with an inventory form indicating "Nothing Taken".
- If the warrant is not served within 10 days, the officer must return the original warrant to the Criminal Division Clerk's Office with an inventory form stating "Warrant Not Served".
- The warrant and inventory are matched with the original affidavit, assigned the corresponding register number and maintained in the Criminal Division Clerk's Office.

All warrants and affidavits bearing the judge's original signature, whether served or unserved, must be returned to the Criminal Division Clerk's Office along with an inventory form signed by the officer.

c: Pat Sweeten, Court Executive Officer
Adrianne Forshay, Assistant Executive Officer
Executive Team
Alameda County District Attorney
Alameda County Public Defender
Alameda Police Department
Berkeley Police Department
Albany Police Department
Oakland Police Department
Emeryville Police Department

Search Warrant Procedure

January 30, 2009

Page 3

Piedmont Police Department
San Leandro Police Department
Hayward Police Department
Alameda County Sheriff's Department
Union City Police Department
Newark Police Department
Fremont Police Department
Dublin Police Department
Pleasanton Police Department
Livermore Police Department
Department of Motor Vehicle
Department of Insurance
BART Police
California Highway Patrol

G:/exeofs/pj/Northridge/searchwarrant2009memo