ALL MATERIALS at:

https://www.thesessionslawfirm.com/resources/

Fighting Warrants in DUI Cases

Defense of Drinking Drivers Seminar

December 3, 2021

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What's the deal with search warrants?

- They're difficult to challenge.

- They're becoming more prevalent.

- The absence of them creates a good argument for us.

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What do you need to get started?

- Get the warrant.
- Get the affidavit.
- If there is anything outside of the affidavit that the Judge relied upon in considering the application, *try* to get it.

Try to get these things outside of discovery. If you're getting them from the State, they're going to have them too.

You're best day is one where they don't have them.

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Getting started challenging a search warrant

File your motion to suppress:

https://www.thesessionslawfirm.com/wp-content/uploads/2021/12/MTS-SEARCH-WARRANT.docx

DO NOT GET BOUNCED FOR FAILURE TO FILE WITHIN 10 DAYS OF ARRAIGNMENT.

THIS IS A REAL PROBLEM POST-COVID.

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Motion to Suppress or Motion in Limine: Yes, It Does Matter

AUTHORITY

Motion to Suppress: O.C.G.A. 17-5-30, which is also referred to in older case law as Section 13 of an Act of 1966 (Ga.L.1966, pp. 567, 571; Code Ann. 27-313)

Motion in Limine: statutory, regulations, or common law

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Motion to Suppress or Motion in Limine: Yes, It Does Matter

Time Limitations on Filing

Motion to Suppress: within 10 days after the date of arraignment

Motion in Limine: at any time

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Understanding Your Goals in a Motion Hearing

Five Basic Purposes of Motions:

1) Exclusion of unfavorable evidence;
2) Trial preparation;
3) Improving the plea offer;
4) Diversion; and,
5) Dismissal of the charges.

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Understand the burdens at the suppression hearing

Under OCGA § 17–5–30(b), “the burden of proving that the search and seizure were lawful shall be on the [S]tate.”

Once a motion to suppress has been filed, the burden of proving the lawfulness of the warrant is on the [S]tate and that burden never shifts. [Cits.] The only burden upon the challenger of a search warrant is that of producing evidence to support his challenge, which burden is shifted to him only after the [S]tate has met its initial burden of producing evidence showing the validity of the warrant. [Cit.]
Davis v. State, supra at 213, 465 S.E.2d 438.

Watts v. State, 274 Ga. 373, 375, 552 S.E.2d 823, 825 (2001)

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Understand the burdens at the suppression hearing

- The warrant must be introduced.
- The affidavit must be introduced.

Watts v. State, 274 Ga. 373, 375, 552 S.E.2d 823 (2001)

You’re best day is one where they don’t.

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Fun things to look at

- **Authorization of search of the blood outside of the county.**
  - **1st search/seizure; 2nd search in DeKalb**
  - **Cell phone analogy**

"It has been expressly held that a magistrate may issue a search warrant for any area of the county in which his district lies." Ga.Crim.Trial Prac., 1993 ed., § 4-5. *Dye v. State*, 114 Ga.App. 299(1)(a), 151 S.E.2d 164 (1966). Conversely, a magistrate may not issue a search warrant for a location outside of his district. The city court would have had jurisdiction to issue a search warrant for any part of the City of Atlanta, be it in Fulton or DeKalb County. See *Campbell v. State*, 207 Ga.App. 366, 367(2), 428 S.E.2d 111 (1993) (in which a warrant issued by College Park Municipal Court judge from her home in Fulton County was held to be valid for execution in that part of College Park which straddles the Clayton County line).

State v. Kirkland, 212 Ga. App. 672, 672, 442 S.E.2d 491, 492 (1994)

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Fun things to look at

- **The foundation for the blood test**
  - **Shortcuts in 40-6-392 do not apply**

Construing the plain language of OCGA § 40-6-392 (a) (3), it is apparent that it applies only to tests administered at the direction of a law enforcement officer, not tests administered pursuant to a search warrant, which by definition are issued at the direction of a judicial officer. So, while subsection 40-6-392 (a) (1) (A) applies to chemical tests performed pursuant to search warrants, subsection (a) (3) does not. To hold that the statute, in its silence, applies to tests administered at the direction of a judicial officer would require us to add words not found in the statute. This, we will not do. Reading the statute in this manner is also consistent with our conclusion that an independent test is an incentive for accepting testing under implied consent.

Hynes v. State, 341 Ga. App. 500, 511–12, 801 S.E.2d 306, 313 (2017).

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Fun things to look at

- **Affidavits that rely upon refusal of tests**

It was error for the magistrate to consider the Gardners' refusal to consent to a search of their residence as part of the basis for the issuance of the search warrant in this case. Refusing consent to search was the Gardners' right, and "[w]e decline to view the exercise of a constitutional right as a factor in determining probable cause."[13] Thus, the trial court's determination that refusal to consent to a search may be taken into account when determining probable cause is error as a matter of law.

That said, however, a review of the affidavit in support of the warrant request demonstrates an ample factual basis for the warrant to issue absent the Gardners' refusal to consent, which factual basis consisted of the majority of the facts outlined above. Under the "totality of circumstances" review utilized on appellate review, we find that "the magistrate had a substantial basis for concluding that probable cause existed."[14]

Gardner v. State, 255 Ga. App. 489, 493, 566 S.E.2d 329, 332–33 (2002)

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Visit: **https://whatlawyersdo.co/dui-practice-accelerator**

Thank you!

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