



**VI. CRIMINAL PROCESS
FROM ARREST TO
CONCLUSION**

**PRESENTED BY:
JUDGE MARK A. SPEISER**

I. POLICE INVESTIGATIVE TOOLS

- **A. ARREST WITHOUT WARRANT**
 - **WHEN A FELONY, MISDEMEANOR OR ORDINANCE VIOLATION IS COMMITTED OR IS BEING COMMITTED IN PRESENCE OF OFFICER**



- **B. INVESTIGATIVE MEASURES AVAILABLE TO DETECT CRIME WHEN CRIMINAL ACTIVITY IS NOT READILY ASCERTAINABLE, VISIBLE AND APPARENT**

1. UNDERCOVER POLICE

- **SELLING DRUGS, COUNTERFEIT CURRENCY, ALCOHOL, STOLEN PROPERTY**
- **POSING AS PROSTITUTE, ORGANIZED CRIME HITMAN**
- **MUST BE CONCERNED WITH DEFENSE OF ENTRAPMENT**

- **2. USE OF INFORMANTS**

- **MUST BE RELIABLE AND CREDIBLE**
- **DOES INFORMANT HAVE PENDING CRIMINAL CHARGES OR IS INFORMANT MERELY A CO-OPERATING CITIZEN?**
- **IS INFORMANT “WIRED” TO RECORD CONVERSATIONS?**
- **IS INFORMANT UNDER SURVEILLANCE BY POLICE AT TIME CRIMINAL ACTIVITY IS OCCURRING?**
- **DISCLOSURE OF INFORMANT’S IDENTITY NORMALLY NOT REQUIRED TO JUDGE ISSUING SEARCH WARRANT**
- **AT TRIAL, JUDGE HAS DISCRETION TO DISCLOSE OR WITHHOLD IDENTITY OF INFORMANT**

• 3. **NARCOTICS SNIFFING DOGS**

- **DOG HANDLER NEEDS TO ESTABLISH IN SEARCH WARRANT AFFIDAVIT EVIDENCE OF DOG'S HISTORY OF TRAINING AND SUCCESS OF PRIOR IDENTIFICATIONS**
- **NO SEARCH WARRANT REQUIRED TO USE DOG TO IDENTIFY CONTAINERS OR PACKAGES CONTAINING DRUGS**
- **POSITIVE ALERT BY DOG CAN BE USED AS BASIS FOR PROBABLE CAUSE TO SECURE A SEARCH WARRANT**
- **OFTENTIMES USED BY LAW ENFORCEMENT AT TRANSPORTATION HUBS**





- 4. **“BIRD DOG” MOBILE TRACKING DEVICE**

- NO SEARCH WARRANT REQUIRED

- IT IS NOT IMPERMISSIBLY INTRUSIVE UPON PRIVATE AFFAIRS OF TARGET

• **5. “PEN REGISTER” AND “TRAP AND TRACE” DEVICES**

- **PEN REGISTER IS AN ELECTRONIC DEVICE THAT RECORDS NUMBERS YOU DIAL ON YOUR PHONE**
- **TRAP AND TRACE DEVICES RECORD THE NUMBERS THAT CALL YOU**
- **NOT AN ILLEGAL SEARCH NOR VIOLATION OF 4TH AMENDMENT SINCE THERE IS NO REASONABLE EXPECTATION OF PRIVACY IN THE NUMBERS DIALED OR RECEIVED SINCE TELEPHONE OWNER VOLUNTARILY CONVEYED NUMBERS TO TELEPHONE COMPANY TO FACILITATE THE CONNECTION OF THE CALLS**

» **SMALL V. MARYLAND 442US 735(1979)**

–NO PRIVACY INTEREST SINCE YOU KNOWINGLY EXPOSE NUMBERS TO PHONE COMPANY FOR BILLING PURPOSES WHEN YOU DIAL OR RECEIVE THEM

–EXPECTATION OF PRIVACY EXISTS WITH RESPECT TO WORDS UTTERED ON PHONE AND THUS CONTENTS OF A CONVERSATION ARE PROTECTED UNDER 4TH AMENDMENT BUT NOT DIALING INFORMATION

–A COURT ORDER VALID UP TO 60 DAYS IS REQUIRED

• **6. WIRETAPPING OR ELECTRONIC
EAVES DROPPING SECTION 934.07**

**– THE ACT OF SECRETLY LISTENING TO
THE PRIVATE CONVERSATIONS OF
OTHERS WITHOUT THEIR
KNOWLEDGE OR CONSENT**

**– AFFIDAVIT OF LAW
ENFORCEMENT OFFICER IS
REQUIRED TO SECURE COURT
AUTHORIZATION**

**– COURT ORDER IS GOOD FOR 30
DAYS, BUT MAY BE EXTENDED
WITH COURT APPROVAL**



- BEFORE WIRETAP WARRANT WILL BE JUDICIALLY APPROVED, POLICE MUST ESTABLISH ALL OTHER INVESTIGATIVE TECHNIQUES HAVE EITHER FAILED, ARE LIKELY TO FAIL, OR ARE TOO DANGEROUS TO UNDERTAKE**
- MUST SPECIFY IN DETAIL SUBJECT MATTER OF COMMUNICATIONS SOUGHT TO BE INTERCEPTED, IDENTITY OF PERSONS WHO HAVE OR ARE ABOUT TO COMMIT AN OFFENSE TO BE INTERCEPTED, AND LOCATION(S) WHERE INTERCEPTIONS WILL OCCUR**

- NO STATE MAY ENACT A WIRETAP STATUTE THAT IS LESS RESTRICTIVE ON LAW ENFORCEMENT THAN THE FEDERAL WIRETAP LAW; STATE WIRETAP LEGISLATION HOWEVER MAY BE MORE RESTRICTIVE THAN THE FEDERAL WIRETAP LAW**
- STATE WIRETAP STATUTE CAN ONLY BE USED FOR CRIMES ENUMERATED IN THE FEDERAL WIRETAP STATUTE THAT ARE FELONIES DANGEROUS TO LIFE, LIMB OR PROPERTY
 - » NOT PROSTITUTION OR ANY OTHER MISDEMEANOR****
- PROBABLE CAUSE MUST BE SHOWN THAT A CRIME HAS BEEN OR IS BEING COMMITTED**

- CAN'T BE USED TO INVESTIGATE NONVIOLENT CRIMES**
- EVIDENCE OF OTHER CRIMES UNCOVERED AS A RESULT OF AN INVALID WIRETAP CAN NOT AFTER THE FACT VALIDATE AN OTHERWISE INVALID AUTHORIZATION**
- CAN EITHER BE FOR A “PHONE TAP”OR FOR A “HIDDEN AUDIO AND VIDEO DEVICE” PLACED IN A RESIDENCE OR OFFICE**

7. SEARCH WARRANTS

- PROBABLE CAUSE REQUIREMENT
- UNDER OATH BY POLICE OFFICER
- APPLICATION MUST BE TO A JUDGE BY AFFIDAVIT OF LAW ENFORCEMENT OFFICER
- DETAILED DESCRIPTION REQUIREMENT
 - PLACE TO BE SEARCHED
 - THINGS TO BE SEIZED
 - EVIDENCE TO BE OBTAINED

United States District Court

SOUTHERN DISTRICT OF FLORIDA

In the Matter of the Search of
(Name, address or brief description of person or property to be searched)
RESIDENCE OF LAZARO GONZALEZ, LOCATED AT
2319 N.W. 2ND STREET, MIAMI, MIAMI-DADE
COUNTY, FLORIDA

SEARCH WARRANT

CASE NUMBER:

TO: S/A Mary A. Rodriguez, U.S. Immig. & Natl. Service and any Authorized Officer of the United States

Affidavit(s) having been made before me by S/A Mary A. Rodriguez who has reason to believe that on the person of or on the premises known as place, description and location

THE RESIDENCE OF LAZARO GONZALEZ, LOCATED AT 2319 N.W. 2ND STREET, MIAMI, MIAMI-DADE COUNTY, FLORIDA

in the SOUTHERN District of FLORIDA there is now concealed a certain person or property, namely (describe the person or property)

THE PERSON OF ELIAN GONZALEZ, DATE OF BIRTH DECEMBER 8, 1993, A NATIVE AND CITIZEN OF CUBA,

I am satisfied that the affidavit(s) and any record testimony establish probable cause to believe that the person or property so described is now concealed on the person or premises above-described and establish grounds for the issuance of this warrant.

YOU ARE HEREBY COMMANDED to search on or before 5-1-0 _____ _____

(not to exceed 10 days) the person or place named _____ for the person or property specified, serving this warrant and making the search (if the time 5:00 PM to 10:00 PM) (at any time in the day or night as I find reasonable cause has been established) and if the person or property be found there to seize same, leaving a copy of this warrant and receipt for the person or property taken, and prepare a written inventory of the person or property seized and promptly return this warrant to, U. S. Magistrate Judge HARRIS as required by law.

21 APR 2001 12:00 PM
Date and Time Issued

at Miami, Florida
City and State

U.S. Magistrate Judge
Name and Title of Judicial Officer

[Signature]
Signature of Judicial Officer

**– FREQUENT ISSUES RAISED BY
MOTIONS TO SUPPRESS EVIDENCE
SEIZED PURSUANT TO SEARCH
WARRANT (A/K/A “EXCLUSIONARY
RULE”)**

- » OFFICER LACKS JURISDICTION**
- » FALSE STATEMENTS OR
OMMISSIONS IN AFFIDAVIT**
- » INCORRECT ADDRESS IN AFFIDAVIT**
- » INFORMATION PROVIDED BY AN
INFORMANT IS NOT CREDIBLE,
RELIABLE OR LACKS POLICE
CORROBORATION**
- » MERE CONCLUSIONS IN AFFIDAVIT**
 - (LACK OF SPECIFICITY)**

» FAILURE TO EXECUTE WARRANT PROPERLY BY NOT COMPLYING WITH “KNOCK AND ANNOUNCE RULE”

» EXCEEDING SCOPE OF SEARCH AUTHORIZED BY WARRANT

» FAILURE TO LEAVE AN “INVENTORY OF ITEMS SEIZED

– DID DEFENDANT HAVE STANDING TO CHALLENGE SEARCH WARRANT

– DID DEFENDANT HAVE AN EXPECTATION OF PRIVACY



THE END