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ALERT

CRIMINAL DIVISION

FROM THE OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF MAINE.

SEARCH WARRANTS I

In the past four issues of the ALERT Bulletin, we have discussed the topics of Consent Searches and Searches Incident to Arrest. As every law enforcement officer knows, these types of searches are considered exceptions to the warrant requirement and, as has been pointed out, are strictly limited in their use. Because of these limitations, officers have been increasingly required to go the warrant route in order to be sure that the searches and seizures they perform do not violate individual's Fourth Amendment rights, thereby resulting in evidence being declared inadmissible in court.

This article is an attempt to set out the legal requirements both for obtaining and executing search warrants in a comprehensible, step-by-step manner. Some officers will recall the October 1970 issue of ALERT addressed itself to this topic in some detail. This article will update the material in the earlier bulletin and go into greater detail as to some aspects of the law regarding search warrants.

Definition

It is necessary, first of all, to start with a clear definition of a search warrant. For purposes of this article, a search warrant is (1) an order in writing; (2) issued by a magistrate (District Court Judge or complaint justice); (3) in the name of the people of the State of Maine; (4) directed to a law enforcement officer; (5) commanding him to search for certain personal property; and (6) bring it before the magistrate. In many of its aspects, the search warrant is substantially the same as an arrest warrant which, in effect, is an order to take a *person* into custody and bring him before the magistrate or court. Throughout the course of the article, the terms of the above definition will be clarified and important relationships between search warrants and arrest warrants will be highlighted.

OBTAINING A SEARCH WARRANT

The law enforcement officer wishing to obtain a search warrant must follow proper procedures in applying for the warrant. If these procedures are not closely adhered to, the warrant may not issue or may later be declared invalid, resulting in lost evidence and very likely a lost case. These procedures can be found in Rule 41 of the Maine Rules of Criminal Procedure and in various scattered statutes and court decisions. They will be summarized and discussed below.

Who May Issue Search Warrants

The only person authorized to issue a search warrant is the District Court Judge or complaint justice with jurisdiction over the area in which the property sought is located. *Glassman, Maine Practice, Rules of Criminal Procedure, Rule* 41 (*a*). This provision should be self-explanatory. Nevertheless, there are two additional considerations worthy of note. First, although certain clerks of the District Court are authorized to issue *arrest warrants*, they do not have authority to issue search warrants. This authority is strictly limited to District Court Judges and complaint justices.

Second, a complaint justice may have the additional authority to issue search warrants for the county adjoining the county of his residence in two specified circumstances:

1. There is no complaint justice in the adjoining county; or
2. All the complaint justices in the adjoining county are absent. 4 *M.R.S.A* §161.

Furthermore, the complaint justice issuing the warrant under these circumstancees *must state in the warrant* his justification for doing so.

Grounds for Issuance

In order for the District Court Judge or complaint justice to issue a search warrant, he must have probable cause to believe that items subject to seizure are in a particular place or on a particular person at the time of the issuance of the warrant. It is the law enforcement officer's duty to provide the District Court Judge or complaint justice with the information upon which probable cause is to be based. The officer does this in his application for a search warrant by means of an affidavit. An *affidavit* is a written declaration or statement of facts sworn to before an officer having the authority to administer an oath, in this case a District Court Judge or complaint justice. The following discussion will cover in detail the required information which must be contained in the affidavit.

Probable Cause

Under Rule 41(c), Maine Rules of Criminal Procedure, the sworn affidavit must contain *all* the information upon which the District Court Judge or complaint justice

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is to base his finding of probable cause. *State v. Hawkins*, 261 A. 2d 255, (Supreme Judicial Court of Maine, 1970). The affidavit should show (1) the information relied upon to justify the search; and (2) the information which led to the belief that the property is on the premises. The required amount of proof to justify the issuance of a search warrant is essentially the same as that required for the issuance of an arrest warrant or that which is necessary before an officer may arrest without a warrant for felonies or certain misdemeanors. (See July 1971 ALERT). While the constitutional term usually used is "probable cause", it means the same as "reasonable cause", "sufficient cause", "reasonable cause to believe", or "reasonable ground to suspect", as found in various statutes, constitutional provisions, and judicial opinions. As state by the U.S. Supreme Court, probable cause exists where the facts and circumstances shown are sufficent to justify an ordinarily prudent and cautious person in believing there is a reasonable basis for the search. *Beck v. Ohio*, 85 S. Ct. 223, 225 (1964).

The basis for probable cause may arise through facts or information which the officer himself has personally observed or gathered. It may also be based upon reliable hearsay information from third parties such as the victim, other police agencies, witnesses, reporters, informants, or even the defendant himself. In recent years, there have been several decisions of the Maine Supreme Judicial Court and the U. S. Supreme Court dealing with various aspects of probable cause. A complete discussion of the effect of these decisions is beyond the scope of this article. A future issue of ALERT will be devoted entirely to this topic. The important thing for the officer to remember is that he must state in the affidavit the facts and circumstances upon which probable cause is to be based. Mere conclusions, statements of belief, or opinions of the law enforcement officer will not suffice.

It should be further noted that while "probable cause" always means the same thing with respect to *amount* of proof required, probable cause to search and probable cause to arrest will usually arise out of different sets of facts. In order to find probable cause to arrest, the magistrate must find sufficient facts to show that an offense was committed and that a particular suspect committed it. Probable cause to search, on the other hand, turns on facts tending to show that particular items are connected with criminal activity and that they will be found in a particular described place.

Items Subject to Seizure

Under Rule 41(b), Maine Rules of Criminal Procedure, a warrant may be issued to search for and seize the following types of property:

1. Property stolen or embezzled; or
2. Property designed or intended for use or which is or has been used as a means of committing a criminal offense (instrumentalities); or
3. Property, the possession of which is unlawful (contraband); or
4. Property consisting of nontestimonial evidence which will aid in a particular apprehension or conviction.

The first three listed types of property should be self-explanatory. The fourth may need some discussion. This fourth type of property is sometimes called "mere evidence." Examples of mere evidence might be items of clothing, shoes, or business records. "Mere evidence" was added to the list in 1967 in accordance with the U. S. Supreme Court decision in the case of *Warden v. Hayden*, 87 S. Ct. 1642. That decision did away with the previous rule that "mere evidence" could not be the subject of seizure in any event. Nevertheless, even though "mere evidence" may now be seized, certain limitations are placed on its seizure. One of these limitations is that the evidence to be seized must be nontestimonial. This requirement protects the individual from being compelled to be a witness against himself in violation of his Fifth Amendment rights. The other limitation is that the evidence to be seized will aid in a particular apprehension or conviction. The reason for this second requirement was stated by the Supreme Court:

> "The requirements of the Fourth Amendment can secure the same protection of privacy whether the search is for 'mere evidence' or for fruits, instrumentalities or contraband. There must of course be a nexus—automatically provided in the case of fruits, instrumentalities or contraband—between the item to be seized and criminal behavior. Thus in the case of 'mere evidence', probable cause must be examined in terms of cause to believe that the evidence sought will aid in a particular apprehension or conviction. In doing so, consideration of police purposes will be served." *Warden v. Hayden*, 87 S. Ct. 1647, 1650.

The importance of stating *in the affidavit* the grounds for which the items are subject to seizure has been recently emphasized in a 1971 decision of the Supreme Judicial Court of Maine in the case of *State v. Benoski*, 281 A. 2d 128. In that case, the search warrant stated that certain described property was concealed on the premises to be searched, but the warrant made no mention that the property was stolen nor did it refer to any connection of the property with criminal activity. The court held that this failure to mention the ground for the search in the warrant was in violation of the plain requirements of Rule 41 (c) of the Maine Rules of Criminal Procedure and that the warrant was therefore deficient. It is imperative then that the law enforcement officer show that the property falls within one of the four grounds for search listed above in every affidavit for a search warrant. It is good practice to actually state the ground in the affidavit.

Particular Description of Place

The sworn affidavit for the search warrant must contain a description of the premises to be searched which particularly points to a definitely ascertainable place so as to exclude all others. It has been held that the description of premises is sufficient if "officers thereby are enabled to ascertain and identify the place intended by reasonable effort . . . A technical description of the place to be searched is not necessary." *State v. Brochu*, 237 A. 2d 418, 422 (Supreme Judicial Court of Maine, 1967). The following examples will help to illustrate how courts have

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dealt with descriptions of premises in particular instances.

In the *Brochu* case cited above, the property to be searched was described as "the premises known as the dwelling of Armand A. Brochu located at 20 Forest Street, in the City/Town of Biddeford, County of York and State of Maine, said premises being owned/occupied by Armand A. Brochu." The court held that no one could have been misled by the description of the premises in the warrant. Furthermore the description was held to cover not only the dwelling house but also the garage and any other buildings generally associated with and included within a house or home.

Where the place to be searched is a multiple-occupancy dwelling such as an apartment house, hotel, or rooming house, the affidavit must go beyond merely stating the location of the premises. In an illustrative case, the affidavit upon which the warrant was based read as follows: "Place to be searched: 313 West 27th Street, a dwelling. The apartment of Melvin Lloyd Manley." The defendant objected to the search on the ground that the apartment to be searched was not sufficiently described in the affidavit and warrant.

The court held that the defendant's apartment was sufficiently described for the searching officers to locate it with very little effort.

> "It has been generally held that a search warrant directed against a multiple-occupancy structure is invalid if it fails to describe the particular sub-unit to be searched with sufficient definiteness to preclude search of other units located in the larger structure and occupied by innocent persons. But there are exceptions to the general rule. Even though a search warrant against a multiple-occupancy structure fails to describe the particular sub-unit to be searched, it will ordinarily not be held invalid where it adequately specifies the name of the occupant of the sub-unit against which it is directed and provides the searching officers with sufficient information to identify, without confusion or excessive effort, such apartment unit." *Manley v. Commonwealth*, 176 S.E. 2d 309, 314 (Supreme Court of Virginia, 1970).

Whenever possible, however, information like room number, apartment number, or floor should be included in the affidavit. If necessary, a diagram showing the location should be made.

Both of the above cases serve to emphasize the importance of including in the affidavit the *name* of the person who owns or occupies the premises to be searched. Under Rule 41(c) of the Maine Rules of Criminal Procedure, if the owner or occupant of premises is known to the officer applying for a search warrant, it *must* be included in the description of premises in the affidavit.

Although not often used, it should be remembered that a search warrant may also issue for the search of a person. Again, the standard for determining the validity of a warrant to search an individual's person is whether it describes the individual to be searched with such particularity that he may be identified with reasonable certainty. The cases seem to hold that even though a person's name is unknown or incorrectly stated, the warrant may still be valid if a description of the person is included. *U.S. v. Ferrone*, 438 F. 2d 381 (3rd Circuit Court of Appeals, 1971). Therefore, it is advisable for the law enforcement officer, when applying for a warrant for the search of a person, to state not only the person's name, if known, but also a complete description including weight, height, age, race, clothing, address, and any aliases. *State v. Tramantano*, 260 A. 2d 128 (Superior Court of Connecticut, 1969). That way, if the name in the affidavit is incorrect, there is still backup information to enable the person to be identified.

With the U.S. Supreme Court's decision in the case of *Coolidge v. New Hampshire*, 91 S. Ct. 2022 (1971) (see September 1971 ALERT, page 4), law enforcement officers will be required to apply for more warrants for the search of vehicles. Again, since vehicles are considered *places* for search and seizure purposes, the affidavit is required to contain a description of the vehicle to be searched sufficiently particular so that it can be located with reasonable certainty. Some courts have held that only the license plate number is necessary to sufficiently describe a motor vehicle for purposes of issuance of a warrant. *Bowling v. State*, 408 S. W. 2d 660 (Supreme Court of Tennessee, 1966). License plates, however, can be easily removed or replaced. Therefore, when other information about the vehicle is known, it should be included in the affidavit. Such other information, for instance, would be the make, body style, color, year, location and owner or operator of the vehicle. When the license plate number is not known, the officer should include as much of this other information as possible in the affidavit.

Particular Description of Things

Besides a particular description of the place to be searched, the sworn affidavit for a search warrant must contain a particular description of the items to be seized. In general, the items to be seized must be described with sufficient particularity so that the officer executing the warrant (1) can identify the items with reasonable certainty, and (2) is left with no discretion as to which property is to be taken.

Therefore, a description of items merely as "stolen goods," "obscene materials," or "other articles of merchandise too numerous to mention," for instance, would be inadequate. *Marcus v. Search Warrant*. 367 U.S. 717 (U.S. Supreme Court, 1961). When an item can be described in detail, all available information about it should be included in the affidavit. For example, number, size, color, weight, condition, brand name, and other distinguishing features of items to be seized should be a part of the description where applicable.

Often, the nature of the property will give some indication as to how detailed a description is necessary. For example, a court upheld the sufficiency of a warrant which authorized a search for

> "certain items of property, to wit: 'various instruments and tools used in performing an abortion, which were instrumentalities of such offense . . ."

The court felt that because of the unusual nature of the items to be seized, they were described with reasonable particularity in the warrant. A technical identification

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or description would have required the experience of a trained surgeon. *State v. Brown*, 470 P. 815 (Supreme Court of Kansas, 1970).

In another case, property was described in the warrant as follows:

> "one electric heater, one orange colored ice jug, 16 gauge shotgun shells, 22 shells, and so forth."

The court did not feel that this language was too general.

> "We think, as did the trial judge, that these items were about as particularly described as such commodities can be. Such merchandise is difficult to describe. It may be said that the heater should be described as a 'G.E.' or a 'Westinghouse', it could also be argued there are thousands of Westinghouse heaters. Shotgun shells might be described as Remington, Western, or Winchester or by the name of the manufacturers, still it could be argued there are untold numbers of Winchester, Remington or 'Peters' 20's." *Poole v. State*, 467 S.W. 2d 826, 833 (Court of Criminal Appeals of Tennessee, 1971).

Nevertheless, the description in the above case is probably about as general as it could be without being declared insufficient. If the officer knows the brand names and any other pertinent information, he should include them in the affidavit just to be safe.

Courts will generally allow greater leeway in descriptions of contraband material. Thus, a description merely of "paraphernalia for making coins", "heroin", or "narcotic drugs", will be adequate. The reason for this is that the purpose of the warrant is not to seize specified property but only property of a specified character which by reason of its character is contraband.

CONTENTS OF THE WARRANT

If the District Court Judge or complaint justice is satisfied from the affidavit that grounds for issuance of a search warrant exist or that there is probable cause to believe they exist, he will issue the warrant. There are a number of things which every search warrant must contain and the law enforcement officer should be familiar with them.

1. The warrant must be directed to an officer authorized to enforce the laws of Maine.
2. The warrant must identify the property to be searched for.
3. The warrant must name or describe the person or place to be searched.
4. The warrant must state the grounds of probable cause for its issuance and the names of the persons whose affidavits have been taken in support of it. It is important to note that the grounds of probable cause do not have to appear in the body of the warrant itself, but may appear in attached affidavits. The Supreme Judicial Court of Maine has said: "A basic reason for requiring the grounds of probable cause to appear on the face of the warrant is to provide a reviewing court with a complete record. Clear reference to an attached affidavit setting forth a basis of probable cause serves the same purpose." *State v. Hollander*, 289 A.2d. 419 (March, 1972).
5. The warrant shall command the officer to search the person or place named for the property specified.
6. The warrant shall direct that it be served in the daytime. If, however, the affidavits are *positive* that the property is on the person or in the place to be searched, the warrant may direct it to be served at any time.
7. The warrant shall designate the judge to whom it shall be returned.

The following is a typical form for a search warrant, containing spaces for all the elements listed above. It should be noted that the above requirements need not appear in any particular order.

STATE OF MAINE
..... ss.
DISTRICT COURT
District of.....
Division of .....
.....

SEARCH WARRANT

To the Sheriff of ..... County, or any of his deputies or any other authorized officer:

Affidavit having been made before me by ..... that he has reason to believe that on the premises known as .....
.....
located at ..... Street, in the City/Town of ..... County of .....
and State of Maine, said premises being owned/occupied by .....

*said premises being owned/occupied by a person or persons to the complainant unknown, there is now being concealed certain person/property, to wit;

As I am satisfied that there is probable cause to believe that the property/person so described and used is being concealed on the premises above described, upon the following grounds:

You are hereby commanded to search the place named for the person/property specified, serving this warrant and making the search in the daytime and if the person/property be found there to seize it, prepare a written inventory of the person seized /property seized, and bring the person/property and the person in whose possession or custody the same was found before a District Judge, to wit Honorable .....

*Being satisfied that the complainant is positive that the person/property is in the place to be searched and that it is necessary to prevent the removal of said person/property you are hereby authorized to search the place named in the nighttime.

Dated, this ..... day of ..... 19.....

.....
District Judge
Complaint Justice

**Delete Sections not applicable.*

IMPORTANT RECENT DECISIONS

Note: Cases that are considered especially important to a particular branch of the law enforcement team will be designated by the following code: J - Judge, P - Prosecutor, L - Law Enforcement Officer.

Pretrial Identification; Right to Counsel JPL

On February 21, 1968, two men robbed one Shard of his wallet. On February 22nd, the petitioner and a companion were stopped by police officers and when asked for identification, the petitioner produced a wallet that contained three travellers checks and a social security card bearing the name of Willie Shard. The petitioner was arrested (the police thought he was someone else) and at the police station, they learned of the Shard robbery. Shard was picked up and upon entering the police station, positively identified the men as those who had robbed him. No counsel was present, nor had the petitioner been advised of his right to counsel. Six weeks later, the petitioner was indicted for robbery. The Illinois Supreme Court upheld the trial court conviction for robbery, holding that the *Wade-Gilbert* per se exclusionary rule is not applicable to pre-indictment confrontations.

On appeal, the Supreme Court firmly established that the *Wade-Gilbert* exclusionary rule comes under the Sixth and Fourteenth Amendments involving a right to counsel and not the Fifth and Fourteenth Amendments, involving the right against self-incrimination. The court said that a person's Sixth and Fourteenth Amendment right to counsel attaches only at or after the time that adversary judicial proceedings have been initiated against him. This would mean that the right would not attach until the formal charge, preliminary hearing, indictment, information, or arraignment had occurred. In this case, the confrontation with the victim occurred before the commencement of any prosecution whatever and the petitioner was not entitled to the presence of counsel.

The court went on to emphasize that this decision did not mean that identification procedures could be abused by police as long as it happened before the commencement of prosecution. The Due Process Clause forbids a line-up that is unnecessarily suggestive and conducive to irreparable mistaken identification, no matter when it occurs. *Kirby v. Illinois*, 92 S Ct. 1877 (U. S. Supreme Court, June, 1972).

Stop and Frisk; Informant L

An informant told a police officer in a high crime area that an individual in a vehicle nearby was carrying narcotics and a gun at his waist. The officer tapped on the suspect's car window and when the suspect rolled down the window, the officer reached into the car and removed a fully loaded revolver from the suspect's waistband. The gun had not been visible from outside the car. A search incident to arrest was conducted after other officers arrived, and substantial quantities of heroin were found on the defendant's person and in the car. A machete and a second revolver were also found. The defendant contends that the investigatory requirements of *Terry* were not met.

The Court found that *Terry*, while requiring an investigatory process, allowed the officer to conduct a limited search where justified in believing the suspicious person "is armed and presently dangerous to the officer or to others." The discovery of the gun tended to corroborate the reliability of the informant's report of narcotics, and taking account of all surrounding circumstances, probable cause existed both for unlawful possession of heroin and weapons charges, as well as a search of the defendant's person and of the car incident to the weapons arrest. This case expands the concept of stop and frisk as laid down in *Terry v. Ohio*, 392 U.S. 1, which held that when an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, he may conduct a limited protective search for concealed weapons. Under *Adams*, an informant's information may supply the necessary justification for a protective search for weapons. *Adams v. Williams*, 92 S. Ct. 1921 (U.S. Supreme Court, June 1972).

Right to Counsel JP

Petitioner was sentenced to serve 90 days in jail on a charge of carrying a concealed weapon, an offense punishable by imprisonment up to six months and a $1,000 fine. The Petitioner brought a habeas corpus action in the Florida Supreme Court, alleging that by being deprived of his right to counsel he was unable as an indigent layman to raise a good and sufficient defense. The Florida Supreme Court denied the petition and the U.S. Supreme Court granted certiorari.

The Court held that "absent a knowing and intelligent waiver, no person may be *imprisoned* for *any* offense; whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at trial." The classification of crimes is left up to the state, and thus, the decision reaches crimes where imprisonment is a practical possibility, and does not necessarily mean crimes such as traffic offenses. *Argersinger v. Hamlin*, 92 S. Ct. 2006 (U. S. Supreme Court, June 1972).

Search and Seizure JPL

A Treasury agent, under the authority of The Gun Control Act of 1968, which authorized official entry during business hours of "the premises (including places of storage) of any firearms or ammunition . . . dealer . . . for the purpose of inspecting or examining (1) any records or documents required to be kept . . . and (2) any firearms or ammunition kept or stored by such . . . dealer . . . at such premises", conducted a warrantless search of a pawn shop and seized two sawed off rifles which the pawn shop operator was not licensed to possess.

The Supreme Court held that where regulatory inspections further Federal interest, and the possibilities of abuse and the threat to privacy are not of impressive dimensions, the inspection may

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proceed without a warrant where specifically authorized by statute. The Court reasoned that the prerequisite of a warrant could easily frustrate inspection. A dealer choosing to deal in guns does so with the knowledge that he will be subject to effective inspection. *U.S. v. Biswell*,92 S. Ct. 1593 (U.S. Supreme Court, May, 1972).

Jury Trial; Lineup JP

The appellant was arrested at his home without an arrest warrant pursuant to being identified through photographs by the victim of an armed robbery. At the line-up, appellant was identified by a different robbery victim. Appellant was convicted of the latter robbery by a twelve man jury on a vote of nine to three.

The Supreme Court held that Due Process is not violated by a less than unanimous verdict. The three jurors who voted to acquit do not demonstrate that guilt was not in fact proved beyond a reasonable doubt. The identification in the line-up was not tainted as a forbidden fruit by any unlawful arrest because after the arrest and prior to the lineup, defendant was brought before a committing magistrate to advise him of his rights and to set bail. At the time of the lineup, the detention of the defendant was under authority of such commitment. *Johnson v. Louisiana*, 92 S. Ct. 1620 (U.S. Supreme Court, May, 1972).

Disorderly Conduct, Trial de Novo JP

The Appellant was arrested for disorderly conduct. The Appellant and 15 to 20 other students were leaving a protest in a procession of 6 to 10 cars. One of the first cars was carrying expired license plates and was pulled off the highway. The Appellant pulled off behind the unregistered car and attempted to engage the officer in a conversation about the issuance of the summons. The Appellant was asked to leave, refused to do so, and was arrested. Appellant was fined $10, appealed, and received a trial de novo, where he was fined $50.

The case presented two different issues:

1. The constitutionality of the disorderly conduct statute, and
2. Whether Kentucky's two-tier system violates Due Process.

The court held the application of the statute could only be unconstitutional where there is a bona fide exercise of a constitutional right. The Supreme Court upheld the Kentucky court's finding that the Appellant was not exercising a constitutional right and had no other purpose than "to cause inconvenience and annoyance."

The Court further held that the trial de novo system does not come under the *North Carolina v. Pearce* ruling (395 U.S. 711 (1909) which forbids the imposition of a greater punishment on retrial for vindictive reasons, in that when there is a completely new trial there is a fresh determination of guilt, and no motive for vindictiveness is inherent in the system. *Colten v. Kentucky*, 92 S. Ct. 1953 (U.S. Supreme Court, June 1972).

Competency to Stand Trial J

In May, 1968, the petitioner, a mentally defective deaf mute, was charged with separate robberies of two women. The trial court set up motion procedures to determine his competency to stand trial. The trial court found the petitioner "lacked comprehension sufficient to make his defense" and ordered him committed until the Department of Mental Health should certify the defendant sane. Petitioner's counsel moved for a new trial on the grounds the commitment deprived petitioner of his Fourteenth Amendment rights to Due Process and Equal Protection and constituted cruel and unusual punishment under the Eighth Amendment. The motion was denied.

The Supreme Court held (1) Indiana deprived petitioner of equal protection by using a more lenient commitment standard and a more stringent standard of release than applicable to those not charged with offenses, thus condemning him to permanent institutionalization. (2) Due process was violated in that Indiana committed the defendant indefinitely solely on account of his lack of capacity to stand trial. He should not be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain competency in the foreseeable future. If it is determined that he will not, the State must either institute civil proceedings applicable to indefinite commitment of those not charged with crime, or release the defendant. *Jackson v. Indiana*, 92 S. Ct. 1845 (U.S. Supreme Court, June, 1972).

Vagueness JP

Petitioner was convicted of the knowing display of "obscene" motion pictures. Two successive evenings, a police officer outside the fence of a drive-in viewed a movie containing sexually frank scenes. He obtained a warrant and arrested Petitioner. The Supreme Court of Washington held the film obscene because it was shown in a drive-in, where it was visible to an audience other than consenting adults. If the film had been exhibited to an audience of consenting adults in an indoor theatre, it would not have been held obscene.

The U.S. Supreme Court held that the statute violated Due Process in that it did not give the Petitioner fair warning that the location of the exhibition was an element of the offense. *Rabe v. Washington*, 92 S. Ct. 993 (U.S. Supreme Court, March 1972)

Comments directed toward the improvement of this bulletin are welcome. Please contact the Law Enforcement Education Section, Criminal Division, Department of the Attorney General, State House, Augusta, Maine.

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