



JACKIE LACEY
DISTRICT ATTORNEY

LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE

ONE MINUTE BRIEF

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NUMBER: 2018-10 DATE: 06-20-18 BY: Devallis Rutledge TOPIC: Help Serving a Search Warrant

ISSUE: Who can assist peace officers in serving a search warrant?

Search warrants are directed to **peace officers** for service. PC §§ 1523, 1528(a), 1530. “[T]he reasons for requiring a search warrant only be served by a peace officer are obvious....” *People v. Bell* (1996) 45 Cal.App.4th 1030, 1055. However, when the help of non-peace officers is needed, serving officers can employ assistance from others “***in aid of the officer***” in conducting the search. PC § 1530.

“[I]t is generally left to the **discretion of the executing officers** to determine the details of **how** to proceed with the performance of a search authorized by warrant—subject of course to the general Fourth Amendment protection against unreasonable searches and seizures.” *Dalia v. US* (1979) 441 US 238, 257.

Examples:

- *Wilson v. Layne* (1999) 526 US 603, 611-12: “Where the police enter a home under the authority of a warrant to search for **stolen property**, the presence of third parties for the purpose of **identifying the stolen property** has long been approved by this Court and our common-law tradition.” Accord, *People v. Superior Court (Meyers)* (1979) 25 Cal.3d 67, 70 (OK for a burglary **victim** to accompany officers with valid warrant to identify stolen property).

However, if an *invalid* warrant does not describe the sought evidence with sufficient **particularity**, a victim or other third-party may **not** be relied on to “fill in the blanks” as the search progresses. *People v. Tockgo* (1983) 145 Cal.App.3d 635, 645 (the theft victim cannot cure an *inadequate* description of “stolen property” in the warrant by pointing to items).

• *People v. Superior Court (Moore)* (1980) 104 Cal.App.3d 1001, 1008 (OK for a **technical expert** to accompany officers to identify proprietary data-base tapes for semiconductors).

• *People v. Russell* (1987) 195 Cal.App.3d 186, 190 (OK to bring a **narcotics-detection K-9** when serving a warrant to search for narcotics).

• *People v. Carrington* (2009) 47 Cal.4th 145, 167: “**Officers from another jurisdiction may accompany officers conducting a search pursuant to a warrant ... even when the officers lack probable cause to support issuance of their own search warrant**” (upholding **plain-view** seizures of evidence not listed in the warrant but connected to other crimes). See 1MB 2009-12.

• When the property to be seized consists of records maintained by a lawyer, doctor, psychotherapist or member of the clergy, the search **must** be conducted by a court-appointed **special master**, **except** where the listed professional is a **target** of the investigation. PC § 1524(c); *Brillantes v. Superior Court* (1996) 51 Cal.App.4th 323, 330.

• Police may make themselves subject to potential **civil liability** by allowing media representatives, civilian “ride-alongs” or other third parties to enter the premises (including the curtilage) during service of the warrant. “*We hold that it is a violation of the Fourth Amendment for police to bring members of the media or other third parties into a home during the execution of a warrant when the presence of the third parties in the home was not in aid of the execution of the warrant.*” *Wilson v. Layne* (1999) 526 US 603, 614; accord, *Hanlon v. Berger* (1999) 526 US 808, 809.

However, the exclusionary rule **does not require suppression of evidence** properly seized by officers within the scope of the warrant, merely because unauthorized third parties were present. *Wilson v. Layne* (1999) 526 US 603, 614, fn. 2; *US v. Duenas* (9th Cir. 2012) 691 F.3d 1070, 1083.

BOTTOM LINE: **Search warrants must be served by peace officers, who may enlist the necessary assistance of others (including victims, experts and “special masters”) in aid of execution of the warrant, but may not admit third-party “lookie-loos.”**

(Bold emphases added and punctuation and citations omitted from some quoted material.)

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