

# SEARCH AND SEIZURE BASICS

## - WHAT HAPPENS WHEN THE POLICE CONDUCT AN ILLEGAL SEARCH??

*“In Part I of this series we discussed under what conditions the police are legally allowed to search your home. Here, in Part II, we will explore what happens if the police violate your rights and conduct an illegal search and seizure at your home.”*



## Part II of a Two Part Series



Most people will go their entire lives without ever being the subject of a search and seizure by law enforcement officers. In fact, if you are a law abiding citizen living an average, ordinary life you have likely never even given the *possibility* of having your home searched by the police any thought. While this is understandable, it is not necessarily wise. The reality of the matter is that you *could* open the door one day and find law

enforcement officers on your front steps asking to search your home. It might happen because someone visiting you is in trouble with the law. Much as you don't want to consider it, maybe your teenage daughter is mixed up in something illegal or it could be that someone at your company is involved in embezzling funds from the company. These are but a few of the reasons why you could find yourself face to face with the police asking to search your home.

What should you do? What rights do you have? What can you do if the police violate those rights?

In **Part I** of this series we discussed under what conditions the police are legally allowed to search your home. Here, in **Part II**, we will explore what happens if the police violate your rights and conduct an illegal search and seizure at your home.

## When Can the Police Search Your Home – A Summary

The U.S. Constitution protects you from unreasonable searches and seizures. Though the protection afforded by the Constitution has been watered down over the years, your house remains fairly well protected with regard to searches by law enforcement. As a general rule, a law enforcement officer must obtain a warrant, based on probable cause, before a search of your home may be conducted. Exceptions to the general rule include:

- **Consent**
- **Incident to arrest**
- **Plain view**
- **Exigent circumstances**

## If No Warrant Was Obtained Is the Search *Illegal*?

It is important to understand that because each search and seizure occurs under



a unique set of facts and circumstances, every challenge to the validity of a search must be viewed independently. Having said that, there are some guidelines to help

you analyze a search and seizure that occurred in your home. If no warrant was produced the State will have the burden of proving that an exception to the warrant requirement existed at the time of the search. If the State is unable to meet that burden the search and seizure will be declared illegal.

## If a Warrant Was Obtained Does that Mean the Search Was Legal?

Conversely, people often assume that if a warrant *was* produced it means the search and seizure was legal. Not always so. In fact, there are a number of scenarios under which a search that was conducted with a warrant can be found to be illegal, or otherwise defective, such as:

- **No probable cause** – a search warrant must be based on probable cause, defined as “a reasonable belief that a crime has been committed and that evidence of the crime can be found at the premises to be searched.” If probable cause was lacking the warrant should not have been issued, making the search illegal absent an exception.
- **Not specific enough** – a search warrant must particularly describe the place to be searched and the items to be seized. If the warrant was too vague or broad it could be found to be defective.
- **Search exceeded the scope of the warrant** – the warrant must indicate what the officers are searching for on the premises. Only places where the items sought might be located can be searched. For example, if the warrant is issued to search for assault rifles the officers cannot disassemble the kitchen plumbing because an assault rifle would not fit in your kitchen pipes.
- **Technical deficiencies** – technical errors such as forgetting to sign the warrant can actually lead to a defective warrant.

## What If I Consented to the Search?

The most commonly used exception to the warrant requirement is "consent." If you consent to the search of your home a warrant is not required. ***Do not ever***



***consent to a search without first consulting with an experienced Tennessee criminal defense attorney.*** If you

already consented to a search, all may not be lost. For a consent to search to be valid the police must follow certain procedures. In addition, certain conduct by the

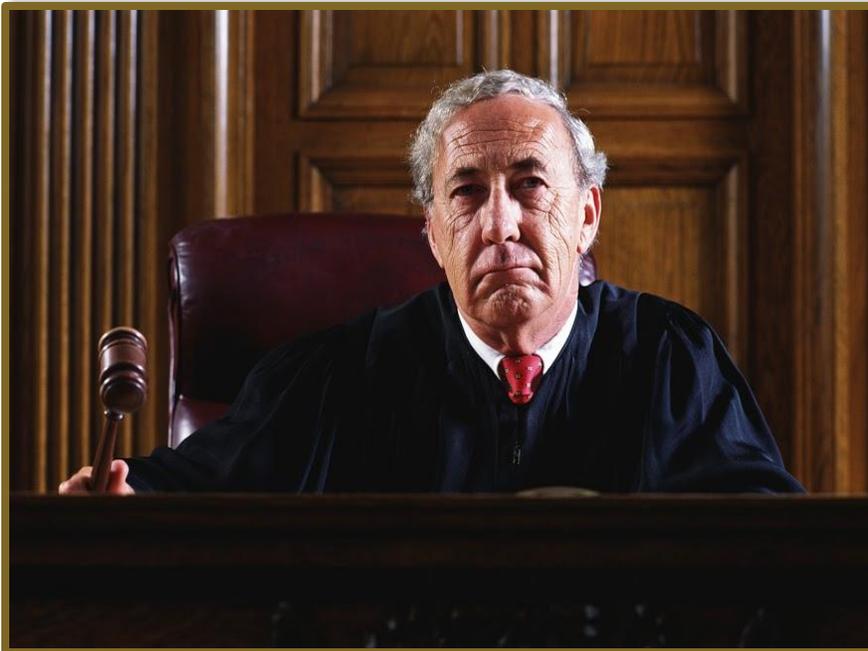
police may invalidate a consent, such as threats used to get a suspect to agree to a search. Always consult with your attorney about the circumstances surrounding your consent to search to find out if you are able to challenge the search despite the fact that you gave your consent.

## How Is a Search and Seizure Declared Illegal?

If a search and seizure is conducted at your home and incriminating evidence is uncovered that leads to your arrest, you have a right to challenge the search in court. Your attorney will file a motion with the court asking the court to suppress the evidence collected during the search on the basis that the search was illegal. At a subsequent hearing your attorney will make the argument supporting the contention that the search was illegal. The prosecuting attorney will defend the search. Ultimately, the judge will decide whether the search was legal or not.

## What Are the Consequences of an Illegal Search and Seizure?

If the judge rules in your favor by declaring the search to have been conducted



illegally, the evidence collected during that search will be inadmissible at a subsequent trial pursuant to the "Exclusionary Rule." If evidence collected during the search constitutes the bulk of the State's

case against you it may mean the State will be forced to dismiss the charges against you.

## What Is the "Fruit of the Poisonous Tree" Doctrine?



The "Fruit of the Poisonous Tree" doctrine is an extension of the Exclusionary Rule. This doctrine prevents evidence from being admitted at trial that, **but for** an illegal search, would never have been found. By way of illustration, imagine that you are using your legitimate business to launder money for a few less than legitimate enterprises. One of those "businesses" is raided by the police. During the subsequent search of the premises, records are uncovered that point to your involvement in the money

laundering end of the operation. The police then obtain a warrant to search your home based on the evidence uncovered in the initial search.

During that search they uncover additional evidence of your money laundering activities and place you under arrest. The original search is ultimately declared illegal. The search of your home then becomes "fruit of the poisonous tree"

because that search would never have occurred ***but for*** the illegally obtained evidence uncovered during the initial (illegal) search. As a result, the evidence obtained during the search of your home may also be inadmissible.

If you are the defendant in a prosecution wherein evidence against you was obtained as a result of a search and seizure, it is in your best interest to consult with an experienced Tennessee criminal defense attorney to discuss the facts and circumstances of the search and seizure because an illegal search often provides the basis for a successful defense.

Cornell University Law School, [Fourth Amendment: An Overview](#)

Cornell University Law School, [Exclusionary Rule](#)

Tennessee Constitution, [Article I. Declaration of Rights](#)

## About Bennett and Michael, Attorneys at Law



The law firm of Bennett & Michael is located on the historic public square in Murfreesboro, Tennessee. We offer knowledgeable and effective representation for families in divorce and family law situations, injured victims of negligent accidents, and those charged with misdemeanor or felony offenses.

Our firm takes pride in being a local law firm that delivers superior results at competitive prices right here at home for the people of Murfreesboro, Smyrna, La Vergne, and the greater Rutherford County area. Our staff is professional and helpful, and our attorneys are experienced litigators and trial lawyers.

When you need legal help, you should be confident that the lawyer you choose will provide you with exceptional, trustworthy, and effective services. Our experienced, dedicated, and compassionate lawyers and legal staff are committed to always protecting clients' rights and relentlessly fighting for their best interests. Enlist the unyielding advocacy at Bennett & Michael, and you can trust that you and your family will get the results, service, and respect that you deserve. You won't be disappointed.