COMMITTEE COMMENT

This rule is intended to facilitate the issuance of warrants by eliminating the need to physically carry the supporting affidavit to the judge.

Source: The introductory portion to (c), (c)(3), and (f) amended July 16, 1993, effective November 1, 1992; entire rule amended and effective October 4, 2001; entire rule corrected and effective October 22, 2001; entire rule corrected and effective October 25, 2001; (d)(5)(VI) amended May 7, 2009, effective July 1, 2009; (c)(3) and (f) amended and effective February 10, 2011; (c)(3) amended and effective June 16, 2011; (d)(5)(VI) amended and adopted December 14, 2011, effective July 1, 2012.

Editor's note: The 2001 amendments to this section added a new (d)(5)(V) and renumbered the existing (d)(5)(V) as (d)(5)(VI).

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For note, "Search and Seizure Since Mapp", see 36 U. Colo. L. Rev. 391 (1964). For comment on Hernandez v. People, 153 Colo. 316, 385 P.2d 996 (1963), appearing below, see 36 U. Colo. L. Rev. 435 (1964). For article, "Attacking the Seizure — Overcoming Good Faith", see 11 Colo. Law. 2395 (1982). For comment, "Colorado's Approach to Searches and Seizures in Law Offices", see 54 U. Colo. L. Rev. 571 (1983). For article, "Criminal Procedure", which discusses a Tenth Circuit decision dealing with post-arrest silence and searches, see 61 Den. L.J. 281 (1984). For article, "The Demise of the Aquilar-Spinelli Rule: A Case of Faulty Reception", see 61 Den. L.J. 431 (1984). For comment, "The Good Faith Exception: The Seventh Circuit Limits the Exclusionary Rule in the Administrative Context", see 61 Den. L.J. 597 (1984). For article, "Veracity Challenges in Colorado: A Primer", see 14 Colo. Law. 227 (1985). For article, "Consent Searches: A Brief Review", see 14 Colo. Law. 795 (1985). For article, "Criminal Procedure", which discusses Tenth Circuit decisions dealing with searches, see 62 Den. U. L. Rev. 159 (1985). For article, "Civil Action for Return of Property: 'Anomalous' Federal Jurisdiction in Search of Justification", see 62 Den. U. L. Rev. 741 (1985). For article, "People v. Mitchell: The Good Faith Exception in Colorado", see 62 Den. U. L. Rev. 841 (1985). For article, "Pronouncements of the U.S. Supreme Court Relating to the Criminal Law Field: 1985-1986", which discusses cases relating to protection from searches and warrant requirements, see 15 Colo. Law. 1564 and 1566 (1986). For article, "Criminal Procedure", which discusses Tenth Circuit decisions dealing with unreasonable searches and seizures, see 65 Den. U. L. Rev. 535 (1988). For article, "Electronic Search Warrants in Colorado", see 44 Colo. Law. 45 (June 2015).

Applied in Seccombe v. District Court, 180 Colo. 420, 506 P.2d 153 (1973); People v. Hoinville, 191 Colo. 357, 553 P.2d 777 (1976); People v. Fletcher, 193 Colo. 314, 566 P.2d 345 (1977); People v. Valdez, 621 P.2d 332 (Colo.

1981); People v. Conwell, 649 P.2d 1099 (Colo. 1982); People v. Lindsey, 660 P.2d 502 (Colo. 1983); People v. Roybal, 672 P.2d 1003 (Colo. 1983).

II. CONSTITUTIONAL PROTECTIONS.

State courts to resolve search and seizure problems in light of constitutional guarantees. Mapp v. Ohio, 367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081 (1961), does not by its terms nationalize the law of search and seizure, but it does compel state courts to examine and resolve the problems arising from the search for and the seizure of evidence in the light of state and federal constitutional guarantees against unlawful searches and seizures. Hernandez v. People, 153 Colo. 316, 385 P.2d 996 (1963).

And state rules proper, provided they do not violate federal constitution. Rules establishing workable state procedures governing searches and seizures, even though they may not be strictly in accord with federal procedures, are proper provided that such rules do not violate the fourth amendment proscription against unreasonable searches and seizures. Hernandez v. People, 153 Colo. 316, 385 P.2d 996 (1963).

Thus, this rule issued to implement constitutional guarantees. As a result of Mapp v. Ohio, 367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081 (1961), and to implement the constitutional guarantees against unlawful searches and seizures, the supreme court of Colorado on November 1, 1961, initially issued this rule providing for the manner in which search warrants should be issued and making property obtained by an unlawful search and seizure inadmissible in evidence in the courts of this state, provided timely motions to suppress are made. Hernandez v. People, 153 Colo. 316, 385 P.2d 996 (1963).

Though use of search warrant has long been encouraged in Colorado. It has long been the policy of the supreme court of Colorado and other courts to encourage the use of the search warrant as a most desirable method of protecting and preserving the constitutional rights of the accused. People v. Whisenhunt, 173 Colo. 109, 476 P.2d 997 (1970).

But previous statute on issuance of search warrants held unconstitutional. People v. Leahy, 173 Colo. 339, 484 P.2d 778 (1970); People v. Singleton, 174 Colo. 138, 482 P.2d 978 (1971) (decided under § 48-5-11(3), C.R.S. 1963).

Federal constitution guarantees security of persons against unreasonable searches. The fourth amendment to the United States Constitution does not guarantee the security of persons against all searches but only those which are unreasonable. Moore v. People, 171 Colo. 338, 467 P.2d 50 (1970).

And practical accuracy determines whether warrant complies with constitutional requirements. The standard for determining whether search warrant complies with constitutional requirements is one of practical accuracy rather than technical nicety. People v. Ragulsky, 184 Colo. 86, 518 P.2d 286 (1974).

No constitutional violation when prison cells "shaken down". Considering normal and necessary prison practices and the charge placed upon prison officials to supervise the operation of state prisons, to preserve order and discipline therein, and to maintain prison security, there is no violation of the fourth amendment prohibition against unreasonable search and seizure when prison cells are searched or "shaken down" in carrying out this charge. Moore v. People, 171 Colo. 338, 467 P.2d 50 (1970).

So long as searches not cruel, or conducted for harassing or humiliating purposes. Searches conducted by prison officials entrusted with the orderly operation of the prisons are not unreasonable so long as they are not conducted for the purpose of harassing or humiliating the inmate or in a cruel or unusual manner. Moore v. People, 171 Colo. 338, 467 P.2d 50 (1970).

And seizure of business records not unconstitutional where records instrumentalities of crime. Seizure of records does not violate defendant's privilege against self-incrimination where defendant is not "compelled" to produce the papers, the papers are not communicative in nature, they are business records of which others must have knowledge rather than personal and private writings, and they are instrumentalities of the crime with which defendant is charged. People v. Tucci, 179 Colo. 373, 500 P.2d 815 (1972).

Voluntary surrender of nontestimonial evidence waives any constitutional protections. People v. Mattas, 645 P.2d 254 (Colo. 1982).

III. APPLICABILITY OF RULE.

Validity of a search warrant is to be judged under this rule. People v. Leahy, 173 Colo. 339, 484 P.2d 778 (1970); People v. Ferris, 173 Colo. 494, 480 P.2d 552 (1971).

Consequently, it is necessary for search warrant to comply with provisions of this rule. People v. Henry, 173 Colo. 523, 482 P.2d 357 (1971).

But only unlawfully seized or obtained evidence or confession suppressed. This rule provides only for motions to suppress physical evidence unlawfully seized, as well as confessions and statements unlawfully obtained, from accused defendants. People v. McNulty, 173 Colo. 491, 480 P.2d 560 (1971).

Mandatory pretrial suppression of evidence hearing only for matters listed in rule. There is nothing in the Colorado Rules of

Criminal Procedure which contemplates a mandatory pretrial suppression of evidence hearing other than for the matters listed in sections (e) and (g) of this rule, viz., evidence obtained because of an illegal search and seizure or an extrajudicial confession or admission. People v. Thornburg, 173 Colo. 230, 477 P.2d 372 (1970).

Therefore, this rule does not encompass motions for suppression of testimonial evidence. People v. McNulty, 173 Colo. 491, 480 P.2d 560 (1971).

Nor motions for suppression of identification testimony. Where the defendant contends that he was not afforded counsel during a lineup and that the lineup was overly suggestive, so that identification testimony should not be allowed into evidence, such a matter is to be resolved at trial rather than pursuant to this rule. People v. Thornburg, 173 Colo. 230, 477 P.2d 372 (1970).

Likewise, whether an arrest is without probable cause is a subject which may not properly be considered under a motion to suppress. People v. Henry, 173 Colo. 523, 482 P.2d 357 (1971).

Interlocutory appeals by state made only from adverse suppression rulings governed by rules. C.A.R. 4.1, which provides for interlocutory appeals by the state, is designed to review rulings of the trial court made upon suppression hearings under sections (e) and (g) of this rule; where objections to proposed evidence do not come within these sections, rulings on the same are not subject to review under C.A.R. 4.1. People v. Thornburg, 173 Colo. 230, 477 P.2d 372 (1970); People v. McNulty, 173 Colo. 491, 480 P.2d 560 (1971); People v. Henry, 173 Colo. 523, 482 P.2d 357 (1971); People v. Patterson, 175 Colo. 19, 485 P.2d 494 (1971); People v. Fidler, 175 Colo. 90, 485 P.2d 725 (1971) (all cases decided prior to 1979 amendment of C.A.R. 4.1).

Under C.A.R. 4.1, interlocutory appeals may only be made by the state from adverse rulings by a district court to motions made pursuant to sections (e) and (g) of this rule and Crim. P. 41.1(i). People v. Morgan, 619 P.2d 64 (Colo. 1980).

V. AUTHORITY TO ISSUE WARRANT.

Only judicial officer may issue search warrant. Hernandez v. People, 153 Colo. 316, 385 P.2d 996 (1963); Mayorga v. People, 178 Colo. 106, 496 P.2d 304 (1972).

And only such authority may modify warrant. It is axiomatic that the right to alter, modify, or correct a warrant is necessarily vested only in a judicial authority. Hernandez v. People, 153 Colo. 316, 385 P.2d 996 (1963); Mayorga v. People, 178 Colo. 106, 496 P.2d 304 (1972).

So, alteration of search warrant by police officer is usurpation of judicial function and is therefore improper. Hernandez v. People, 153 Colo. 316, 385 P.2d 996 (1963).

But warrant modified before issued by judge not subject to challenge. Where changes and modifications on a search warrant take place before it is signed and issued by a judge, the validity of the search warrant is not subject to challenge. People v. Ferris, 173 Colo. 494, 480 P.2d 552 (1971).

V. APPLICATION FOR WARRANT.

A. General Procedural Requirements.

Rule requires affidavit to support search warrant, which establishes the grounds for the issuance of the warrant, and demands that the affidavit be sworn to before a judge. People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971).

Which must comply with United States supreme court standards. If a search warrant is to be sustained, the affidavit must comply with the standards set forth in Aguilar v. Texas, 378 U.S. 108, 84 S. Ct. 1509, 12 L. Ed. 2d 723, 10 A.L.R.3d 359 (1966), and in Spinelli v. United States, 393 U.S. 410, 89 S. Ct. 584, 21 L. Ed. 2d 637 (1969). People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971).

But technical requirements and elaborate specificity are not required in the drafting of affidavits for search warrants. People v. Padilla, 182 Colo. 101, 511 P.2d 480 (1973).

Probable cause must be supported by oath or affirmation reduced to writing. The fourth amendment to the United States constitution requires probable cause supported by oath or affirmation as a condition precedent to the valid issuance of a search warrant; § 7 of art. II, Colo. Const., is even more restrictive and provides that probable cause must be supported by oath or affirmation reduced to writing. Hernandez v. People, 153 Colo. 316, 385 P.2d 996 (1963); People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971).

Under the Colorado Constitution, the warrant can only be issued upon probable cause supported by oath or affirmation which is "reduced to writing". People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971).

And verbal communication insufficient. Verbal communication of facts, as contrasted with written communication, will not suffice to establish probable cause. People v. Padilla, 182 Colo. 101, 511 P.2d 480 (1973).

Previously, this rule did not require affidavit to be attached to search warrant. People v. Ferris, 173 Colo. 494, 480 P.2d 552 (1971); People v. Singleton, 174 Colo. 138, 482 P.2d 978 (1971).

Admission of evidence seized from a defendant's residence pursuant to a defective war-

rant did not constitute reversible error, even though warrant was issued based on an affidavit inadvertently failing to allege facts linking defendant to the residence to be searched. People v. Deitchman, 695 P.2d 1146 (Colo. 1985).

Failure for good cause to comply with section (c)(1), which requires affidavits for search warrants to be sworn to or affirmed before the issuing judge, does not constitute a constitutional violation that automatically triggers the exclusionary rule. People v. Fournier, 793 P.2d 1176 (Colo. 1990).

B. Role of Courts and Police.

Probable cause determined by detached magistrate, not police officer. Search warrants must be supported by evidentiary affidavits containing sufficient facts to allow "probable cause" to be determined by a detached magistrate instead of the accusing police officer. Brown v. Patterson, 275 F. Supp. 629 (D. Colo. 1967), aff'd, 393 F. 2d 733 (10th Cir. 1968).

Existence of probable cause must be determined by a member of the judiciary rather than by a law enforcement officer who is employed to apprehend criminals and to bring before the courts for trial those who would violate the law. People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971).

Be it a judge of the supreme, district, county, or superior court. The determination of whether probable cause exists is a judicial function to be performed by the issuing magistrate, which in Colorado may be any judge of the supreme, district, county, or superior court under this rule, and is not a matter to be left to the discretion of a police officer. Hernandez v. People, 153 Colo. 316, 385 P.2d 996 (1963); People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971).

And to dispense with this requirement would render search warrant itself meaningless, since it would allow a police officer to subjectively determine probable cause. Brown v. Patterson, 275 F. Supp. 629 (D. Colo. 1967), aff'd, 393 F.2d 733 (10th Cir. 1968).

Police officer's role limited to providing judge with facts to make proper determination. The role of the police officer in search warrant practice is limited solely to providing the judge with facts and trustworthy information upon which he, as a neutral and detached judicial officer, may make a proper determination. People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971).

Affidavits for warrants interpreted by magistrates in common-sense fashion. Affidavits for search warrants must be tested and interpreted by magistrates and courts in a common-sense and realistic fashion. People v. Whisenhunt, 173 Colo. 109, 476 P.2d 997 (1970).

And judge, in determining sufficiency, looks to four corners of affidavit. In determining whether the affidavit is sufficient, the judge must look within the four corners of the affidavit to determine whether there are grounds for the issuance of a search warrant. People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971); People v. Woods, 175 Colo. 34, 485 P.2d 491 (1971); People v. Padilla, 182 Colo. 101, 511 P.2d 480 (1973).

Issuing magistrate need only state result that probable cause exists. This rule was not intended to require the issuing magistrate to reiterate his mental process for reaching the result that probable cause exists, but rather to require only that he state that the result has been reached. People v. Singleton, 174 Colo. 138, 482 P.2d 978 (1971); People v. Noble, 635 P.2d 203 (Colo. 1981).

Reasons given for search judicially reviewed by standards appropriate for reasonable police officer. Where an officer believes he has probable cause to search and states his reasons, an appellate court will not examine such reasons grudgingly, but will measure them by standards appropriate for a reasonable, cautious, and prudent police officer trained in the type of investigation which he is making. People v. Singleton, 174 Colo. 138, 482 P.2d 978 (1971).

For negative attitude by reviewing courts discourages police from submitting evidence before acting. A grudging or negative attitude by reviewing courts toward warrants will tend to discourage police officers from submitting their evidence to a judicial officer before acting. People v. Whisenhunt, 173 Colo. 109, 476 P.2d 997 (1970).

C. Underlying Facts and Circumstances.

Issuing magistrate to be apprised of underlying facts and circumstances showing probable cause. Before the issuing magistrate can properly perform his official function he must be apprised of the underlying facts and circumstances which show that there is probable cause to believe that proper grounds for the issuance of the warrant exist. Hernandez v. People, 153 Colo. 316, 385 P.2d 996 (1963); Brown v. Patterson, 275 F. Supp. 629 (D. Colo. 1967), aff'd, 393 F.2d 733 (10th Cir. 1968); People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971); People v. Padilla, 182 Colo. 101, 511 P.2d 480 (1973); People v. Clavey, 187 Colo. 305, 530 P.2d 491 (1975).

The police must show to the issuing magistrate the underlying facts and circumstances upon which the magistrate can determine that probable cause exists for the issuance of a warrant. People v. Massey, 178 Colo. 141, 495 P.2d 1141 (1972).

And it is elementary and of no consequence that police have additional informa-

tion which could provide a basis for the issuance of the warrant. People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971).

Mere affirmance of the belief or suspicion on the officer's part is not enough, for to hold otherwise would attach controlling significance to the officer's belief rather than to the magistrate's judicial determination. Hernandez v. People, 153 Colo. 316, 385 P.2d 996 (1963); People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971).

Mere conclusory belief or suspicion by an affiant officer is not enough upon which to base the issuance of a search warrant. People v. Clavey, 187 Colo. 305, 530 P.2d 491 (1975).

Nor will affiant's conclusory declaration that he has probable cause add strength to the showing made. People v. Padilla, 182 Colo. 101, 511 P.2d 480 (1973).

For without facts, affidavits fatally defective. Affidavits containing only the conclusion of the police officer that he believes that certain property is on the premises or person and that such property is designed, or intended, or is, or has been, used as a means of committing a criminal offense, or the possession of which is illegal, without setting forth facts and circumstances from which the judicial officer can determine whether probable cause exists are fatally defective. Hernandez v. People, 153 Colo. 316, 385 P.2d 996 (1963).

And warrant issued on basis of mere conclusion deemed nullity. Where the mere conclusions by an officer provide nothing from which the judge can make an independent determination of probable cause, a warrant issued on the basis of such an affidavit is a nullity. People v. Baird, 172 Colo. 112, 470 P.2d 20 (1970).

But a search warrant may be based on hearsay, as long as a substantial basis for crediting the hearsay exists. People v. Woods, 175 Colo. 34, 485 P.2d 491 (1971).

Police officer's statements in affidavit that are erroneous and false must be stricken and may not be considered in determining whether the affidavit will support the issuance of a search warrant. People v. Malone, 175 Colo. 31, 485 P.2d 499 (1971).

Where the information supplied by an affiant which supports the issuance of a search warrant is false, the trial court has no alternative but to strike the admittedly erroneous information which the affiant supplied. People v. Hampton, 196 Colo. 466, 587 P.2d 275 (1978).

But other information supplied by affidavit not ignored. Fact that some portions of affidavit are erroneous does not require the issuing magistrate to ignore the other information supplied by the affidavit. People v. Hampton, 196 Colo. 466, 587 P.2d 275 (1978).

And where affidavit still sufficient, court will not strike down warrant. Where the affidavit still contains material facts sufficient as a matter of law to support the issuance of a warrant after the deletion of erroneous statements, the court will not strike down the warrant because the affidavit is not completely accurate. People v. Malone, 175 Colo. 31, 485 P.2d 499 (1971).

Verbal communications cannot correct deficient affidavit. Verbal communications, to the magistrate, of additional supporting information cannot correct an affidavit which is basically deficient in its statement of the underlying facts and the circumstances relied upon. People v. Padilla, 182 Colo. 101, 511 P.2d 480 (1973).

But sworn testimony to supplement warrant, or amendment of affidavit, may be required. Should the judge to whom application has been made for the issuance of a search warrant determine that the affidavit is insufficient, he can require that sworn testimony be offered to supplement the warrant or can demand that the affidavit be amended to disclose additional facts, if a search warrant is to be issued. People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971).

Affidavit containing stale information. Although crimes were perpetrated eight months prior to application for search warrant, because officers proceeded with all due diligence upon discovery of information upon which to base request for a search warrant, the affidavit was sufficient to establish probable cause. People v. Cullen, 695 P.2d 750 (Colo. App. 1984).

Anticipatory warrants are barred by language of rule and identical language in § 16-3-303 requiring that property to be searched for, seized, or inspected "is located at, in, or upon" premise, person, place, or thing to be searched. People v. Poirez, 904 P.2d 880 (Colo. 1995).

D. Finding of Probable Cause.

Police entry into individual's private domain made only upon showing of probable cause. It is only upon a showing of probable cause that the legal doors are opened to allow the police to gain official entry into an individual's domain of privacy for the purpose of conducting a search or to make an official seizure under the constitution. People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971).

Not necessary to specifically allege that possession of articles illegal. To establish the grounds in an affidavit it is not necessary that the person seeking the search warrant specifically allege therein the conclusion that the possession of the articles is illegal. People v. Whisenhunt, 173 Colo. 109, 476 P.2d 997 (1970); People v. Martin, 176 Colo. 322, 490 P.2d 924 (1971).

Or that the use thereof is illegal. Where an affidavit identifies the articles in question and alleges where they are located, but does not

state that the possession or use thereof is illegal, the fact that the illegality is not set forth in the affidavit does not prevent the issuance of a search warrant. People v. Martin, 176 Colo. 322, 490 P.2d 924 (1971).

But warrant issues upon judge finding grounds established, or probable cause therefor. This rule provides that if the judge is satisfied from the facts alleged in the affidavit that the existence of one or more of the grounds for the issuance of a warrant has been established or that there is probable cause to believe that one or more grounds for issuing the warrant exist, then it should issue. People v. Whisenhunt, 173 Colo. 109, 476 P.2d 997 (1970); People v. Martin, 176 Colo. 322, 490 P.2d 924 (1971).

Warrant authorized upon connection being provided between evidence and criminal activity. One test for authorizing a search warrant for the seizure of certain articles is: Does the evidence in itself or with facts known to the officer prior to the search, excluding any facts subsequently developed, provide a connection between the evidence and criminal activity? People v. Henry, 173 Colo. 523, 482 P.2d 357 (1971).

Probable cause exists where facts warrant reasonable belief offense committed. Probable cause exists where the facts and circumstances within the officers' knowledge, and of which they had reasonably trustworthy information, are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been, or is being, committed. People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971); Finley v. People, 176 Colo. 1, 488 P.2d 883 (1971).

Moreover, in dealing with probable cause, one deals with probabilities; these are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971); Finley v. People, 176 Colo. 11, 488 P.2d 883 (1971).

Hence, the odor of a decomposing body is certainly probable cause for obtaining a search warrant. Condon v. People, 176 Colo. 212, 489 P.2d 1297 (1971).

Affidavit must support probable cause finding as to each place searched. The fact that places to be searched were apartments rather than single-family residences does not alter the rule that an affidavit must support a finding of probable cause as to each separate place to be searched. People v. Arnold, 181 Colo. 432, 509 P.2d 1248 (1973).

Affidavit detailing various items at named address presents sufficient facts showing probable cause. Where the affidavit of a police officer in support of a search warrant sets forth at length the various items of information regarding the presence of certain articles at a named address, elaborating in detail on the items of police surveillance and discovery of such, such an affidavit presents ample and sufficient facts showing probable cause for the issuance of the search warrant. People v. Ferris, 173 Colo. 494, 480 P.2d 552 (1971).

Officers rightly in defendant's residence entitled to seize stolen items in plain view. If the supporting affidavit was sufficient to provide probable cause for issuance of a warrant, are the searching officers are rightfully in the defendant's residence, then the officers are entitled to seize items in plain view which they recognize as stolen. People v. Espinoza, 195 Colo. 127, 575 P.2d 851 (1978).

Even if not false, statements of officer-affiants may be so misleading that a finding of probable cause may be deemed erroneous. People v. Winden, 689 P.2d 578 (Colo. 1984).

Probable cause to issue a search warrant for a residence was sufficiently established by affidavit that was based primarily on information provided by confidential police informant and only thinly corroborated by independent police investigation. The "totality of circumstances" test for determining whether probable cause existed for issuing warrant was met. People v. Paquin, 811 P.2d 394 (Colo. 1991).

Where only non-criminal activity is corroborated by independent police investigation, the question of whether probable cause exists focuses on the degree of suspicion that attaches to the types of corroborated non-criminal acts and whether the informant provides details that are not easily obtained. People v. Pacheco, 175 P.3d 91 (Colo. 2006).

E. Informers.

Affidavit for search warrant based on an informant's information must meet a two-pronged test requiring that the officer establish: (1) The underlying circumstances from which the informant concluded what he claims, and (2) some of the underlying circumstances from which the officer concludes that the informant is credible or his information reliable. People v. Peppers, 172 Colo. 556, 475 P.2d 337 (1970); People v. Glaubman, 175 Colo. 41, 485 P.2d 711 (1971); Stork v. People, 175 Colo. 324, 488 P.2d 76 (1971).

The standards of probable cause for issuance of search warrant based on information given to affiant police officer by unidentified informant are that the affidavit must: (1) Allege facts from which the issuing magistrate can independently determine whether there are reasonable grounds to believe that an illegal activity is being carried on in the place to be searched; and (2) set forth sufficient facts to allow the magistrate to determine independently if the informer is credible or his information reliable. People v. Peschong,

181 Colo. 29, 506 P.2d 1232 (1973); People v. Harris, 182 Colo. 75, 510 P.2d 1374 (1973); People v. Baird, 182 Colo. 284, 512 P.2d 629 (1973); People v. Masson, 185 Colo. 65, 521 P.2d 1246 (1974).

The two-pronged test which emphasizes the basis upon which an informer's tip will provide a foundation for the issuance of a search warrant requires that the affidavit set forth: (1) The underlying circumstances necessary to enable the magistrate independently to judge the validity of the informant's conclusion; and (2) support of the affiant's claim that the informant was credible or his information reliable. People v. McGill, 187 Colo. 65, 528 P.2d 386 (1974); People v. Dailey, 639 P.2d 1068 (Colo. 1982).

And informant's personal knowledge satisfies first prong of test. Personal observation by informant of the objects of the search within the place to be searched satisfied the first prong of establishing probable cause. People v. Ward, 181 Colo. 246, 508 P.2d 1257 (1973); People v. Harris, 182 Colo. 75, 510 P.2d 1374 (1973).

The requirement that the affidavit for a search warrant set forth underlying circumstances so as to enable a magistrate to independently judge the validity of the informant's conclusion that criminal activity exists can be satisfied by the assertion of personal knowledge of the informant. People v. Montoya, 189 Colo. 106, 538 P.2d 1332 (1975).

Where the affiant states that the informant personally observed illegal property in the premises to be searched, this statement is sufficient to permit the issuing magistrate to determine independently that there were reasonable grounds to believe that illegal activity was being carried on in the place to be searched. People v. Harris, 182 Colo. 75, 510 P.2d 1374 (1973).

Where it appears that the informant personally saw an illegal narcotic on the premises, that he was given an illegal narcotic by someone on the premises and that he observed other illegal narcotics at the time he left the premises, these facts are sufficient to allow a magistrate to determine whether there was probable cause to determine presence of illegal activity. People v. Baird, 182 Colo. 284, 512 P.2d 629 (1973).

But informant's information insufficient where place searched not connected with illegal substance. An affidavit, while stating that an informant was present when defendants sold contraband, but does not state that he was ever in the defendants' place, that he had seen such contraband in the defendants' place, or that he had witnessed the sale of such in the defendants' place is not sufficient information upon which to base a search warrant of defendants' place. People v. Massey, 178 Colo. 141, 495 P.2d 1141 (1972).

Also, affidavit insufficient if no explanation of how information received. An affidavit is insufficient to support a finding of probable cause where the officer does not more than state that he received information from an investigator who received the information from a reliable source and there is nothing in the affidavit concerning personal knowledge of the facts on the part of either officer, the facts upon which the informant based his information, or the circumstances from which the officers could conclude that the informant is credible or his information reliable. People v. Baird, 172 Colo. 112, 470 P.2d 20 (1970).

An affidavit does not meet the test if there is no explanation as to how the police obtained the information, nor does the affidavit set forth who made the observation or whether the information was obtained from an eyewitness or from a person who received the information indirectly. People v. Myers, 175 Colo. 109, 485 P.2d 877 (1971).

Magistrate must be shown facts to form basis for believing informant's information reliable. Some facts must also be shown to a magistrate upon which he can form a basis for believing information supplied by an informer is credible or the informer reliable. People v. Massey, 178 Colo. 141, 495 P.2d 1141 (1972).

There must be a comprehensive statement of underlying facts upon which the magistrate can make an independent determination that the informant is credible or his information reliable. People v. Aragon, 187 Colo. 206, 529 P.2d 644 (1974).

And merely stating informant known to be reliable does not establish his credibility. An affidavit does not establish the credibility of an informant by merely stating that the informant is known to be reliable, nor does an affidavit establish the credibility of an informant by merely stating that the informant is known to be reliable based on "past information" supplied by the informer which has proved to be accurate. Although the words "past information" might conjure up in the mind of the officer some knowledge of the underlying circumstances from which the officer might conclude that the informant is reliable, the judge has not been apprised of such facts, and consequently, he cannot make a disinterested determination based upon such facts. People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971).

As a basis for issuing a search warrant, the mere assertion of reliability is not sufficient to establish an informant's credibility. People v. Aragon, 187 Colo. 206, 529 P.2d 644 (1974).

An affidavit for a search warrant seeking to show an informant's credibility is not satisfactory by merely stating that the informant is reliable, or that he has supplied information in the past which proved to be accurate. Nor are irrelevant, albeit correct, details sufficient. People v. Montoya, 189 Colo. 106, 538 P.2d 1332 (1975).

Where the only recital in the affidavit for a search warrant bearing upon the informant's credibility or the reliability of the information supplied was as follows: "That the confidential informant has related information to the affiant regarding several previous narcotics and dangerous drugs sellers and users which has been confirmed and proven reliable by the affiant", this was totally conclusory and devoid of details sufficient to support an independent finding of credibility or reliability. People v. Bowen, 189 Colo. 126, 538 P.2d 1336 (1975).

Neither does allegation of suspect's criminal reputation. An allegation of suspect's criminal reputation standing alone does not set forth sufficient facts to allow a magistrate to determine independently reliability of information supplied by an informant. People v. Peschong, 181 Colo. 29, 506 P.2d 1232 (1973).

But three ways to allow magistrate to determine reliability of informant's information. There are at least three ways in which an affidavit might allow a magistrate to determine the reliability of an informant's information so as to issue a search warrant: (1) By stating that the informant had previously given reliable information; (2) by presenting the information in detail which clearly manifests its reliability; and (3) by presenting facts which corroborate the informant's information. People v. Masson, 185 Colo. 65, 521 P.2d 1246 (1974).

Reliability of informant. Where an affidavit is based upon an informer's tip, the totality of the circumstances inquiry looks to all indicia of reliability, including the informer's veracity, the basis of his knowledge, the amount of detail provided by the informer, and whether the information provided was current. People v. Leftwich, 869 P.2d 1260 (Colo. 1994); People v. Randolph, 4 P.3d 477 (Colo. 2000); People v. Pacheco, 175 P.3d 91 (Colo. 2006).

Assertion that informant previously furnished solid information of criminal activity shows his credibility. The requirement that the affiant-police officer support his request for a search warrant with information showing that the informant was credible, or his information was reliable, may be satisfied by an assertion that the informant has previously furnished solid material information of specified criminal activity. People v. Montoya, 189 Colo. 106, 538 P.2d 1332 (1975).

Previously furnished information leading to arrests sufficient to find informant reliable. Where the affidavit related that the informant had, within the past 14 months, supplied information which led to the arrest and conviction of an individual for possession of a narcotic drug, and that the informant had, within the past 24 hours, supplied information which resulted in arrests and the seizure of a quantity of marijuana, this information was sufficient to permit the issuing magistrate to find that the informant was reliable. People v. Harris, 182 Colo. 75, 510 P.2d 1374 (1973).

Where the affidavit states that the informant has "given information in the past that has resulted in seizures and arrests" and that the informant "reported that he has just left this location and observed the described articles", then a fair reading of these statements compels one to conclude that the informant is personally aware of the location and the identity of the articles and additional details, such as the name of the person who led the informant to the location of the articles; these constitute examples of that type of essential information that allows the judge who issues the warrant to determine the underlying circumstances from which the officer who signs the affidavit concluded that these articles are on the premises. People v. Peppers, 172 Colo. 556, 475 P.2d 337 (1970).

Where informant had furnished information which "has been the cause of approximately 20 narcotic and dangerous drug arrests in the past year", the magistrate could independently conclude that the police would not repeatedly accept information from one who has not proven by experience to be reliable, and hence, the magistrate could determine that the informant was credible. People v. Baird, 182 Colo. 284, 512 P.2d 629 (1973).

Additionally, reliability of informant can be corroborated by descriptions in police reports. Where defendant contends that an affidavit does not contain sufficient corroborative information as to reliability of informant, such is without merit when the similarity of descriptions given by the informant, as well as by police employee, of articles matches descriptions contained in police (e.g., theft) reports; this is sufficient independent proof of reliability of informant, and employee, and constitutes sufficient probable cause for issuance of a warrant. People v. Greathouse, 173 Colo. 103, 476 P.2d 259 (1970).

Citizen-informer not considered on same basis as ordinary informant. Colorado follows the citizen-informer rule and will recognize that a citizen who is identified by name and address and was a witness to criminal activity cannot be considered on the same basis as the ordinary informant. People v. Glaubman, 175 Colo. 41, 485 P.2d 711 (1971).

And not necessary that affidavit contains facts showing reliability of citizen-informer. Where the citizen-informant rule applies to information contained in an affidavit for issuance of a search warrant, it is not necessary that the affidavit contain a statement of facts showing the reliability of the citizen-informant, as is the case when the informant is confidential and unidentified. People v. Schamber, 182 Colo. 355, 513 P.2d 205 (1973).

Totality of circumstances test adopted. eople v. Pannebaker, 714 P.2d 904 (Colo. 986).

VI. ISSUANCE, CONTENTS, EXECUTION, AND RETURN.

A. Issuance and Contents.

Affidavit must support finding of probable ause as to each warrant issued. While more an one search warrant may be issued on the asis of a single affidavit, the affidavit must upport a finding of probable cause as to each eparate warrant or each separate place to be earched. People v. Arnold, 181 Colo. 432, 509 2d 1248 (1973).

Search warrant should not be broader an the justifying basis of facts. People v. lavey, 187 Colo. 305, 530 P.2d 491 (1975).

Description sufficient where person preented with warrant knows place authorized be searched. The description in a warrant is ufficient where any person, upon being preented with the warrant, would know immeditely in which place the search is authorized. eople v. Peppers, 172 Colo. 556, 475 P.2d 337 970).

And number of place searched not reuired where location specifically indicated. is unrealistic to require the technicality of dicating the number of the place to be earched when the location is otherwise indiated with reasonable specificity. People v. Pepers, 172 Colo. 556, 475 P.2d 337 (1970).

Warrant describing house as within Denr when in fact the house lay one-half block utside Denver was not for that reason inalid. People v. Martinez, 898 P.2d 28 (Colo. 995).

Illicit property may be described generly. If the purpose of search is to seize not a ecific property but any property of a specified haracter which by reason of its character is icit or contraband, a specific particular deription of the property is unnecessary, and it ay be described generally as to its nature or haracter. People v. Benson, 176 Colo. 421, 490 2d 1287 (1971).

Such as "a quantity of narcotic drugs". here the affidavit contains information which stifies the magistrate in believing that upon a arch of the particular premises not only mariana but other narcotics might be found, a arrant describing "a quantity of narcotic ugs" is in order. People v. Benson, 176 Colo. 1, 490 P.2d 1287 (1971).

Historically, problem has arisen in execun of warrant at night. Historically, there has t been a question about executing a search arrant during the daytime; the problem has isen in the execution of a warrant at night hen the warrant did not specifically so authorize such execution. People v. Henry, 173 Colo. 523, 482 P.2d 357 (1971).

Thus, under rule, warrant without specified time may be executed in daytime. Under this rule, when a search warrant does not specify the time at which it is to be served, or that it may be served at any time, its validity is not affected, and it may be executed in the daytime. People v. Henry, 173 Colo. 523, 482 P.2d 357 (1971).

Or at any time. Unless and until a warrant specifically indicates that it must be served in the daytime, it may be served at any time. People v. Singleton, 174 Colo. 138, 482 P.2d 978 (1971).

Language sufficient to identify affiant. People v. Singleton, 174 Colo. 138, 482 P.2d 978 (1971).

B. Execution and Return.

The fourth amendment generally requires officers to knock before executing a search warrant except when the warrant specifically authorizes a "no-knock" or the particular facts and circumstances known to them at the time the warrant is executed adequately justify dispensing with the requirement to knock. In this case the officers had reasonable suspicion that knocking would result in destruction of the drugs subject to seizure. People v. King, 292 P.3d 959 (Colo. App. 2011).

Execution means searching premises authorized to be searched in warrant. The execution of a search warrant means carrying out the judicial command of the warrant to conduct a search of the premises authorized to be searched. Mayorga v. People, 178 Colo. 106, 496 P.2d 304 (1972).

Warrant directed to "authorized" officers sufficient, as name of specific officer not required. The contention that a search warrant which directs "all sheriffs and peace officers" is improperly directed and should be specifically directed to officers in a certain county is without merit where it is implicit after considering all the language of the warrant that its direction or command is to officers in a certain county and that in this respect it complies with section (d). People v. Ferris, 173 Colo. 494, 480 P.2d 552 (1971).

A search warrant addressed to "any person authorized by law to execute warrants within the state of Colorado" complies with the provisions of this rule and is not deemed insufficient merely because it does not contain the name of the officer who would execute it. People v. Henry, 173 Colo. 523, 482 P.2d 357 (1971).

Rule's requirements relating to making of return and inventory are ministerial in nature. People v. Schmidt, 172 Colo. 285, 473 P.2d 698 (1970).

And the failure to make a proper return can always be corrected at a later time in the proceedings. Deficiencies, if any exist in the return, can always be corrected by order of court. People v. Schmidt, 172 Colo. 285, 473 P.2d 698 (1970).

Technical perfection not required. Where warrant specified a street address that was adjacent to defendant's residence and owned by the same owner, and defendant's residence was not itself searched, both the warrant and the search were valid. People v. Schrader, 898 P.2d 33 (Colo. 1995).

Not every violation of section (c)(1) requires suppression of evidence under the exclusionary rule. Where search warrant was executed one-half block outside officers' jurisdiction, but city boundaries were not clear and officers promptly notified the proper authorities when the error was discovered, no violation of defendant's constitutional rights occurred. People v. Martinez, 898 P.2d 28 (Colo. 1995).

VII. MOTION TO SUPPRESS EVIDENCE.

A. In General.

Annotator's note. For further annotations concerning search and seizure, see § 7 of art. II, Colo. Const., part 3 of article 3 of title 16, and Crim. P. 26.

Previously, evidence obtained in unlawful search was admissible in criminal prosecution. Until June 19, 1961, when the supreme court of the United States decided Mapp v. Ohio, 367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081 (1961), the rule in Colorado was that evidence, even though obtained as a result of an unlawful search and seizure, was admissible in a prosecution for a criminal offense. Hernandez v. People, 153 Colo. 316, 385 P.2d 996 (1963).

But now is inadmissible. The fruits of an unlawful search are, by Mapp v. Ohio, 367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081 (1961), and by this rule, inadmissible in evidence. Hernandez v. People, 153 Colo. 316, 385 P.2d 996 (1963).

This rule specifically provides for motion to suppress. A motion to suppress is excluded by definition from Crim. P. 12(b), but section (e) of this rule specifically provides for such a motion. Adargo v. People, 173 Colo. 323, 478 P.2d 308 (1970).

Only purpose served by suppressing evidence is preventing use by prosecution. The only purpose that can be served by suppressing the evidence which is seized by the police is to prevent its use by the prosecution at the trial. Lucero v. People, 164 Colo. 247, 434 P.2d 128 (1967).

Habeas corpus is not correct vehicle to raise the issue of illegal evidence having been secured through wiretapping. Ferrell v. Vogt, 161 Colo. 549, 423 P.2d 844 (1967).

Not every violation of section (c)(1) requires suppression of evidence under the exclusionary rule. Where search warrant was executed one-half block outside officers' jurisdiction, but city boundaries were not clear and officers promptly notified the proper authorities when the error was discovered, no violation of defendant's constitutional rights occurred. People v. Martinez, 898 P.2d 28 (Colo. 1995).

Trial court erred in holding that defendant abandoned the motions to suppress when he failed to appear at the suppression hearings. The court could have heard and decided the motions on the merits though defendant was absent. People v. Dashner, 77 P.3d 787 (Colo. App. 2003).

Defendant's incriminating statements were obtained in violation of his Miranda rights, and trial court's order to suppress the statements was appropriate. A reasonable person in defendant's circumstances would have felt deprived of his or her freedom of action in a manner similar to a formal arrest. Therefore, defendant was in custody and subject to interrogation without being advised of his Miranda rights. People v. Holt, 233 P.3d 1194 (Colo. 2010).

B. Aggrieved Party.

Defendant has the burden of showing that he is an aggrieved person under the provisions of this rule. People v. Towers, 176 Colo. 295, 490 P.2d 302 (1971).

And where burden not established, motion denied. Where the defendant does not meet his burden and does not establish that he has standing to object to the search and seizure, his motion to suppress is properly denied. People v. Towers, 176 Colo. 295, 490 P.2d 302 (1971).

Prosecutor bears no burden at suppression hearing to prove that defendant was the victim of the claimed illegal police conduct because, when a defendant files a motion to suppress claiming his or her fourth amendment rights were violated, this initial allegation suffices to establish that he or she was the victim or aggrieved party of the alleged invasion of privacy. People v. Jorlantin, 196 P.3d 258 (Colo. 2008).

Defendant legitimately on premises when search occurs possesses standing to object. A defendant has standing to object to a search or to a seizure if he is legitimately on the premises when the search occurs. People v. Towers, 176 Colo. 295, 490 P.2d 302 (1971).

When fruits of search to be used against him. Anyone legitimately on the premises

where a search occurs may challenge its legality by way of a motion to suppress, when its fruits are proposed to be used against him. Lanford v. People, 176 Colo. 109, 489 P.2d 210 (1971).

Including a child subject to delinquency adjudication. Since a child subject to a delinquency adjudication is entitled to same constitutional safeguards as adult accused of crime, evidence obtained as result of unlawful search should be suppressed. In re People in Interest of B.M.C., 32 Colo. App. 79, 506 P.2d 409 (1973).

Hence, defendant "aggrieved" where search occurs in sister's home while defendant there. Where the search and seizure which a defendant challenges occurred in the home of his sister and the defendant was there with the permission of his sister, the defendant qualifies under this rule as a person "aggrieved", where the search, if valid, produces evidence which is relevant to the issue of his guilt, for under the circumstances, he has standing to have the question of the validity of the search determined upon its merits. Adargo v. People, 173 Colo. 323, 478 P.2d 308 (1970).

One not legitimately on the premises has no standing to move to suppress the fruits of a search and seizure of those premises. People v. Trusty, 183 Colo. 291, 516 P.2d 423 (1973).

And defendant cannot urge standing on basis of fleeting presence before search. Where a defendant neither claims nor has a possessory interest in premises and has no personal expectation of privacy, he cannot successfully urge standing on the basis of his fleeting presence in the premises before the search. People v. Towers, 176 Colo. 295, 490 P.2d 302 (1971).

State precluded from denying defendant's possessory interest when possession essential element of offense. When possession of the seized evidence is itself an essential element of the offense charged, the state is precluded from denying that the defendant has the requisite possessory interest to challenge the admission of the evidence. People v. Towers, 176 Colo. 295, 490 P.2d 302 (1971).

Defendant did not have automatic standing to challenge automobile search. Where the defendant was found unconscious inside an automobile which upon a search was found to contain the deceased's body, and it was not an instance where the basis for defendant's prosecution was possession of the vehicle, the defendant did not have automatic standing to challenge the vehicle's search and seizure. People v. Trusty, 183 Colo. 291, 516 P.2d 423 (1973).

Likewise, where defendant has abandoned a car, he has no standing to suppress the evidence seized in a warrantless search of the car as "a person aggrieved". Kurtz v. People, 177 Colo. 306, 494 P.2d 97 (1972).

A person who has abandoned a vehicle is not an "aggrieved" person under section (e) and has no standing to suppress evidence seized in a search of that vehicle. People v. Parker, 189 Colo. 370, 541 P.2d 74 (1975).

Jail not place where defendant can claim constitutional immunity from search. A public jail is not the equivalent of a man's "house" or a place where he can claim constitutional immunity from search or seizure of his person, his papers, or his effects. A jail shares none of the attributes of privacy of a home, an automobile, an office, or a hotel room. In prison, official surveillance has traditionally been the order of the day. Moore v. People, 171 Colo. 338, 467 P.2d 50 (1970).

C. Grounds.

1. In General.

Motion has limited reach. A brief examination of the five grounds that support a motion to suppress discloses the limited reach of the motion. People v. Fidler, 175 Colo. 90, 485 P.2d 725 (1971).

A court cannot exclude all of a witness's testimony based on a violation of the constitution. The court has the authority to suppress only the tainted evidence, not the untainted evidence. People v. Cowart, 244 P.3d 1199 (Colo. 2010).

Entrapment does not present a question of admissibility of evidence, but presents rather the proposition that a conviction may not be obtained, no matter what the evidence, where the authorities instigated the acts complained of, and this is generally a question of fact for a jury; therefore, entrapment is not within the scope of section (e) of this rule, which deals solely with the question of admissibility. People v. Patterson, 175 Colo. 19, 485 P.2d 494 (1971).

Absence of "chain of evidence" not within rule's perimeters. When the defendant argues that there is no "chain of evidence" to establish that a specimen analyzed is one obtained from the defendant, then, in the absence of any averment of constitutional overtones for this claim, this ground does not fall within the perimeters set forth in section (e) of this rule, and to which interlocutory appeals are limited. People v. Kokesh, 175 Colo. 206, 486 P.2d 429 (1971).

Where no constitutional rights invaded under official authority, motion denied. Where no constitutional rights are invaded by or under color of official authority, a motion to suppress will be denied. People v. Benson, 176 Colo. 421, 490 P.2d 1287 (1971).

Rule not expanded to exclude evidence obtained by private persons. Even though the rule as to the exclusion of evidence obtained by an unreasonable search and seizure has been broadened and expanded, it has not been expanded to the extent that evidence obtained by persons not acting in concert with either state or

federal officials must be excluded. People v. Benson, 176 Colo. 421, 490 P.2d 1287 (1971).

But question whether items seized inadmissible on other grounds determined at trial. The question of whether the items seized are inadmissible in evidence on grounds other than those specified in this rule must be determined at the time of trial. People v. Towers, 176 Colo. 295, 490 P.2d 302 (1971).

Rule applicable to evaluate validity of arrest prior to search. This rule does apply when the validity of an arrest must be evaluated before the court can rule upon a motion to suppress items seized in a search incident to the arrest. People v. Lott, 197 Colo. 78, 589 P.2d 945 (1979).

Evidence need not be suppressed if it is obtained in violation of a statutory provision unless it also amounts to a constitutional violation. People v. Mandez, 997 P.2d 1254 (Colo. App. 1999).

Police search of cloth glove not unconstitutional. Like the plain view doctrine, the plain feel doctrine allows police to seize contraband discovered through the sense of touch during an otherwise lawful search; therefore, trial court erred in suppressing evidence. People v. Brant, 252 P.3d 459 (Colo. 2011).

Where search warrant validly is obtained, motion to suppress evidence is not valid. People v. Buttorff, 179 Colo. 406, 500 P.2d 979 (1972).

Preservation of hazardous substances not required. The destruction of evidence rule cannot be applied mechanically in a way that endangers the lives of public safety officers or forces the police to preserve hazardous substances which cannot be stored safely. People v. Clements, 661 P.2d 267 (Colo. 1983).

Such as high explosives. The prosecution does not have the duty to preserve high explosives, homemade bombs or dangerous materials if that requirement would endanger lives and the public safety. People v. Clements, 661 P.2d 267 (Colo. 1983).

Failure for good cause to comply with section (c)(1), which requires affidavits for search warrants to be sworn to or affirmed before the issuing judge, does not constitute a constitutional violation that automatically triggers the exclusionary rule. People v. Fournier, 793 P.2d 1176 (Colo. 1990).

2. Illegal Seizure Without Warrant.

Not every search that is conducted without search warrant is "unreasonable" or "illegal" as those words are used in the United States Constitution and in this rule. More v. People, 171 Colo. 338, 467 P.2d 50 (1970).

Nor does Mapp decision exclude all evidence incident to arrest without warrant. The decision of the supreme court of the United States in Mapp v. Ohio, 367 U.S. 643, 81 S. C 1684, 6 L. Ed. 2d 1081 (1961), went no furth than to exclude in state courts the use of ev dence obtained by unreasonable search and se zure prohibited by the fourth amendment; does not exclude all evidence which might b obtained as an incident to a lawful arrest, n does it preclude admission of all evidenc which may have been obtained without th sanction of a search warrant. Peters v. Peopl 151 Colo. 35, 376 P.2d 170 (1962).

But probable cause requirements are least as strict in warrantless searches as those pursuant to a warrant. People v. Thom son, 185 Colo. 208, 523 P.2d 128 (1974).

Where search illegal at inception, nothi intervening can render search legal. Where search is illegal at its inception, nothing inte vening, including the last minute obtaining of search warrant, can render any part of t search legal. Condon v. People, 176 Colo. 21 489 P.2d 1297 (1971).

But where warrantless entry and arr legal, evidence seized not inadmissible. Whe warrantless entry and arrest are based on pro able cause and a search warrant is issued su sequent to the entry and arrest, the eviden seized is not inadmissible because the entry a arrest were without warrant. People v. Vaugh 175 Colo. 369, 489 P.2d 591 (1971).

Except where supposed legitimate ent utterly vitiated by method of entry. Wh any supposed legitimate entry is utterly vitia by the method of entry, the evidence obser by the officers is tainted, cannot be used as basis for probable cause to arrest or seized incident to a lawful arrest, and is theref properly suppressed. People v. Godinas, Colo. 391, 490 P.2d 945 (1971).

Warrant needed where article believ concealed. A belief, no matter how w founded, that an article sought is concealed i dwelling furnishes no justification for the sea of the dwelling without a lawful warra People v. McGahey, 179 Colo. 401, 500 P 977 (1972).

Defendant's allegedly criminal acts w sufficiently attenuated from any illegal c duct of sheriff's deputies so that exclusion evidence was not appropriate. Evidence c new crime committed in response to an unl ful trespass is admissible. People v. Doke, P.3d 237 (Colo. 2007).

"Emergency doctrine" tested on parti lar facts of each case. In applying the "em gency doctrine" to warrantless searches e case must be tested on its own particular fa Condon v. People, 176 Colo. 212, 489 1297 (1971).

And the test is reasonableness under circumstances. Condon v. People, 176 C 212, 489 P.2d 1297 (1971).

But odor of decomposing body not emer-ncy. The detection of an odor which might be t of a decomposing body does not create, in l of itself, an emergency sufficient to justify a rrantless search. Condon v. People, 176 lo. 212, 489 P.2d 1297 (1971).

Burden of proving probable cause for ar-t without warrant is on the prosecution. pple v. Chacon, 177 Colo. 368, 494 P.2d 79 72).

As is burden to establish probable cause warrantless search. The burden is upon the te at a suppression hearing to establish that bable cause existed which would justify a rrantless search of the defendant's person. pple v. Ware, 174 Colo. 419, 484 P.2d 103 71).

Burden of proof for warrantless arrest and rch. Where defendant is arrested without a rrant and moves to suppress evidence seized course of his arrest, burden of proof is upon secution to prove constitutional validity of st and search. People v. Crow, 789 P.2d 4 (Colo. 1990).

'Reasonable" search may be made in the ce where a lawful arrest occurs in order to l and seize articles connected with the crime its fruits or as the means by which it was mmitted. Hernandez v. People, 153 Colo. , 385 P.2d 996 (1963).

And police entitled to made contempora-us search of person. When a person is fully arrested, the police have the right, hout a search warrant, to made a contempo-eous search of the person of the accused for apons or for the fruits of or implements used commit a crime. People v. Vigil, 175 Colo. , 489 P.2d 593 (1971).

And such searches not violative of consti-ons. Even if there is a search, where the st is legal the search is not violative of the e and federal constitutions regarding unrea-able search and seizure. People v. Clark, 173 o. 129, 476 P.2d 564 (1970).

o long as not too much time between rch and arrest. The lapse of too much time veen the inception of the search and the st falls short of the requirement that the two (search and arrest) be nearly simultaneous constitute for all practical purposes one saction. People v. Drumright, 172 Colo. , 475 P.2d 329 (1970).

earch incident to arrest limited to evi-ce related to offense. The scope of a war-less evidentiary search incident to arrest is ted to evidence related to offense for which st is made. In re People in Interest of B. M. 32 Colo. App. 79, 506 P.2d 409 (1973).

nd extends to things under accused's im-diate control and place of arrest. The right earch and seize without a search warrant dent to a lawful arrest extends to things er the accused's immediate control and to an extent, depending on the circumstances of the case, to the place where he is arrested. People v. Vigil, 175 Colo. 421, 489 P.2d 593 (1971).

Including police station. A police station, immediately following an arrest, cannot be held to be too remote from the place of arrest in a search and seizure case. Glass v. People, 177 Colo. 267, 493 P.2d 1347 (1972).

Search following arrest may also be conducted as inventory procedure. A warrantless search of defendant's purse that followed her arrest for drug use and the seizure of the contraband found therein may be upheld either as a search incident to an arrest or as an inventory procedure conducted prior to incarceration. Avalos v. People, 179 Colo. 88, 498 P.2d 1141 (1972).

Where probable cause for a warrantless arrest is lacking, subsequent search is invalid. People v. Trujillo, 179 Colo. 428, 500 P.2d 1176 (1972).

And fact contraband found in search does not make arrest valid. Where police officers when they arrest a defendant have no idea of what the charge is for which they are arresting him, the fact that contraband is found in an illegal search does not make such an arrest valid. Gallegos v. People, 157 Colo. 173, 401 P.2d 613 (1965).

Fruits of unlawful arrest inadmissible. The prosecution's failure to present evidence to support a determination that the arrest of the defendant was supported by probable cause leaves the court with no alternative but to hold that the arrest was unlawful and its fruits inadmissible. People v. Chacon, 177 Colo. 368, 494 P.2d 79 (1972).

And the defendant's motion to suppress should be granted where the police conducted a warrantless search and arrest without probable cause. People v. Henderson, 175 Colo. 400, 487 P.2d 1108 (1971).

Test of admissibility of evidence seized in lawful search following unlawful search is whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been arrived at by exploitation of that illegality, or instead by means sufficiently distinguishable to be purged of the primary taint. People v. Hannah, 183 Colo. 9, 514 P.2d 320 (1973).

"Pat down" or "stop and frisk" search justified for potentially armed individual. It is well established that an officer may conduct a limited search for weapons (a so-called "pat down" or "stop and frisk") for his own safety when he is justified in believing that he is dealing with a potentially armed and dangerous individual. Finley v. People, 176 Colo. 1, 488 P.2d 883 (1971).

Limited searches of person for weapons during investigative detention, where probable

cause for arrest is lacking, is permissible, but there must be: (a) Some reason for the officer to confront the citizen in the first place; (b) something in the circumstances, including the citizen's reaction to the confrontation, must give the officer reason to suspect that the citizen may be armed and, thus, dangerous to the officer or others; and (c) the search must be limited to a frisk directed at discovery and appropriation of weapons and not at evidence in general. People v. Martineau, 185 Colo. 194, 523 P.2d 126 (1974).

And evidence of crime uncovered is competent and admissible. Where the search was limited to a frisk directed at the discovery and appropriation of weapons, and not to uncover evidence as such, evidence of a crime having thus been lawfully uncovered, it is competent and admissible in evidence as relevant proof of the charges of which defendant is accused. People v. Martineau, 185 Colo. 194, 523 P.2d 126 (1974).

Objects in plain view of officer subject to seizure. Objects falling in the plain view of an officer who has a right to be in the position to have that view are subject to seizure and may be introduced in evidence. People v. McGahey, 179 Colo. 401, 500 P.2d 977 (1972).

Where the record fails to support defendant's contention that the officers were engaged in a search when they observed the evidence in plain view, suppression is not required. Blincoe v. People, 178 Colo. 34, 494 P.2d 1285 (1972).

As such does not constitute a search. The discovery of the fruits of a crime or of contraband lying free in the open does not constitute any kind of search. Alire v. People, 157 Colo. 103, 402 P.2d 610 (1965).

Police protective search of passenger compartment of vehicle justified. People v. Brant, 252 P.3d 459 (Colo. 2011).

Applying the "plain feel" doctrine, police properly seized evidence discovered in cloth glove. People v. Brant, 252 P.3d 459 (Colo. 2011).

Validity of automobile searches turn upon their own peculiar circumstances. Kurtz v. People, 177 Colo. 306, 494 P.2d 97 (1972).

Police officer entitled to approach suspicious parked automobile and look inside. Where a police officer approaches a parked automobile, in which the defendant is seated, he has a right to flash his light inside, and any contraband which he sees in the automobile and seizes is admissible against the defendant. People v. Shriver, 186 Colo. 405, 528 P.2d 242 (1974).

Plain view exception applies to contraband in defendant's home observed by officers using a flashlight to view inside defendant's residence. Officers who were lawfully on defendant's porch when defendant left front door open could use flashlights to peer into the home. The fact that the officers used their flashlights to see inside defendant's home did not transform their plain view observations into an illegal search because, had it been daylight, the contraband on the table inside the home would have been plainly visible to the officers. People v. Glick, 250 P.3d 578 (Colo. 2011).

Lawful to stop vehicle for investigatory purposes, and search where probable cause. Where police officer obtained probable cause to search a vehicle and seize evidence in the process of making a lawful stop for threshold investigatory purposes, the defendant's motion to suppress this evidence was properly denied. People v. Lucero, 182 Colo. 39, 511 P.2d 468 (1973).

Stopping automobile not "unreasonable" where probable cause offense committed. Stopping an automobile and conducting a search and seizure is not "unreasonable" where the officer conducting it has a probable and reasonable belief that an offense has been committed. Hopper v. People, 152 Colo. 405, 382 P.2d 540 (1963).

If probable cause to search car, right to search without warrant. If there is probable cause to obtain a warrant to search a car, police officers have the right to stop and search it without a warrant. People v. Chavez, 175 Colo. 25, 485 P.2d 708 (1971).

And items found admissible into evidence. Where police officers have probable cause to search defendants' automobile, the search of defendants' automobile without a warrant is proper, and it is not error to admit the items found into evidence. Atwood v. People, 176 Colo. 183, 489 P.2d 1305 (1971).

Search of vehicle which is made substantially contemporaneously with an arrest is permissible as an incident to the arrest. People v. Olson, 175 Colo. 140, 485 P.2d 891 (1971).

And evidence seized during arrest not suppressed. The denial of a motion to suppress evidence seized during a warrantless arrest of fleeing felons in an automobile should be affirmed. People v. Duncan, 179 Colo. 253, 500 P.2d 137 (1972).

Where defendant stopped for careless driving, exposed contraband seized. The fact that a defendant is stopped by police officers because of his careless driving will not prevent them from seizing contraband found lying exposed on the seat of the automobile. Alire v. People, 157 Colo. 103, 402 P.2d 610 (1965).

As inspection protected by "plain view rule". Where a police officer properly stops a car for careless driving, that officer has every right to look into the car and seize anything that is contraband, for such an inspection is held to be protected by the "plain view rule". People v. Teague, 173 Colo. 120, 476 P.2d 751 (1970).

And items in "plain view" admissible in evidence. Where an arrest is made with prob-

e cause, any items in "plain view" after the endant exits from a vehicle can properly be d in evidence against him. People v. Clark, 3 Colo. 129, 476 P.2d 564 (1970).

Probable cause must exist at moment art or automobile search made. In order for a rrantless search of an automobile to be exed under exigent circumstances, probable se must exist at the moment the arrest or the rch is made. People v. Thompson, 185 Colo. 3, 523 P.2d 128 (1974).

Factors which lead to the conclusion that a rrantless search of a car was reasonable lude the commission of a felony, abandonnt of the car by the suspects at the scene of crime, and their flight from the scene on t into the night and their remaining at large. rtz v. People, 177 Colo. 306, 494 P.2d 97 72).

Suspicious demeanor and odor supports obable cause for possession of marijuana car. The combination of the suspicious deanor of the occupants of a vehicle and the sequent odor of marijuana emanating from hin the car moments after the occupants had ted was a sufficient basis upon which to dicate probable cause for the belief that the ense of possession of marijuana had been ently committed. People v. Olson, 175 Colo.), 485 P.2d 891 (1971).

Moreover, it is unnecessary for officer to ve a chemical analysis of a suspected naric prior to making a valid seizure; it is only cessary that he have reason to believe that the cle seized is a narcotic. Alire v. People, 157 lo. 103, 402 P.2d 610 (1965).

But mere exploratory search not susned. Where a police officer has no cause to ieve that a car contains any contraband, a rch is exploratory only and cannot be susned. People v. Singleton, 174 Colo. 138, 482 d 978 (1971).

Search not incident to arrest where defennt in custody, car outside search area. The endant was in custody so there was no dan of his destroying any evidence in his car, l the car was without the area authorized to searched by a warrant, the search was not ident to the arrest. People v. Singleton, 174 lo. 138, 482 P.2d 978 (1971).

Suppression of evidence proper where it s undisputed that defendant had already en arrested, handcuffed, and placed in pal car at the time of the search of defent's vehicle and because it would not have n reasonable for officers to believe that dedant's vehicle might contain evidence relnt to the false reporting crime. People v. amberlain, 229 P.3d 1054 (Colo. 2010).

Permissive search is not unreasonable rch and seizure within the coverage of pp v. Ohio (367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081 (1961)). Peters v. People, 151 Colo. 35, 376 P.2d 170 (1962).

Hence, a search loses its illegal effect when defendant gives permission for such a search of the premises, as this consent removes the applicability of the constitutional guaranty. Williams v. People, 136 Colo. 164, 315 P.2d 189 (1957); Hopper v. People, 152 Colo. 405, 382 P.2d 540 (1963).

But search must be voluntary. A search conducted without a warrant but with the voluntary consent of the person whose place is searched is reasonable and not in violation of the state or federal constitutions. Phillips v. People, 170 Colo. 520, 462 P.2d 594 (1969).

And voluntary means that the consent is intelligently and freely given. Phillips v. People, 170 Colo. 520, 462 P.2d 594 (1969).

Burden of proof as to consent to warrantless search on people. The burden of proof in the determination of whether a consent to a warrantless search is intelligently and freely given rests firmly on the people. People v. Neyra, 189 Colo. 367, 540 P.2d 1077 (1975).

Whether consent voluntary determined from each case's total circumstances. Whether or not the consent which is given to a search in a particular case is voluntary is a question to be determined from the totality of the circumstances in each case. The circumstances of a case may indicate that a defendant was fully aware that the police were his adversaries and that evidence seized by them could be used against him at trial. Phillips v. People, 170 Colo. 520, 462 P.2d 594 (1969).

Miranda decision not applicable to fourth amendment searches and seizures. Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694, 10 A.L.R.3d 974 (1966), has no application to the area of fourth amendment searches and seizures, since the ruling therein was designed as a prophylactic rule to correct and prevent abusive police practices in the area of confessions, and the United States Supreme Court has not acted to extend the rule in Miranda to the fourth amendment. Phillips v. People, 170 Colo. 520, 462 P.2d 594 (1969).

But warning that defendant does not have to consent to search constitutionally sufficient. Where a defendant is informed that he does not have to consent to a warrantless search of his premises, such a warning is sufficient to apprise the defendant of his rights under the fourth amendment of the U.S. Constitution and § 7 of art. II, Colo. Const. Phillips v. People, 170 Colo. 520, 462 P.2d 594 (1969).

Resident of a place has the ability to consent to a search of the premises, and a search based on such consent is not illegal. Lanford v. People, 176 Colo. 109, 489 P.2d 210 (1971).

Likewise, one of two or more persons occupying premises may authorize search. When two or more persons have an equal right

of ownership, occupancy, or other possessory interest in the premises searched or the property seized, any one of such persons may authorize a search and seizure thereof thereby binding the others, waiving their rights to object. Lanford v. People, 176 Colo. 109, 489 P.2d 210 (1971).

But a landlord is not a proper person to give consent to the search of his tenant's residence. Condon v. People, 176 Colo. 212, 489 P.2d 1297 (1971).

After consent has been granted to conduct search, that consent cannot be withdrawn. People v. Kennard, 175 Colo. 479, 488 P.2d 563 (1971).

Prisoner cannot expect to be free from warrantless searches. A prison cell is not a place in which the occupant can expect to be free from all searches unless accompained by a warrant. Moore v. People, 171 Colo. 338, 467 P.2d 50 (1970).

3. Warrant Insufficient on Face.

Affidavits have not been required to be attached to warrants. People v. Leahy, 173 Colo. 339, 484 P.2d 778 (1970).

Warrant not insufficient because affidavit does not allege possession of articles is crime. Where an affidavit upon which a search warrant is issued does not allege that possession of the articles in question is a crime, this does not render the warrant insufficient. People v. Whisenhunt, 173 Colo. 109, 476 P.2d 997 (1970).

The fact that the affidavit details activities that are lawful does not cause it to be a bare bones affidavit; a combination of otherwise lawful circumstances may well lead to a legitimate inference of criminal activity. People v. Altman, 960 P.2d 1164 (Colo. 1998).

But, constitutionally, probable cause must appear on face of affidavit. The express Colorado constitutional requirement of a written oath or affirmation makes it clear beyond a doubt that sufficient facts to support a magistrate's determination of probable cause must appear on the face of a written affidavit. People v. Baird, 172 Colo. 112, 470 P.2d 20 (1970).

Otherwise, warrants issued on such fatally defective affidavits are nullities, any search conducted under them was unlawful, and the fruits of such a search are inadmissible in evidence. Hernandez v. People, 153 Colo. 316, 385 P.2d 996 (1963); People v. Baird, 173 Colo. 112, 470 P.2d 20 (1970); People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971).

Affidavit in support of warrant held fatally defective. People v. Peschong, 181 Colo. 29, 506 P.2d 1232 (1973).

On review, search warrants are tested and interpreted in common sense and realistic fashion. People v. Lamirato, 180 Colo. 250, 504 P.2d 661 (1972).

Where statements concerning reliability of informer are not true, warrant cannot stand. Where information attributed to an informer is sufficient upon which to base a warrant, but statements made to the issuing magistrate by a policeman concerning the reliability of the informer are not true, a search warrant issued by the magistrate based on the false allegations of the police officer cannot stand. People v. Massey, 178 Colo. 141, 495 P.2d 1141 (1972).

Warrant's validity cannot be challenged where modified before issuance. Where changes and modifications on a search warrant take place before it is signed and issued by a judge, the validity of the search warrant is not subject to challenge. People v. Ferris, 173 Colo. 494, 480 P.2d 552 (1971).

Warrant not invalidated because descriptions therein vary from affidavit's. That there exists a variation between the descriptions in the warrant and in the affidavit does not in itself render the warrant invalid, unless the variance is material. People v. Peppers, 172 Colo. 556, 475 P.2d 337 (1970).

So long as description adequately identifies premises. A slight variation from the description in the affidavit will not affect the validity of a search warrant as long as the remainder of the descriptive language adequately identifies the premises to be searched. People v. Peppers, 172 Colo. 556, 475 P.2d 337 (1970).

And warrant specifically describing premises not rendered insufficient by command portion of warrant. A command portion of search warrant which reads: "You are therefore commanded to search forthwith the above described property for the property described" did not render the warrant insufficient on its face where the property to be searched had been specifically described "above" in the warrant. People v. Ragulsky, 184 Colo. 86, 518 P.2d 286 (1974).

Test for determining whether the sufficiency of a description in a search warrant is adequate is if the officer executing the warrant can with reasonable effort ascertain and identify the place intended to be searched. People v. Ragulsky, 184 Colo. 86, 518 P.2d 286 (1974).

Where city not specified in warrant, absence not fatal where location clear. Where a warrant specified the place to be searched as to street, county, and state, although not as to city, but the district attorney made a showing to the trial court that the place searched was the only one in the indicated county having such a street address, and the trial court found that there was sufficient clarity as to the location in the minds of all parties involved, then the absence of the name of the city was not fatal or prejudicial. People v. Leahy, 173 Colo. 339, 484 P.2d 778 (1970).

But omission of description of property to be seized not excused. Where in the space

rovided in a warrant for the description of the roperty to be seized there appears a description f the location of the place to be searched, then, lthough it may be presumed that this incorrect nguage doubtless was inserted by mistake and iat the person who completed the warrant in- ended to insert the required description of the roperty to be seized, this is, however, not the ype of mere "technical omission" that is ex- used, since it goes rather to the very essence of ie constitutional requirement that a warrant escribe "the person or thing to be seized, as ear as may be" contained in § 7 of art. II, olo. Const. People v. Drumright, 172 Colo. 77, 475 P.2d 329 (1970).

Warrant commanding officers to enter esignated place for certain property valid. A earch warrant directed to all peace officers hich in essence states that certain articles are oncealed at a designated address, that com- laint made by a named person set forth reasons hich show that probable cause exists, and ommands such persons to enter the place and earch for certain property fully sets forth the formation required by this rule, and is there- re valid. People v. Ferris, 173 Colo. 494, 480 2d 552 (1971).

Failure to insert names indicating to whom eturn to be made is ministerial deficiency. he failure to insert names in blank spaces rovided in a search warrant for purpose of dicating to whom return is to be made and to hom written inventory of seized property is to e made is ministerial deficiency and not such to render a warrant invalid. Brown v. People, 58 Colo. 561, 408 P.2d 981 (1965).

Substantial compliance with contempo- ary objection rule exists where continuous eneral objection is made on ground that evi- ence is product of search under invalid war- nt. Brown v. Patterson, 275 F. Supp. 629 (D. olo. 1967), aff'd, 393 F.2d 733 (10th Cir. 968).

But even if objection insufficient, federal abeas relief not precluded. Even if failure to ecifically attack insufficiency of affidavit sup- rting warrant renders objection insufficient der this rule, a state court conviction based ereon will not preclude procuring federal ha- as corpus relief. Brown v. Patterson, 275 F. pp. 629 (D. Colo. 1967), aff'd, 393 F.2d 733 0th Cir. 1968).

4. Property Not Described in Warrant.

Description of items to be seized in search arrant must be specific. People v. Clavey, 7 Colo. 305, 530 P.2d 491 (1975).

And items seized under warrant with in- fficient description suppressed. All items zed under a search warrant that failed to scribe the things to be seized with sufficient particularity should be suppressed. People ex rel. McKevitt v. Harvey, 176 Colo. 447, 491 P.2d 563 (1971).

But the seizure of property not specified does not render specified items inadmissible. People v. Greathouse, 173 Colo. 103, 476 P.2d 259 (1970).

Warrant not too broad where authorizes seizure of "narcotics" and "paraphernalia". The language in a warrant which specifies the items to be seized is not so broad and ambiguous as to make it a general warrant where the warrant authorizes seizure of: (1) Any and all narcotics and dangerous drugs as defined by the applicable Colorado statutes, the possession of which is illegal; and (2) all implements, paraphernalia, articles, papers, and records pertaining to, or which would be evidence of, the illegal use, possession, or sale of narcotics and/or dangerous drugs. People v. Leahy, 173 Colo. 339, 484 P.2d 778 (1970).

And "narcotics" includes marijuana. Where a search warrant authorizes a search for "narcotics, dangerous drugs, and narcotics paraphernalia", then, since the word "narcotics" includes marijuana, the seizure of marijuana is properly authorized under the warrant. People v. Henry, 173 Colo. 523, 482 P.2d 357 (1971).

Term "narcotics paraphernalia" is not so vague as to make document general warrant. People v. Henry, 173 Colo. 523, 482 P.2d 357 (1971).

Seized items held sufficiently within warrant description. People v. Lamirato, 180 Colo. 250, 504 P.2d 661 (1972).

Search must be conducted for specific articles. The search, whether under a valid search warrant or whether as incident to a lawful arrest, must be one in which the officers are looking for specific articles and must be conducted in a manner reasonably calculated to uncover such articles. Hernandez v. People, 153 Colo. 316, 385 P.2d 996 (1963); People v. Drumright, 172 Colo. 577, 475 P.2d 329 (1970).

And any search more extensive than this constitutes a general exploratory search and is squarely within the interdiction of the constitutional guarantee against unreasonable search and seizure. Hernandez v. People, 153 Colo. 316, 385 P.2d 996 (1963); People v. Drumright, 172 Colo. 577, 475 P.2d 329 (1970); In re People in Interest of B.M.C., 32 Colo. App. 79, 506 P.2d 409 (1972).

Entire search only becomes invalid if general tenor is that of exploratory search for evidence not specifically related to the search warrant. People v. Tucci, 179 Colo. 373, 500 P.2d 815 (1972).

And where execution of warrant in good faith, not all evidence obtained suppressed. Where evidence is without conflict that the persons executing the search warrant were trying

in good faith to obtain items relating to that prescribed in the warrant, a ruling requiring suppression of all evidence obtained during the search of defendant's premises is disapproved. People v. Tucci, 179 Colo. 373, 500 P.2d 815 (1972).

Evidence seized during general exploratory search will be suppressed. Where evidence was seized during a general exploratory search for which no probable cause existed, defendant's motion to suppress the evidence will be granted. People v. Valdez, 182 Colo. 80, 511 P.2d 472 (1973).

"Other" articles found in course of "proper" search are admissible. If an officer is conducting a search, either under a valid search warrant or incident to a valid arrest, where the search is such as is reasonably designed to uncover the articles for which he is looking and in the course of such search discovers contraband or articles the possession of which is a crime, other than those for which he was originally searching, he is not required to shut his eyes and refrain from seizing that material under the penalty that if he does seize it, it cannot be admitted in evidence. Hernandez v. People, 153 Colo. 316, 385 P.2d 996 (1963).

And no suppression of fruits or instruments of crime, and contraband. Harris v. United States, 331 U.S. 145, 67 S. Ct. 1098, 91 L. Ed. 1399 (1947), upheld the validity of seizure of fruits of a crime, instrumentalities of a crime, and contraband articles; such items may be referred to as "Harris articles", and where items are "Harris articles", a trial court is correct in denying a suppression motion with respect to them. People v. Henry, 173 Colo. 523, 482 P.2d 357 (1971).

But burden on state where such articles not connected with crime "per se". When a defendant demonstrates that an article is not specifically described in the search warrant and it is not "per se" connected with criminal activity, the burden of showing that it is so connected falls upon the state. People v. Henry, 173 Colo. 523, 482 P.2d 357 (1971); People v. Wilson, 173 Colo. 536, 482 P.2d 355 (1971).

And if state sustains burden, the articles should not be suppressed. People v. Wilson, 173 Colo. 536, 482 P.2d 355 (1971).

However, where showing not made, nonspecified articles suppressed. When the district attorney fails to make the requisite showing, the trial court should sustain the motion as it relates to nonspecified articles not "per se" connected with criminal activity. People v. Wilson, 173 Colo. 536, 482 P.2d 355 (1971).

"Mere evidence" seized must be shown to have a "nexus" with case and defendant. "Mere evidence" consists of articles which are not fruits, instrumentalities, or contraband, and which are not "per se" associated with criminal activity, but which an officer executing a warrant has probable cause to believe are associated with criminal activity, and "mere evidence" which is seized within the scope of the search authorized by a warrant must be shown to have a "nexus" with the case in which a motion to suppress is filed and with at least one of the defendants in the case. People v. Henry, 173 Colo. 523, 482 P.2d 357 (1971); People v. LaRocco, 178 Colo. 196, 496 P.2d 314 (1972).

5. No Probable Cause.

Matter of probable cause not "res judicata". The trial court is not bound to conclude that because a search warrant had been issued the matter of the existence of probable cause for the issuance thereof was "res judicata", inasmuch as it is for the judge who determines the adversary proceeding to decide all questions relating to the admissibility of the evidence offered by the litigants. Gonzales v. District Court, 164 Colo. 433, 435 P.2d 384 (1967).

Warrant routinely issued at request of accusing officer clearly unconstitutional. Where a search warrant was routinely issued at the request of the accusing officer, without the slightest showing of probable cause, it therefore clearly violates the fundamental principle that the basis for the issuance of a search warrant must be determined by a judicial officer based on facts and not on the conclusion of the applicant. Consequently, such a search warrant is issued in violation of long-established fundamental constitutional standards, and any evidence seized under its authority should be excluded from evidence in the trial court, unless there is other legal basis for its admission. Brown v. Patterson, 275 F. Supp. 629 (D. Colo. 1967), aff'd, 393 F.2d 733 (10th Cir. 1968).

Independent determination of probable cause to search specified place. The fact that the police did not request a warrant to search additional places likely to contain incriminating evidence is irrelevant to the independent determination of probable cause to search the place specified in the warrant. People v. Chase, 675 P.2d 315 (Colo. 1984).

Affidavit introduced where warrant challenged for lack of probable cause. When a search warrant is challenged for lack of probable cause, the supporting affidavit is an essential element to be introduced in evidence. People v. Espinoza, 195 Colo. 127, 575 P.2d 851 (1978).

Where supporting affidavit lacks probable cause, warrant invalid. Where the affidavit upon which a search warrant was issued was not sufficient to establish probable cause, the search and resultant arrest of defendant are part of the illegal fruits of an invalid warrant.

Zamora v. People, 175 Colo. 340, 487 P.2d 1116 (1971).

Warrant based on observations of police employee in response to invitation not invalid. Where a visit by a police employee is legitimately in response to an invitation by the defendant, a later search is not invalidated by the fact that the employee made observations which became part of the basis for the warrant. People v. Greathouse, 173 Colo. 103, 476 P.2d 259 (1970).

Affidavit in support of search warrant was not insufficient because it was predicated upon "double hearsay". People v. Quintana, 183 Colo. 81, 514 P.2d 1325 (1973).

But where the affidavit upon which a search warrant was predicated was based on "double hearsay", such does not render the warrant invalid. People v. Leahy, 173 Colo. 339, 484 P.2d 778 (1970).

Such as where the information is conveyed by one police officer to another police officer. People v. Quintana, 183 Colo. 81, 514 P.2d 1325 (1973).

Even if hearsay turns out to be incorrect. If the material in the affidavit is stated to be or appears to be hearsay information obtained from an informant or other person and the information turns out to be incorrect, a court will not use hindsight as a test to determine whether the search warrant should or should not have been issued. People v. Woods, 175 Colo. 34, 485 P.2d 491 (1971).

Reliability of detective need not be shown. The fact that the affidavit did nothing to disclose the reliability of a detective—except the fact that he was a detective—does not affect its validity, since there is nothing requiring a showing of reliability of a detective. People v. Leahy, 173 Colo. 339, 484 P.2d 778 (1970).

Facts held sufficient to establish probable cause. People v. Henry, 173 Colo. 523, 482 P.2d 357 (1971); People v. Vigil, 175 Colo. 421, 489 P.2d 593 (1971); Atwood v. People, 176 Colo. 183, 489 P.2d 1305 (1971).

Facts held not sufficient to establish probable cause. People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971).

6. Illegal Execution.

Trial court erred in assigning to the prosecution the initial burden of proving search warrant was legally executed. As the moving party seeking suppression of evidence seized through a search warrant, the defendant has the burden of alleging and showing that a search or seizure violated his or her right to privacy under the fourth amendment of the U.S. Constitution. If the defendant satisfies this burden, it is then upon the prosecution to show that defendant's fourth amendment rights were not violated. People v. Cunningham, 2013 CO 71, 314 P.3d 1289.

Officers must identify themselves before forced entry. Even with a valid warrant, before police officers attempt a forced entry into a place, they must first identify themselves and make their purpose known. People v. Godinas, 176 Colo. 391, 490 P.2d 945 (1971).

And forceful entries include entries without permission. Forceful entries need not involve the actual breaking of doors and windows, but may include merely entries made without permission. Thus, where officers enter through a door which is ajar without right and they do not announce their purpose, a subsequent knock on an interior door is made after an illegal entry and without announcing identity and purpose. People v. Godinas, 176 Colo. 391, 490 P.2d 945 (1971).

Copy of warrant need not be left personally with one confined in jail. The argument that the execution of a search warrant did not comply with this rule in that a copy of the warrant was not left with defendant personally is without merit where at the time of the search defendant was confined in jail, the officer upon whose affidavit the warrant was issued exhibited the warrant, receipt, and inventory of what was seized to defendant after seizure, and the copy of the warrant, receipt, and inventory was then placed in defendant's locker in the jail which contained his other personal belongings; in the absence of a showing of any prejudice resulting from this particular procedure, there is no reversible error. People v. Aguilar, 173 Colo. 260, 477 P.2d 462 (1970).

Warrant need not have copy of affidavit attached. There is nothing which requires that a person given a warrant must receive a copy of the underlying affidavit or that a copy thereof must be attached to the copy of the warrant which is served at the time of the search. People v. Papez, 652 P.2d 619 (Colo. App. 1982).

Where one recites he has "duly executed" warrant, authority to execute inferred. Where in the return and inventory made following the execution of a warrant, one recites that he has "duly executed the within search warrant", this alone justifies an inference and finding that the individual was authorized by law to execute such, and it thereupon becomes incumbent upon the defendant to show that he was not. People v. Henry, 173 Colo. 523, 482 P.2d 357 (1971).

Warrant not invalidated by failure to follow requirements as to return and inventory. Since the requirements of this rule relating to the making of the return and inventory are ministerial in nature, a failure to comply does not render the search warrant or the seizure of the property pursuant thereto invalid. People v. Schmidt, 172 Colo. 285, 473 P.2d 698 (1970).

Hence, failure to file the return within 10 days does not invalidate a search. People v. Wilson, 173 Colo. 536, 482 P.2d 355 (1971).

D. Hearing.

1. When Motion Made.

Suppression remedy not extended to grand jury proceedings. The remedy of suppression of evidence applies to a trial once an indictment has been returned, but has not been extended to grand jury proceedings considering an indictment. People ex rel. Dunbar v. District Court, 179 Colo. 321, 500 P.2d 819 (1972).

Purpose of rule to prevent introduction of issue of police misconduct into trial. The purpose of this rule is to prevent, whenever possible, the introduction of a collateral issue, that of whether the police acted improperly, into the trial on the issue of guilt. Morgan v. People, 166 Colo. 451, 444 P.2d 386 (1968).

Rule on time to serve motions preserves right to raise fourth amendment issues. Crim. P. 45(d), which must be read in conjunction with this rule, can adequately preserve the defendant's right to raise fourth amendment issues, while carrying out the salutary purpose of not commingling the fourth amendment issues with the guilt issue. Morgan v. People, 166 Colo. 451, 444 P.2d 386 (1968).

Motion to suppress filed on the morning of the trial is not timely. Morgan v. People, 166 Colo. 451, 444 P.2d 386 (1968).

Trial court's consideration of merits of a suppression motion does not render moot ruling by trial court that the motion was untimely. People v. Tyler, 874 P.2d 1037 (Colo. 1994).

Nor is motion filed day before trial, where grounds raised therein previously apparent. Where defendant files his motion to suppress on the afternoon before the day on which the trial is to begin, but all the grounds raised therein were clearly apparent in the record from the very first time counsel appeared, then under such circumstances the motion is not timely filed. Morgan v. People, 166 Colo. 451, 444 P.2d 386 (1968).

Motion untimely where defendant possesses all pertinent information prior to trial. Where defendant possessed prior to trial all pertinent information relative to the seizure of evidence and its possible suppression, the trial court did not abuse its discretion in declaring the motion to suppress untimely. People v. Hinchman, 40 Colo. App. 9, 574 P.2d 866 (1977), rev'd on other grounds, 196 Colo. 526, 589 P.2d 917, cert. denied, 442 U.S. 941, 99 S. Ct. 2883, 61 L. Ed. 2d 311 (1979).

But trial court has discretionary power to entertain a suppression motion at trial. People v. Stevens, 183 Colo. 399, 517 P.2d 1336 (1973).

And if court rules on untimely motion, matter not waived unless discretion abused. If the trial court elects to rule on a untimely suppression motion raised at trial, an appellate court should not consider the matter waived unless it can be shown that the trial court abused its discretion in ruling on the merits of the motion. People v. Stevens, 183 Colo. 399, 517 P.2d 1336 (1973).

Defendant not to be penalized because belated motion to suppress heard. There cannot be read into this rule any intendment that the defendant is to be penalized because the court chose to hear and consider his belated motion to suppress. People v. Voss, 191 Colo. 338, 552 P.2d 1012 (1976).

Where proper pretrial request denied, court errs in not holding hearing at trial. Where the defendant is entitled to such a pretrial hearing which he requests, then a court which fails to grant a pretrial hearing again errs in not holding a hearing at the time the property objected to is offered in evidence by the prosecution; the defendant having made a proper request, the trial court errs in not holding a hearing. Adargo v. People, 173 Colo. 323, 478 P.2d 308 (1970).

Pretrial ruling on a motion to suppress does not necessarily bind the trial judge, and under certain circumstances, the trial court has a duty to consider "de novo" the issue of suppression. Gibbons v. People, 167 Colo. 83, 445 P.2d 408 (1968).

And within judge's discretion to hold additional evidentiary hearing. If it is necessary for the trial judge to hold an additional evidentiary hearing in order to arrive at the truth concerning a suppression of evidence motion, it is within his discretion to do so. People v. Duncan, 179 Colo. 253, 500 P.2d 137 (1972).

2. Procedure.

Rule provides for procedure to be followed when motion to suppress is filed. Adargo v. People, 173 Colo. 323, 478 P.2d 308 (1970).

Motion to suppress is interlocutory in character, and neither res judicata nor collateral estoppel applies to a ruling which is less than a final judgment. People v. Lewis, 659 P.2d 676 (Colo. 1983).

Court makes inquiry and bases determination solely on evidence presented. The trial court shall make an inquiry concerning the validity of the search and base its determination solely upon the evidence presented upon a hearing conducted by it on the motion of the petitioners. Gonzales v. District Court, 164 Colo. 433, 435 P.2d 384 (1967).

Burden is upon the state at a suppression hearing to show a connection between the evidence seized and the criminal activity for which the search was initiated in order that the

evidence not be suppressed. People v. LaRocco, 178 Colo. 196, 496 P.2d 314 (1972).

Trial court erred in assigning to the prosecution the initial burden of proving search warrant was legally executed. As the moving party seeking suppression of evidence seized through a search warrant, the defendant has the burden of alleging and showing that a search or seizure violated his or her right to privacy under the fourth amendment of the U.S. Constitution. If the defendant satisfies this burden, it is then upon the prosecution to show that defendant's fourth amendment rights were not violated. People v. Cunningham, 2013 CO 71, 314 P.3d 1289.

When granting or denying a motion, the court should state appropriate findings of fact. People v. Vigil, 175 Colo. 373, 489 P.2d 588 (1971).

It is the function of the court to determine the factual issues presented by a motion to suppress, and this fact in turn requires the judge to make findings of fact whenever he rules on a motion to suppress. People v. Duncan, 176 Colo. 427, 498 P.2d 941 (1971); People v. Brazzel, 18 P.3d 1285 (Colo. 2001).

And making conclusion of law instead is error. In a suppression hearing, when the court makes a conclusion of law rather than a required finding of fact, there is error. People v. Duncan, 176 Colo. 427, 498 P.2d 941 (1972).

But findings in second case may suffice for findings in identical first case. Where in one case the judge, in denying the motion to suppress, does not make sufficient findings, but in another case the findings upon denial of the motion to suppress are amply sufficient, then where the findings in the second case are by the same court although by a different judge, the rulings by both judges are the same, and the parties and the search — and in substantial effect the testimony — are identical, an appellate court is justified in considering the findings in the second case as governing the first case, for it would be useless to remand the first case for findings. People v. Ramey, 174 Colo. 250, 483 P.2d 374 (1971).

Finding that lesser crimes not included in wiretap statute, grounds for suppression. A finding that lesser crimes are not intended by congress to be included in the class of crimes for which a wiretap can be authorized does not render an entire state statute invalid, but is merely grounds for suppression. People v. Martin, 176 Colo. 322, 490 P.2d 924 (1971).

District judge may reconsider a motion to suppress previously denied by another district judge. People v. Lewis, 659 P.2d 676 (Colo. 1983).

Fourth amendment exclusionary rule is designed to deter police misconduct. Illegal police searches and district attorney preparedness are unrelated. The court ruling granting suppression of all evidence was tantamount to dismissal of the case, which was outside the court's authority to dismiss. People v. Bakari, 780 P.2d 1089 (Colo. 1989).

Suppression for a procedural flaw in argument does not serve the purpose of the exclusionary rule, which is solely to deter police misconduct, not prosecutorial error. People v. Kirk, 103 P.3d 918 (Colo. 2005).

3. Return of Property.

No right to return of illegal property. If property is legally seized and it is designed or intended for use as a means of committing a criminal offense or the possession of which is illegal, there is no right to have it returned. People v. Angerstein, 194 Colo. 376, 572 P.2d 479 (1977).

Return can be made only upon determination by judge. If certain property is seized under and by virtue of a search warrant, it was incumbent upon the officers seizing same to deal with it only in accordance with the provisions and terms of this rule; consequently, they cannot rightfully restore it to the party from whom taken until a judge has examined witnesses and made a determination. Guyton v. Neal, 48 Colo. 549, 111 P. 84 (1910).

Mandamus lies to compel officer to obey order to return goods. Where goods seized under a search warrant are ordered by the magistrate, on a hearing pursuant to this rule, to be returned by the officer to the person from whose premises they were taken, mandamus lies to compel the discharge of this ministerial duty. Bell v. Thomas, 49 Colo. 76, 111 P. 76, 31 L.R.A. (n.s.) 664 (1910).

But mandamus cannot lie to return goods while proceedings still pending. Mandamus will not lie to compel an officer to surrender goods seized upon a search warrant, in excess of what is described therein, while the proceedings under the search warrant are still pending. Guyton v. Neal, 48 Colo. 549, 111 P. 84 (1910).

A decision on a motion for return of property is ordinarily interlocutory and therefore unappealable, but actions for return of property prior to the initiation of any civil or criminal proceedings may be reviewed. In re Search Warrant for 2045 Franklin, Denver, 709 P.2d 597 (Colo. App. 1985).

4. Judicial Review.

Appellate procedures cannot be invoked to test propriety of suppression order. The order of a trial court by which a motion to suppress evidence is sustained is not a final judgment and, accordingly, does not come within any exceptions provided by rule or statute under which appellate procedures can be invoked to

test the propriety of the order. People v. Hernandez, 155 Colo. 519, 395 P.2d 733 (1964).

But interlocutory appeals may be taken pursuant to C.A.R. 4.1. People v. Thornburg, 173 Colo. 230, 477 P.2d 372 (1970); People v. McNulty, 173 Colo. 491, 480 P.2d 560 (1971); People v. Henry, 173 Colo. 523, 482 P.2d 357 (1971); People v. Patterson, 175 Colo. 19, 485 P.2d 494 (1971); People v. Fidler, 175 Colo. 90, 485 P.2d 725 (1971).

Contemporaneous objection rule applies to search and seizure issues. Brown v. People, 162 Colo. 406, 426 P.2d 764 (1967).

Issue of illegal evidence should be brought to attention of the trial court either by a pretrial motion to suppress or at the trial when the prosecution offers evidence which the defendant claims is "tainted" because of the manner in which it was obtained by the prosecution. Ferrell v. Vogt, 161 Colo. 549, 423 P.2d 844 (1967).

And failure to raise objection tantamount to waiver. The failure to raise the objection of an illegal search and seizure by proper objection at the trial level is tantamount to a waiver. Brown v. People, 162 Colo. 406, 426 P.2d 764 (1967).

To preserve an issue for appeal, defendant must alert trial court to the particular issue. In case where defendant argued on appeal that search of his vehicle violated the fourth amendment and that trial court erred in admitting evidence found in the vehicle, defendant had waived the issue by failing to contest it at trial. Trial court's ruling that the search and seizure of the evidence was proper did not negate the waiver or preserve the issue for appeal. People v. Cordova, 293 P.3d 114 (Colo. App. 2011).

In absence of motion, ground of error disregarded. In the absence of a motion for return of items or to suppress them as evidence on the ground of illegal search and seizure, an alleged ground of error based thereon will be disregarded. Salazar v. People, 153 Colo. 93, 384 P.2d 725 (1963).

Where defendant denies possessory interest at hearing, cannot later claim possessory interest. At a suppression hearing where a defendant denies that he has a possessory interest in any of the items found, he cannot be allowed to later claim a possessory interest unsupported by the record and in direct contradiction of his own testimony in order to challenge the admission of the seized evidence. People v. Towers, 176 Colo. 295, 490 P.2d 302 (1971).

And guilty plea makes question of search's validity moot. The question of the validity of the search for and seizure of contraband goods becomes moot upon the entry of the plea of guilty. Lucero v. People, 164 Colo. 247, 434 P.2d 128 (1967).

Suppression order sustained where facts not shown on record on appeal. Order sustaining motion to suppress admission in evidence of items seized in execution of search warrant will be affirmed where record on appeal does not show essential facts on which trial court predicated its ruling. People v. Cram, 180 Colo. 418, 505 P.2d 1299 (1973).

Granting of motion to suppress held invalid. People v. McGahey, 179 Colo. 401, 500 P.2d 977 (1972).

Denial of motion to suppress upheld. People v. Hankin, 179 Colo. 70, 498 P.2d 1116 (1972); People v. Tucci, 179 Colo. 373, 500 P.2d 815 (1972); People v. Cram, 180 Colo. 418, 505 P.2d 1299 (1973).

VIII. RETURN OF PAPERS TO CLERK.

Warrant not invalidated by failure to indicate to whom papers to be returned. The failure to insert the names in the blank spaces provided in a search warrant for the purpose of indicating to whom the return is to be made and to whom a written inventory of the seized property is to be made is a deficiency of a ministerial nature and not such as to render a warrant invalid. Brown v. People, 158 Colo. 561, 408 P.2d 981 (1965).

And where return made to issuing court, no prejudice to defendant. Where the record supports the conclusion that the return was made to the court which issued the warrant, then, such being the state of the record and the obvious intent of the issuing magistrate, there can be no finding of prejudice to the defendant in regard to such an alleged deficiency of the warrant. Brown v. People, 158 Colo. 561, 408 P.2d 981 (1965).

IX. SUPPRESSION OF CONFESSION OR ADMISSION.

A. Grounds.

Confession deemed acknowledgment of truth of guilty fact. A confession is an acknowledgment in express words, by the accused in a criminal case, of the truth of the guilty fact charged or of some essential part of it. Jones v. People, 146 Colo. 40, 360 P.2d 686 (1961).

Statement taken as result of and following an unlawful arrest must be suppressed. People v. Moreno, 176 Colo. 488, 491 P.2d 575 (1971).

And no distrinction between "inculpatory" or "exculpatory" statements. No distinction may be drawn between "inculpatory" statements made by defendant and statements alleged to be merely "exculpatory", following an unlawful arrest. People v. Moreno, 176 Colo. 488, 491 P.2d 575 (1971).

Not between formal arrest and police custody. The fact that the defendant is not under

formal arrest at the time he made such statements is unimportant where he is in police custody, he is the main suspect, and the accusing finger is surely directed at defendant, in which case the questions of a police officer in this posture are obviously for the main purpose of eliciting incriminating statements from the defendant, and therefore, the trial court should exclude any oral incriminating statements. Nez v. People, 167 Colo. 23, 445 P.2d 68 (1968).

Prosecution has burden at suppression hearing to show that defendant was lawfully arrested. People v. Moreno, 176 Colo. 488, 491 P.2d 575 (1971).

Judge may suppress statements made by defendant before he was given "Miranda warning", but deny the suppression of statements made after the warning has been given. People v. Garrison, 176 Colo. 516, 491 P.2d 917 (1971).

Confession obtained after inadequate warning should be suppressed. Where defendant's confession is obtained after a warning of his rights, which does not meet the requirements of Miranda, a motion to suppress the confession should be granted. People v. Vigil, 175 Colo. 373, 489 P.2d 588 (1971).

Suppression of incriminating statements warranted when defendant was subject to interrogation by police officers before being advised of Miranda rights. A routine encounter turned into a custodial situation, as defendant was physically surrounded by officers, was not free to go during questioning, and had "objective reasons to believe that he was under arrest"; such circumstances constituted custody. People v. Null, 233 P.3d 670 (Colo. 2010).

Stereotype warning cannot be the sole basis of the court's determination that a statement was voluntary and that the defendant was aware of his rights and waived and relinquished those rights. People v. Moreno, 176 Colo. 488, 491 P.2d 575 (1971).

If written confession is direct exploitation of prior illegality, it is inadmissible as the "fruit of the poisonous tree". People v. Algien, 180 Colo. 1, 501 P.2d 468 (1972).

Similarly, search conducted pursuant to illegal confession must be suppressed. Where the sole basis of a probable cause for the search of the defendant's home presented in the affidavit is his confession and that confession was illegally obtained, then, under the "fruit of the poison tree" doctrine, any articles obtained must be suppressed. People v. Vigil, 175 Colo. 373, 489 P.2d 588 (1971).

Good faith basis required to challenge warrant affidavits. As conditions to a veracity hearing testing the truth of averments contained in a warrant affidavit, a motion to suppress must be supported by one or more affidavits reflecting a good faith basis for the challenge and contain a specification of the precise statements challenged. People v. Dailey, 639 P.2d 1068 (Colo. 1982).

Voluntariness should be determined based on the totality of the circumstances, including the occurrences and events surrounding the confession and the presence or absence of official misconduct. People v. Sparks, 748 P.2d 795 (Colo. 1988); People v. Mounts, 801 P.2d 1199 (Colo. 1990).

Confession given after proper warnings not defective just because prior statements illegal. A confession obtained after proper constitutional warnings are given is not defective just because prior statements might be tainted with illegality. People v. Potter, 176 Colo. 510, 491 P.2d 974 (1971).

But time lapse between interrogations found insufficient to remove original taint from confession. People v. Algien, 180 Colo. 1, 501 P.2d 468 (1972).

"Totality of circumstances" standard. Courts must determine whether a confession given in a noncustodial setting is voluntary under the "totality of circumstances" standard. People v. Johnson, 671 P.2d 958 (Colo. 1983).

Confession properly suppressed where defendant's will was overborne by coercive conduct of police. Defendant's statements concerning drugs in his pockets were made after sustaining serious facial fractures and other injuries from the police and while he feared the police would use further force. People v. Vigil, 242 P.3d 1092 (Colo. 2010).

Trial court must consider all attendant circumstances to determine whether coercion of first confession infected second confession. Officers receiving subsequent confessions cannot merely be the beneficiaries of earlier pressure improperly applied to defendant. Defendant declined further medical treatment for his serious injuries, was released to the same officers who had inflicted the injuries, and was interrogated by those officers at 2:00 a.m. The evidence supports the trial court's ruling that defendant's subsequent statements were made under the lingering coercion of the physical force used against him and were thus properly suppressed. People v. Vigil, 242 P.3d 1092 (Colo. 2010).

B. When Motion Made.

Defendant entitled to object to confession's use at some stage in proceedings. A defendant has a constitutional right at some stage in the proceedings to object to the use of a confession and to have a "fair and reliable determination" on the issue of voluntariness. Compton v. People, 166 Colo. 419, 444 P.2d 263 (1968); Whitman v. People, 170 Colo. 189, 460 P.2d 767 (1969).

But pretrial hearing not constitutional requirement. While the better practice, at least

with questions involving the admissibility of confessions and admissions, is to conduct a hearing before the jury becomes aware that the evidence exists, such has never made a pretrial hearing a constitutional requirement. Whether or not a reference to such evidence before the jury might result in a denial of the defendant's constitutional rights is a matter to be considered on a case-by-case basis. People v. Renfrow, 172 Colo. 399, 473 P.2d 957 (1970).

Issue of timeliness of motion moot when court entertains motion. When the court determines to entertain a motion to suppress and conduct a hearing thereon, the issue of the timeliness of the motion becomes moot and can no longer be a proper ground for denial thereof. People v. Robertson, 40 Colo. App. 386, 577 P.2d 314 (1978).

C. Procedure.

Procedural guidelines same for determining admissibility of confession and "voluntariness" of blood test. It is proper for a trial judge to resolve the matter as to the "voluntariness" of the blood alcohol test along the same procedural lines as would be followed in determining the admissibility, or nonadmissibility, of a confession. Compton v. People, 166 Colo. 419, 444 P.2d 263 (1968).

Express or contemporaneous objection to admission of confession unnecessary where voluntariness issue evident. It is not necessary that there be an express objection by the defendant to the admission of the confession by a motion to suppress or by contemporaneous objection, for the trial judge is required to conduct a hearing when it becomes evident to him that voluntariness is in issue, and an awareness on the part of the trial judge that the defendant is questioning the circumstances under which the statements were obtained is sufficient. Whitman v. People, 170 Colo. 189, 460 P.2d 767 (1969).

Denial of hearing on voluntariness is error. The denial of defense counsel's request for a hearing to determine whether defendant's statements following his arrest were voluntarily made is error. Hervey v. People, 178 Colo. 38, 495 P.2d 204 (1972).

Trial judge, and not the jury, determines the admissibility of a confession where objection is made on the ground that the confession was involuntarily made. Compton v. People, 166 Colo. 419, 444 P.2d 263 (1968).

And court must make findings of fact and law. Before incriminating statements or confessions, to which objections have been made, can be admitted in evidence, the court must make findings of fact and law that the statements and confessions under consideration were voluntarily given with full understanding of the accused's rights. Compton v. People, 166 Colo. 419, 444 P.2d 263 (1968); Espinoza v. People 178 Colo. 391, 497 P.2d 994 (1972).

Before a trial court may rule that a confessio is voluntary and admissible, or that it is invo untary and must be suppressed, the court mu make sufficiently clear and detailed findings fact and conclusions of law on the record permit meaningful appellate review. People McIntyre, 789 P.2d 1108 (Colo. 1990).

And the mere denial of defendant's motio to suppress, without more, does not satisf these requirements. Espinoza v. People, 17 Colo. 391, 497 P.2d 994 (1972).

Showings required for admission of co fession. On a motion to suppress a confessio made to police officers without assistance of attorney, the prosecution must prove, by cle and convincing evidence, that the defenda knowingly, voluntarily and intelligently waiv his right to counsel and his right against sel incrimination and must prove, by a preponde ance of the evidence, that the confession w made voluntarily. People v. Fish, 660 P.2d 5 (Colo. 1983).

Court finds whether statement voluntar and whether defendant voluntarily waiv constitutional privileges. Where the defenda makes a motion under this rule, it is incumbe upon the trial court to find whether the sta ment was given freely and voluntarily witho any improper compelling influences a whether the defendant voluntarily, knowing and intelligently waived his privilege agai self-incrimination and his right to retained appointed counsel. Espinoza v. People, 1 Colo. 391, 497 P.2d 994 (1972).

And trial judge must find that the sta ment was voluntary beyond a reasonal doubt. People v. Moreno, 176 Colo. 488, 4 P.2d 575 (1971).

Jury precluded from fully resolving iss of voluntariness. Under the federal consti tion, a fair and reliable determination of voluntariness of a confession precludes conficting jury from fully resolving the iss Compton v. People, 166 Colo. 419, 444 P 263 (1968).

Including the taking of a blood alco test. The defendant has the right to a "fair reliable determination" on the issue as whether he gave his consent to the taking blood alcohol test, and therefore, it is impro for the trial court to permit the jury to "fu resolve" this matter. Compton v. People, Colo. 419, 444 P.2d 263 (1968).

But where issues resolved against def dant, weight given to confession left to ju Where the trial court conducts a full "in c era" hearing to determine whether defenda confession was voluntary and to ascer whether defendant was advised of rights forded him by Miranda v. Arizona, then, wh these issues are resolved against defendant,

weight to be given to defendant's confession is properly left to jury. People v. Lovato, 180 Colo. 445, 506 P.2d 361 (1973).

And where evidence not sufficient to require exclusion, confession's voluntariness question for jury. Whenever there is evidence, not sufficient to require exclusion of the alleged confession, but sufficient to raise a question as to the weight to which it is entitled at the hands of the jury, the court must refer the question of the voluntariness of the confession to the jury under proper instructions. Baker v. People, 168 Colo. 11, 449 P.2d 815 (1969) (but see Compton v. People, 166 Colo. 419, 444 P.2d 263 (1968); People v. Lovato, 180 Colo. 445, 506 P.2d 361 (1973).

However, judge must first affirmatively find confession voluntarily given before submitted to jury. The fact that the jury determines the weight to be given a confession, or, as is sometimes the practice, the fact that the issue of the voluntariness of a confession, though already determined by the trial court, is also submitted to the jury under proper instructions, in nowise alters the fundamental rule that before a confession is admitted into evidence the trial judge must first affirmatively find that the confession was voluntarily given. Compton v. People, 166 Colo. 419, 444 P.2d 263 (1968).

Or that blood alcohol test was taken with consent. Where an objection is made by a defendant to the introduction into evidence of the results of a blood alcohol test on the ground that the test was taken without his consent, the trial court, after hearing, must make a specific and affirmative finding that such consent was given before this line of testimony may with propriety be submitted to the jury for its consideration. Compton v. People, 166 Colo. 419, 444 P.2d 263 (1968).

When no evidence on voluntariness, matter not submitted to jury. When there is no evidence which raises a question as to the voluntariness of a confession, the matter need not be submitted to the jury. Baker v. People, 168 Colo. 11, 449 P.2d 815 (1969).

Evidence held sufficient to support finding of voluntary confession. People v. Valencia, 181 Colo. 36, 506 P.2d 743 (1973).

Rule 41.1. Court Order for Nontestimonial Identification

(a) Authority to Issue Order. A nontestimonial identification order authorized by this Rule may be issued by any judge of the Supreme, District, Superior, County Court, or Court of Appeals.

(b) Time of Application. A request for a nontestimonial identification order may be made prior to the arrest of a suspect, after arrest and prior to trial or, when special circumstances of the case make it appropriate, during trial.

(c) Basis for Order. An order shall issue only on an affidavit or affidavits sworn to or affirmed before the judge, or by the procedures set forth in Crim. P. 41(c)(3), and establishing the following grounds for the order:

(1) That there is probable cause to believe that an offense has been committed;

(2) That there are reasonable grounds, not amounting to probable cause to arrest, to suspect that the person named or described in the affidavit committed the offense; and

(3) That the results of specific nontestimonial identification procedures will be of material aid in determining whether the person named in the affidavit committed the offense.

(d) Issuance. Upon a showing that the grounds specified in section (c) exist, the judge shall issue an order directed to any peace officer to take the person named in the affidavit into custody to obtain nontestimonial identification. The judge shall direct that the designated nontestimonial identification procedures be conducted expeditiously. After such identification procedures have been completed, the person shall be released or charged with an offense.

(e) Contents of Order. An order to take into custody for nontestimonial identification shall contain:

(1) The name or description of the individual who is to give the nontestimonial identification;

(2) The names of any persons making affidavits for issuance of the order;

(3) The criminal offense concerning which the order has been issued and the nontestimonial identification procedures to be conducted specified therein;

(4) A mandate to the officer to whom the order is directed to detain the person for only such time as is necessary to obtain the nontestimonial identification;

(5) The typewritten or printed name of the judge issuing the order and his signature.

(f) Execution and Return.

(1) Nontestimonial identification procedures may be conducted by any peace officer or other person designated by the judge. Blood tests shall be conducted under medical supervision, and the judge may require medical supervision for any other test ordered pursuant to this section when he deems such supervision necessary. No person who appears under an order of appearance issued pursuant to this section (f) shall be detained longer than is reasonably necessary to conduct the specified nontestimonial identification procedures unless he is arrested for an offense.

(2) The order may be executed and returned only within 14 days after its date.

(3) The order shall be executed in the daytime unless the issuing judge shall endorse thereupon that it may be served at any time, because it appears that the suspect may flee the jurisdiction if the order is not served forthwith.

(4) The officer executing the order shall give a copy of the order to the person upon which it is served.

(5) No search of the person who is to give nontestimonial identification may be made, except a protective search for weapons, unless a separate search warrant has been issued.

(6) A return shall be made to the issuing judge showing whether the person named has been:

(I) Detained for such nontestimonial identification;

(II) Released or arrested.

(7) If, at the time of such return, probable cause does not exist to believe that such person has committed the offense named in the affidavit or any other offense, the person named in the affidavit shall be entitled to move that the judge issue an order directing that the products of the nontestimonial identification procedures, and all copies thereof, be destroyed. Such motion shall, except for good cause shown, be granted.

(g) Nontestimonial Identification Order at Request of Defendant. A person arrested for or charged with an offense may request a judge to order a nontestimonial identification procedure. If it appears that the results of specific nontestimonial identification procedures will be of material aid in determining whether the defendant committed the offense, the judge shall order the state to conduct such identification procedure involving the defendant under such terms and conditions as the judge shall prescribe.

(h) Definition of Terms. As used in this Rule, the following terms have the designated meanings:

(1) "Offense" means any felony, class 1 misdemeanor, or other crime which is punishable by imprisonment for more than one year.

(2) "Nontestimonial identification" includes, but is not limited to, identification by fingerprints, palm prints, footprints, measurements, blood specimens, urine specimens, saliva samples, hair samples, specimens of material under fingernails, or other reasonable physical or medical examination, handwriting exemplars, voice samples, photographs, appearing in lineups, and trying on articles of clothing.

(i) Motion to Suppress. A person aggrieved by an order issued under this Rule may file a motion to suppress nontestimonial identification seized pursuant to such order and the said motion shall be granted if there were insufficient grounds for the issuance or the order was improperly issued. The motion to suppress the use of such nontestimonial identification as evidence shall be made before trial unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court, in its discretion, may entertain the motion at the trial.

Source: (f)(2) amended May 7, 2009, effective July 1, 2009; IP(c) amended and effective February 10, 2011; (f)(2) amended and adopted December 14, 2011, effective July 1, 2012.

ANNOTATION

Law reviews. For comment, "Beyond the Davis Dictum: Reforming Nontestimonial Identification Evidence Rules and Statutes", see 79 U. Colo. L. Rev. 189 (2008).