JC 101

2023 JCAT CONFERENCE DECEMBER 11-13, 2023



CONSTITUTION



Due Process

US Constitution Fourth Amendment

Protection Against
Unreasonable Search and
Seizure

• The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

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TN Const. Art. 1, § 7 Searches and seizures

That the people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures; and that general warrants, whereby an officer may be commanded to search suspected places, without evidence of the fact committed, or to seize any person or persons not named, whose offences are not particularly described and supported by evidence, are dangerous to liberty and ought not to be granted.

Tenn. R. Crim. P., Rule 5 Rule 5. Initial Appearance Before Magistrate

- · · · · · (a) In General.
 - '(1) 'Appearance Upon an Arrest. Any person arrested--except upon a capias pursuant to an indictment or presentment--shall be taken without unnecessary delay before the nearest appropriate magistrate of:
 - (A) the county from which the arrest warrant issued; or
 - (B) the county in which the alleged offense occurred if the arrest was made without a warrant, unless a citation is issued pursuant to Rule 3.5..

Tenn. R. Crim. P., Rule 5
Rule 5. Initial Appearance Before Magistrate (continued);

- 2) Affidavit of Complaint When No Arrest Warrant. An affidavit of complaint shall be filed promptly when a person, arrested without a warrant, is brought before a magistrate.
- (3) Governing Rules. The magistrate shall proceed in accordance with this rule when an arrested person initially appears before the magistrate.

T.C.A. § 40-5-103

in NO person can be committed to prison for any criminal matter until examination therefore is first had before some magistrate.

T.C.A. § 40-5-101

MAGISTRATE

An officer having the power to issue a warrant for the arrest of a person charged with a public offense.

T.C.A. § 40-5-102

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The following are magistrates within the meaning of this part:

- (1) The judges of the supreme court;
- (2) The judges of the circuit and criminal courts;
- (3) Judicial commissioners;
- (4) Judges of the courts of general sessions;
- (5) City judges in cities and towns; and
- (6) Judges of juvenile courts.

JUDICIAL COMMISSIONER T.C.A.§ 40-1-111

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- *In most counties (and all under 200,000 population) the legislative body may
- 'appoint one or more people to serve as judicial commissioners whose duties include, but are not limited to:
- 1. Issuing arrest and search warrants upon a finding of *probable cause*;
- 2. Issuing mittimus following compliance with lawful procedures;
- 3. Appointing attorneys for indigent defendants;
- 4. Setting and approving bonds and the release on recognizance of defendants; and
- 5. Issuance of injunctions and other appropriate orders in cases of alleged domestic violence.

JUDICIAL COMMISSIONER

(C) In any county having a population greater than seven hundred thousand (700,000), according to the 1970 federal census or any subsequent federal census, to be eligible for appointment and service as a judicial

in the state of Tennessee.

commissioner a person must be licensed to practice law

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CODE OF JUDICIAL CONDUCT

A judge, within the meaning of this Code, is anyone who is authorized to perform judicial functions, including but not limited to an officer such as a **magistrate**, referee, court commissioner, **judicial commissioner**, special master, or an administrative judge or hearing officer.

Tenn. Sup. Ct. R. 10

T.C.A. § 40-6-214. General session courts; clerks and deputies; warrants

Clerks of courts of general sessions and their duly sworn deputies have jurisdiction and authority, concurrent with that of the judges of the general sessions court, to issue warrants for the arrest of persons.

T.C.A.§ 40-11-105. Right to bail; clerks;

powers and duties

'(a)(1) When the defendant has been arrested or held to 'answer for any bailable offense, the defendant is entitled to be admitted to bail by the committing magistrate, by any judge of the circuit or criminal court, or by the clerk of any circuit or criminal court; provided, that if admitted to bail by the clerk of any circuit or criminal court, the defendant has a right to petition the judge of the circuit or criminal court if the defendant feels that the bail set is excessive, and shall be given

notice of this fact by the clerk.

T.C.A.§ 40-11-105. Right to bail; clerks; powers and duties (cont.)

· · · ·(2)·The clerk of any circuit or criminal court may only admit ithe defendant to bail when the judge is not present in the court and the clerk reasonably believes that the judge will not be present within three (3) hours after the defendant has been committed to the county or city jail, following arrest.

T.C.A.§ 40-11-105. Right to bail; clerks; powers and duties (cont.)

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- • ((b) Except as provided in subsection (c), in no event may a clerk set the
- amount of bail in excess of:
 - (1) One thousand dollars (\$1,000) if the defendant is charged with a misdemeanor;
 - (2) Ten thousand dollars (\$10,000) if the defendant is charged with a felony that does not involve a crime committed against a person;
 - (3) Fifty thousand dollars (\$50,000) if the defendant is charged with a felony that involves a crime committed against a person; or
 - (4) One hundred thousand dollars (\$100,000) if the defendant is charged with some form of homicide.
 - (c) A clerk may set the amount of bail in excess of the listed amounts in subsection (b) if the defendant is deemed a risk of flight pursuant to § 40-11-18

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Beginning the Process

Arrest warrant
Summons
Misdemeanor citations

Affidavit of Complaint

. A statement alleging that a person has committed. an offense. It must:

- (a) be in writing;
- (b) be made on oath before a magistrate or a neutral and detached court clerk authorized by Rule 4 to make a probable cause determination; and
- (c) allege the essential facts constituting the offense charged.

Tenn.R.Crim.P., Rule 3

Affidavit of Complaint

• Essential Facts: 1.Date of Offense 2.Offense Charged and Elements 3.T.C.A. Code 4. Grade of Offense 5. Name of Defendant 6. Name of Victim 7. Name(s) of Witness(es) Necessary for General Sessions Court 8. Contact Information for Victim(s) and Witnesses(es) 9.Venue

Four Corners Doctrine

When reviewed later, only the affidavit will be considered for the existence of probable cause. A court **will not** consider any other evidence know to the affiant or provided to or possessed by the issuing magistrate.

Arrest Warrant

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if the affidavit of complaint and any supporting affidavits filed with it establish that there is *probable cause* to believe that an offense has been committed and that the defendant has committed it, the magistrate or clerk shall issue an arrest warrant to an officer authorized by law to execute it or shall issue a criminal summons for the appearance of the defendant.

Tenn.R.Crim.P., Rule 4(a)

Probable Cause

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"sufficient reason based upon known facts to believe a crime has been committed or that certain property is connected with a crime." Black's Law Dictionary

Probable cause is a requirement in criminal law that must be met before a police officer can make an arrest, conduct a search, seize property, or get a warrant.

a reasonable basis for believing that a crime may have been committed (for an arrest) or when evidence of the crime is present in the place to be searched (for a search)

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Arrest Warrant

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- The arrest warrant shall:
 - * A. be signed by the magistrate or clerk;
 - B. contain the name of the defendant or, if this name is unknown, any name or description by which the defendant can be identified with reasonable certainty;
 - C. indicate the county in which the warrant is issued;
 - D. describe the offense charged in the affidavit of complaint; and
 - E. order that the defendant be arrested and brought before the nearest appropriate magistrate in the county of arrest.

Tenn.R.Crim.P., Rule 4(c)

Criminal Summons T.C.A. § 40-6-215

- · · As an alternative to an arrest warrant...the magistrate or clerk
 - may issue a criminal summons instead of an arrest warrant:
 - A. When affiant is law enforcement officer, felony or misdemeanor offense...upon request of officer
 - B. When affiant(s) not a law enforcement officer, misdemeanor offense presumption is to issue a criminal summons.
 - C. When affiant(s) not law enforcement officer, felony offense...presumption is against a criminal summons.

Criminal Summons (cont.)

- Shall be in substantially the same form as an arrest warrant except that it shall summon the defendant to appear before the magistrate or court at a stated time and place. It shall give notice that:
 - The defendant is being charged with a state criminal offense
 - The summons is being issued in lieu of an arrest warrant
 - The failure to appear in court is a separate criminal offense for which warrant may be issued
 - Failure to appear for booking and processing is a separate criminal offense for which warrant may be issued

TCA § 40-7-118. Definitions; citations

'(a)(1) "Citation" means an order prepared as a written or electronic citation and issued by a peace officer on paper or on an electronic data device requiring a person accused of violating the law to appear in a designated court or government office at a specified date and time. The signature of the person to whom the order is issued is required, and the order must be filed, electronically or otherwise, with a court having jurisdiction over the alleged offense;

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(b)(1)A peace officer who has arrested a person for the commission of a misdemeanor committed in the peace officer's presence, or who has taken custody of a person arrested by a private person for the commission of a misdemeanor, **SHALL** issue a citation to the arrested person to appear in court in lieu of the continued custody and the taking of the arrested person before a magistrate.

(b)(2)(A) subsection (b) does not apply to an arrest for the offense of DUI unless the offender was admitted to a hospital or detained for medical treatment for at least three (3) hours for injuries received in the DUI.

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A peace officer MAY issue a <u>citation</u> to the arrested person to appear in court in lieu of the continued custody and the taking of the arrested person before a magistrate if a person is arrested for:

- The offense of theft which formerly constituted shoplifting
- Issuance of bad checks
- Use of a revoked or suspended driver license...
- Assault or battery; or
- Prostitution

A peace officer **MAY** arrest and take a person into custody if:

- A reasonable likelihood exists that the arrested person will fail to appear in court; or
- The prosecution of the offense for which the person was arrested, or of another offense, would thereby be jeopardized.

' 'No'citation shall be issued under this section if:

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- The person arrested requires medical examination or medical care, or if the person is unable to care for the person's own safety;
- There is a reasonable likelihood that the offense would continue or resume, or that persons or property would be endangered by the arrested person;
- The person arrested cannot or will not offer satisfactory evidence of identification,

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- The person demands to be taken immediately before a magistrate or refuses to sign the <u>citation</u>;
 - The person arrested is so intoxicated that the person could be a danger to the person's own self or to others;
 - There are one (1) or more outstanding arrest warrants for the person; or
 - The person is subject to arrest pursuant to § 55-10-119.

.T.C.A. §55-10-119 Arrest; accidents resulting in serious 'bodily injury or death and no valid driver license and evidence of financial responsibility and bring the driver before a committing magistrate if the driver:

- (1) Is involved in an accident resulting in:
- Serious bodily injury
- Death; and
- Does not have a valid driver license; and
- Does not have evidence of financial responsibility

STATUTES

Assault T.C.A. §39-13-101

Aggravated Assault T.C.A.§ 39-13-102

Domestic Assault T.C.A. .§ 39-13-111

Reckless endangerment T.C.A. .§ 39-13-103

Burglary T.C.A. .§ 39-13-1002

Harassment T.C.A. .§ 39-17-308

DUI T.C.A. § 55-10-401

' Public Intoxication T.C.A. § 39-17-310

Assault T.C.A. §39-13-101

- A person commits assault who:
- Intentionally, knowingly or recklessly causes bodily injury to another;
- Intentionally or knowingly causes another to reasonably fear imminent bodily injury; or
- Intentionally or knowingly causes physical contact with another and a reasonable person would regard the contact as extremely offensive or provocative.

Imminent Danger

The victim must have a reasonable apprehension of imminent injury or offensive contact. This element is established if the act would produce apprehension in the mind of a reasonable person. Apprehension is not the same as fear. Apprehension means awareness that an injury or offensive contact is imminent. Imminent meaning impending or about to occur.

Threatening to kill someone at a later date would not constitute an assault.

Aggravated Assault T.C.A.§ 39-13-102

- (a) A person commits aggravated assault who:
- (A) *Intentionally or knowingly* commits as assault as defined in § 39-13-101, and the assault:
- (i) results in serious bodily injury to another;
- (ii) results in the death of another;
- (iii) involved the use or display of a deadly weapon; or
- (iv) Involved **strangulation or attempted strangulation**; or

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Aggravated Assault

T.C.A.§ 39-13-102 (cont.)

- (B) *Recklessly* commits an assault as defined in § 39-13-101(a)(1), and the assault :
- (i) results in the serious bodily injury to another;
 - (ii) Results in the death of another; or
- (iii) involved the use or display of a deadly weapon.

Aggravated Assault

T.C.A.§ 39-13-102 (cont.)

(b) A person commits aggravated assault who, being the parent or custodian of a child or the custodian of an adult, intentionally or knowingly fails or refuses to protect the child or adult from an aggravated assault... or aggravated child abuse

Aggravated Assault T.C.A.§ 39-13-102 (cont.)

(c) A person commits aggravated assault who, after having been enjoined or restrained by an order, diversion or probation agreement of a court of competent jurisdiction from in any way causing or attempting to cause bodily injury or in any way committing or attempting to commit an assault against an individual or individuals, intentionally or knowingly attempts to cause or causes bodily injury or commits or attempts to commit an assault against the individual or individuals.

Aggravated Assault T.C.A.§ 39-13-102 (a)(2)

Strangulation defined for Aggravated Assault

"strangulation" means intentionally or knowingly impeding normal breathing or circulation of the blood by applying pressure to the throat or neck or by blocking the nose and mouth or another person, regardless of whether the person has any intent to kill or protractedly injure the victim.

Domestic Assault T.C.A. §39-13-111

Domestic abuse victim means

- Adults or minors who are current or former spouses
- Adults or minors who live together or who have lived together;
- Adults or minors who are dating or who have dated or have had a sexual relationship, but does not include fraternization between two(2) individuals in a business or social context.
- Adults or minors related by blood or adoption;
- Adults or minors who are related or were formerly related by marriage; or
- Adult or minor children of a person in a relationship that is described in subdivision (a)(1)-(5).

Reckless Endangerment T.C.A. § 39-13-103

A person commits an offense who recklessly engages in conduct that places or may place another person in imminent danger of death or serious bodily

Burglary

- (a) A person commits burglary who, without the effective consent of the property owner:
- (1) Enters a building other than a habitation, or any portion of the building, not open to the public, with intent to commit a felony, theft, or assault;
- (2) Remains concealed, with the intent to commit a felony, theft, or assault, in a building;
- (3) Enters a building and commits or attempts to commit a felony, theft, or assault; or

Burglary (cont.) T.C.A. § 39-13-1002

- (4) Enters any freight or passenger car, automobile, truck, trailer, boat, airplane, or other motor vehicle with intent to commit a felony, theft, or assault or commits or attempts to commit a felony, theft, or assault.
- (b) As used in this section, "enter" means:
- (1) Intrusion of any part of the body; or
- (2) Intrusion of any object in physical contact with the body or any object controlled by remote control, electronic or otherwise.
- (c) Burglary under subdivision (a)(1), (2), or (3) is a Class D felony.
- (d) Burglary under subdivision (a)(4) is a Class E felony.

Harassment TCA § 39-17-308

- (a) A person commits an offense who intentionally:
- (1) Communicates a threat to another person, and the person communicating the threat:
- (A) Intends the communication to be a threat of harm to the victim; and
- (B) A reasonable person would perceive the communication to be a threat of harm;

Harassment (cont.) TCA § 39-17-308

(2) Communicates with another person without lawful purpose, anonymously or otherwise, with the intent that the frequency or means of the communication annoys, offends, alarms, or frightens the recipient and, by this action, annoys, offends, alarms, or frightens the recipient; (3) Communicates to another person, with intent to harass that person, that a relative or other person has been injured or killed when the communication is known to be false

Driving Under the Influence TCA § 55-10-401

It is unlawful for any person to drive or to be in physical control of any automobile or other motor driven vehicle on any of the public roads and highways of the state, or on any streets or alleys, or while on the premises of any shopping center, trailer park, or apartment house complex, or any other premises that is generally frequented by the public at large, while:

Driving Under the Influence (cont.) TCA § 55-10-401

- (1) Under the influence of any intoxicant, marijuana, controlled substance, controlled substance analogue, drug, substance affecting the central nervous system, or combination thereof that impairs the driver's ability to safely operate a motor vehicle by depriving the driver of the clearness of mind and control of oneself that the driver would otherwise possess;
- (2) The alcohol concentration in the person's blood or breath is eight-hundredths of one percent (0.08%) or more; or
- (3) With a blood alcohol concentration of four-hundredths of one percent (0.04%) or more and the vehicle is a commercial motor vehicle

Public Intoxication TCA § 39-17-310

A person who commits the offense of public intoxication who appears in a public place under the influence of a controlled substance, controlled analogue or any other intoxicating substance to the degree that:

- (1) The offender may be endangered;
- (2) There is endangerment to other persons or property; or
- (3) The offender unreasonably annoys people in the vicinity.

::: T.C.A. § 39-17-417

· · VS.

T.C.A. § 39-17-418

VS.

- (a) It is an offense for a defendant to knowingly:
- (1) Manufacture a controlled substance;
- (2) Deliver a controlled substance;
- (3) Sell a controlled substance; or
- (4) Possess a controlled substance with intent to manufacture, deliver or sell the controlled substance.
- (b) A violation of subsection (a) with respect to a **Schedule I** controlled substance is a **Class B felony** and, in addition, may be fined not more than one hundred thousand dollars (\$100,000).
- (c) A violation of subsection (a) with respect to:
- (1) Cocaine, methamphetamine, fentanyl, carfentanil, remifentanil, alfentanil, or thiafentanil is a Class B felony if the amount involved is point five (0.5) grams or more...

- (a) It is an offense for a person to knowingly possess or casually exchange a controlled substance, unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of professional practice.
- (b) It is an offense for a person to distribute a small amount of marijuana not in excess of one-half ($\frac{1}{2}$) ounce (14.175 grams).
- (c)(1) Except as provided in subsections (d) and (e), a violation of this section is a **Class A misdemeanor.**
- (2)(A) A violation of subsection (a) with respect to any amount of methamphetamine shall be punished by confinement for not less than thirty (30) days, and the person shall serve at least one hundred percent (100%) of the thirty (30) day minimum.



- (a) It is an offense for a defendant to knowingly:
- (1) Manufacture methamphetamine;
- (2) Deliver methamphetamine;
- (3) Sell methamphetamine; or
- (4) Possess methamphetamine with intent to manufacture, deliver or sell methamphetamine.
- (b) It is an offense for a person to knowingly possess or casually exchange methamphetamine.



T.C.A. § 39-17-434 (cont.)

- (c) If the violation is for methamphetamine, the defendant shall be charged, indicted, prosecuted and convicted under this section rather than §§ 39-17-417 or 39-17-418.
- (d) Any reference in Tennessee Code Annotated that provides a penalty, forfeiture, punishment, fine, disability or other adverse effect for a violation of §§ 39-17-417 or 39-17-418, shall be considered to apply to a conviction under this section if the violation involves methamphetamine.
- (e)(1) A violation of subsection (a) shall be punished as provided in § 39-17-417.
- (2) A violation of subsection (b) shall be punished as provided in § 39-17-418.

https://www.youtube.com/watch?v=2PLC_cBJwk
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Affidavit of Complaint

On October 5, 2023 in Carroll County, Tennessee, agents. with the 24th Judicial Drug Task Force did execute a narcotic-related search warrant at the home of John Doe, located at 123 Monroe St, in McKenzie/Carroll County, TN. During the search of Mr. Doe's residence, agents located the following items:

- A baggie containing approximately 25 grams of a clear, crystal-like substance that did field-test positive for methamphetamine
- A baggie containing approximately 4 grams of a white powdery substance that did field-test positive for cocaine.
- (2) baggies containing ounce of marijuana
- Multiple meth pipes with residue, multiple crack pipes and digital scales.

On July 30, 2023, in Perry County. Tennessee, I received a call for an active stabbing. Upon my arrival, John Doe, the Victim, approached me stating "my brother Joseph just stabbed me". Mr. Doe lifted his shirt and showed me a deep knife wound in the center of his back close to his spine. The Defendant, Joseph Smith, fled the scene before all units arrived on the scene

On September 6, 2023 in Dickson County,
Tennessee, Rachel Smith did commit the offense
of Domestic assault during physical altercation by
shoving and throwing mop water on Walter
Smith's face and hair. Rachel is married to Mark
Smith, which is the brother of Walter. They all
reside together at 123 Morris Street.

On June 12, 2023, I, Deputy Dawg, responded to a call in reference to a vehicle in a ditch. Upon my arrival, I met with the driver, identified as Kitty Catt. Catt had an odor similar to that of an intoxicating substance coming from her person and was unsteady on her feet. Catt was asked to perform the standardized field sobriety test and she did poorly. Catt was arrested for driving under the influence, 1st offense.

On Jun 12, 2023, I, Deputy Dawg, responded to a call in reference to a vehicle in a ditch. Upon arrival, I met with the driver, identified as Kitty Catt. Catt had an odor similar to that of an intoxicating substance coming from her person and was unsteady on her feet. Catt was asked to perform the standardized field sobriety test and she did poorly. Catt was found to have a 2 year old child in the vehicle while driving under the influence. Catt was arrested for child endangerment.

On August 4, 2023, while in Eagleville, TN and in the County of Rutherford; • • Defendant was observed by Affiant operating a Red 4 wheeler on the roadway in the area of 123 Main Street. Defendant was observed trying to conceal an open container of whiskey. Affiant could smell the odor of alcohol emitting from Defendant's person and breath. Defendant was being uncooperative but was still given an opportunity to perform a field sobriety test. Defendant stated multiple times he was not drunk and would not listen to Affiants lawful commands. Defendant was arrested for DUI 4th offense and given a field sobriety test at the Rutherford County jail. During the instructional phase of the test, Defendant was being uncooperative and would begin without being told to do so multiple times. Defendant was asked to stop and listen to instructions multiple times. Due to defendant being uncooperative he was escorted inside the jail on charges of DUI 4th offense.

On August 4, 2023, while in Rutherford County, Defendant was found to be in possession of approximately 0.15 grams of a crystal like substance in a field testing positive for methamphetamine and testing positive for fentanyl. Defendant was found to be in possession of the narcotic while he was trying to hide it in his waist line. The item located was a black eye glasses container which contained the narcotic. Defendant was arrested and charged with possession of Schedule II Methamphetamine and transported to jail.

On November 22, 2023, at approximately 2025 hours, I, Deputy Joyce, attempted to make a traffic stop near Veterans Parkway. The driver, Mr. Haley, exited the vehicle and ran after I initiated the traffic stop. A search of the vehicle resulted in finding two bags of marijuana, one weighing 29.0 grams and the other 7.7 grams for a total of 36.7 grams of marijuana. A records check of Mr. Haley revealed that his drivers' license had been revoked.

On October 1, 2023, while I responded to the Sheriff's Office lobby for a threats call. The victim stated that the suspect had been contacting her via text on an unfamiliar phone number. The victim stated that the suspect identified herself and be to send threatening text messages and called the victim. The suspect texted the victim stating that she would "catch a charge" if she saw the victim. The victim told me that the suspect told her over the phone that she would beat her. I observed the text messages and call logs on the victim's phone. The victim stated that the incident has put her in emotional distress and in fear for her child's safety she is often with her child and since the suspect knows where she lives. I am requesting an active warrant for harassment.

On May 5, 2022, I was dispatched to a suspicious vehicle at 105 Dakota Street, in Greenbrier, Robertson County.. A neighbor called and stated a white Nissan Frontier was stopped on the road and a white male with a red shirt got out of the truck. The neighbor stated the suspect was looking in the back of the truck and then turned and took off running down the driveway. The resident of 105 Dakota stated his ring camera picked this footage up as well and confirmed what our caller stated. The male was unsteady on his feet and had pin point eyes.

AFFIDAVIT OF COMPLAINT HANDOUT

CLASS DISCUSSION THOSE CHARGES

NAME

THE END