

Criminal Procedure: Comprehensive Guide

Main Sections:

Overview	To Whom the Fourth Amendment Applies		Fourth Amendment: Search & Seizure	
Fourth Amendment Standing		Warrant Requirements	Warrant Exceptions	Special Needs & Administrative Searches
Third-Party Doctrine	Terry Stops	Exclusionary Rule	Interrogations & Confessions	Right to Counsel

Note: This guide provides a systematic approach to evaluating key doctrines in Criminal Procedure, with a focus on Professor Sood's course. Each section includes detailed flowcharts with specific criteria for applying the constitutional standards along with key cases.

Fourth Amendment: Warrant Requirements

Warrant Preference Rule	Probable Cause	Particularity Requirement	Neutral and Detached Magistrate
Warrant Execution			

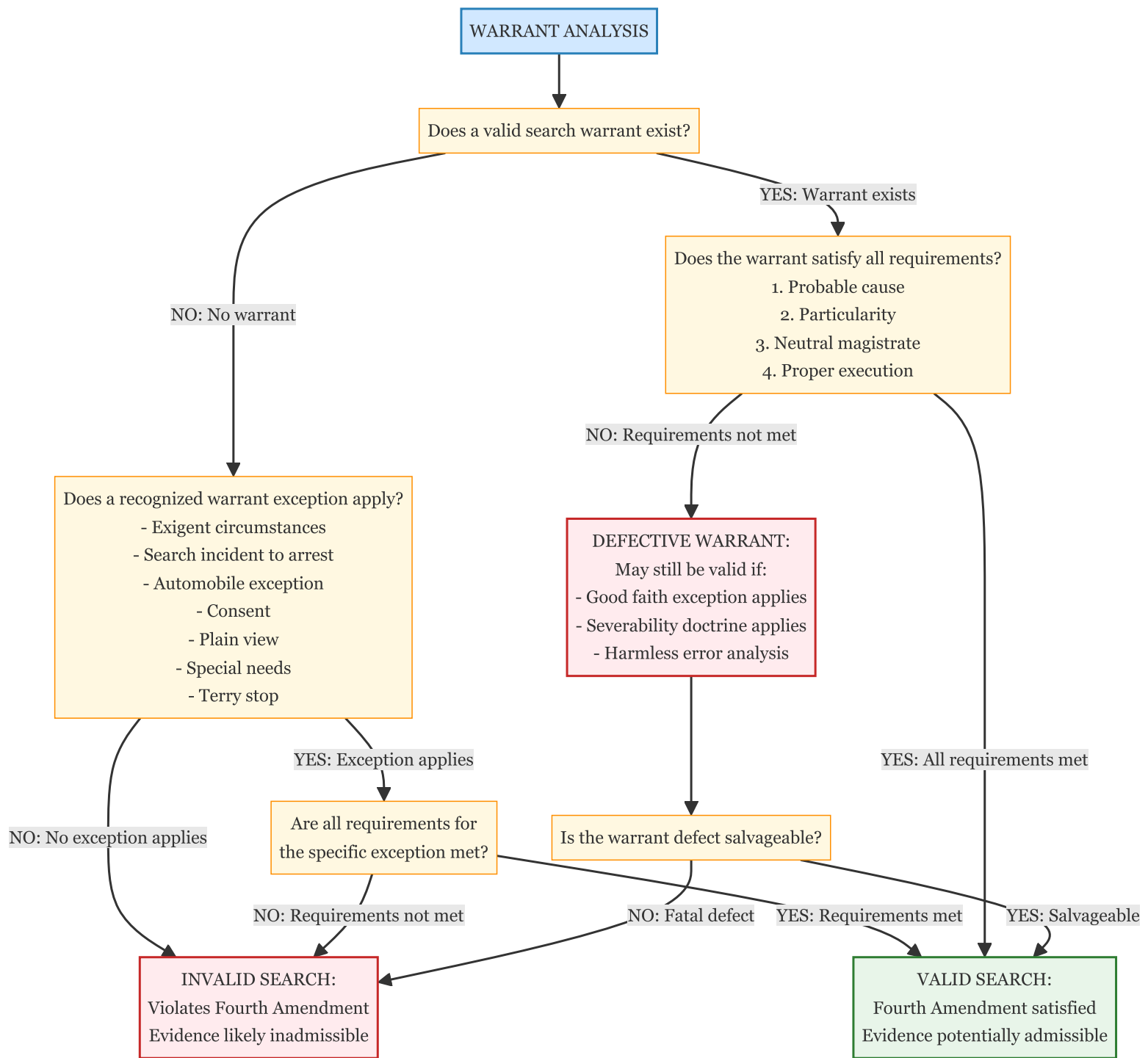
The Warrant Preference Rule

The Supreme Court has repeatedly emphasized that "searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions" (*Katz v. United States*, 389 U.S. 347, 357 (1967)).

This principle, known as the "warrant preference rule," creates a presumption that warrantless searches are unconstitutional unless they fall within an established exception. However, the Court's application of this principle has not been entirely consistent, and some Justices have questioned whether the Fourth Amendment actually demonstrates a preference for warrants.

Benefits of Requiring Warrants

- **Prior Review:** Allows a neutral judicial officer to evaluate the evidence before a search occurs
- **Prevents Hindsight Bias:** Assessment of probable cause isn't tainted by what the search actually found
- **Documentation:** Creates a record of what officers were authorized to search for and where
- **Specificity:** Forces officers to articulate their justifications and limits the scope of intrusion



Probable Cause Requirement

The Fourth Amendment explicitly requires that warrants be supported by probable cause. While the Supreme Court has rejected rigid formulations of probable cause, it has described it as a "practical, nontechnical conception" that deals with "probabilities" rather than certainties (*Illinois v. Gates*, 462 U.S. 213 (1983)).

The Probable Cause Standard

- **Definition:** The facts and circumstances known to the officer would lead a reasonable person to believe that a crime was committed or evidence of a crime would be found in a particular place

- **Quantum of Evidence:** More than reasonable suspicion but less than proof beyond a reasonable doubt or even preponderance of the evidence
- **Totality of Circumstances:** All relevant factors are considered together, not in isolation
- **Specific Items and Location:** Probable cause must exist for the specific items sought and the specific location to be searched

Illinois v. Gates *462 U.S. 213 (1983)*

Probable cause should be determined based on the "totality of the circumstances" rather than rigid tests. Reviewing courts should give "great deference" to a magistrate's determination of probable cause.

Police received an anonymous letter claiming that the Gates were drug dealers who regularly traveled to Florida to purchase drugs, with Sue Gates driving the car to Florida, leaving it to be loaded with drugs, and Lance Gates flying down later to drive the car back. The letter predicted an upcoming trip by the couple. Police corroborated some details of the trip but not any criminal activity. Based on this information, they obtained a search warrant for the Gates' home and car.

The Supreme Court abandoned the rigid "two-pronged test" from *Aguilar v. Texas* and *Spinelli v. United States*, which had required showing both an informant's "basis of knowledge" and "veracity." Instead, the Court adopted a more flexible "totality of the circumstances" approach where these factors remain relevant but are not strictly required in every case. The Court emphasized that probable cause is a "practical, common-sense decision" based on all the circumstances, including the veracity, reliability, and basis of knowledge of informants. The Court also stressed the importance of according "great deference" to a magistrate's determination of probable cause. Under this approach, the Court found sufficient probable cause existed given the anonymous letter's detailed predictions that were substantially corroborated by police.

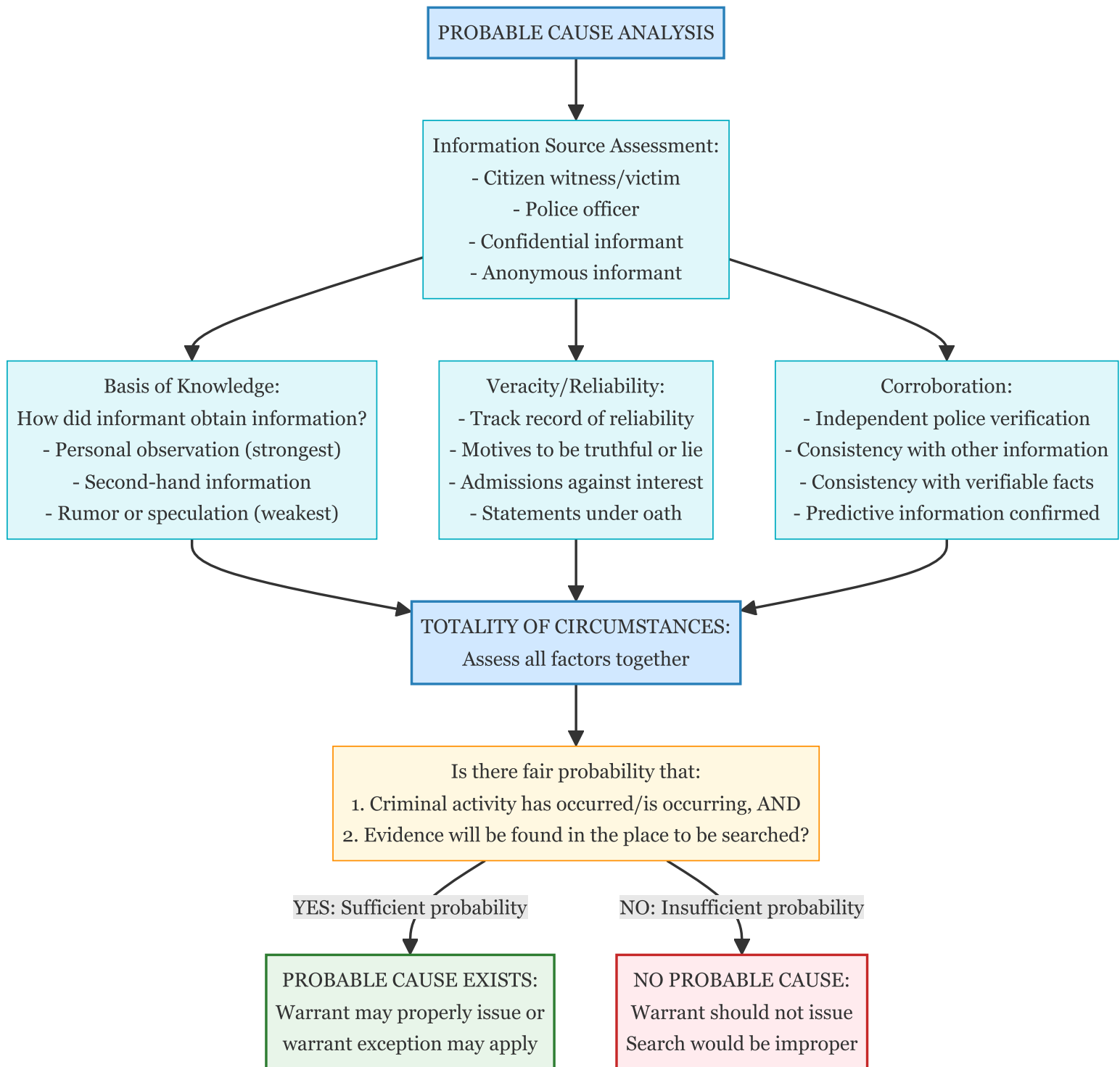
Informants and Probable Cause

Information from informants often forms the basis for probable cause. Under the *Gates* "totality of the circumstances" test, courts consider several factors when evaluating whether an informant's tip establishes probable cause:

Factors in Evaluating Informant Tips

- **Basis of Knowledge:** How did the informant obtain the information? First-hand observation is stronger than hearsay.
- **Veracity/Reliability:** Does the informant have a track record of providing reliable information? Has the informant given false information before?
- **Corroboration:** Have police independently verified any aspects of the tip? Even corroborating innocent details can add credibility.
- **Specificity:** Detailed information suggesting inside knowledge is more credible than vague allegations.
- **Recency:** How recent is the information? Dated information may no longer support probable cause.
- **Type of Informant:**
 - *Citizen informants* (witnesses, victims) generally presumed more reliable
 - *Police officers* generally presumed reliable absent reason to doubt
 - *Confidential informants* scrutinized based on track record and motives

- *Anonymous tips* require substantial corroboration



Particularity Requirement

The Fourth Amendment requires warrants to "particularly describe the place to be searched, and the persons or things to be seized." This particularity requirement serves several important functions:

Purposes of the Particularity Requirement

- **Limits Discretion:** Prevents officers from conducting general exploratory rummaging through a person's belongings
- **Informs the Subject:** Provides notice to the subject of the search of its authorized scope
- **Defines Scope:** Establishes clear boundaries for what officers may search for and where
- **Enables Review:** Allows courts to determine whether the search stayed within authorized limits

Particularity as to Place

A warrant must describe the place to be searched with sufficient particularity that an officer with reasonable effort can identify and locate the intended place with no reasonable probability of searching the wrong location. Factors considered include:

- Detailed physical description (e.g., address, color, distinguishing features)
- Use of diagrams or photographs when helpful
- For multi-unit buildings, specific identification of the target unit
- Geographical directions if no street address is available

Particularity as to Items

A warrant must describe the items to be seized with sufficient particularity that an officer will reasonably know what items are authorized for seizure. The degree of specificity required depends on the nature of the items:

- Unique items (e.g., specific stolen property) must be described with precision
- Generic contraband (e.g., "illegal drugs") may be described more generally
- Categories of documents must be limited by content and relevance to the crime
- "Catch-all" provisions may be permissible if they relate to specific criminal activity

Groh v. Ramirez *540 U.S. 551 (2004)*

A warrant that completely fails to particularize the items to be seized is invalid on its face, even if the supporting documents contain the required particularity.

Agent Groh prepared a warrant application with an attached, detailed description of the firearms believed to be at Ramirez's ranch. However, in the portion of the warrant form that called for a description of the "person or property" to be seized, Groh mistakenly described Ramirez's house rather than the firearms. The magistrate signed the warrant, and Groh executed it, but found no illegal weapons.

The Supreme Court held that the warrant was plainly invalid because it completely failed to describe the items to be seized as required by the Fourth Amendment. The Court rejected the argument that the detailed description in the warrant application satisfied the particularity requirement, explaining that the particularity must appear on the face of the warrant itself. The Court emphasized that the purpose of the particularity requirement is to assure the subject of the search of the lawful authority of the executing officer and the limits of the officer's power to search. Since the warrant did not describe any items to be seized, it was "so obviously deficient that we must regard the search as 'warrantless.'"

Neutral and Detached Magistrate

The Fourth Amendment requires that warrants be issued by a neutral and detached magistrate who independently evaluates the evidence of probable cause. As the Supreme Court stated in *Johnson v. United States*, "The point of the Fourth Amendment... is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime."

Requirements for the Issuing Magistrate

- **Neutrality:** Free from bias or conflict of interest
- **Detachment:** Independent from the law enforcement function
- **Capability:** Competent to determine probable cause
- **Actual Review:** Must actually review and evaluate the evidence rather than rubber-stamping requests

The Supreme Court has invalidated warrants issued by magistrates who:

- Had a financial interest in issuing the warrant (*Connally v. Georgia*)
- Actively participated in the investigation (*Lo-Ji Sales v. New York*)
- Were executive branch officials directly involved in law enforcement (*Coolidge v. New Hampshire*)

However, the Court has also clarified that the magistrate need not be a lawyer or judge, as long as they are capable of determining probable cause and are genuinely independent of law enforcement.

Warrant Execution

Even if a warrant properly issues, the Fourth Amendment also governs how the warrant must be executed. Several key rules apply to warrant execution:

Timing of Execution

- Warrants typically must be executed within a specified time period (often 10-14 days under state or federal rules)
- Warrants generally may be executed during daytime hours, with special permission needed for nighttime searches
- Officers must execute the warrant with reasonable promptness once at the location

Knock and Announce Rule

Under the common law "knock and announce" rule, officers generally must:

- Announce their presence and authority
- State their purpose
- Wait a reasonable time for occupants to respond before forcing entry

The Supreme Court has held that this rule is part of the Fourth Amendment reasonableness inquiry (*Wilson v. Arkansas*), but has recognized several exceptions:

- When officers reasonably believe that announcing would lead to destruction of evidence
- When announcement would increase the risk of danger to officers or others

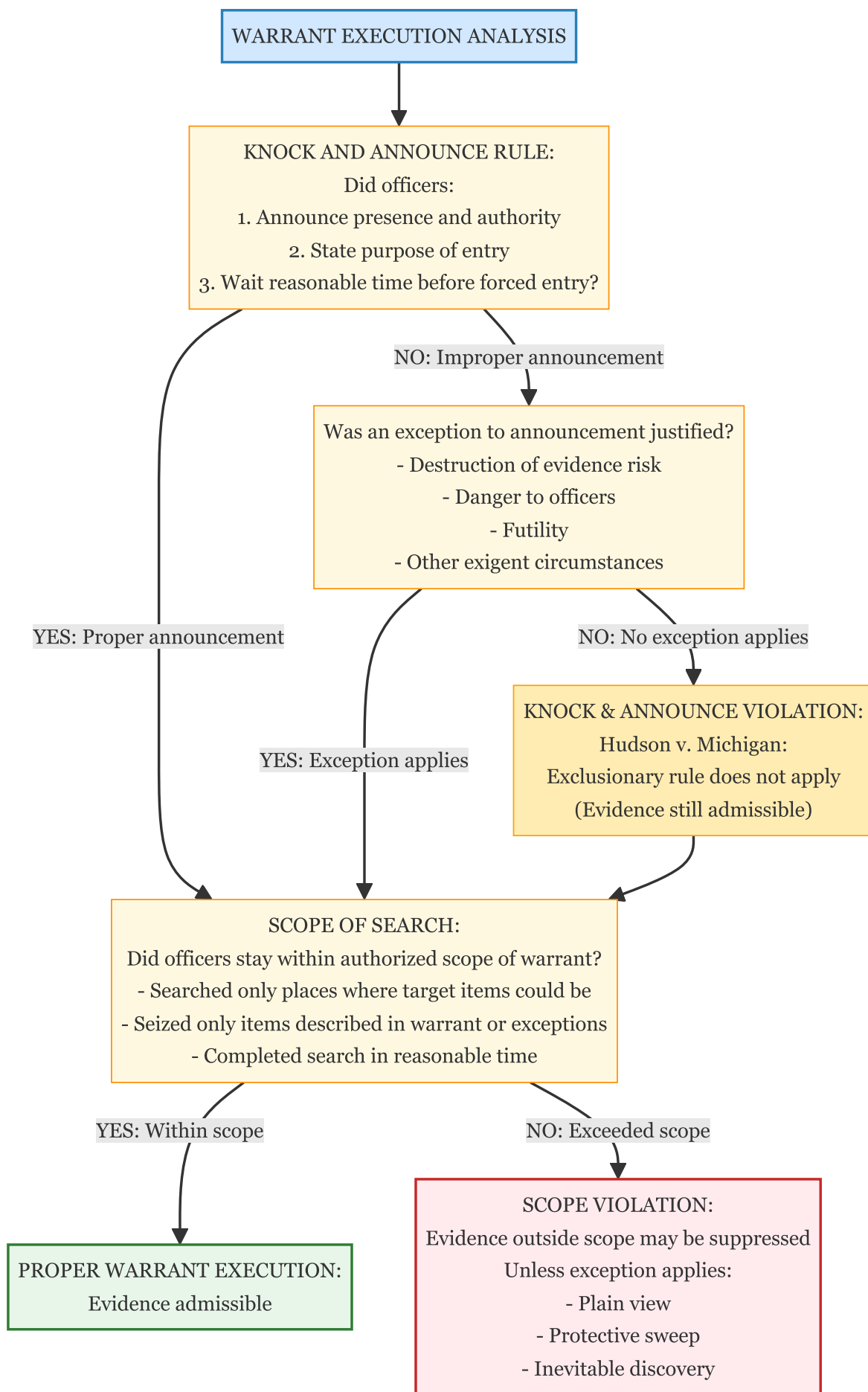
- When officers have reason to believe announcing would be futile
- In certain exigent circumstances

Additionally, in *Hudson v. Michigan* (2006), the Court held that the exclusionary rule does not apply to knock-and-announce violations, meaning that evidence found after such a violation remains admissible.

Scope of the Search

The warrant defines the permissible scope of the search in terms of:

- **Places:** Officers may search only in areas where the items described could reasonably be found
- **Items:** Officers may seize only items described in the warrant, with certain exceptions:
 - Items in "plain view" if their incriminating nature is immediately apparent
 - Protective sweeps for safety purposes
 - Items discovered while searching for items named in the warrant
- **Duration:** The search must be completed in a reasonable time without unnecessary delay



The common law "knock and announce" principle forms part of the Fourth Amendment's reasonableness inquiry, but may be flexible in cases where law enforcement has a reasonable suspicion that knocking and announcing would inhibit effective investigation of the crime.

Police officers with a warrant to search Wilson's home for drugs entered her home without first announcing their presence. The officers found drugs and drug paraphernalia, and Wilson was charged with various drug offenses. Wilson argued that the evidence should be suppressed because the officers failed to knock and announce.

The Supreme Court unanimously held that the common law knock-and-announce principle forms part of the Fourth Amendment reasonableness inquiry. Justice Thomas, writing for the Court, traced the knock-and-announce principle back to English common law, noting its consistent presence in early American legal traditions. However, the Court also emphasized that the principle was never treated as an absolute requirement. The Court recognized that the "flexible requirement of reasonableness should not be read to mandate a rigid rule of announcement that ignores countervailing law enforcement interests." The Court identified several situations where knock-and-announce might not be required: when there is a threat of physical violence, when officers believe evidence would be destroyed, or when knocking would be futile. The Court remanded the case for further consideration of whether such circumstances existed.

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