

SEARCH WARRANTS: ADVANCED TOPICS

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Nexus (to Residence)

- Mere involvement in drug activity not enough:
 - [State v. Campbell](#), 282 N.C. 125 (1972) (three drug dealers lived together, but affidavit did not allege sales from the home or any other nexus)
- But not much more is required:
 - [State v. Allman](#), 369 N.C. 292 (2016) ("a suspected drug dealer's lie about his address, in combination with other evidence of drug dealing, can give rise to probable cause to search his home")
 - [State v. Bailey](#), 374 N.C. 332 (2020) (drug dealers returned to their home after completing a sale; this connection provided PC that "drugs, drug paraphernalia, proceeds from drug sales, or associated items" would be in the home)

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Nexus (to Cell Phone)



- Is there an "automatic nexus" to a suspect's phone?
- Pretty much yes: [State v. Moats](#), 168 A.3d 952 (Md. Ct. App. 2017)
- Definitely no: [United States v. Lyles](#), 910 F.3d 787 (4th Cir. 2018) (heck no), [State v. Baldwin](#), 664 S.W.3d 122 (Tex. Ct. Crim. App. 2022)
- Not super helpful in-state case: [State v. Byrd](#), 287 N.C. App. 276 (2022)

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Probable Cause and SEM

- No requirement to attach images, State v. Gerard, 249 N.C. App. 500 (2016)
- What about
 - Statements that the affiant or a witness saw "child pornography" without further description?
 - Evidence of possession of child erotica?
 - Evidence that child pornography was downloaded via an IP address at a residence shared by multiple occupants?
 - Evidence that the suspect sexually abused children?

Unclear

Probably not PC

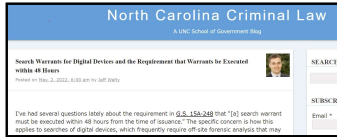
PC

Probably not PC

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Digital Devices + Later Forensic Analysis

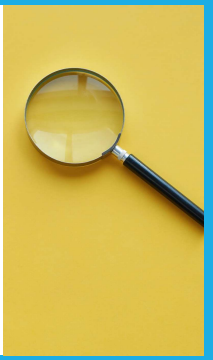
- The application may address this but it is likely OK even if it doesn't
- The 48-hour limit on execution doesn't apply but many months of delay could be problematic
- The return and inventory should be done after the initial physical search



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Digital Devices: Scope of the Search

- Should a warrant for a digital device
 - Limit a search to certain kinds of content?
 - Limit a search to content created during a certain period of time?
 - Allow access to connected cloud services?




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Connected Cloud Services

- Phones connect to all sorts of cloud services
 - Email providers
 - Social media companies
 - Dropbox and other storage apps
 - Photo storage
- Some warrant applications specifically request authorization to search
 - "Your affiant requests the warrant to include a full forensic exam of the devices and any connected cloud accounts."
- Should you authorize that? Place any limits on it?


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Biometric Unlocking

- Some search warrant applications ask specifically for permission to do this
- Is that proper?
- What if they don't do that?
- "The law in this area is emerging and entirely unsettled." In re Search Warrant No. 5165, 470 F.Supp.3d 715 (E.D. Ky. 2020).

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Catchalls

- "All evidence of the crime under investigation"
- "Any items illegal to possess"
- "All persons on the premises"

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Anticipatory Warrants

- Used when police believe that there will be evidence of a crime present in the future (usually controlled delivery of drugs)
- Seminal case: United States v. Grubbs, 547 U.S. 90 (2006)
- Requires PC that the "triggering condition" will take place and that once it does, evidence will be found
- Pro tip: the triggering condition must be described specifically, leaving no discretion to the officer



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No-Knock Warrants

- Normally officers must knock + announce before entry
- But not if (1) dangerous, (2) futile, or (3) would lead to the destruction of evidence. Richards v. Wisconsin, 520 U.S. 385 (1997).
- G.S. 15A-251(2): an officer need not give notice if "[t]he officer has probable cause to believe that the giving of notice would endanger the life or safety of any person."




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No-Knock Warrants

- It isn't clear that North Carolina judicial officials have the authority to issue no-knock warrants
- If they do, it may be a good practice to authorize the no-knock entry in a notation on the face of the warrant
- Violations of the knock-and-announce requirement generally do not require suppression of evidence.
 - See Hudson v. Michigan, 547 U.S. 586 (2006); State v. White, 184 N.C. App. 519 (2007).

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Warrants for Bodily Intrusions

- What if police want to pump the stomach of someone suspected of swallowing baggies of drugs?
- What if the police want to remove a bullet lodged in a suspect's leg in order to tie the suspect to a shoot-out?

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Warrants for Bodily Intrusions

- Winston v. Lee, 470 U.S. 753 (1985): just having PC is not enough
- Must weigh competing interests case by case:
 - How intrusive?
 - How risky?
 - How crucial is the evidence?
- If time permits, these applications should be presented to a judge, who may choose to hold an adversarial hearing
- Any significant intrusion should be performed by medically-trained personnel

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Administrative Inspection Warrants

- Used when a government official needs to enter private property to conduct an inspection but the occupant won't consent
- Seminal case: Camara v. Municipal Court of City and County of San Francisco, 387 U.S. 523 (1967)
- Warrants may be based on two kinds of "probable cause"
 - Unlawful condition or activity
 - Part of a reasonable program of systematic inspection
- G.S. 15-27.2 authorizes such warrants in NC
- AOC has created forms



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QUESTIONS?

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**SEARCH WARRANTS:
BEYOND THE BASICS**

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