

Search Warrants: Foundations and Recent Developments

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What Is a Search Warrant?

- “A search warrant is a court order and process directing a law-enforcement officer to search designated premises, vehicles, or persons for the purpose of seizing designated items and accounting for any items so obtained to the court which issued the warrant.” G.S. 15A-241
- Use of AOC forms is optional
- Administrative inspection warrants are similar but different



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Sources of Law

- Fourth Amendment to the United States Constitution
- Article I, section 20 of the North Carolina Constitution
- G.S. 15A-241 through G.S. 15A-259
- Case law
- Helpful reference: Farb & Tyner, [Arrest, Search, and Investigation in North Carolina](#) (2021) (digital version updated 2024)



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Particularity (Place to Be Searched)

- "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."
 - U.S. Const., Am. IV
- Multiple residences vs. outbuildings
- "All persons on the premises"
- Describing digital devices

Particularity (Object of Search)

- "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."
 - U.S. Const., Am. IV
- Are digital devices a place to be searched or a thing to be seized?
- Residual/catchall statements

Probable Cause

- Is "incapable of precise definition or quantification into percentages"
 - Maryland v. Pringle, 540 U.S. 366 (2003)
- Is based on "the totality of the circumstances"
 - Illinois v. Gates, 462 U.S. 213 (1983)
- Means a "reasonable ground for belief"
 - Brinegar v. United States, 338 U.S. 160 (1949)
- Or "a fair probability"
 - Gates, supra
- Staleness may undermine probable cause

Probable Cause

- Standards of Proof – Hierarchy:
 - Beyond Reasonably Doubt is more than
 - Clear and Convincing, which is more than
 - Preponderance of the Evidence, which is more than
 - **Probable Cause**, which is more than
 - Reasonable Suspicion

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Probable Cause and Informants

- Citizen informants
 - Most trustworthy
 - May presume truthfulness
- Confidential informants
 - Less trustworthy
 - Need some reason to believe them, usually
 - Track record of reliability
 - Corroboration
- Anonymous tipsters
 - Least trustworthy
 - Normally require corroboration

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Being a Neutral and Detached Judicial Official

- "The record before us makes manifest that the magistrate, by simply signing without reading the paper which the police officer placed before him, utterly failed to perform the important judicial function which it was his duty to perform as a neutral and detached magistrate of making his own independent determination from the affidavit submitted to him as to whether probable cause existed for issuance of the search warrant which he signed. Had he performed his duty, it is inconceivable that the mistake would have occurred."
 - State v. Miller, 16 N.C. App. 1 (1972)
- Review applications thoroughly and critically
- Flagging problems for officers is OK but collaborating isn't

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Workflow for Considering an Application

- You "may" examine the applicant under oath – G.S. 15A-245
- If you consider information not in the written application, you must record it or write it down



- Better to focus on the written application- "Four Corners Rule"
– Reviewing court will only look at what's on the page

Search Warrants



Search Warrants

Additional investigation



Strike-through / Setting Limits



What is "nexus to house?" – Eddings case



Eddings case- State v. Eddings, 866 S.E.2d 499 (2021)

- Officers worked with CI to purchase drugs from Jones
- They surveilled Jones and followed him to a house that they suspected was the source of supply.
- On the day they applied for the search warrant, officers followed Jones from the house and stopped his car.
- Jones tried to ingest drugs and drugs were found on his person.

What the Reviewing Court Said

- The application did not provide PC
- Nexus- evidence seized must "implicate the premises to be searched."
- The court noted the following about the application:
 - It contained no information about whether Jones had drugs on him before going to the residence
 - It did not state how much time elapsed after Jones left the residence and before he was stopped
 - There was little detail about how closely prior visits were connected to Jones's drug sales
 - It provided no factual support for the applicant's belief that Jones sourced drugs from the residence
- "[A]ll that can be discerned from . . . the affidavit is that law enforcement observed Jones at 92 Gillespie Drive and apprehended Jones with narcotics on the same date. . . . [His prior visits could have been] for any number of reasons."

Other cases on nexus to house

- State v. Bailey, 374 N.C. 332 (2020)
 - Raises the question of whether nexus is still required to have PC to search house when we know drug dealer lives there
 - Says it still is required- not breaking new ground
- State v. Boyd, 901 S.E.2d 374 (2024)
 - CI purchases and surveillance established that D was dealing drugs out of F-150 truck
 - Pen register showed pattern of movement with return to house immediately before and after short stops at multiple gas stations

Related Issue- Timeliness/Staleness

- "Timeliness or Staleness of Information" – See pp. 478-479 of Farb- Arrest, Search, and Investigation (2021)
 - No fixed durations
 - Depends on:
 - Nature of criminal activity: ongoing or isolated occurrence?
 - Type of evidence: likely to move around or stay put?
 - Place to be searched



Phone Searches - State v. Byrd, 287 N.C. App. 276 (2022)



Search Warrants for Phones– What Limitations Can Be Set

Strike-through / Setting Limits

- **Specify App** where incriminating evidence is likely to be found
 - "All Snapchat messages"
- **Timeframe** limits
 - "Instagram messages in the last 6 months"
 - "Phone call history in the last 4 weeks"
- **Crime-related** limits
 - "related to the crime of first degree kidnapping"



See United States v. Zelaya-Veliz, 94 F.4th 321 (4th Cir. 2024).

How to know when magistrate is reliable: *Brody* case

- Generally, courts look to corroboration, track record, or both :
 - (1) "it is corroborated by other evidence, or
 - (2) [that] the confidential informant has a history of providing reliable information." See *United States v. Butler*, 594 F.3d 955 (8th Cir. 2010).

How's a Magistrate to Know Whether a Confidential Informant Is Reliable?



February 27, 2017 [aaff_waaly](#)

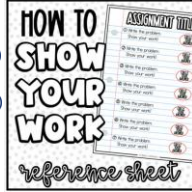
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What the Reviewing Court Said in *Brody*

- The affidavit provided probable cause
- "The fact that the affidavit did not describe the precise outcomes of the previous tips from the CI did not preclude a determination that the CI was reliable. Although a general averment that an informant is "reliable"—taken alone—might raise questions as to the basis for such an assertion, the fact that Detective Duft also specifically stated that investigators had received information from the CI in the past allows for a reasonable inference that such information demonstrated the CI's reliability."
- The controlled buy also corroborated the informant's report, even though the location of the buy is not stated in the application

Avoiding conclusory language

- Not always easy to define, but generally means "showing your work"
- Examples of conclusory language:
 - "house was suspected source of supply"
 - (what facts lead you to suspect that?)
 - "CI has history of reliability/credibility"
 - (how many times, what specific info?)
 - "suspicious individuals/high crime area"
 - (what facts make them suspicious)
 - (what specifically happened in area)



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Questions



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