804.50 SECTION 1983 - UNREASONABLE SEARCH OF HOME.

NOTE WELL: This instruction was previously labeled "N.C.P.I. - Civil 804.05 SECTION 1983 - UNREASONABLE SEARCH OF HOME" and published in May 2004. It has been renumbered as "N.C.P.I. - Civil 804.50" and the published date has been updated from "MAY 2004" to "JUNE 2016". No substantive changes have been made since the 2004 revision.

This (*state number*) issue reads:

Did the defendant violate the plaintiff's constitutional rights by conducting an unreasonable search of plaintiff's home?

On this issue the burden of proof is on the plaintiff.

This means that the plaintiff must prove, by the greater weight of the evidence, three things.

First, that the defendant acted under color of state law. An official acts under color of state law if *he* acts within the limits of lawful authority or if, while purporting to act in the performance of his official duties, he exceeds lawful authority. On the other hand, an official who does not use state authority and acts for purely private purposes does not act under color of state law.[1]

Second, that the defendant deprived the plaintiff of *his* Fourth Amendment[2] constitutional right to be free from an unreasonable search.[3]

Ordinarily, a law enforcement officer must obtain a warrant before conducting a search of a home. However, there are certain exceptions to this requirement, including consent and exigent circumstances.[4] When a person in lawful possession of a home freely and voluntarily consents to a search, law enforcement officers may reasonably and lawfully conduct a search consistent in scope with the consent given.[5] Exigent circumstances exist when a law enforcement officer has a reasonable belief that there is an imminent threat of danger to himself or others or that occupants will

attempt to escape or destroy evidence.[6]

And Third, that the unreasonable search was a proximate cause of the [injury] [damage] sustained by the plaintiff.

A proximate cause is a cause which in a natural and continuous sequence produces a person's [injury] [damage], and is a cause which a reasonable and prudent person could have foreseen would probably produce such [injury] [damage] or some similar injurious result.

There may be more than one proximate cause of [an injury] [damage]. Therefore, the plaintiff need not prove that the defendant's conduct was the sole proximate cause of the [injury] [damage]. The plaintiff must prove, by the greater weight of the evidence, only that the defendant's conduct was a proximate cause.

Finally, as to this (*state number*) issue on which the plaintiff has the burden of proof, if you find, by the greater weight of the evidence, that the defendant, acting under color of state law, conducted an unreasonable search of the plaintiff' s home, and that the unreasonable search was a proximate cause of the plaintiff 's [injury] [damage], then it would be your duty to answer this issue “Yes” in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "NO" in favor of the defendant.

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1 *See West v. Atkins*, 487 U.S. 42, 49-50 (1988); *Mentavlos v. Anderson*, 249 F.3d 301, 321 (4th Cir. 2001); *Scott v. Vandiver*, 476 F.2d 238, 241 (4th Cir. 1973).

2 U.S.C.A. Const. Amend. IV.

3 *See Roberts v. Swain*, 126 N.C. App. 712, 719, 487 S.E. 2d 760, 765 (1997); *Barnett v. Karpinos*, 119 N.C. App. 719, 726, 460 S.E. 2d 208, 211 (1995). Section 1983 provides a civil action for deprivation of rights. 42 U.S.C.A. § 1983.

4 *See Groh v. Ramirez*, 124 S.Ct. 1284, 1294 (2004) ("No reasonable officer could claim to be unaware of the basic rule, well established by our cases, that, absent consent or exigency, a warrantless search of the home is presumptively unconstitutional."); *United States v. Reed*, 935 F.2d 641, 642 (4th Cir. 1991); *United States v. Miller*, 933 F. Supp. 501, 504 (M .D.N.C. 1996); *State v. Worsley*, 336 N.C. 268, 281, 443 S.E. 2d 68, 74

(1994).

5 *See Florida v. Jimeno*, 500 U.S. 248, 251 (1991) (using the standard of objective reasonableness to measure the scope of a suspect's consent); *United States v. McFarley*, 935 F.2d 1188, 1191 (4th Cir. 1993) (noting that consent may be limited or withdrawn) ; *Trulock v. Freeh*, 275 F.3d 391, 503 (4th Cir. 2001) (explaining that authority to consent does not automatically extend to every discrete, enclosed space); *see also United States v. Boone*, 245 F.3d 352, 364 (4th Cir. 2001) (determining the officer did not exceed the scope of the consent); *Worsley*, 336 N.C. at 283, 443 S.E.2d at 75 (discussing consent searches under N.C. Gen. Stat. §§ 15A-221 to -222).

6 *See United States v. Kennedy*, 32 F.3d 876, 882 (4th Cir. 1994) (danger to police); *United States v. Jackson*, 585 F.2d 653, 662 (4th Cir. 1978) (occupants will escape, resist, or destroy evidence); *see also United States v. Reed*, 935 F.2d 641, 642 (4th Cir. 1991) (discussing factors relevant to a determination of the existence of exigent circumstances); *State v. Johnson*, 310 N.C. 581, 586, 313 S.E.2d 580, 583 (1984) (recognizing that the facts and circumstances sufficient to constitute exigent circumstances vary widely); *State v. Yananokwiak*, 65 N.C. App. 513, 517, 309 S.E.2d 560, 563 (1983) (using a totality of the circumstances test to determine whether there were exigent circumstances).