Search Warrants: Informants

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Objectives

- Be able to categorize sources of information accurately as officers, citizens, confidential informants, or anonymous tipsters.
- Know the legal tests for when information from each type of source is sufficient to provide probable cause.
- Know the legal rules regarding staleness of information.
- Be able to apply the above knowledge in the context of actual search warrant applications.

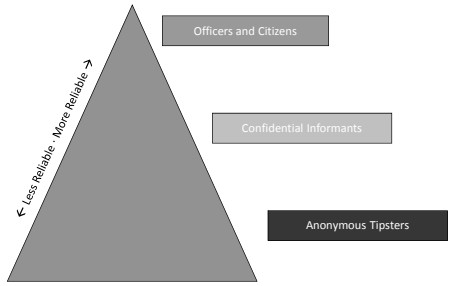
Most Search Warrant Cases Involve Informants

- "Studies in Atlanta, Boston, San Diego, and Cleveland [found] that 92 percent of the 1,200 federal warrants issued in those cities relied on an informant."
  - Alexandra Natapoff, Snitching: The Institutional and Communal Consequences, 73 U. Cin. L. Rev. 645 (2004)
- What fraction of your search warrant cases involve informants?

It Is OK for Officers to Rely on Information from Others

- "The affidavit may be based on hearsay information and need not reflect the direct personal observations of the affiant."
  - State v. Campbell, 282 N.C. 185 (1972)

Categories of Sources

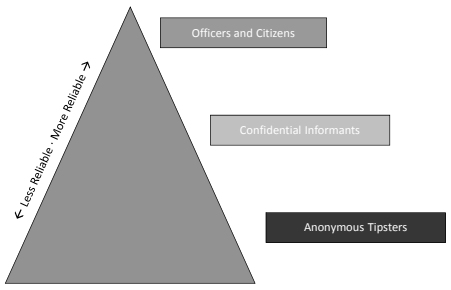


Information from Other Officers

- "[I]t is well-established that where the named informant is a police officer, his reliability will be presumed."
  - State v. Caldwell, 53 N.C. App. 1 (1981)
- Does this presumption of reliability make sense?
- Are there circumstances where you would not presume the reliability of information from another officer?
- Even if it is reliable, it won't always provide probable cause
  - Limited information
  - Conclusory information
  - Stale information
  - Poor basis of knowledge

Information from Victims and Other Citizens

- "The fact that [the citizen informant] was named and identified . . . in the search warrant affidavit provided the magistrate with enough information to permit him to determine that [the citizen informant] was reliable."
  - State v. Eason, 328 N.C. 409 (1991)
- Does this presumption of reliability make sense?
- Are there circumstances when you would not presume the reliability of information from a citizen?
- Even if it is reliable, it won't always provide probable cause



Information from Confidential Informants

- "[W]e cannot lose sight of the fact that these confidential informants are generally involved in illegal activities themselves and hence are not model citizens whose trustworthiness is above reproach."
  - United States v. Wesevich, 666 F.2d 984 (5th Cir. 1982)
- "Information from a confidential informant may be sufficient to establish probable cause if it is corroborated by independent evidence or if the informant has a track record of supplying reliable information."
  - United States v. Vinson, 414 F.3d 924 (8th Cir. 2005)

Confidential Informants: Track Record

- May not be sufficient for the applicant to describe the informant as "reliable" or "reliable in the past"
- But great detail about past work is not required
- What do you look for, and what do you usually see, regarding informants' past performance?

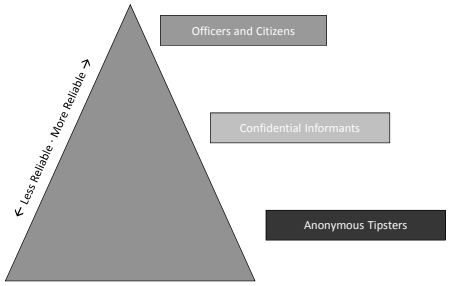
Confidential Informants: Track Record

a. The CI provided corroborated information in the past of individuals involved in the sale of illegal drugs;
b. The CI has made "numerous controlled buys;"
c. The CI has introduced undercover officers to "drug dealers;
d. The above ir.formation provided by the CI led to drafting of search warrants, seizure of illegal drugs and the "apprehension" of drug dealers; and
e. The above information provided by the CI led to "no less than 30 successful narcotics investigations."

Investigators have known this informant for approximately two weeks. This informant has provided information on other persons involved in drug trafficking in the Charlotte area which we have investigated independently. Through interviews with the informant, detectives know this informant is familiar with drug pricing and how controlled substances are packaged and sold for distribution in the Charlotte area.

Confidential Informants: Corroboration

- Corroboration of "mundane matters" such as a suspect's name and address, "does little toward establishing probable cause"
  - State v. Benters, 367 N.C. 660 (2014)
- Corroboration need not always be of incriminating matters but "corroboration of a very few nonsuspicious and easily predictable events should not suffice."
  - Wayne R. LaFave, Search and Seizure, § 3.3(f)
- What kind of corroboration do you look for, and what do you usually see, regarding informants' reports?



Information from Anonymous Tipsters

- "An anonymous tip, standing alone, is rarely sufficient, but [a] tip combined with corroboration by the police could show indicia of reliability that would be sufficient" to establish probable cause
  - State v. Benters, 367 N.C. 660 (2014)
- "The difference in evaluating an anonymous tip [as opposed to information from a CI] is that the overall reliability is more difficult to establish, and thus some corroboration of the information or greater level of detail is generally necessary."
  - State v. Nixon, 160 N.C. App. 31 (2003)

Anonymous Tipsters: Corroboration

- Corroboration of "mundane matters" is not sufficient
- Should more corroboration be required for an anonymous tipster than for a confidential informant?

Citizen or Anonymous Tipster?

"[I]n providing the tip through a face-to-face encounter with the sheriff's deputies, the minivan driver was not a completely anonymous informant. It is inconsequential to our analysis that the officers did not actually pause to record her license plate number or other identifying information. Not knowing whether the officers had already noted her tag number or if they would detain her for further questioning, and aware they could quickly assess the truth of her statements by stopping the silver Honda, the minivan driver willingly placed her anonymity at risk. This circumstance weighs in favor of deeming her tip reliable."

- State v. Maready, 362 N.C. 614 (2008)

Staleness

- "The test for staleness of information on which a search warrant is based is whether the facts indicate that probable cause exists at the time the warrant is issued."
  - State v. Lindsey, 58 N.C. App. 564 (1982)
- "As a general rule, an interval of two or more months between the alleged criminal activity and the affidavit has been held to be such an unreasonably long delay as to vitiate the search warrant."
  - State v. Lindsey, 58 N.C. App. 564 (1982)
- Staleness "is a function not simply of watch and calendar but of variables that do not punch a clock."
  - Id. (quoting Andresen v. Maryland, 331 A.2d 78 (1975))

Staleness and the No Information Problem

- The most common staleness problem is not that the information is too old, but that the application does not say how old it is

Case 1: State v. Villanueva

- Read the affidavit
- Talk with a neighbor about the case
- Answer the questions at the bottom of the page

Case 1: State v. Villanueva

Case 2: State v. Daye

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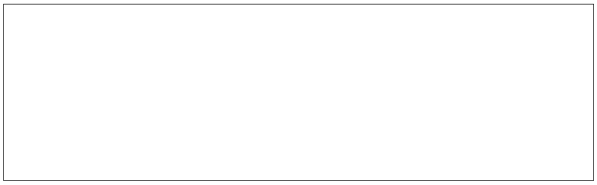
Case 2: State v. Daye



Case 3: State v. Teague

- Read the affidavit
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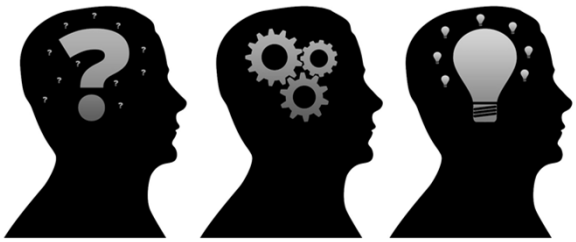
Case 3: State v. Teague

Takeaways



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