

SEARCH WARRANTS FOR SUPERIOR COURT JUDGES

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A Knock at Your Door



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Road map



- Search warrant basics
- Probable cause
- Special issues with technology warrants
- Record-keeping
- Remote applications

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Search Warrant Basics

- A warrant is a court order authorizing the search of a person, vehicle, premises, or other place
- Requires probable cause to believe that evidence of a crime will be found therein
- Usually sought by a LEO
- Always executed by a LEO
- Principal sources of law
 - Fourth Amendment
 - Article I, section 20 of the state constitution
 - G.S. 15A-241 et seq.

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Search Warrants and SCJs

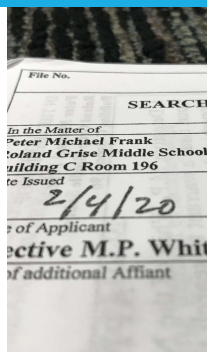
Why do officers ask SCJs to approve search warrants?

- SCJs may issue search warrants valid statewide, G.S. 15A-243(a)(3)
- SCJs may issue search warrants for "electronic communication services" under the federal Stored Communications Act, 18 U.S.C. § 2703(a), 2711(3)(B)
- Magistrates may not, and it is unclear whether DCJs may
- Some LEOs prefer to seek warrants from SCJs in serious cases

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How to Review an Application

- The application may be on AOC-CR-119, typically with attachments, but it doesn't need to be
- You may examine the applicant under oath, G.S. 15A-245(a), but I don't recommend it
- You must make a record of any testimony that goes beyond the written application, id.
- Be alert for things the officer knows but failed to include



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Addressing Deficiencies

- How much should you "coach" applicants about defects?
- Amending the application
- Editing the warrant

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Probable Cause

- How high a hurdle is probable cause?
- Does the height of the hurdle vary with the severity of the crime?
- Staleness
 - Two months is "a general rule," *State v. Lindsey*, 58 N.C. App. 564 (1982), but how long depends on the facts.
 - What if the affidavit doesn't specify recency? See *State v. Kochetkov*, 280 N.C. App. 351 (2021).

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Informants and Probable Cause

Citizen witnesses

- Most reliable
- Information may provide probable cause by itself, if sufficiently detailed and there's no reason to disbelieve it

Confidential informants

- Less reliable
- Information may provide probable cause only if bolstered in some way, such as (1) past reliability or (2) corroboration

Anonymous tipsters

- Least reliable
- Generally requires corroboration
- Classifying people who put their "anonymity at risk"

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Probable Cause: Nexus to a Residence

- **State v. Campbell, 282 N.C. 125 (1972)** (evidence that three residents of a home sold drugs away from the home did not provide probable cause to search the home)
- **State v. Allman, 369 N.C. 292 (2016)** (drugs and cash found in suspects' car; they lied about their address; this evasion, combined with officers' training and experience indicating that drug dealers often keep evidence at home, provided probable cause to search their residence)
- **State v. Bailey, 374 N.C. 332 (2020)** (suspects sold drugs away from their home, then promptly returned home; the temporal connection between the sale and the residence provided the required nexus)

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Probable Cause and Broad Requests

- "Any and all evidence of [the crime that is the focus of the investigation]"
- "All persons on the premises"

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Probable Cause: Suicide and Overdose Warrants



- Suicide isn't a crime, G.S. 14-17.1 ("The common-law crime of suicide is hereby abolished.")
- Overdosing isn't a crime, but overdose scenes may contain evidence of drug offenses or death by distribution

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Technology Warrants: Devices

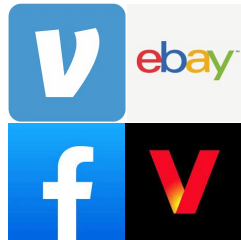
- When does PC that a suspect has committed a crime provide PC to search the suspect's phone?
- Should you limit the scope of a search of a suspect's phone?
- Should you authorize a search of connected cloud services?
- Can you order a suspect to provide a passcode or a biometric identifier?



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Technology Warrants: Service Providers

- Governed by:
 - Stored Communications Act, 18 U.S.C. § 2701
 - Fourth Amendment
- Process required:
 - Warrant for location data (next slide)
 - Warrant for communication content
 - Orders for most other user data based on "reasonable grounds to believe" data is relevant to a criminal investigation
- Is it OK to order provider to produce all account information?



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Technology Warrants: Tracking

- Carpenter v. United States, 585 U.S. 296 (2018) (obtaining many days' worth of a robbery suspect's historical CSLI was a Fourth Amendment search)
- What about short-term historical CSLI?
 - And what is the line between long term and short term?
- What about real-time/prospective CSLI?
 - State v. Thomas, 268 N.C. App. 121 (2019) (court "decline[s] to extend the holding in Carpenter to real-time or prospective CSLI")
 - And what is the line between "historical" and "real-time"? State v. Perry, 243 N.C. App. 156 (2015) (CSLI provided with 5-to-15-minute delay was "historical")

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Recordkeeping: Copies

- Need at least three copies
 - Original, to be executed and returned
 - Service copy
 - Clerk's copy
- G.S. 15A-245(b) ("The issuing official must retain a copy of the warrant and warrant application and must promptly file them with the clerk.")
 - Can you rely on the LEO do this for you?
 - What about other kinds of orders, e.g., pen register orders?

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Recordkeeping: Jurisdictional Issues

- Original scenario: live in Madison, assigned to Buncombe, officer from Watauga contacts you in the evening
- Probably OK to consider search warrant applications at home under G.S. 7A-47.1, which addresses "jurisdiction in vacation"
- But which clerk gets the warrant? And the return?
 - G.S. 15A-245: "The issuing official . . . must promptly file [the warrant] with the clerk."
 - G.S. 15A-257: return and inventory are to "the clerk of the issuing court"
- RRC 9.4 may require the clerk in the issuing county to send a copy of the warrant/return/inventory to the county where the case is pending

File No.		STATE OF NORTH CAROLINA	
SEARCH WARRANT		County	
IN THE MATTER OF		To any officer with authority and jurisdiction to cond	

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Special Issues with Remote Applications

- Remote applications are generally authorized by G.S. 7A-49.6
- But:
 - Can you "notarize" the written application remotely?
 - Can you sign the warrant using an electronic signature?
- Suggested practice:
 - Applicant swears to the accuracy of the affidavit before a notary, perhaps one in his or her agency
 - Applicant scans the application and emails it to you
 - You confer with the applicant virtually as needed
 - You print the search warrant out and sign it with a pen
 - You scan the search warrant and email it to the applicant
 - You provide the search warrant and application to the clerk

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QUESTIONS?

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