SEARCH WARRANTS FOR SUPERIOR COURT JUDGES

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January 2026

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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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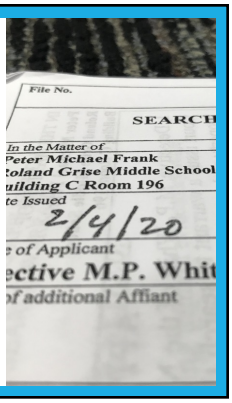
How to Review an Application

- 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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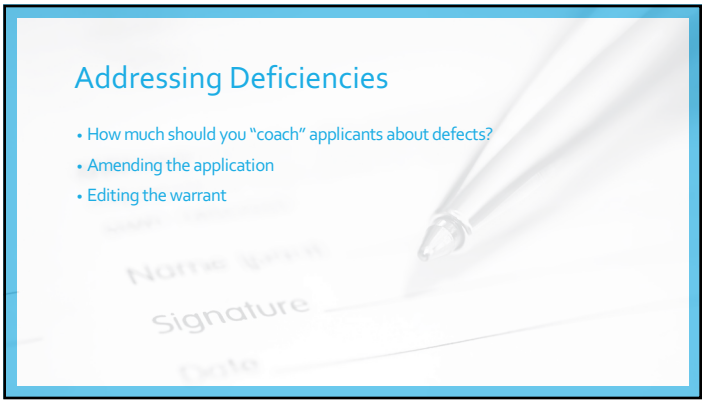
Addressing Deficiencies

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



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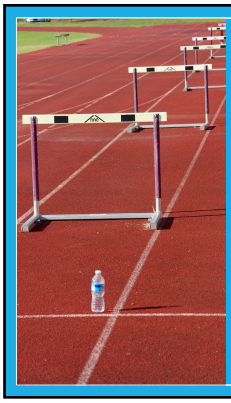

Probable Cause

- 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 (but see Navarette v. CA) • 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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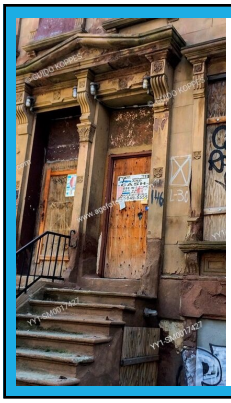

Probable Cause and Broad Requests

- "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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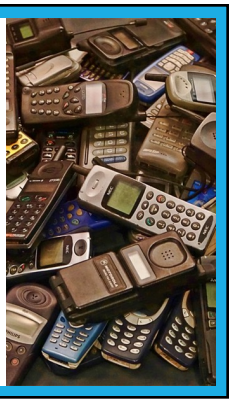
Technology Warrants: Devices

- 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?
- 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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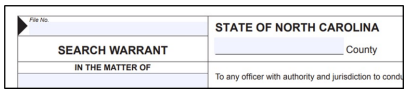
Recordkeeping: Jurisdictional Issues

- 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.

SEARCH WARRANT

IN THE MATTER OF

STATE OF NORTH CAROLINA

_____ County

To any officer with authority and jurisdiction to condu

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Special Issues with Remote Applications

- Generally OK under G.S. 7A-49.6
- Can you "notarize" the written application remotely?

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME	Date
Date	Name Of Applicant (type or print)
Signature	Signature Of Applicant
☐ Magistrate ☐ Dep. CSC ☐ Asst. CSC ☐ Clerk Of Superior Court ☐ Judge	

- Can you sign the warrant using an electronic signature?

Date Issued	Time Issued	☐ AM ☐ PM	Name (type or print)	Signature
☐ Deputy CSC ☐ Assistant CSC ☐ CSC ☐ Magistrate ☐ District Ct. Judge ☐ Superior Ct. Judge				

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QUESTIONS?

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