

SEARCH WARRANTS: FUNDAMENTALS AND DIGITAL DEVICES

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SEARCH WARRANTS: FUNDAMENTALS

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Fourth Amendment Requirements

- "[N]o 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

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Written Application vs. Oral Testimony

- A court "may not consider facts beyond the **four corners** of a search warrant in determining whether a search warrant was supported by probable cause at a suppression hearing."
- *State v. Logan*, 278 N.C. App. 319 (2021)

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Being a Neutral Judicial Official

- Search warrants "ensure that a search is not carried out unless a **neutral** magistrate makes an **independent** determination that there is probable cause to believe that evidence will be found."
- *Birchfield v. North Dakota*, 579 U.S. 438 (2016)

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SEARCH WARRANTS: DIGITAL DEVICES

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Warrants You Can't Issue under the SCA


- Under the Stored Communications Act, 18 U.S.C. § 2703 . . .
- An officer who wants
 - The contents of communications or most other records
 - From an **"electronic communication service"** or a **"remote computing service"** . . .
- May use a warrant from a "court of competent jurisdiction" . . .
- Which includes "a court of **general criminal jurisdiction** of a State authorized by the law of that State to issue search warrants"
 - Magistrates have limited jurisdiction
 - Superior court judges have general jurisdiction

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ECSs and RCSs

- A "remote computing service" is a business that provides "computer storage or processing services" to the public
 - Ex: Google Drive
- An "electronic communication service" is a business that "provides to users . . . the ability to send or receive wire or electronic communications"
 - Ex: Verizon, Facebook
- Likely applies to businesses that allows users to communicate in connection with transactions, like Airbnb or Venmo
- Likely does not apply to businesses that merely allow users to post reviews or comments like Amazon or Yelp

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Warrants to search digital devices



Warrants for financial records

Warrants You Can Issue

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Warrants to Seize/Warrants to Search

- "Current practice in many jurisdictions [is to] utilize either—
 - One search warrant that authorizes both the initial seizure of a computer and the subsequent forensic examination, or
 - two search warrants in which the first warrant authorizes the initial seizure and the second (usually obtained at a later time) authorizes the forensic examination."
- Todd G. Shipley & Henry R. Reeve, *Collecting Evidence From a Running Computer: A Technical and Legal Primer for the Justice Community*, 1 *Cybercrime & Security* § 2:5 (Jan. 2023 update)

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Nexus Between Crimes and Devices



- "Is generic, boilerplate language about cell phone use among criminals sufficient to establish probable cause to search a cell phone? We hold it is not. Instead, **specific facts connecting the items to be searched to the alleged offense are required** for the magistrate to reasonably determine probable cause. To hold otherwise would condone the search of a phone merely because a person is suspected to have committed a crime with another person."
 - *State v. Baldwin*, __ S.W.3d __, 2022 WL 1499508 (Tex. Ct. Crim. App. May 11, 2022)

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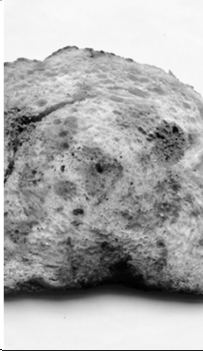
Particularly Describing Devices

- 4th Amendment: "[N]o warrants shall issue, but upon probable cause . . . and **particularly describing the place to be searched**, and the persons or things to be seized."
- Description should allow an officer not involved in the investigation to search the right place for the right things
- A device may be a "place to be searched"
- Make and model alone may be insufficiently particular. Consider: serial number, assigned phone number, IMEI number, distinctive physical features, current custodial agency
- Crime lab may decline to execute if not sufficiently particular

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Staleness

- Staleness is when PC dissipates over time
- Two months is "a general rule," State v. Lindsey, 58 N.C. App. 564 (1982), but how long depends on the facts
- Digital evidence may less readily become stale, State v. Rayfield, 231 N.C. App. 632 (2014)
- What if the affidavit doesn't specify recency? Compare United States v. Doyle, 650 F.3d 460 (4th Cir. 2011), with State v. Kochetkov, 280 N.C. App. 351 (2021)



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Understanding Device Extractions



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Biometric Unlocking

- Some search warrant applications ask specifically for permission to do this
 - Is that proper?
 - What if they don't do that?
- "The law in this area is emerging and entirely unsettled." In re Search Warrant No. 5165, 470 F.Supp.3d 715 (E.D. Ky. 2020).



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Execution and Return

- G.S. 15A-248: "A search warrant must be executed within 48 hours from the time of issuance"
- G.S. 15A-257: officer must return "the warrant together with a written inventory of items seized" without "unnecessary delay"

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QUESTIONS?

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