

Search Warrants: Theory and Practice

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Road Map

1. Review of the Law
2. Cases
3. Questions

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Part I: Review of the Law

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What Is a Search Warrant?

- “A search warrant is a court order and process directing a law-enforcement officer to search designated premises, vehicles, or persons for the purpose of seizing designated items and accounting for any items so obtained to the court which issued the warrant.”
 - G.S. 15A-241
- Use of AOC forms is optional
- Administrative inspection warrants are similar but different

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Sources of Law

- Fourth Amendment to the United States Constitution
- Article I, section 20 of the North Carolina Constitution
- G.S. 15A-241 through G.S. 15A-259
- Case law
- Helpful reference: Farb & Tyner, Arrest, Search, and Investigation in North Carolina (2021)

Particularity (Place to Be Searched)

- “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no 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
- Multiple residences vs. outbuildings
- “All persons on the premises”
- Describing digital devices

Particularity (Object of Search)

- “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no 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
- Residual/catchall statements

Probable Cause

- Is “incapable of precise definition or quantification into percentages”
 - Maryland v. Pringle, 540 U.S. 366 (2003)
- Is based on “the totality of the circumstances”
 - Illinois v. Gates, 462 U.S. 213 (1983)
- Means a “reasonable ground for belief”
 - Brinegar v. United States, 338 U.S. 160 (1949)
- Or “a fair probability”
 - Gates, supra
- BRD > C+C > PoE > PC > RS
- Staleness may undermine probable cause

Probable Cause and Informants

- Citizen informants
 - Most trustworthy
 - May presume truthfulness
- Confidential informants
 - Less trustworthy
 - Need some reason to believe them, usually
 - Track record of reliability
 - Corroboration
- Anonymous tipsters
 - Least trustworthy
 - Normally require corroboration

Being a Neutral and Detached Judicial Official

- “The record before us makes manifest that the magistrate, by simply signing without reading the paper which the police officer placed before him, utterly failed to perform the important judicial function which it was his duty to perform as a neutral and detached magistrate of making his own independent determination from the affidavit submitted to him as to whether probable cause existed for issuance of the search warrant which he signed. Had he performed his duty, it is inconceivable that the mistake would have occurred.”
 - State v. Miller, 16 N.C. App. 1 (1972)
- Review applications thoroughly and critically
- Flagging problems for officers is OK but collaborating isn't

Workflow for Considering an Application

- You “may” examine the applicant under oath
 - G.S. 15A-245
- If you consider information not in the written application, you must record it or write it down
 - G.S. 15A-245
- Better to focus on the written application

In addition to the affidavit included above, this application is supported by sworn testimony, given by _____

This testimony has been (check appropriate box) reduced to writing
 recorded, and I have filed any such writing/recording with the clerk.

NOTE: *If more space is needed for any section, continue the statement on an attached sheet of paper*

Part II: Cases

Case 1: Johnson

- Read the application
- Discuss it with your neighbors
 - Does it provide probable cause?
 - Given the legality of smokable hemp, how significant is the “odor of marijuana”?
 - Do you see other issues with the application?

What the Reviewing Court Said

- The application provided PC
- Court quoted approvingly from a federal case: despite the legalization of hemp, “precedent on the plain odor of marijuana giving law enforcement probable cause to search has not been overturned.”
- Court stated that “the smell of marijuana was not the only basis to provide the officers with probable cause”
 - Drugs were found on an occupant during a frisk
 - Drug paraphernalia was found in the house during a protective sweep

Case 2: Eddings

- Read the application
- Discuss it with your neighbors
 - Does it provide probable cause?
 - What is the evidence that the drugs came from 92 Gillespie Drive?
Do you see any gaps the applicant could fill?
 - Do you see other issues with the application?

What the Reviewing Court Said

- The application did not provide PC
- The court noted the following about the application:
 - It contained no information about whether Jones had drugs on him before going to the residence
 - It did not state how much time elapsed after Jones left the residence and before he was stopped
 - There was little detail about how closely prior visits were connected to Jones's drug sales
 - It provided no factual support for the applicant's belief that Jones sourced drugs from the residence
- “[A]ll that can be discerned from . . . the affidavit is that law enforcement observed Jones at 92 Gillespie Drive and apprehended Jones with narcotics on the same date. . . . [His prior visits could have been] for any number of reasons.”

Case 3: Byrd

- Read the application
- Discuss it with your neighbors
 - Does it provide probable cause?
 - Is there a sufficient “nexus” between the phone and the crime? Why or why not?
 - Do you see other issues with the application?

What the Reviewing Court Said

- The application provided PC
- The court highlighted the connections between the crime, the car, the suitcase, the phone, and the defendant
- “[T]he white LG cellphone was discovered in the Lexus, along with the specific red and black Tourister suitcase that was taken from McNeill's home. These findings show the requisite nexus between Defendant's white LG cellphone and the home invasion.”

Case 4: Logan

- Read the application
- Discuss it with your neighbors
 - Does it provide probable cause?
 - This application was prepared quickly, while a handful of officers were managing a large crowd at the location in question. Is that relevant to your evaluation of the application?
 - Do you see other issues with the application?

What the Reviewing Court Said

- The application did not provide PC
- The application “was completely devoid of any indication as to when the events used to establish probable cause occurred. The affidavit did not include the date on which the officers’ investigation began, the date when the officers were dispatched to Defendant’s address, the date when the officers spoke to Defendant regarding loud music, or the date when the officers smelled marijuana coming from inside Defendant’s building.”

Case 5: Brody

- Read the application
- Discuss it with your neighbors
 - Does it provide probable cause?
 - How would you classify the source from whom Detective Duft has received information?
 - Do you see other issues with the application?

What the Reviewing Court Said

- The affidavit provided probable cause
- “The fact that the affidavit did not describe the precise outcomes of the previous tips from the CI did not preclude a determination that the CI was reliable. Although a general averment that an informant is “reliable”—taken alone—might raise questions as to the basis for such an assertion, the fact that Detective Duft also specifically stated that investigators had received information from the CI in the past allows for a reasonable inference that such information demonstrated the CI's reliability.”
- The controlled buy also corroborated the informant's report, even though the location of the buy is not stated in the application

Part III: Questions

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Questions



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