

# Search Warrants: Sources, Staleness, and Scope

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## Sources

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## Sources: Kinds of Sources

- Citizen witness
- Confidential informants
- Anonymous tipsters

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### Sources: Classification

- “[I]n providing the tip through a face-to-face encounter with the sheriff’s deputies, the [source] was not a completely anonymous informant [even though she did not provide her name or any identification]. Not knowing whether the officers had already noted her tag number or if they would detain her for further questioning . . . [the source] willingly placed her anonymity at risk. This circumstance weighs in favor of deeming her tip reliable.”
  - State v. Maready, 362 N.C. 614 (2008)

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### Sources: How Much Can You Trust ‘Em?

- Whether a source of information is sufficiently credible to support a finding of probable cause is determined using a “totality of the circumstances analysis.”
  - Illinois v. Gates, 462 U.S. 213 (1983)
- Citizen witnesses: presumptively reliable
- Confidential informants: need to show reliability
- Anonymous tipsters: unreliable without corroboration



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### Sources: Establishing Reliability of Informants

- Track record
- Corroboration
- Statements against interest
- Amount of detail
- Personal appearance before judicial official

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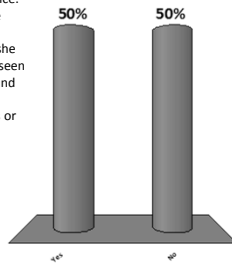
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### Sources: Problem 1

An officer applies for a search warrant for a suspect's residence. The application states: "Yesterday, a confidential and reliable source of information (CRSI) told me that [suspect] is selling cocaine from [suspect's residence]. The CRSI stated that he/she had been inside [suspect's residence] that morning and had seen cocaine packaged for sale. The CRSI is familiar with cocaine and the sale of cocaine. He/she has conducted two controlled purchases of cocaine in the past year that have led to arrests or convictions for drug offenses." **Does the affidavit provide probable cause?**

- A. Yes
- B. No



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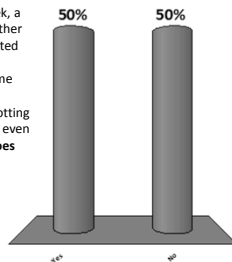
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### Sources: Problem 2

An officer in a rural area applies for a search warrant for a residence. The application states that: (1) within the last week, a "confidential and reliable source of information . . . told [another officer that] an indoor marijuana growing operation . . . located at" the residence. (2) "Kilowatt usage [at the residence was] indicative of a marijuana grow operation based on the extreme high and low . . . usage." (3) Officers saw items in the yard "indicative of [a] marijuana growing operation," including "potting soil, starter fertilizer, seed starting trays" and pump sprayers, even though the house had no visible gardens or potted plants. **Does the affidavit provide probable cause?**

- A. Yes
- B. No



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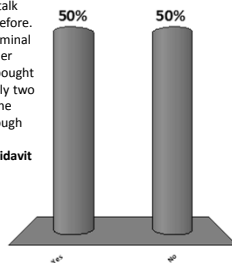
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### Sources: Problem 3

An officer applies for a search warrant for a residence. The application states that: (1) An officer conducted a knock-and-talk with a suspected drug offender that the officer had not met before. The officer told the suspected offender that she could face criminal charges for possession of marijuana. (2) The suspected offender agreed to tell the officer about her source. She said that she bought marijuana from a man she named and described, most recently two days ago. She said that the sales took place at his home and she described the home's location. (3) The officers confirmed through records that the suspect lives at the location the informant described and matches the description she gave. **Does the affidavit provide probable cause?**

- A. Yes
- B. No



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# Staleness

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Staleness: Generally

- “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)

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Staleness: Rule of Thumb

- “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))

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### Staleness: Factors

- How old is the information supporting probable cause?
- What type of crime is under investigation, i.e., is it a type of conduct that is normally ongoing and continuous?
- Is the suspect "nomadic or entrenched"?
- Is the evidence perishable?
- Is the evidence consumable?
- Is the evidence easy to move?
- Is the evidence easy to sell?
- Is the evidence likely to leave recoverable traces behind?
- Is the evidence inherently incriminating?
- Is the evidence of enduring utility to the suspect?

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### Staleness: Importance of the Affidavit

- Evidence that the defendant, a convicted felon, had possessed firearms was not stale even though some of the evidence was years old. The officer's affidavit stated that, "based on his professional experience, survivalists and other firearm enthusiasts such as [the defendant] tended to hold onto their firearms for long periods of time."
  - United States v. Maxim, 55 F.3d 394 (8<sup>th</sup> Cir. 1995)
- Evidence that the defendant had downloaded child pornography four months earlier was not stale where the officer's affidavit stated that "individuals who view child pornography typically maintain their collections for many years." The issuing official "was entitled to rely on the [officer's] experience [as] an expert in the field of enforcing child pornography laws."
  - United States v. Watzman, 486 F.3d 1004 (2007)

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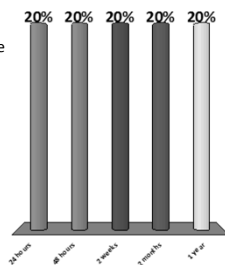
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### Staleness: Problem 1

When an officer applies for a search warrant for a residence based on the fact that a confidential informant made a controlled purchase of drugs at the residence, how long after the controlled purchase does probable cause go stale?

- A. 24 hours
- B. 48 hours
- C. 2 weeks
- D. 2 months
- E. 1 year



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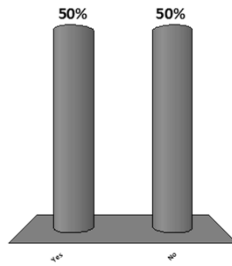
### Staleness: Problem 2

An officer applies for a search warrant for a suspect's residence. The application states:

1. The suspect is on probation because of a drug conviction.
2. An informant with a (documented) history of reliability reported seeing a pound of marijuana at the suspect's residence a week ago.
3. Another informant reported purchasing marijuana on the day of the application.

Is the probable cause stale?

- A. Yes
- B. No



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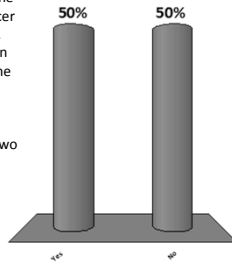
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### Staleness: Problem 3

An officer applies for a search warrant for a residence. The application states that within the past 48 hours, the officer spoke with a confidential, reliable source of information. The application further states that "[the source] has been in contact with [a suspect], and [the source] provided [the officer] with a counterfeit \$100 bill that came from [the suspect's home]." The suspect was involved in another counterfeiting case six years earlier, and the suspect's nephew was caught with a similar counterfeit \$100 bill two years earlier. Is the probable cause stale?

- A. Yes
- B. No



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Scope

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## Outbuildings

- If within the curtilage, normally may be searched under a warrant for the premises even if not specifically mentioned therein.
  - State v. Hagin, 203 N.C. App 561 (2010) (“The search of an outbuilding within the curtilage of the home does not exceed the scope of a warrant permitting the search of a suspect’s property.”)
- If outside the curtilage, a warrant for the premises does not authorize a search unless the outbuildings are specifically mentioned.

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## Vehicles

- If within the curtilage, normally may be searched under a warrant for the premises even if not specifically mentioned therein.
  - State v. Lowe, \_\_\_ N.C. App. \_\_\_, 794 S.E.2d 282 (2016) (“Because the rental car was within the curtilage of the residence targeted by the search warrant . . . we conclude that the search of the rental car was authorized by the warrant.”)
- If outside the curtilage, a warrant for the premises does not authorize a search unless the vehicles are specifically mentioned.

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## People

- If a warrant is for a public place, the warrant doesn’t provide authority for detaining or searching people not named in the warrant.
- If a warrant is for a non-public place, the warrant provides authority to *detain* people not named in the warrant. If there is reason to believe that a detainee is armed and dangerous, he or she may be *frisked*. If the search of the place comes up empty and the evidence is small enough to conceal on a person, the person may be *searched*.

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## Electronic Devices

- Whether a search warrant for a residence, office, or vehicle that does not contain specific language about electronic devices authorizes a search of electronic devices found therein is not clear.
  - United States v. Giberson, 527 F.3d 882 (9<sup>th</sup> Cir. 2008) (warrant authorizing search of identity theft suspect's residence for certain records and documents allowed seizure of computers in the residence as they were likely "repositories" for such information)
  - United States v. Payton, 573 F.3d 859 (9<sup>th</sup> Cir. 2009) (warrant authorizing search of drug suspect's residence for evidence including ledgers and pay-sheet sheets did not authorize search of computers in the residence even though they were possible repositories for such information; searches of computers are extremely intrusive and normally require specific authorization in a warrant)

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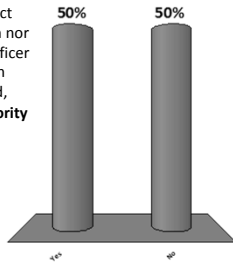
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## Scope: Problem 1

An officer obtains a search warrant for a drug suspect and the suspect's residence. Neither the application nor the warrant mention any outbuildings. When the officer arrives at the residence, he notices a storage shed in the backyard. A high privacy fence encloses the yard, including the shed. **Does the warrant provide authority for searching the shed?**

- A. Yes
- B. No



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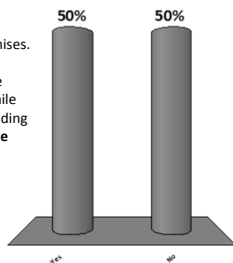
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## Scope: Problem 2

An officer obtains a search warrant for a mobile home, a specific occupant of the home, and a nearby shack after learning that the occupant is selling drugs from the premises. Officers execute the warrant and find six people there, including "Steve." Steve is a visitor, not an occupant. One officer searches Steve, finding crack and a crack pipe, while other officers search the mobile home and the shack, finding more drugs and paraphernalia. **Does the warrant provide authority for searching Steve?**

- A. Yes
- B. No



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Questions



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