

Search Warrants 2.0



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Quick Recap



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4th Amendment and Warrants

- **3 Core Requirements**
 - Based on probable cause, under oath
 - Particularly describe place to be searched, things seized
 - Neutral/detached judicial official
- **No Unreasonable Search/Seizure**
 - Reasonable expectation of privacy
 - Trespass theory
 - Tracking, extended time
- **Instructive Case?**
 - *State v. Gore*, 272 N.C. App. 98 (2020)



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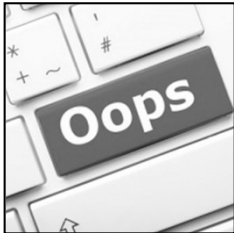
G.S. 15A, Article 11



- Statutory Requirements
 - Name/title of affiant
 - Under oath/affirmation
 - Identify the crime
 - Identify person/place/vehicle
 - Identify items sought
 - Facts supporting PC: crime committed, evidence there
- Execution, Service, Return, Inventory, Filing

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Gotta Be Right...



- Constitutional Rights at Stake
- Motion to Suppress, Evidence Excluded
- No "Good Faith" Exception for NC

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Top 10!



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Remember this resource!

- *Arrest, Search, and Investigation in North Carolina*. Main volume, plus periodic supplement. Farb and Tyner, SOG.

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And this SOG resource has the timeliest legal updates!

North Carolina Criminal Law Blog

<https://nccriminallaw.sog.unc.edu/>

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#1: Nexus to Place

- Probable Cause to Search Place
 - Reasonable grounds to believe
 - Search of premises will reveal objects
 - To aid in apprehension/prosecution of D
- Affidavit/PC Must Show Nexus
 - Not required to be direct
 - But not just conclusory
- Instructive Case?
 - *State v. Bailey*, 374 N.C. 332 (2020)
 - *State v. Parson*, 250 N.C. App. 142 (2016)

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#2: Boilerplate Language



- Affiant's Background
 - Specialized training and experience
 - Common practices, indicators
- Purpose and Relevance
 - Supports common sense inferences
 - Facts viewed from officer's perspective
- Instructive Case?
 - *State v. Frederick*, 259 N.C. App. 165 (2018), *aff'd*, 371 N.C. 547 (2018)
 - *State v. Benters*, 367 N.C. 660 (2014)

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#3: Catch-all Clause

- Tension with Particularity Requirement?
 - "...any other evidence of a crime..."
 - "...all other evidence related to assault..."
- Permissible, Within Limits
 - No "general warrants"
 - Limited by scope, crime, list, context
- Instructive Case?
 - *State v. Peterson*, 179 N.C. App. 437 (2006), *aff'd*, 361 N.C. 587 (2007), *rev'd on other grounds*, 228 N.C. App. 339 (2013)



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#4: PC for Marijuana?



- Complicated by Hemp/CBD
 - Same odor and appearance
 - Still tests positive for THC
- Law in Flux, But...
 - Odor/appearance alone doubtful
 - Works with/as corroboration
- Instructive Case?
 - *State v. Parker*, 860 S.E.2d 21 (N.C. App. 2021)

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#5: Digital Devices

- Probable Cause and Nexus
 - Device tied to crime/evidence
 - Scope, connected services

- Considerations
 - Local device vs. remote/cloud
 - Phone vs. records

- Instructive Case?
 - *State v. Ladd*, 246 N.C. App. 295 (2020)
 - *State v. Elliott*, 269 N.C. App. 678 (2020) (unpublished)



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#6: Informants & Tips



- Confidential Informant
 - Track record of reliability **OR**
 - Corroboration of significant facts, not just innocent or public facts
 - *State v. Williams*, 267 N.C. App. 485 (2019)
- Anonymous Tipster
 - Reliability unknowable
 - Must corroborate
 - *State v. Lowe*, 369 N.C. 360 (2016)
- Citizen or Known Tipster
 - Presumed truthful, trustworthy
 - *State v. Sanders*, 327 N.C. 319 (1990)

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#7: "Premises"

- Generally Covered
 - Sheds, outbuildings
 - Vehicles within curtilage
 - Persons, if evidence not found

- But Watch Out For
 - All persons on premises
 - Separate residences

- Instructive Case?
 - *State v. Cutshall*, 136 N.C. App. 756 (2000)
 - *State v. Taylor*, 191 N.C. App. 587 (2008)



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#8: Staleness



- Two Types: Old or Not Specified
 - Rule of thumb: over 2 months
 - Or if unspecified, you can't know
- Impact on Probable Cause
 - Likelihood evidence is still there
 - Depends on facts, crime, type, duration
- Instructive Case?
 - *State v. Howard*, 259 N.C. App. 848 (2018)
 - *State v. Logan*, 2021-NCCOA-311 (N.C. App., July 6, 2021)

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#9: Name/Address

- Particularity Requirement
 - Identify what to search, what to seize
 - Allows any officer to execute
- Name/Address Not Mandatory
 - Sufficient description will work
 - Consider possible impact on probable cause
- Instructive Case?
 - *State v. Hunter*, 208 N.C. App. 506 (2010)
 - *State v. Rodgers*, 161 N.C. App. 311 (2003)
 - *State v. Moore*, 152 N.C. App. 156 (2002)



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#10: Minor Crimes



- Statutorily Permitted
 - G.S. 15A-242: crime or offense
 - Not infractions
- Considerations
 - Probable cause
 - Types of evidence
- Instructive Case?
 - *State v. Oxner*, 252 N.C. App. 266 (2017) (unpublished)

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Hooray!

- Totality of Circumstances
- Practical, Common Sense Determination
- Reasonable Inferences
- Not Hypertechnical
- Deference on Close Calls



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Uh-oh...



- Conclusory Allegations
- Unsupported Inferences
- Insufficient Facts
- No Verification/Corroboration
- "Rubber Stamp"

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"Trust But Verify"

Reporter Questions:

- Who?
- What?
- Where?
- When?
- Why?
- How?



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Questions/Discussion?



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