

# SEARCH WARRANTS AND DIGITAL EVIDENCE

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## Privacy and Digital Devices

- Generally, we have a REP in our digital devices
- Exceptions include
  - Stolen devices
  - Abandoned devices
  - Monitored workplace devices
  - Content we share publicly

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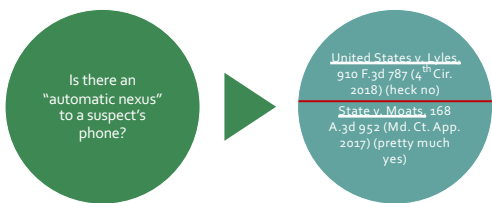
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## Nexus to Devices



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## Particularly Describing Devices

- 4<sup>th</sup> 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
- Possible descriptors: serial number, assigned phone number, IMEI number, distinctive physical features, current custodial agency
- Crime lab may decline to conduct forensic analysis when description is not sufficiently particular

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## Probable Cause and SEM

No requirement to attach images

What about . . .

Witness statement of opinion that images are child pornography?	Evidence of possession of "child erotica"?	IP address connected to residence shared by multiple people?	Evidence that the suspect sexually assaulted or molested children?
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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 (4<sup>th</sup> Cir. 2011), with [State v. Kochetkov](#), 280 N.C. App. 351 (2021)

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### Authorizing Later Forensic Analysis

- The application may address this but off-site analysis is likely OK even if not expressly authorized



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### Scope of the Search

- Should a warrant limit a search to
- Certain kinds of content?
- Content created during a certain period of time?



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### Connected Cloud Services

- Phones connect to all sorts of cloud services
  - Email providers
  - Social media companies
  - Dropbox and other storage apps
  - Photo storage
- Some warrant applications specifically request authorization to search
  - "Your affiant requests the warrant to include a full forensic exam of the devices and any connected cloud accounts."
- Should you authorize that? Place any limits on it?



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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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## Search Warrants for Records

- 18 U.S.C. § 2702(a): Verizon can't give the cops your records
- 18 U.S.C. § 2703: But they can if the cops get a warrant from a "court of competent jurisdiction"
- 18 U.S.C. § 2711: Which includes "a court of general criminal jurisdiction of a State authorized by the law of that State to issue search warrants"
- All kinds of judicial officials are authorized to issue search warrants, G.S. 125A-243
- SCJs, and maybe DCJs, have "general criminal jurisdiction," G.S. 7A-270, -271, -272, but magistrates do not, G.S. 7A-273

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name: BOSS-MD
MSG COMMAND COMPLET
FEB 08 09 *IC LIVE P
PB 0307 RT 252 AC 4-0
R1 ICL 400 CT
44-2405 R2 0308 RT C NUB 0
R3 0316 PFD
com*DBA---
Date: Place Number D
Telecom*DBA
.09 220KENNINGS MD 301 603- JA
.79 220KENNINGS MD 301 603- JA
.99 220KENNINGS MD 301 603- JA
.99 220KENNINGS MD 301 603- JA
.99 220KENNINGS MD 301 603- JA
.79 220KENNINGS MD 301 603- JA
.64 Subtotal Telecom*USA Calls
Questions call
name: BOSS-MD
MSG COMMAND COMPLET
FEB 08 09 *IC LIVE P
PB 0307 RT 252 AC 4-0
R1 ICL 400 CT
44-2405 R2 0308 RT C NUB 0
R3 0316 PFD
.10 KENNINGTON MD 301 603- JA
.80 KENNINGTON MD 301 603- JA
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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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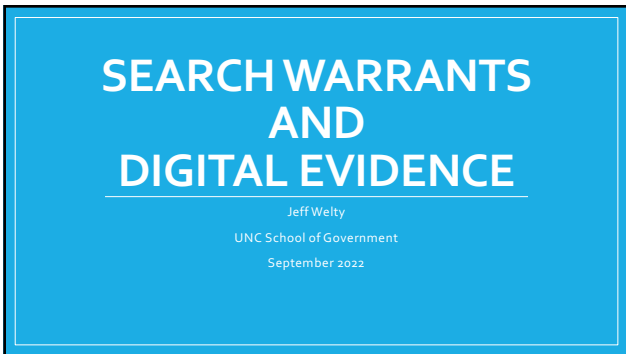
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