

ADMINISTRATION OF JUSTICE BULLETIN

Number 2007/06 November 2007

CRIMINAL PROCEDURE FOR MAGISTRATES

■ Jessica Smith

Criminal Process and Pleadings	2
Introduction	2
Probable Cause	2
Charging Language	3
Citation	3
Criminal Summons	4
Warrant for Arrest	5
Magistrate's Order	6
Order for Arrest	6
Special Problems with Issuing Process and Pleadings	6
Requirements for Criminal Pleadings	7
Conducting the Initial Appearance and Setting Conditions of Pretrial Release	8
Conducting the Initial Appearance	8
Delaying the Initial Appearance	12
Holds	13
Determining the Conditions of Pretrial Release	16
Taking Secured Bonds	20
Surrender of Defendant by Surety	24
Fugitives	25
Fugitive Before Magistrate After Warrantless Arrest	25
Fugitive Warrant	26
Fugitive Before Magistrate After Arrest on a Warrant	26
Fugitive Not Charged in Another State	26
Governor's Warrant	26
Fugitives From North Carolina	27
Search Warrants	27
Generally	27
The Application	28
Issuance of a Search Warrant	30
Execution of the Warrant	31

standard arrest warrant form will need to be modified to indicate that the crime is one committed against the law of another state. The magistrate need not spell out the elements of the offense but simply can state the name of the crime in the other state. The name of the crime given by the officers from that state should be used, even if it is different from the name used in North Carolina (for example, “second degree robbery”). After the warrant is issued, the case proceeds like any other one involving a fugitive.

Governor’s Warrant

Once arrested, a fugitive is held until formal extradition procedures can take place. If he or she wishes to do so, the fugitive may waive extradition before a clerk of court or a judge and be immediately released to the state from which the fugitive fled. Many fugitives choose to do this, knowing that they will be extradited and not wishing to spend the time required for formal extradition.

If the fugitive does not waive extradition, the state from which the fugitive fled then must formally request the Governor of North Carolina to extradite. If the Governor decides to extradite, a Governor’s Warrant will be issued. A Governor’s Warrant authorizes the taking of the fugitive into custody—in fact, the fugitive already may be in custody if he or she was not allowed bail or could not make bail—to be turned over to an agent of the other state.

When a fugitive is brought before a magistrate on a Governor’s Warrant, the magistrate should:

1. *Inform the Fugitive of the Charges.* The magistrate must tell the fugitive what crime he or she is charged with in the other state and that the Governor of North Carolina has issued a warrant to take him or her into custody and be returned to the state from which he or she fled. The fugitive also should be informed of the right to communicate with counsel and friends. The Governor’s Warrant requires that the fugitive be held without bond.

2. *Commit the Fugitive to Jail.* The magistrate should commit the fugitive to jail to await his or her appearance before a district court judge.

3. *Order the Fugitive Returned to District Court at the Earliest Possible Date.* The order of commitment should specify the time and date that the fugitive is to appear before a district court judge, which should be as early as possible.

Fugitives From North Carolina

If a person who committed a crime in North Carolina flees to another state and is found there, a similar procedure takes place. Once the fugitive is arrested in the other state, the North Carolina district attorney of the county where the fugitive is charged is notified and must put together the documents that the North Carolina Governor’s office will need in requesting extradition (assuming that the fugitive does not waive extradition).

A magistrate only will be involved in the process of extraditing a fugitive from North Carolina who has fled to another state if an arrest warrant is used as the charging document. In that case, the warrant must be accompanied by an affidavit (usually by the investigating officer or the victim) that states the grounds for charging the defendant. This affidavit must be sworn to before a magistrate or judge and should have the same date as the warrant (or earlier). Some states will not extradite if the date of the affidavit (for example, January 25, 2007) is later than the date of the arrest warrant (for example, January 20, 2007). Therefore, when a warrant is issued without an accompanying affidavit (oral sworn testimony is sufficient to support an arrest warrant in North Carolina), a new arrest warrant must be issued when the affidavit is prepared so that the dates of the arrest warrant and the affidavit will be the same. Also, if a warrant and affidavit are submitted, they must be accompanied by a certification of the magistrate or judge who issued the warrant or took the affidavit. A clerk of court may certify copies of documents when he or she is the keeper of the original. Each copy must be certified. When a judge or magistrate certifies a document, the clerk of court must certify that person’s official character. Then a district court or superior court judge must certify the official character of the clerk. And in turn the clerk must certify the official character of the judge who certified the clerk.

Search Warrants

Generally

A search warrant directs a law enforcement officer to search premises, vehicles, persons, or other places in order to seize specified items or persons. G.S. 15A-241. Any item is subject to seizure under a search warrant if there is probable cause to believe it is stolen or embezzled; is contraband or otherwise unlawfully possessed; has been used or is possessed for the purpose of being used to commit or conceal the

commission of a crime; or is evidence of an offense or the identity of a person participating in an offense. G.S. 15A-242. Typically, officers will need a search warrant to seize items. Sometimes, however, they will need a search warrant to seize a person—for example when the officers have a warrant for arrest of a person but that person is inside of a friend’s house and the friend will not consent to allow the officers to enter.

For an extensive discussion of search warrants, including among other issues, the advantages of using them and the consequences of unlawful searches, see ROBERT L. FARB, *ARREST, SEARCH, AND INVESTIGATION IN NORTH CAROLINA* (School of Government, UNC-Chapel Hill 3d ed. 2003). This section does not attempt to summarize that extensive discussion. Rather, this section focuses on the magistrate’s role in issuing search warrants.

Documents involved. Two basic documents are used for search warrants: the application for the warrant and the warrant itself. Form AOC-CR-119 (available on-line at: <http://www.nccourts.org/Forms/FormSearch.asp> and included in Appendix A at the end of this paper) contains a generic application (on one side) and a generic warrant (on the other side). A special form, AOC-CR-155 (available on-line at the same web page noted above), is used for search warrants to seize blood or urine in impaired driving cases.

Authority to Issue. Only judicial officials may issue search warrants. G.S. 15A-243. Appellate justices and judges and superior court judges may issue search warrants to search throughout North Carolina. G.S. 15A-243(a). District court judges are limited to searches within their respective judicial districts. G.S. 15A-243(b)(1). Clerks and magistrates are limited to searches within their counties. G.S. 15A-243(b)(2)-(3). One magistrate can issue a search warrant even if another magistrate has refused to do so under the same factual circumstances. However, the second magistrate should view the first magistrate’s refusal as a cautionary signal.

Modification. Once a search warrant has been issued and changes need to be made to it, it is a better practice to issue a new warrant, and have the first warrant returned unexecuted.

The Application

Generally. An application for a search warrant must be in writing, on oath or affirmation. G.S. 15A-244. It is best to use the standard AOC forms noted above. All applications must contain: (1) the name and title of the applicant; (2) a statement that there is probable cause

to believe that the items subject to seizure may be found in or upon a designated or described place, vehicle, or person; (3) allegations of fact supporting the statement, and the statement must be supported by one or more affidavits setting forth the facts and circumstances establishing probable cause to believe that the items are in the places or in the possession of the individuals to be searched; and (4) a request that the court issue a search warrant directing a search for and seizure of the items in question. G.S. 15A-244.

It does not matter who fills out the application for the search warrant, as long as it accurately represents what the applying officer knows. Thus, an officer may fill out most of the application before bringing it to the magistrate, provided the magistrate swears the officer, see G.S. 11-11 regarding oaths, and carefully examines the officer about the information contained in the application.

AOC Form. This section walks the magistrate through the contents of the application for a search warrant. Magistrates might find it helpful to have a copy of form AOC-CR-119 in front of them as they review this material.

Name of Applicant. The first item on the application form is the name and address of the person applying for the warrant, or if an officer, the officer’s name, rank and agency. Most commonly, an officer will apply for the search warrant.

Description of Property to be Seized/Person to be Arrested. The next part of the application form provides space for a listing of the property to be seized or the person to be arrested. The officer who executes a search warrant need not be the officer who applies for the warrant. Therefore, the description of the property to be seized must be sufficiently detailed so that an officer executing the search warrant does not seize the wrong property. The subsections below provide more detail on how the property or person to be seized should be described.

Property. The more common the property, the more detailed the description must be to avoid seizing the wrong thing. Thus, “stolen gun” and “refrigerator” are not sufficient. When dealing with common items, including the serial number, brand, model, and visual description of an item to be seized would be helpful identifying information. A detailed description is less important for obvious contraband, such as a machine gun and nontaxpaid liquor. Moreover, an officer may seize obvious contraband not described in the affidavit, if seen in plain view or seized incident to arrest. Not much detail is needed if the property is drugs, which ordinarily may not be possessed lawfully. Although it is best to state the name of the drug, the generic name is adequate. Thus, “marijuana” is sufficient. It is not

necessary to state the amount of illegal drugs being sought.

Person. As noted above, there are situations when an officer will be required to obtain a search warrant to enter premises to make an arrest with an arrest warrant or an order for arrest. In such a case, the officer must describe the person to be seized by giving that person's name and description. If the person's name is known, only the name is required. But a physical description can be helpful or can be a substitute for the name if the name is unknown (for example, "white male, 6'5", long blond hair and mustache").

Crime That Was Committed. The next item on the application is the crime at issue. Here, it is useful to give a short phrase describing the crime, such as "possession of marijuana," "armed robbery," or "felonious breaking or entering." It is also better practice to refer to the date and location of the crime and the crime's statutory citation. Avoid abbreviations such as "A/R" or "FB/E."

The description of the crime need not be as detailed as in criminal process, since a person is not being charged with a crime by this document. After all, it is possible that a person whose home is being searched may have nothing to do with the crime under investigation.

What Is to Be Searched. The next section on the application form requires that the applicant specify and describe where the person or item sought is located. The options on the form include "premises," "person(s)," "vehicle(s)," and "other places or items." The application may specify any combination of these locations, if justified by the facts. As noted above, the officer who executes a search warrant need not be the officer who applies for the warrant. Therefore, the descriptions of the premises, persons, vehicles, or other places or items to be searched must be sufficiently detailed so that an officer executing the search warrant does not search the wrong person or property.

Premises. If the premises is a house, the street number is sufficient, if correct. However, it is best to include a physical description in case the street number is wrong. If the street number is wrong but the officer searches the correct house based on the physical description, the search warrant still would be valid. If the house and street numbers are incorrect and the application contains no description, the warrant will be invalid. If the premises is an apartment, give the apartment number or description of its location in the apartment complex. Remember that an officer unfamiliar with the investigation must be able to find the premises based on the description in the application.

A search warrant to search premises does not give authority to search persons on the premises at the time of the search, except as provided in G.S. 15A-256. Thus, if particular suspects are involved and evidence may be hidden on them, the search warrant should authorize a search of them under the "person(s)" block. If a search of such persons is not authorized, then officers only can detain them (and frisk them for weapons, if appropriate) while the officers search the premises. If the search of the premises fails to uncover items being searched for, then the officers can conduct a full search of such persons.

If a search warrant only authorizes a search of premises, courts have ruled in certain circumstances that officers may search a vehicle on the premises (if the vehicles might contain evidence described in the application) when the officer knows the vehicle belongs to the suspect whose premises is being searched. However, to avoid any question of lawfulness, and also to authorize search of the vehicle if it is found away from the premises, a search warrant should authorize search of vehicles under "vehicle(s)" block, if there is probable cause that the items sought might be in the vehicle.

Although usually not legally required, it is best to describe outbuildings on the premises that the officer wants to search or simply state "outbuildings on the premises."

If there are more than one premises to be searched, separate warrants should be issued for each to help officers comply with the forty-eight hour rule, discussed below, and to avoid infecting the search of one premises with a problem in the affidavit regarding the search of the other premises.

Persons. When listing persons, the application should include person's name, age, height, weight, race, distinguishing marks, etc.

Vehicles. When listing vehicles, the application should include model, make, year, color, license tag, and anything else that distinguishes it from other similar vehicles, such as its identification number, if known.

Other Places or Items to Be Searched. This category may be used when the place or item to be searched is not in premises or vehicles or on a person. For example, an officer may need a search warrant to search luggage that the officer has seized in a situation when a warrantless search cannot be made.

Statement of Facts Establishing Probable Cause. The next part of the application provides space to list the facts that establish probable cause for the issuance of the search warrant. This portion of the form is where the applicant provides the required supporting affidavit.

When Additional Space Is Needed. If all of the facts establishing probable cause do not fit on the form, additional sheets may be attached. At the very bottom of the application form, there is a note that says: "If more space is needed for any section, continue the statement on an attached sheet of paper with a notation saying 'see attachment.' Date the continuation and include on it the signatures of applicant and issuing official." It is important to follow this procedure so that there is no question later as to whether the attachments were part of the original application. It is also a good idea to include a name on the attachment, such as "In the Matter of Steve Jones" and to staple the additional sheets to the form.

Additional Affidavits. In some cases, affidavits by people other than the officer applying for the warrant may be submitted to support the warrant. For example, the officer may provide affidavit of other officers or of an informant. When this happens, the magistrate should check the box on the form that says "In addition to the affidavit included above, this application is supported by additional affidavits, attached, made by _____" and should fill in the the person's name and address or if a law enforcement officer, name, rank, and agency. The additional affidavits should be dated and clearly marked as attachments to the application.

Additional Testimony Establishing Probable Cause. In some cases, in addition to the affidavit, a person will provide sworn testimony setting out the facts establishing probable cause. When this happens, the magistrate should check the box on the form that says "In addition to the affidavit included above, this application is supported by sworn testimony, given by _____" and should fill in the person's name and address. When testimony is given in this way, it should either be reduced to writing or tape recorded and filed with the clerk. The magistrate should check the appropriate box on the form to indicate whether the testimony has been reduced to writing or tape recorded.

If the officer believes that it is important to exclude some supporting information from the suspect's copy of the application (for example, to keep information from a suspect that might reveal an informant's identity), the officer may wish to have the informant's testimony tape-recorded and filed with the clerk.

General Rules for the Affidavit. The most common problem with search warrants is that the application fails to contain enough of what the officer knows. When preparing the statement of facts establishing probable cause, usually it is best to write a statement telling a story with a clear plot in chronological order. The officer should tell what led to the conclusion that the evidence sought is related to a

crime and why the officer believes it is where the officer wants to search.

There are no set rules about what needs to be in the statement. A good statement need not have an informant's report. On the other hand, a good statement could consist solely of an informant's report, although it is better if the officer corroborates some of the informant's information. What is important is whether all the facts stated together establish a *fair probability* that the evidence is where the officer wants to search. Reliable hearsay is permitted, such as information obtained from another officer or an informant.

If a confidential informant is used, the confidential informant's report should show how the informant got his or her information (the informant was there or someone told the informant, for example) and why the informant should be believed (has given good information before, for example). An officer's corroboration (through personal knowledge or reliable hearsay) of a confidential informant's report is helpful. It is not necessary to establish the prior record of an identified, obviously reliable citizen in giving information (for example, information obtained from a school principal or member of the clergy).

Personal observations should be stated in a way that makes it clear that the officer was the person making the observation. Including truthful phrases such as "I saw . . ." or "Affiant saw . . ." are helpful ways to do this.

Signatures. The officer applying for a search warrant must sign the application under oath or affirmation. G.S. 15A-245(a). There is a place on the application form for the officer's signature and for the magistrate to sign and date the form indicating that the officer's statement was sworn.

Issuance of a Search Warrant

Examination of Applicant. As stated, when an officer applies for a search warrant, the magistrate must examine the officer and/or other witnesses under oath or affirmation to determine that probable cause exists to issue the warrant. G.S. 15A-245. Additionally, legislation enacted in 2005 provides that information supporting the issuance of a search warrant may be offered by oral testimony under oath or affirmation presented by a sworn law enforcement officer to the issuing judicial official by means of an audio and video transmission in which both parties can see and hear each other. Before using this method, the procedures and type of equipment for audio and video transmission must be submitted to the Administrative

Office of the Courts (AOC) by the senior resident superior court judge and the chief district court judge for a judicial district and approved by the AOC. G.S. 15A-245(a)(3). The statute does not say how such testimony is to be memorialized or served.

Probable Cause Determination.

Independent Determination. The magistrate must make an independent judgment of the existence of probable cause. The magistrate must be told the facts that support the officer's conclusion that probable cause exists; simply stating the officer's or informant's conclusion that drugs are in the apartment is not sufficient. The magistrate must determine that there is probable cause—a fair probability—that the items or persons sought are in the places to be searched.

Materials Considered. As described above, sometimes the applicant will offer additional affidavits or additional sworn testimony. These additional materials may be considered if they have been properly attached to the affidavit, reduced to writing or tape-recorded. At a hearing to suppress evidence seized pursuant to a search warrant, only affidavits attached to the application or sworn testimony reduced to writing or tape-recorded and filed with the clerk may be considered. Other information told or given to the magistrate is inadmissible at the hearing.

Completing the Form. The search warrant side of AOC-CR-119 is largely self-explanatory.

Signature and Date. It is a good practice to put original signatures on all copies of the warrant. Additionally, the magistrate should list the time and date of issuance of the warrant. This is important because of the forty-eight hour rule, described below.

Copies. Three copies must be completed: the original, one copy to be filed in the clerk's office, and one copy to be served on the suspect by the executing officer.

Execution of a Warrant

Forty-Eight Hour Rule. An officer must execute a search warrant within forty-eight hours of its issuance. G.S. 15A-248. Any warrant not executed within forty-eight hours is void, and must be marked

“not executed” and returned without unnecessary delay to the clerk. G.S. 15A-248.

Jurisdiction. Officers may execute a search warrant only within their territorial jurisdiction and if their investigative authority encompasses the crime or crimes involved. G.S. 15A-247. Thus, city officers usually cannot go more than one mile outside city limits.

Stating Identity and Purpose. When executing a search warrant and before entering premises, officers must identify themselves and their purpose. G.S. 15A-249.

Breaking and Entering. An officer may break and enter any premises or vehicle to execute a search warrant if: (1) after identifying him- or herself and purpose, the officer reasonably believes that the officer's admittance is being denied or unreasonably delayed or that the premises or vehicle is unoccupied; or (2) the officer has probable cause to believe that giving notice would endanger the officer's life or the safety of any person. G.S. 15A-251.

Notice. The officer must read the search warrant (but not the application) and give a copy of the application and affidavit to the person to be searched or in apparent control of the premises or vehicle to be searched. G.S. 15A-252. If no one in apparent and responsible control is there, the officer must leave a copy of the warrant attached to the premises or vehicle. G.S. 15A-252.

Scope of Search. The search may include any area within the premises large enough to contain the evidence being sought. G.S. 15A-253. During the search, evidence related to any crime seen in plain view also may be seized. G.S. 15A-253. No particular time limit is set on the length of the search.

Paperwork. If items are seized, the officer must leave an inventory receipt with a person or attached to the premises if no one is home. G.S. 15A-254.

An officer who has executed a search warrant must, without unnecessary delay, return the warrant and inventory of items seized to the clerk. G.S. 15A-257. The inventory, if any, and return must be signed and sworn to by the officer who executes the warrant. G.S. 15A-257.

This bulletin is published and posted online by the School of Government to address issues of interest to government officials. This publication is for educational and informational use and may be used for those purposes without permission. Use of this publication for commercial purposes or without acknowledgment of its source is prohibited.

To browse a complete catalog of School of Government publications, please visit the School's website at www.sog.unc.edu or contact the Publications Division, School of Government, CB# 3330 Knapp-Sanders Building, UNC Chapel Hill, Chapel Hill, NC 27599-3330; e-mail sales@sog.unc.edu; telephone 919.966.4119; or fax 919.962.2707.

©2007

School of Government. The University of North Carolina at Chapel Hill

SEARCH WARRANT

IN THE MATTER OF

Date Issued _____ Time Issued AM PM

Name Of Applicant _____

Name Of Additional Affiant _____

Name Of Additional Affiant _____

RETURN OF SERVICE

I certify that this Search Warrant was received and executed as follows:

Date Received _____ Time Received AM PM

Date Executed _____ Time Executed AM PM

I made a search of _____

_____ as commanded.

I seized the items listed on the attached inventory.

I did not seize any items.

This Warrant WAS NOT executed within forty-eight (48) hours of the date of issuance and I hereby return it not executed.

Signature Of Officer Making Return _____

Department Or Agency Of Officer _____ Incident Number _____

STATE OF NORTH CAROLINA

_____ County

In The General Court Of Justice
District/Superior Court Division

To any officer with authority and jurisdiction to conduct the search authorized by this Search Warrant: I, the undersigned, find that there is probable cause to believe that the property and person described in the application on the reverse side and related to the commission of a crime is located as described in the application.

You are commanded to search the premises, vehicle, person and other place or item described in the application for the property and person in question. If the property and/or person are found, make the seizure and keep the property subject to Court Order and process the person according to law.

You are directed to execute this Search Warrant within forty-eight (48) hours from the time indicated on this Warrant and make due return to the Clerk of the Issuing Court.

This Search Warrant is issued upon information furnished under oath by the person(s) shown.

Date _____	Signature _____	<input type="checkbox"/> Deputy CSC	<input type="checkbox"/> Assistant CSC	<input type="checkbox"/> CSC
		<input type="checkbox"/> Magistrate	<input type="checkbox"/> District Ct. Judge	<input type="checkbox"/> Superior Ct. Judge

This Search Warrant was returned to me on the date and time shown below.

Date _____	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Signature _____	<input type="checkbox"/> Deputy CSC	<input type="checkbox"/> Assistant CSC
			<input type="checkbox"/> Clerk Of Superior Court	

APPLICATION FOR SEARCH WARRANT

I, _____
(insert name and address: or if law enforcement officer, name, rank and agency)

being duly sworn, request that the Court issue a warrant to search the person, place, vehicle, and other items described in this application and to find and seize the property and person described in this application. There is probable cause to believe that (Describe property to be seized: or if search warrant is to be used for searching a place to serve an arrest warrant or other process, name person to be arrested)

constitutes evidence of a crime and the identity of a person participating in a crime, (Name crime) _____

and is located (Check appropriate box(es) and fill-in specified information)

in the following premises (Give address and, if useful, describe premises)

(and)

on the following person(s) (Give name(s) and, if useful, describe person(s))

(and)

in the following vehicle(s) (Describe vehicle(s))

(and)

(Name and/or describe other places or items to be searched, if applicable)

The applicant swears to the following facts to establish probable cause for the issuance of a search warrant:

SWORN AND SUBSCRIBED TO BEFORE ME

Date	Date
Signature	Signature of Applicant

Magistrate Dep. CSC Asst. CSC Clerk of Superior Court Judge

In addition to the affidavit included above, this application is supported by additional affidavits, attached, made by _____

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 tape recorded and I have filed each with the clerk.

NOTE: If more space is needed for any section, continue the statement on an attached sheet of paper with a notation saying "see attachment." Date the continuation and include on it the signatures of applicant and issuing official.

STATEMENTS OF PROBABLE CAUSE

1. The applicant states that yesterday , he purchased two ounces of cocaine. The cocaine was delivered to the applicant by Gene Orendorff, Jeff Manning, and Kenny Woods, who were arrested when they delivered the cocaine. The applicant further states that he paid \$1650.00 in marked U.S. currency (listed above) for the cocaine. During the time spent on the purchase of cocaine, the applicant and the suspects were under surveillance by other officers. The applicant states that from the movement of the suspects during and before the purchase and information received from two confidential sources of information after the purchase, the applicant has reason to believe the U.S. currency (listed above) and other controlled substances are at this time located in the above described location.

Good/Bad

Why?

See *State v. Hyleman*, 324 N.C. 506 (1989).

2. The information contained in this application is based upon my personal knowledge and upon factual information I have received from others. A reliable informant who had provided information in the past and whose information in the past had led to arrest and conviction under the N.C. Controlled Substances Act has told the undersigned that approximately one week ago the informant saw Lilly Ann Beam with approximately one pound of marijuana at her home on Ridge Road. Another informant told the undersigned that Lilly Ann Beam sold marijuana to them today. Lilly Ann Beam is on probation for a violation of the Controlled Substances Act.

Good/Bad

Why?

See *State v. Beam*, 325 N.C. 217 (1989).

3. We have been informed by a reliable confidential informant that he has been inside the above address within the past 48 hours and has seen cocaine inside the residence and cocaine is being sold at this time by the above occupants. The informant is familiar with how cocaine is packaged and sold on the streets, and he has used cocaine in the past. We have known this informant for three weeks and information provided by this informant has resulted in the seizure of controlled substances included in the N.C. Controlled Substances Act and led to the arrest of at least six individuals for violations of the N.C. Controlled Substances Act.

Good/Bad

Why?

See *State v. Graham*, 90 N.C. App. 564 (1988).

4. I, the undersigned applicant, have been a law enforcement officer for more than three years with the Smith County Sheriff's Department. During this time I have received extensive training including Basic Law Enforcement Officer's Certification and Advanced Criminal Investigation courses presented through the North Carolina Justice Academy. During the last year I have been involved in several investigations concerning drug offenses in Smith County. Within the past five days, the person who I will refer to as "He," regardless of the person's sex, contacted me. This person offered his assistance to the city/county vice unit in the investigation of drug sales in the city and county. This person told me that he had been inside the residence described above where he observed a room filled with marijuana plants. He stated that the suspect Charles Wayne Newcomb was maintaining the plants. This applicant confirmed the identity of the suspect to be Charles Wayne Newcomb. This information was obtained through D.M.V. records through vehicle registration. This applicant further checked with Duke Power Company and found this residence to have Charles Wayne Newcomb listed as the current occupant.

Good/Bad

Why?

See *State v. Newcomb*, 84 N.C. App. 92 (1987).

5. Sometime between one and five days ago, the Fairchild Christian School in the City of Livingston was broken into and two microscopes (described above) were stolen. That sometime before the date of this application a reliable and confidential informant personally contacted the applicant with the information that the stolen microscopes are in the above described residence of Mark Timothy Roark.

Good/Bad

Why?

See *State v. Roark*, 83 N.C. App. 425 (1986).

6. I and other officers have received information from a confidential and reliable informant that the Bo King is residing at 1509 Luther Street and is possessing cocaine for the purpose of sale at 1509 Luther Street. This informant has been to 1509 Luther Street within the past 48 hours and has observed Bo King possessing cocaine. This informant is familiar with cocaine and how it is packaged for street use. We officers have known this informant for approximately one year and during this time this informant's information has led to the arrests and convictions of many people for violations of the North Carolina Controlled Substances Act.

Good/Bad

Why?

See *State v. King*, 92 N.C. App. 75 (1988).

7. I have received information from a confidential and reliable informant that occupants of the dwelling described above have in their possession and are selling a large quantity of cocaine. I have known this informant only one week, but during that time he has given me information that I know from police intelligence files is true. He has also introduced me to two individuals (while I was in an undercover capacity) from whom I have bought controlled substances. He has also given me information that has allowed me to buy cocaine from two other individuals. Based upon the proven reliability of this informant, I request a warrant to search the above described premises for cocaine.

Good/Bad

Why?

8. A confidential and reliable informant has given me information that occupants of the above described premises are selling large quantities of cocaine. This informant has been inside the dwelling within the past 48 hours and has seen large quantities of cocaine. Within the past 48 hours, this informant has, at my direction and while under my control, purchased a small quantity of cocaine from the dwelling occupants. The informant was searched prior to entering the dwelling. At that time he had no cocaine in his possession. I then gave the informant \$200 in Department funds. I maintained constant observation while the informant entered the dwelling and until he exited the building. All other exits were observed by other officers. After the informant exited, he was again searched. A small quantity of cocaine and \$75 was found on his person.

Good/Bad

Why:

9. Three days ago, an armed robbery occurred at the 7/11 Store on Main Street. Cash in the amount of \$78 and a derringer pistol (pearl handles; owner applied number of 237-72-8451 on barrel) were stolen by the robber. A customer who identified himself as David Kiser stated to this affiant that he recognized the robber. He states that robber sells newspapers (the Daily Gazette) on the corner of Main Street and Elm Street. I have personally observed the subject described above selling newspapers on this corner. Employees of the Gazette confirm that this is the only subject that has sold papers on the corner of Main and Elm for the past year. The city telephone directory indicates that the suspect resides in the above described dwelling, and I have observed an automobile registered to the suspect in the driveway of the dwelling. I met my informant, Mr. Kiser, only as a result of investigating this crime. I have never before received information from Mr. Kiser. Based on this information, I request a search warrant for the above described dwelling to search for the above described derringer pistol.

Good/Bad

Why?

10. A search warrant issued on the basis of information supplied by a person named in an affidavit is usually valid if there is no reason to believe the named person's information is unreliable.

True/False

11. A search warrant issued on the basis of information supplied by a person whose identity must remain confidential is usually valid even if no other basis for reliability appears in the affidavit.

True/False

12. A magistrate may not issue a search warrant based upon hearsay.

True/False

13. Which of the following are adequate descriptions of things to be seized?
- a. “quantity of marijuana”
 - b. “quantity of stolen TV's”
 - c. “cocaine”
 - d. “stolen property”
 - e. “evidence of any crime”
 - f. “obscene magazines”
 - g. “RCA XL 100 Color TV set with a broken antenna”
 - h. “journals, registers, ledgers, canceled checks, and similar records and documents that constitute evidence of the embezzlement described in the affidavit”
 - i. “Smith & Wesson .38 Cal. revolver (4 inch barrel)”

14. Which of the following describe the place to be searched adequately?
- a. single family dwelling at 1132 Yale Place, Durham, N.C.
 - b. an apartment in the building at 198 West Cameron Avenue, Chapel Hill, N.C.
 - c. single family dwelling at 1818 Jameston Drive, Greensboro, N.C. and a 1990 Oldsmobile Delta 88, N.C. license number SFL 298, located in the driveway there
 - d. John Smith's apartment at the Oaks Apartments, Chapel Hill, N.C.
 - e. yellow 2 story stucco, Dutch colonial dwelling, located on Arrow Wood Drive (street number unknown), exactly 1 mile north of the intersection of US 15, on the east side of the road, Bahama, N.C. The dwelling has a green roof, green shutters, and a driveway with an oak tree on either side.

15. If you have a street address, there is no reason to include a physical description of the building.

True/False

16. Failure to include a physical description of the building will render a search warrant invalid even if the address (street and number) is given and is correct.

True/False

17. If the officer who applies for a search warrant gives the magistrate information other than that in the affidavit, the magistrate
- a. may not consider this information under any circumstances.
 - b. may always consider this information.
 - c. may consider this information only if the affidavit is amended or a new affidavit is submitted.
 - d. may consider this information only if the affidavit is amended or a new affidavit is submitted or if magistrate reduces the information to writing and files it with clerk, or if magistrate prepares a tape recording of the oral testimony.

(Circle letter for the best answer)