

## SEARCH WARRANTS

### **If a Reasonable Office Could have Believed a Party was in Need of Immediate Assistance, Entering Without a Warrant is Justified**

*State v. Cline*, \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (July 20, 2010)

A police officer with more than ten years of experience, was summoned to a scene where motorists discovered a young, unattended toddler on the side of a major highway, near several residences. Officer was able to ascertain the identity and residence of the child, Defendant's son, with reasonable certainty. Officer proceeded to Defendant's mobile home where he knocked and then banged on the front door several times, without response. Officer also observed a vehicle parked in front of the mobile home, discovered a photo inside the vehicle that appeared to be of the child, searched the glove box for a vehicle registration card, and phoned another officer who was unable to locate the child's parents based on the address on the registration. Officer then walked to the rear of the mobile home where he observed a diaper lying on the top step and noticed that the back door was ajar. Officer indicated that it would have taken him 15 minutes to drive to the magistrate's office and another hour and a half to two hours to obtain a search warrant to enter the premises. Even though officer did not hear any sounds from within the residence, nor did he observe any blood or other signs suggesting criminal activity, a reasonable officer in that officer's position could have believed that a party was in need of immediate assistance inside the mobile home, such that entering without obtaining a warrant was justified.

### **Search Warrant Was Valid**

*State v. Haymond*, \_\_ N.C. App. \_\_, 691 S.E.2d 108 (6 April 2010).

The defendant was convicted of multiple offenses involving break-ins, larcenies, and possession of stolen property concerning multiple victims. He received ten consecutive habitual felon sentences. The court ruled that the search warrant of the defendant's residence was valid (see the court's discussion of issues such as the affiant-officer's alleged intentional omission of material facts and the application of the plain view doctrine

### **After Police Knock and Announce Their Presence, An Individual Who Does Not Live At The Residence Subject to the Search Warrant May Peacefully Leave if Officers Have Not Asked Him To Stay**

*State v. Richardson*, \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (Feb. 16, 2010).

There was insufficient evidence of resisting an officer. The State argued that the defendant resisted by exiting a home through the back door after officers announced their presence with a search warrant. "We find no authority for the State's presumption that a person whose property is not the subject of a search warrant may not peacefully leave the premises after the police knock and announce if the police have not asked him to stay."

## **Trial Court Properly Sealed From Public Inspection Search Warrants Involving Ongoing Investigation of Murder**

*In re Search Warrants*, \_\_\_ N.C. App. \_\_\_, 683 S.E.2d 418 (6 October 2009).

The court ruled that the trial court properly sealed from public inspection search warrants involving the ongoing investigation of a murder. (See the court's opinion concerning the facts and its legal analysis involving the sealing of these search warrants.)

## **Magistrate Did Not Have Substantial Basis for Finding Probable Cause to Issue Search Warrant**

*State v. Taylor*, \_\_\_ N.C. App. \_\_\_, 664 S.E.2d 421 (5 August 2008).

Between August 2, 2006, and September 27, 2006, a reliable, confidential informant made six controlled purchases of cocaine at 3095 Brewer Road in Faison, North Carolina, under the supervision of a law enforcement officer. The search warrant application described two dwellings on the property to be searched: a mobile home and wood frame house located directly behind the mobile home. The application did not identify the owner or occupant of either dwelling. The affidavit was silent concerning where specifically on the property and from whom the informant made the controlled purchases. The affidavit lacked any facts concerning whether the officer saw the informant enter either the mobile home or the wood frame house to make the purchases. Distinguishing *State v. Riggs*, 328 N.C. 213 (1991), the court ruled that the magistrate did not have a substantial basis for finding probable cause to issue the search warrant.

## **Court Upholds Anticipatory Search Warrant Whose Execution Was Contingent on Confidential Informant, Who Was Working Under Officers' Directions, To Give Prearranged Signal to Officers After Informant Entered Residence and Purchased Marijuana There**

*State v. Stallings*, 189 N.C. App. 376, 657 S.E.2d 915 (18 March 2008).

The court, relying on *State v. Falbo*, 526 N.W.2d 814 (Wisc. Ct. App. 1994), and *State v. Smith*, 124 N.C. App. 565 (1996), upheld an anticipatory search warrant whose execution was contingent on a confidential informant, who was working under officers' directions, to give a prearranged signal to the officers after the informant entered a residence and purchased marijuana there. The confidential informant during a prior one year period had purchased marijuana from the defendant at his residence. Based on the Falbo and Smith rulings, the court set out a test to consider the legality of this anticipatory search warrant and concluded that the warrant satisfied the test.

## **(1) Probable Cause Existed to Issue Search Warrant to Search Computer in Defendant's Home Based on Instant Messages Between Defendant and Law Enforcement Officers Posing as Twelve-Year-Old Girl**

## **(2) Impossibility Not Bar to Commission of Attempt Offenses Based on Conversations With Law Enforcement Officers Posing as Young Girl**

*State v. Ellis*, 188 N.C. App. 820, 657 S.E.2d 51 (19 February 2008).

(1) The court ruled that probable cause existed to issue a search warrant to search a computer in the defendant's home based on instant messages between the defendant and law enforcement officers posing as a twelve-year-old girl. The search warrant affidavit contained many sexually explicit instant message conversations in which the defendant asked to meet the "children" to engage in sexual conduct and stated that he transmitted a video of himself masturbating. Other conversations including his statements to a "mother" of young girls involving sexual contact with the girls. In other conversations the defendant admitted that he had penetrated children with his penis. (2) The court also stated that although it was not necessary to find in upholding the search warrant, the defendant's conversations with officers posing as a young girl constituted attempted indecent liberties under G.S. 14-202.1 and attempted computer solicitation under the former version of G.S. 14-202.3. Impossibility of committing the completed offenses would not bar a person from attempting to commit these offenses; see *State v. Hageman*, 307 N.C. 1 (1982).

## **Probable Cause Existed to Support Search Warrant of Defendant's Home and His Computer for Child Pornography**

*State v. Dexter*, 186 N.C. App. 587, 651 S.E.2d 900 (6 November 2007).

Officers received an email tip from a person they later verified as the defendant's housemate. The email reported the defendant's having child pornography on his home computer. The court noted that although the housemate later recanted her email tip, the officers confirmed the easily verified information from the tip which increased her credibility. The court reviewed the officers' additional corroboration of the tip (see the facts set out in its opinion) and ruled that probable cause supported the issuance of a search warrant for the defendant's home and his computer for child pornography.

## **(1) Magistrate Had Substantial Basis for Concluding There Was Probable Cause to Issue Search Warrant to Search Home for Illegal Drugs; Court Reverses Trial Judge's Grant of Defendant's Pretrial Motion to Suppress**

*State v. Edwards*, \_\_\_ N.C. App. \_\_\_, 649 S.E.2d 646 (4 September 2007).

The trial judge granted the defendant's pretrial motion to suppress evidence on the ground that probable cause did not exist to issue a search warrant to search the defendant's home for illegal drugs. The judge then dismissed the indictments against the defendant. The state appealed. (1) The court ruled that the magistrate had a substantial basis for concluding there was probable cause to issue a search warrant to search the defendant's home for illegal drugs. The officer's affidavit stated that he had received information from a confidential and reliable informant who had seen hydrocodone

(without a prescription) inside the defendant's home within the past 48 hours. He had known the informant for nine years, during which time the informant had provided "confidential and reliable" information that had proven true through independent investigations. The informant was familiar with hydrocodone and its uses. The officer had 24 years' experience with his law enforcement agency, including seven years of street level drug interdiction. The court stated that even though the officer did not set out in exact detail the connection between the informant and the prior drug investigations, the magistrate could properly infer that the informant had provided reliable information to the officer in these situations.

**Although Officers' Forcible Entry into Residence During Execution of Search Warrant Violated Fourth Amendment and Was Substantial Violation of G.S. 15A-251, Evidence Seized in Residence Was Not Subject to Suppression Because There Was No Causal Relationship Between Violation and Seizure of Evidence**

*State v. White, 184 N.C. App. 519, 646 S.E.2d 609 (3 July 2007).*

Officers executed a search warrant for illegal drugs. The trial court ruled that the officers' forcible entry into the residence violated the Fourth Amendment and was a substantial violation of G.S. 15A-251, and the substantial violation required suppression of the evidence seized in the residence as a fruit of the poisonous tree. The state on its appeal of the trial court's ruling did not contest that the officers' entry into the residence violated the Fourth Amendment and was a substantial violation of G.S. 15A-251. The court ruled, relying on *State v. Richardson, 295 N.C. 309 (1978)*, that the evidence seized in the residence was not subject to suppression because there was no causal relationship between the violation and the seizure of the evidence. The search was conducted sometime after the forced entry and only after the occupants were secured and the defendant was read a copy of the search warrant. The cocaine would have likely been located even in the absence of the forced entry. (Author's note: The Fourth Amendment's exclusionary rule was not applicable based on the ruling in *Hudson v. Michigan, 126 S. Ct. 2159 (2006)*).

**1) Anticipatory Search Warrants Do Not Categorically Violate Fourth Amendment**

*United States v. Grubbs, (21 March 2006) US Sup Ct*

**2) Fourth Amendment Does Not Require Conditions Precedent to Execution of Anticipatory Search Warrant Be Set Out in Warrant Itself**

*United States v. Grubbs, (21 March 2006) US Sup Ct*

Federal postal inspectors planned a controlled delivery of a child pornography videotape purchased by the defendant for delivery at his home. They obtained a search warrant to search the defendant's home contingent on the delivery of the videotape and its being taken into the residence. The contingency language was contained in the affidavit to the search warrant, but the affidavit was not incorporated into the search warrant. [Author's

note: North Carolina's search warrant form, AOC-CR-119, incorporates the application for a search warrant, which includes the affidavit. See *State v. Carrillo*, 164 N.C. App. 204, 595 S.E.2d 219 (2004) (anticipatory search warrant was valid under Fourth Amendment when contingency language for executing the search warrant was set out in affidavit and warrant incorporated the affidavit by reference).] 1) The Court ruled that anticipatory search warrants do not categorically violate the Fourth Amendment. Two prerequisites must be satisfied, however. There is a fair probability (probable cause) that contraband or evidence of a crime will be found in a particular place, and probable cause to believe that the triggering condition will occur. 2) The Court also ruled that the Fourth Amendment does not require that the conditions precedent to the execution of an anticipatory search warrant must be set out in the warrant itself. In this case, the conditions precedent to the warrant's execution were set out in the affidavit to the search warrant. [Author's note: For a discussion of anticipatory search warrants under North Carolina case law, see page 140 of Robert L. Farb, *Arrest, Search, and Investigation in North Carolina* (3d ed. 2003), and the Carrillo ruling, discussed above, that was decided after the book's publication.]

**Law Enforcement Officers may enter a home without a Search Warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury**

*Brigham City v. Stuart*, 126 S. Ct. 1943 (2006)

It is a "basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable." *Groh v. Ramirez*, 540 U.S. 551, 559, 124 S. Ct. 1284, 157 L. Ed. 2d 1068 (2004) (quoting *Payton v. New York*, 445 U.S. 573, 586, 100 S. Ct. 1371, 63 L. Ed. 2d 639 (1980) (some internal quotation marks omitted)). Nevertheless, because the ultimate touchstone of the Fourth Amendment is "reasonableness," the warrant requirement is subject to certain exceptions. *Flippo v. West Virginia*, 528 U.S. 11, 13, 120 S. Ct. 7, 145 L. Ed. 2d 16 (1999) (*per curiam*); *Katz v. United States*, 389 U.S. 347, 357, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967). [\*\*\*10] We have held, for example, that law enforcement officers may make a warrantless entry onto private property to fight a fire and investigate its cause, *Michigan v. Tyler*, 436 U.S. 499, 509, 98 S. Ct. 1942, 56 L. Ed. 2d 486 (1978), to prevent the imminent destruction of evidence, *Ker v. California*, 374 U.S. 23, 40, 83 S. Ct. 1623, 10 L. Ed. 2d 726 (1963), or to engage in "hot pursuit" of a fleeing suspect, *United States v. Santana*, 427 U.S. 38, 42-43, 96 S. Ct. 2406, 49 L. Ed. 2d 300 (1976). "Warrants are generally required to search a person's home or his person unless 'the exigencies of the situation' make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment." *Mincey v. Arizona*, 437 U.S. 385, 393-394, 98 S. Ct. 2408, 57 L. Ed. 2d 290 (1978). One exigency obviating the requirement of a warrant is the need to assist persons who are seriously injured or threatened with such injury. "The need to protect or preserve life or avoid serious injury is justification for what would be otherwise [\*\*\*658] illegal absent an exigency or emergency." *Id.*, at 392, 98 S. Ct. 2408, 57 L. Ed. 2d 290

(quoting *Wayne v. United States*, 115 U.S. App. D.C. 234, 318 F.2d 205, 212 (CADDC 1963) (Burger, J.)); see also [\*\*\*11] *Tyler, supra*, at 509, 98 S. Ct. 1942, 56 L. Ed. 2d 486. Accordingly, law enforcement officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury. *Mincey, supra*, at 392, 98 S. Ct. 2408, 57 L. Ed. 2d 290; see also *Georgia v. Randolph*, 547 U.S. \_\_\_, \_\_\_ 126 S. Ct. 1515, 1525, 164 L. Ed. 2d 208 (2006) ("It would be silly to suggest that the police would commit a tort by entering . . . to determine whether violence (or threat of violence) has just occurred or is about to (or soon will) occur").

### **Searches and Seizures--Search warrant for house--Marijuana in curbside garbage--Criminal history--Probable cause**

*State v. Sinapi* 359 NC 394 (2005) Rev'd Ct Appeals 164 N. C. APP. 56 (2004)  
Magistrates are entitled to draw reasonable inferences from the material supplied to them and their determination of probable cause is entitled to great deference. Here, the trial court erred by suppressing evidence seized from inside defendant's house pursuant to a search warrant that was based on marijuana plants in a garbage bag taken from defendant's curb, defendant's drug-related criminal history, and information that defendant was linked to a heroin sale and overdose. See Farb P. 3

### **1) Detention of House Occupant in Handcuffs for Two to Three Hours During Execution of Search Warrant Concerning Gang Shooting Was Reasonable Under Fourth Amendment (2) Questioning Concerning Immigration Status of House Occupant Detained During Execution of Search Warrant Concerning Gang Shooting Did Not Violate Fourth Amendment When Questioning Did Not Prolong Length of Detention**

*Muehler v. Mena*, (22 March 2005).

Officers obtained a search warrant for a house and premises to search for deadly weapons and evidence of gang membership related to an investigation of a gang-related drive-by shooting. A SWAT team and other officers (a total of 18 officers altogether) executed the warrant. Aware that the gang was composed primarily of illegal immigrants, an INS officer accompanied the officers. One or two officers guarded four occupants detained at the scene, who were handcuffed for about two to three hours while the warrant was executed. In addition, an INS questioned the occupants about their immigration status while the warrant was executed. One of the occupants (the plaintiff in this case) sued the officers for allegedly violating her Fourth Amendment rights during the execution of the search warrant. 1) The Court ruled that the detention of the plaintiff in handcuffs was reasonable under the Fourth Amendment. The two to three hour detention in handcuffs in this case did not outweigh the officers' continuing safety interests. 2) The Court ruled that the questioning of the plaintiff about her immigration status did not violate the Fourth Amendment because the plaintiff's detention during the execution of the search warrant

was not prolonged by the questioning. Mere questioning by law enforcement does not constitute a seizure. [Author's note: This ruling appears to affirm validity of cases that have ruled that law enforcement questioning during a traffic stop is not limited by the Fourth Amendment, even though the questioning is unrelated to the traffic stop, when the questioning does not prolong the detention of the motorist during the stop. See cases in note 163 on page 55 of Robert L. Farb, *Arrest, Search, and Investigation in North Carolina* (3d ed. 2003).]

### **1) Search Warrant Was Invalid Under Fourth Amendment Because It Did Not Describe Things to Be Seized and Did Not Incorporate by Reference Application's Description of Things to Be Seized**

*Groh v. Ramirez, Sup Ct. February 24, 2004:*

An officer with the Bureau of Alcohol, Tobacco and Firearms prepared and signed an application for a search warrant to search a ranch for specified weapons, explosives, and records. The application was accompanied by a detailed affidavit setting out the basis for believing that the items were on the ranch and was accompanied by a warrant form that he completed. The magistrate signed the warrant form even though it did not describe the things to be seized; instead, the space on the warrant for listing those items merely described the house on the ranch. The warrant did not incorporate by reference the application's list of the items to be seized. 1) The Court ruled that the search warrant was invalid under the Fourth Amendment because it did not describe the things to be seized and did not incorporate by reference the application's description of the things to be seized. [Author's note: This ruling does not affect the validity of AOC-CR-119, Rev. 9/02 (Search Warrant), because the warrant language specifically incorporates by reference the items to be seized that are described on the accompanying application.]

### **2) Officer Was Not Entitled to Qualified Immunity Because No Reasonable Officer Could Believe That Search Warrant Complied with Fourth Amendment**

*Groh v. Ramirez, Sup Ct. February 24, 2004:*

The Court ruled that the officer was not entitled to qualified immunity because no reasonable officer could believe that the search warrant complied with the Fourth Amendment.

### **Forcible Entry Into Apartment With Search Warrant for Cocaine After Wait of Fifteen to Twenty Seconds, When Officers Had Previously Knocked on Door and Announced Their Authority, Did Not Violate Fourth Amendment**

*United States v. Banks, US Sup Ct.*

Officers with knowledge that the defendant was selling cocaine at his residence obtained a search warrant to search his two-bedroom apartment. As soon as they arrived there in the afternoon, officers at the front door called out "police search warrant" and rapped hard enough on the door to be heard by officers at the back door. There was no indication whether anyone was at home, and after waiting for 15 to 20 seconds with no answer, they broke open the front door with a battering ram. The Court ruled that the forcible entry into the apartment under these circumstances did not violate the Fourth Amendment. [Author's note: This ruling did not set fifteen to twenty seconds as a Fourth Amendment required minimum waiting time before using force to enter a residence with a search warrant. The Court in its opinion stressed that each case must be decided on the totality of circumstances presented to the officers as they attempt to execute a search warrant.]

### **Search and Seizure--Basis for warrant--Trash pick-up--insufficient connection to house**

*State v. Sinapi, 164 N. C. APP. 56 (2004) \*\*\* Rev'd State v. Sinapi 359 NC 394 (2005)*  
The trial court correctly suppressed evidence of marijuana seized from defendant's residence where the seizure was based on a search warrant supported by an affidavit stating that marijuana had been found in a trash bag near the curb in defendant's front yard. The affidavit did not contain sufficient facts and circumstances linking the bag to defendant's residence and failed to establish probable cause for a warrant to search the house.

### **Search and Seizure--Search warrant--Motion to suppress cocaine**

*State v. Rodgers 161 N. C. APP. 311 (2003)*  
The trial court did not err by denying defendant's motion to suppress cocaine found in his home as the result of a search warrant, because: 1) the law does not require absolute certainty, but only requires that probable cause exists to believe there are drugs on the premises; and 2) based on a confidential informant's tip and the officer's training and experience, the totality of circumstances provided sufficient probable cause to support issuance of the search warrant for defendant's home.

### **2) Search and Seizure--Affidavit supporting warrant--Insufficient**

*State v. McHone, 158 N. C. APP. 117 (2003)*  
The trial court correctly concluded that the affidavit supporting a search warrant was insufficient, and did not err by granting defendant's motion to suppress, where the affidavit referred to a lengthy interview of defendant but did not contain the substance of the interview, and concluded that probable cause existed but did not relate particular facts supporting that belief.

## 2) **Search and Seizure--Motion to suppress--Drugs--Anticipatory search warrant**

*State v. Baldwin, 161 N.C. App. 382 (2003)*

The trial court did not err in a trafficking in cocaine by possession, trafficking in cocaine by transportation, conspiracy to traffic in cocaine, possession with intent to sell or deliver marijuana, and maintaining a dwelling for the purpose of keeping or selling controlled substances case by denying defendant's motion to suppress evidence seized pursuant to an anticipatory search warrant, because: 1) although defendant contends findings of fact were required for denying the motion to suppress, there was no dispute regarding the events of the search or the items seized; and 2) the anticipatory search warrant met the three requirements of *State v. Smith, 124 N.C. App. 565 (1996)*.

## **Search and Seizure--Anticipatory search warrant--Tripartite test--Motion to suppress drugs**

*State v. Phillips, 160 N.C. App. 549 (2003)*

The trial court did not err in a trafficking in cocaine and maintaining a dwelling for the keeping of a controlled substance case by denying defendant's motion to suppress evidence seized pursuant to an anticipatory search warrant, because the warrant met the tripartite test including: 1) the triggering event for execution of the warrant was the successful controlled delivery of a Federal Express package to the listed address, and a magistrate is not required to set forth the precise time following the occurrence of the triggering event when an officer must execute the warrant; 2) the warrant precluded delegation of power to the executing officer to find probable cause and ensured the contraband was present at the time of the warrant's execution when the execution of the warrant was contingent on delivery of the package to the listed address; and 3) it is undisputed that the package was delivered and taken into the listed address prior to the execution of the search warrant, and defendant failed to cite any authority for his proposition that a valid and correct address not contained in a city directory would be deficient as a means of establishing with reasonable certainty the premises to be searched.

## **Search and Seizure—Warrant--Improper address--Failure to use full name--Motion to suppress**

*State v. Moore 152 N. C. APP. 156 (2002)*

The trial court did not err in a trafficking in cocaine and knowingly maintaining a place to keep or sell a controlled substance case by denying defendant's motion to suppress the evidence seized at defendant's home pursuant to a search warrant even though the warrant did not use defendant's full name and defendant's address was listed as "996" instead of "995," because: 1) the executing officer's prior knowledge of the house to be searched is relevant, and the officer had previously been to defendant's residence and observed defendant there; 2) the address described in the search warrant may differ from

the address of the residence actually searched; and 3) a search warrant is not defective for failure to specifically name a defendant.

### **1) Search and Seizure--Probable cause for warrant--Controlled buy--Sufficiency of affidavit**

*State v. Reid, 151 N. C. APP. 420 (2002)*

An officer's affidavit was sufficient to establish probable cause for the issuance of a warrant to search an apartment leased by defendant for narcotics based upon a controlled buy of cocaine at the apartment by a confidential informant, although the affidavit did not indicate the identity of the specific person from whom the informant had purchased cocaine, where the affidavit stated that 1) the informant purchased cocaine from someone at the apartment within the previous six days, 2) the informant had told officers that a white female with the same first name as defendant and a black male were in the business of selling cocaine from the apartment, and 3) the informant had witnessed the white female and the black male in possession of cocaine within the previous six days.

### **Search and Seizure--Warrant--Reports of heavy traffic at residence--Drugs not observed--Affidavit insufficient**

*State v. Hunt, 150 N. C. APP. 101 (2002)*

The trial court erred in a controlled substance prosecution by not granting defendant's motion to suppress evidence seized pursuant to a search warrant where the affiant stated in his application that drug trafficking was occurring at defendant's premises based on citizen complaints and officer verification of heavy vehicular traffic with short visits, there was no mention of anyone seeing drugs on the premises, and the affidavit was insufficient to establish probable cause.

### **Officers' Entry into Defendant's Home Without Arrest Warrant or Search Warrant Required Exigent Circumstances**

*Kirk v. Louisiana, (24 June 2002).*

Officers entered the defendant's home to arrest him without an arrest warrant, search warrant, or consent to enter. A state appellate court ruled that the officers did not violate the Fourth Amendment because the officers had probable cause to arrest the defendant. The Court ruled that the state appellate court's reasoning plainly violated its ruling in *Payton v. New York*, 445 U.S. 573, 100 S. Ct. 1371, 63 L. Ed. 2d 639 (1980). Exigent circumstances must exist if officers enter a home to arrest a defendant without an arrest warrant, search warrant, or consent to enter. The Court did not decide whether exigent circumstances existed in this case.

## **2) Search and Seizure--Unlawful warrantless entry--Subsequent warrant--Independent source doctrine**

*State v. Robinson, 148 N. C. APP. 422 (2002)*

Assuming that a warrantless entry by officers into defendant's home was not justified by exigent circumstances and was unlawful, evidence thereafter seized from the home pursuant to a subsequently obtained search warrant was admissible under the independent source doctrine where the search warrant was obtained on the basis of an informant's tip that defendant was growing marijuana in his home, corroborating evidence obtained while officers were lawfully on the premises attempting to gain consent to search, and defendant's refusal to consent to a search; the warrant application contained no information concerning what the officers observed when they initially entered the home without a warrant; and there was no indication that the warrant was prompted by what the officers saw during the warrantless entry.

## **3) Search and Seizure--Warrant--Probable cause--Corroboration of tip**

*State v. Robinson, 148 N. C. APP. 422 (2002)*

A detective's affidavit provided a sufficient showing of probable cause to support issuance of a search warrant where an informant's anonymous tip was not reliable standing alone, but the information in the tip was sufficiently corroborated to provide reasonable cause to believe that a search of defendant's house would reveal marijuana.

*State v. Nowell, 355 N.C. 273 (2002)*

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, 144 N.C. App. 636, 550 S.E.2d 807 (2001), reversing in part and reversing and remanding in part judgments entered 8 December 1999 by Allsbrook, J., in Superior Court, Halifax County. On 4 October 2001, the Supreme Court granted the State's petition for discretionary review of an additional issue. Heard in the Supreme Court 12 February 2002. AFFIRMED.

## **Search and Seizure--Narcotics--Strip search--Warrant not exceeded**

*State v. Johnson, 143 N.C. App. 307, 2001*

Officers executing a search warrant for narcotics did not exceed the scope of the warrant by performing a strip search of defendant where the warrant was executed for the express purpose of finding controlled substances on the premises or the persons described in the warrant, including defendant; such substances could be readily concealed on the person; an officer testified that there is a trend toward hiding controlled substances in body cavities; the search of the premises had revealed electronic scales and an initial search of defendant had revealed almost \$ 2,000 in small denominations; and the search was done

in a reasonable manner in that defendant was taken into his bedroom by two male officers who did not touch him.

#### **4) Search and Seizure - Warrant - Tainted evidence**

*State v. Woods, 136 N.C. App. 386 (2000)*

Even though the officers' prior warrantless entries into defendant's residence did not violate the Fourth Amendment since the security alarm was sounding at the time officers arrived, the back door of the residence was ajar, and a cursory inspection revealed a recently broken window, the officers' search violated the permissible scope, and the trial court erred in denying defendant's motion to suppress the additional evidence the officers obtained pursuant to a warrant because the illegally discovered marijuana and cash obtained during the warrantless search comprised more than a minor portion of the evidence establishing probable cause for the warrant, and thus, the fruits obtained pursuant to the search under the warrant are inadmissible.

#### **Search and Seizure - Warrant for premises - Search of individual - Probable cause**

*State v. Cutshall, 136 N.C. App. 756 (2000)*

Even though police officers had a warrant to search a mobile home and all outbuildings at the residence for crack cocaine and other controlled substances, the trial court violated defendant's Fourth Amendment right to be free from an unreasonable search and seizure by failing to suppress a rock of crack cocaine and the crack pipes obtained from defendant's jacket because the officers' search in the instant case yielded the exact object of the officers' investigation, crack cocaine, which meant the officers' statutory authority under N.C.G.S. 15A-256 to search defendant ceased to exist.

#### **1) Search and Seizure--warrant--scope of search**

*State v. Miller 137 N.C. App. 450 2000*

The trial court did not err in an indecent liberties with a minor, first-degree sexual exploitation, statutory sexual offense, and statutory rape case by denying defendant's motion to suppress evidence seized by police officers during the search of his residence pursuant to a search warrant based on an affidavit containing information about a police agent's interview of the minor, as well as information obtained in a consent search of defendant's home, because: 1) even if the minor had been subjected to custodial interrogation in which her statutory rights and constitutional rights had not been protected, defendant is without standing to assert that any violation of the minor's rights would protect defendant; 2) although defendant asserts the minor's statements to the police agent were coerced and untruthful, the veracity of the agent as the affiant, instead of the minor, is at issue; and 3) there is no evidence that the officers exceeded the scope of defendant's initial consent to search since a copy of defendant's written consent to search is contained in the record on appeal, and there were no restrictions.

### **1) Searches and Seizures 21 (NCI3d) - Informant's tip - No probable cause sufficient to issue search warrant**

*State v. Wallace, 111 N.C. App. 581 (1993)*

An informant's tip that marijuana was being grown in the basement of a residence, standing alone, was insufficient to constitute probable cause to issue a search warrant.

### **Searches and Seizures §§ 118, 85 (NCI4th) anticipatory search warrants requirements**

*State v. Smith, 124 N.C. App. 565, 478 S.E.2d 237 (1996)*

The trial court erred in a prosecution for conspiracy to traffic in cocaine and trafficking in cocaine by denying defendant's motion to suppress evidence obtained through an anticipatory search warrant. Although anticipatory warrants are constitutionally permissible under both the North Carolina and federal constitutions, this warrant is defective under the North Carolina Constitution because the ultimate locus of the contraband could have been anywhere; there were no conditions governing execution of the warrant, so that the investigators rather than the issuing judge totally controlled the events giving rise to probable cause; the warrant was overly broad in that it did not ensure that the cocaine was on a sure course to the enumerated premises; and the warrant draws no nexus between the criminal activity, the circumstances of the intended seizure, and the premises. Anticipatory warrants must set out on their face explicit, clear, and narrowly drawn triggering events which must occur before execution may take place; those triggering events must be ascertainable and preordained (meaning that the property is on a sure and irreversible course to its destination); and no search may occur unless and until the property does in fact arrive at that destination. N.C. Const. art. I, § 20.

### **Searches and Seizures 109 (NCI4th) purchase of controlled substance from confidential informant within six days sufficiency of affidavit to support issuance of search warrant**

*State v. Ledbetter, 120 N.C. App. 117 (1995)*

Probable cause existed for issuance of a search warrant where a confidential informant made a purchase of cocaine from defendant at his residence; the officer's affidavit gave a precise and detailed recitation of his observations regarding the controlled purchase; and the statement that the one-time controlled purchase occurred within six days of the application for the search warrant was placed in the affidavit in an effort to conceal the identity of the informant and did not render the controlled purchase stale from the passage of time

**Searches and Seizures 93 (NCI4th) unlawful entry by police officer taint purged by information from others search warrant valid**

*State v. McLean, 120 N.C. App. 838 (1995)*

A search warrant was based upon information independent of and unrelated to an unlawful entry of defendant's apartment by a police officer so as to purge the taint and validate the search warrant where the managers of the apartment complex and an exterminator who treated defendant's apartment gave sufficient information about marijuana plants and drug paraphernalia found by them in the apartment to dissipate any taint arising from the officer's unlawful entry.

**3) Searches and Seizures § 100 (NCI4th) - Search warrant - False information in affidavit - Failure to show bad faith**

*State v. Fernandez, 346 N.C. 1 (1997)*

Defendant failed to show that a search warrant was invalid and that evidence seized thereunder was inadmissible under *Franks v. Delaware*, 438 U.S. 154 (1978) and N.C.G.S. § 15A-978 on the ground facts necessary to establish probable cause were asserted in the affidavit either with knowledge of their falsity or with a reckless disregard for the truth where the affiant, an SBI agent, testified at the hearing on defendant's motion to suppress that the vast majority of information set forth in the affidavit was gleaned from discussions with other law officers who had talked directly with witnesses, and other evidence presented by defendant at the hearing only served to contradict assertions contained in the affidavit but failed to show bad faith by the affiant.

**4) Searches and Seizures § 87 (NCI4th) - Search warrant - Blood samples from defendant – Probable cause**

*State v. Dickens, 346 N.C. 26 (1997)*

The trial court did not err in a first-degree murder prosecution by failing to suppress blood samples drawn from defendant pursuant to a search warrant where defendant argued that there was no forecast of evidence that defendant's blood either constituted evidence of murder or would assist in identifying the perpetrator, but the affidavit signed by an agent to support the issuance of the warrant contained ample data to support the warrant and the cumulative effect of the information establishes that the blood samples seized from defendant provide evidence of the offense and the identity of the person participating in the crime.

**Searches and Seizures 12 (NCI3d)--No detention or seizure of defendant before arrest-- Probable cause for arrest--Physical evidence --Seizure incident to arrest and under warrant**

*State v. Farmer, 333 N.C. 172 (1993) 424 S.E.2d 120*

Defendant was not "detained" or "seized" within the meaning of the Fourth Amendment to the U.S. Constitution or Art. I, 20 of the N.C. Constitution where defendant's encounter with the officers took place on a public street; the officers wore no uniforms and displayed no weapons; they did not summon the defendant into their presence but approached him and identified themselves as law officers; the officers requested, but did not demand, information concerning the defendant's identity and place of residence and asked why he was covered with what appeared to be blood; and the officers asked defendant why he had given them a false name after it became apparent that he had done so. Furthermore, officers had probable cause to arrest defendant for murder when they received information from an individual that defendant had left the individual's house headed in the direction of the victim's residence at 8:30 p.m. on the date the victim was killed, and that when defendant returned at 11:00 p.m., he had blood on his face and clothes and in his ears. Therefore, physical evidence seized at the time of defendant's arrest and during the later execution of a search warrant supported by probable cause was properly admitted in defendant's trial for first degree murder.