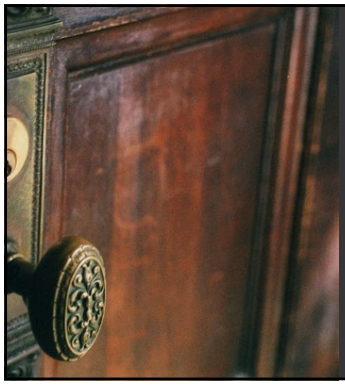


Entering Private Property

for Environmental Health Specialists

Shea Denning
UNC School of Government
March 2021

1

Statutory Authority

"The . . . health director shall have the right of entry upon the premises of any place where entry is necessary to enforce [the health laws]. If consent for entry is not obtained, an administrative search and inspection warrant shall be obtained [unless there is an emergency]."

- G.S. 130A-17

2

The 4th Amendment

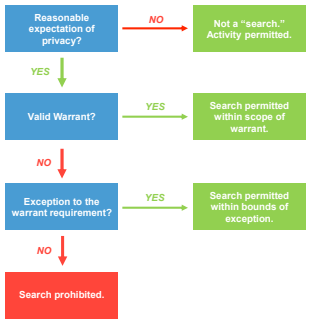
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

3

- A "search" is any intrusion into a private location.
- Searches must be reasonable.
- A search with a valid warrant, supported by probable cause, is reasonable.
- There are a few limited circumstances in which a search is reasonable without a warrant.

4

FOURTH AMENDMENT FLOW CHART



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Reasonable Expectation of Privacy?

6

6

Curtilage

Any area directly and intimately connected with the home and in proximity to it.

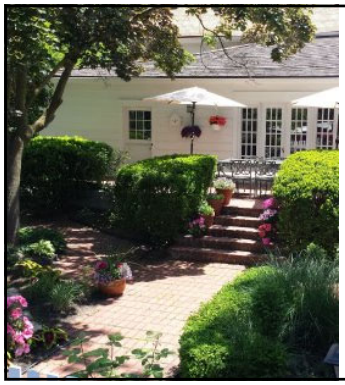
Generally subject to a reasonable expectation of privacy

Open Fields

Any area that is not within the curtilage is an open field.

Not subject to a reasonable expectation of privacy

7



Curtilage of a Dwelling

- To determine whether an area, building, etc., is within the curtilage, a court will consider:
  - The proximity of the area to the home
  - Whether the area is within an enclosure surrounding the home
  - The nature and use to which the area is put
  - Efforts taken by the resident to protect the area from observation by passers-by

8

Common Entranceways

- "When officers go to a house by using the common entranceway . . . for a legitimate purpose . . . they are not conducting a search under the Fourth Amendment – even though they have entered the curtilage."

9

9

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10

REP exists in offices and similar areas

No REP in a business open to the public

Businesses don't have curtilage

Privacy & Business Property

11

Plain View Observation

- When an item or an area "is left in open view and is observed . . . from a lawful vantage point, there has been no invasion of a legitimate expectation of privacy and thus no 'search'."

12

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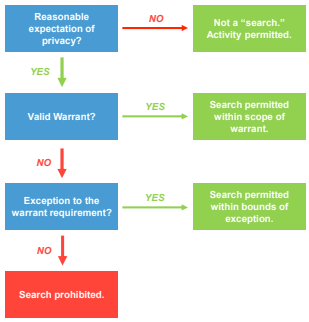

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Consent

14

Who may give consent to search?

Children?	
Tenants or landlords?	
Housemates?	
Employees?	

15

15

Consent must be voluntary.

Scope of consent search is controlled by the person giving consent.

16

16

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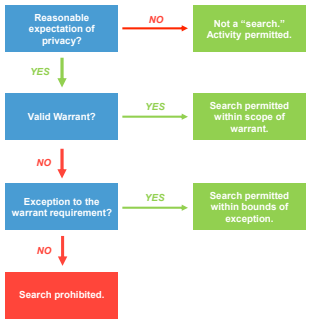

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STATE OF NORTH CAROLINA
In The General Court Of Justice
_____ County

AFFIDAVIT TO OBTAIN ADMINISTRATIVE INSPECTION WARRANT FOR PARTICULAR CONDITION OR ACTIVITY

I, _____, being
(name and position)
duly sworn and examined under oath, state under oath that there is probable cause for believing that there is
_____
(describe condition, object, activity, or circumstance which the search is intended to check or reveal)
at the property owned or possessed by _____
and described as follows: _____
(precisely describe the property to be inspected)
The facts which establish probable cause to believe this are: _____

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Administrative Inspection Warrants

Similar to search warrants

Usually issued by magistrate

Authorized

- *Camara v. Municipal Court*, 387 U.S. 523 (1967)
- G.S. 15-27.2

Forms

- AOC-CR-913M (particular condition or activity)
- AOC-CR-914M (periodic inspection)

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Administrative Inspection Warrants

Particular condition/activity

Must show a "fair probability" of a violation

Periodic inspection

Must show inspection is included in a program of inspection

Examples:

- Inspect each bar every year
- Inspect each well every five years

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Execution of Administrative Inspection Warrant

Must be executed within 24 hours

Must be executed between 8 a.m. and 8 p.m.

Bring a law enforcement officer if possible

Serve a copy of the warrant on the owner/possessor of property

Return to clerk's office after execution

21

Fourth Amendment Violations

- Civil lawsuit against government officer and agency
- Criminal prosecution of government officer
- Disciplinary action against government officer
- Exclusion of evidence

22

Second-Degree Trespass

- A person without authorization enters or remains on premises of another
  - After having been notified not to do so by the owner, a person in charge of the premises, a lawful occupant, or another authorized person, or
  - When the premises are posted, in a manner reasonably likely to come to the attention of intruders, with notice not to enter the premises
- G.S. 14-159.13

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Poll Everywhere

PollEv.com/sheadenning

24

The curtilage

is the area immediately surrounding a business that may not be entered without the owner's consent or a warrant

is the area between a fence surrounding the home and the home itself

is the area, closely connected with the home, that serves the daily needs of the home's occupants

Is the area surrounding the home that is posted with no trespassing signs

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An EHS may obtain valid consent to inspect a rental property

from either the landlord or the tenant

only if both the landlord and the tenant agree

from the landlord, even if the tenant does not consent

from the tenant, even if the landlord does not consent

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An administrative inspection warrant

A. may be issued only if there is probable cause to believe that a violation of a law has occurred or is occurring on the property to be inspected

B. may be issued if there are grounds to believe that the property described in the affidavit is to be inspected as part of a legally authorized program of inspection that naturally includes the property

C. may be issued if there is probable cause to believe that there is a condition, object, activity, or circumstance legally justifying an inspection of the property described in the affidavit

D. both B. and C.

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An administrative inspection warrant

may be executed by an EHS at any time within 48 hours after the warrant was issued

must be supported by probable cause to believe that a criminal violation of a health or sanitation law has occurred

allows an EHS to conduct an inspection without obtaining the consent of the person who owns or rents the property

must be executed by a law enforcement officer

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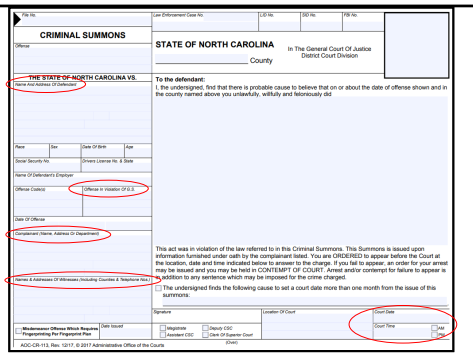

CRIMINAL SUMMONS

STATE OF NORTH CAROLINA

_____ County

In The General Court Of Justice
District Court Division

THE STATE OF NORTH CAROLINA VS.

To the defendant:

I, the undersigned, find that there is probable cause to believe that on or about the date of offense shown and in the county named above you unlawfully, willfully and feloniously did

This act was in violation of the law referred to in this Criminal Summons. This Summons is issued upon information furnished under oath by the complainant listed. You are ORDERED to appear before the Court at the location, date and time indicated below to answer to the charge. If you fail to appear, an order for your arrest may be issued and you may be held in CONTEMPT OF COURT. Arrest and/or contempt for failure to appear is in addition to any sentence which may be imposed for the crime charged.

☐ The undersigned finds the following cause to set a court date more than one month from the issue of this summons:

AOC-CR-113, Rev. 12/17, © 2017 Administrative Office of the Courts

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Working with the District Attorney

- Make contact in advance
- Know what to bring
- Be patient
- Prepare to testify

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