

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA**

YOLANDA IRVING, et al.,

Plaintiffs,

v.

THE CITY OF RALEIGH, et al.,

Defendants.

**5:22:CV-0068-BO**

**MEMORANDUM IN OPPOSITION TO MOTION FOR PROTECTIVE ORDER  
RELATED TO DEPOSITION OF DEFENDANT CHIEF OF POLICE ESTELLA  
PATTERSON**

The City of Raleigh and Official Capacity Defendants have moved for a protective order (D.E. 132) forbidding the deposition of Defendant Chief of Police Estella Patterson. For the reasons set forth below, Plaintiffs respectfully oppose the Motion.

Chief Patterson has unique personal knowledge of relevant facts and her media interview on WRAL about “No Knock” warrants and how she interprets the “Knock and Announce” warrant execution policy have made her interpretation of these subjects central to the claims and defenses in this case. Plaintiffs do not seek the deposition of Defendant Patterson for purposes of burden, harassment, or

embarrassment, but rather to obtain necessary and highly relevant information that no other defendant or deponent can provide.

### **RELEVANT FACTS**

Plaintiffs are ten private individuals and an organizational plaintiff challenging, among other things, the Raleigh Police Department's policy and practice of entering private homes on a search warrant without providing constitutionally required notice, what the Complaint refers to as "No Knock" or "Quick Knock" warrant executions (Claim 2).

The complaint alleges that when Raleigh Police execute a search warrant, police generally enter a private home almost-simultaneously with knocking and announcing their presence, within 1 to 2 seconds of the announcement, rendering "Knock and Announce" warrants effectively into "Quick Knock" warrants. The "announcement" that police provide does not permit adequate opportunity for any resident to comply by answering the door and permitting entry voluntarily, nor enough time for surprised and shocked residents to realize what is happening and make a rational decision on how to react to a surprising and upsetting incident. This warrant execution practice is unconstitutional and dangerous. It is associated with the loss of life – both law enforcement and civilians – because the element of surprise causes people to react out of fear and shock, rather than rational decision-making. For this reason, many departments, including the Federal Bureau of Investigation, Charlotte-Mecklenburg Police, and Buncombe County Sheriff, have banned "No Knock" warrants explicitly and publicly and they specify that "Knock and Announce"

warrants *should be executed in a manner consistent with giving actual notice to the occupants.*

## **AREAS OF THE CHIEF’S UNIQUE FIRST-HAND KNOWLEDGE**

Plaintiffs seek to depose Defendant Chief of Police Estella Patterson on an area of unique first-hand knowledge because Plaintiffs seek to understand the following questions, which are highly relevant to the facts at issue in Claim 2 of this litigation:

### **1. What exactly *is* Raleigh Police’s warrant execution policy? Does its policy forbid “No Knock” warrant executions?**

Defendant Patterson has stated to the news media that Raleigh Police does not engage in “No Knock” warrants. *See* Maggie Brown, “Lawsuit accuses Raleigh police of illegally raiding two families’ homes using no-knock warrant,” WRAL (Feb. 22, 2022) (available online). Depositions of Defendant Officers Mead and Ortiz also reveal that Raleigh has a practice, if not a written policy, of avoiding “No Knock” warrants, i.e., warrants executed without any knock or announcement – although both noted the existence of exigency exceptions to that general practice. Notwithstanding the Chief’s claim in the media, however, Plaintiffs are unaware of any publicly available document commemorating an official policy forbidding “No Knock” warrants, or the exigency exceptions. Meanwhile, video footage of officers entering the individual plaintiffs’ homes demonstrates that they *did not knock* prior to entering. Chief Patterson stated to WRAL: “It is very clear that we won’t serve no-knock warrants. Officers must knock and announce when executing a warrant. I personally believe

that it is the best route to take. It's the safest for favorable outcomes for our employees as well as those where we are serving warrants." *Id.*

Other North Carolina agencies, including the Charlotte-Mecklenburg Police Department and the Buncombe Sheriff's Office have promulgated official policies banning "No Knock" warrants, unless there are individualized circumstances posing a risk to life. These policies are available on their websites for the public to peruse. On information and belief, Raleigh has no such policy publicly available. Buncombe and Charlotte-Mecklenburg also explicitly describe the purpose of the "Knock and Announce" warrant execution style, which is to give actual notice to occupants sufficient for them to be able to comply and give admittance.

Buncombe County issued a press release and a 21-page policy on warrants on April 26, 2022. The policy states that "Before entering, deputies must knock and give appropriate notice of their identity and purpose to the person in apparent control of the premises to be entered. After announcing their identity and purpose, and *if the deputies believe that admittance is being denied or unreasonably delayed*, the force necessary to complete the entry may be used." *See* Ex. A, Buncombe County Policy.

Charlotte-Mecklenburg Police Department amended its policy on September 30, 2020. It states: "CMPD will not seek or serve "No-Knock" search warrants. An officer engaged in the execution of a search warrant must give notice to those within the premises of the officer's presence by knocking and announcing his/her authority and the purpose of his/her presence before making entry. If the officer executing a search warrant *believes that he/she is being denied entry* after giving due notice of

his/her authority and purpose, the officer may use reasonable force to gain entry.” *See* Ex. B, Charlotte-Mecklenburg Policy.

Why did Defendant Patterson tell the media that Raleigh Police has banned “No Knock” warrants when there is no public evidence of written policy? If it has done so, why does she speak about it publicly, yet Raleigh Police has not promulgated a policy available to the public to review? These are questions that only Defendant Patterson can answer.

**2. What does “Knock and Announce” mean as a matter of practice? Does it mean enough time for a resident to answer the door and permit entry to the home, or does it mean less notice than that? Does it mean “knock, announce, and enter a home by force within a mere second?”**

An additional area of unique knowledge for the Chief is what is meant by “Knock and Announce” warrant execution. Other jurisdictions specify that an officer executing a warrant in this manner must believe that he/she “is being denied entry” before using force to gain entry. But in an recorded interview with WRAL on February 22, 2022, Chief Patterson expressed adherence to a quicker timeline for entry. Chief Patterson stated:

It just states you knock and announce your presence. I have always been taught that you clearly knock on the door and then you clearly announce and then you enter at that time.

Joe Fisher, “Raleigh police chief says her department doesn’t use no-knock warrants,” WRAL (Feb. 22, 2022) (available online).

Chief Patterson additionally stated in the recorded interview:

It's reasonable to make sure that you knock, that you announce, and some sense that it is clear, that you have announced yourself. And that you have given an opportunity to at least be alerted. And that doesn't mean for them to get up and put their clothes on and come to the door but they have been alerted.

*Id.*

These descriptions of what is meant by a “Knock and Announce” warrant – i.e., what is the purpose of the policy and how long is the duration of the pause between the Knock/Announcement and the Forced Entry -- are confusing and non-specific. Depositions of Defendants Mead and Ortiz on November 1, 2022, did not substantially clarify the scope of time required between the Knock/Announce and the Forced Entry, as neither deponent could identify a written policy that describes the required duration or the purpose of a pause between the Knock/Announce and the Forced Entry, and testimony varied from stating that the announcement must be completed three times (i.e., Raleigh Police, Raleigh Police, Raleigh Police), to the concession that the three repetitions could be dispensed with in officer discretion, as it was evidently dispensed with in every body camera video mentioned in the Amended Complaint.

Without written policy delineating the meaning and duration of the “pause-time” in Knock and Announce warrants, Raleigh police officers may take the cue from the Chief that the meaning of “Knock and Announce” is vague and undefined. In all the incidents recounted in the complaint, officers either did not knock prior to entering, or forcibly entered a home within 1 to 2 seconds of the simultaneous knock and announcement – not enough time for the occupant to comply and allow entry. To understand what Defendant Patterson meant when she stated on WRAL “an

opportunity to at least be alerted” is one subject the plaintiffs seek to explore in deposition. Only Defendant Chief Patterson can clarify what she meant by that in this news interview.

For this reason, plaintiffs seek to depose Chief Patterson about this subject and the meaning of “Knock and Announce,” and how much time should pass between the announcement and the forced entry.

## **ARGUMENT**

As Defendants state in their memorandum, to justify taking a high-ranking government official’s deposition, a party may demonstrate that “the official has unique first-hand knowledge related to the litigated claims.” D.E. 132 at 4 (citing *Lederman v. N.Y.C. Dep’t of Parks & Recreation*, 731 F.3d 199, 203 (2d Cir. 2013) (citing cases); *see also Smithfield Bus. Park, LLC v. SLR Int’l Corp.*, No. 5:12-cv-282-F, 2014 WL 547078, at \*2 (E.D.N.C. Feb. 10, 2014) (“[B]efore a plaintiff may depose a corporate defendant’s high ranking officer, the plaintiff must show ‘(1) the executive has unique or special knowledge of the facts at issue and (2) other less burdensome avenues for obtaining the information sought have been exhausted.’” (quoting *Performance Sales & Mktg., LLC*, No. 5:07-cv-00140-RLV, 2012 WL 4061680, at \*3-4 (W.D.N.C. Sept. 14, 2012))).

Here, Chief Patterson’s public comments in the media alleging that Raleigh Police “won’t serve “No Knock” warrants” and her confusing explanation of what duration of “alert” or notice is required by “Knock and Announce” warrants, make her a crucial deponent for Claim 2 of the litigation. Plaintiffs aver that the deposition of

Chief Patterson is not intended for any improper purpose, such as harassment or embarrassment. Rather, the purpose of the deposition is to understand what the Chief of Police believes Raleigh's warrant execution policy actually is and what it actually means since she has gone to the public to describe warrant execution.

There are no other deponents who can describe what she meant on her behalf, so there is no less burdensome alternative to simply asking Chief Patterson what duration of "alert" is required for a Knock and Announce warrant. The apex doctrine shielding high-level executives does not apply to depositions of executives that have "unique or personal" knowledge, and the "wait and see" approach is only intended for high level executives who lack unique knowledge. *See Minter v. Wells Fargo Bank, N.A.* 258 F.R.D. 118 (D. MD 2009). That is not the case here.

Certainly, plaintiffs are willing to accommodate Chief Patterson's schedule, as they have done with depositions of all other defendants they have noticed for deposition to date.

Respectfully submitted, this the 2<sup>nd</sup> day of November, 2022,

/s/ Abraham Rubert-Schewel  
Abraham Rubert-Schewel  
(N.C. Bar # 56863)  
TIN FULTON WALKER & OWEN, PLLC  
119 E. Main Street  
Durham, NC 27701  
Tel: (919) 451-9216  
schewel@tinfulton.com

/s/ Emily Gladden  
Emily D. Gladden  
TIN FULTON WALKER & OWEN, PLLC  
State Bar No.: 49224



204 N. Person Street Raleigh, NC 27601  
Telephone: (919) 720-4201  
Facsimile: (919) 400-4516 [Egladden@tinfulton.com](mailto:Egladden@tinfulton.com)

/s/ Micheal L. Littlejohn Jr.

Micheal L. Littlejohn Jr.  
N.C. Bar No. 49353  
Littlejohn Law PLLC  
PO Box 16661  
Charlotte, NC 28297  
Telephone: (704) 322-4581  
Fax: (704) 625-9396  
[mll@littlejohn-law.com](mailto:mll@littlejohn-law.com)

/s/ Ian Mance

Ian A. Mance  
N.C. Bar No. 46589  
EMANCIPATE NC  
Post Office Box 309 Durham, NC 27702  
Tel: (828) 719-5755  
[ian@emancipatenc.org](mailto:ian@emancipatenc.org)

/s/ Elizabeth Simpson

Elizabeth G. Simpson  
N.C. Bar No. 41596  
EMANCIPATE NC  
Post Office Box 309  
Durham, NC 27702  
Tel: (919) 682-1149  
[elizabeth@emancipatenc.org](mailto:elizabeth@emancipatenc.org)

## CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2022, I electronically filed the foregoing **OPPOSITION TO MOTION FOR PROTECTIVE ORDER** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Dorothy Kibler  
Amy C. Petty  
P.O. Box 590  
Raleigh, NC 27602  
[Dorothy.Kibler@raleighnc.gov](mailto:Dorothy.Kibler@raleighnc.gov)  
[Amy.Petty@raleighnc.gov](mailto:Amy.Petty@raleighnc.gov)  
*Counsel for Defendant The City of Raleigh*

Jason R. Benton  
Daniel Edward Peterson  
Jessica C. Dixon  
Parker Poe Adams & Bernstein, LLP  
620 South Tryon Street, Suite 800  
Charlotte, NC 28202  
[jasonbenton@parkerpoe.com](mailto:jasonbenton@parkerpoe.com)  
[danielpeterson@parkerpoe.com](mailto:danielpeterson@parkerpoe.com)  
[jessicadixon@parkerpoe.com](mailto:jessicadixon@parkerpoe.com)  
*Counsel for Defendant Omar Abdullah*

Norwood P. Blanchard, III  
Crossley McIntosh Collier Hanley & Edes, PLLC  
5002 Randall Parkway  
Wilmington, NC 28403  
Email: [norwood@cmclawfirm.com](mailto:norwood@cmclawfirm.com)  
*Counsel for Defendant William Rolfe*

Rodney E. Petty  
[rpetty@ymwlaw.com](mailto:rpetty@ymwlaw.com)  
Samuel G. Thompson, Jr.  
[bthompson@ymwlaw.com](mailto:bthompson@ymwlaw.com)  
Yates, McLamb & Weyher, LLP

Post Office Box 2889

Raleigh, North Carolina 27602

*Counsel for Officer R.P. Monroe, J.D. Rattelade, and M.C. Gay in their individual capacities*

Leslie C. Packer

Michelle A. Liguori

Ellis & Winters LLP

4131 Parklake Avenue Suite 400

Raleigh NC 27612

[Leslie.packer@elliswinters.com](mailto:Leslie.packer@elliswinters.com)

[Michelle.liguori@elliswinters.com](mailto:Michelle.liguori@elliswinters.com)

*Counsel for Officers Mead, Ortiz, Perrin, Mollere, Thompson, Debonis, Twiddy, Webb, McDonald, and Garner in their individual capacities*

/s/ Elizabeth Simpson

Elizabeth Simpson

EMANCIPATE NC

# Exhibit A

## **Buncombe County Sheriff's Office**

### **X. SEARCH WARRANT PROCEDURE:**

The basis for the issuance of a warrant is Probable Cause.

A. The deputy seeking the search warrant will complete a de-confliction check prior to seeking the warrant.

B. Affidavit for Search Warrant:

1. A search warrant must be based upon a duly sworn to and subscribed to affidavit which sets forth facts to establish probable cause to believe that the property sought to be seized is upon the premises, person, or vehicle to be searched.
2. A search warrant must describe the place to be searched with sufficient particularity so that a reasonable person who is unfamiliar with the investigation could read the description and find the premises, person or vehicle to be searched.
3. A search warrant must particularly describe the property obtained to be seized.
4. A confidential source can provide sufficient probable cause upon which to base a sworn affidavit for a search warrant.
5. The signature of any NC Superior Court Judge must be sought for a search warrant that will be served in another NC county.

C. Execution of a Search Warrant:

1. A search warrant and its attendant sworn affidavit must be reviewed and signed by a judicial official and must be executed and returned to the clerk/magistrate.
2. Prior to the execution of an out of agency search warrant, BCSO deputies shall review it for probable cause and check to see if it is signed by a North Carolina Superior Court Judge. If the supervising deputy determines no probable cause exists, BCSO deputies should not execute the out of agency search warrant.
3. "Knock and Announce" required:
  - a. BCSO will not seek or serve 'No-Knock' search warrants.
  - b. A deputy engaged in the execution of a search warrant must give notice to those within the premises of the deputy's presence by knocking and announcing his/her authority and the purpose of his/her presence before making entry.

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- c. If the deputy executing a search warrant believes that he/she is being denied entry after giving due notice of his/her authority and purpose, the deputy may use reasonable force to gain entry.
- d. Nothing in this subsection prohibits deputies from entering under the exigency exception to the search warrant requirement if deputies observe an intervening exigent circumstance that would endanger the life or safety of any person.

### **D. Preparation of the Plan for Execution of the Search**

1. Responsibilities of the Division Captain, Lieutenant, or Operations Commander
  - a. The Division Lieutenant, Captain, or Operations Commander will review the search warrant application prior to presentation to the judicial official.
  - b. The Division Lieutenant, Captain, or Operations Commander will designate a law enforcement supervisor to be present at the scene and in charge of the search.
  - c. It is recommended the Division Lieutenant, Captain, Operations Commander, or law enforcement supervisor will request assistance from the SRT Team if the threshold is met he or she determines the warrant to be high risk.
2. In the event a Division Lieutenant, Captain or Operations Commander is not available, a Criminal Investigations Division supervisor of the rank of Sergeant or above may assume the responsibilities of the Division Lieutenant, Captain or Operations Commander.
3. When a search warrant is initiated by a deputy assigned to the Buncombe County Anti-Crime task force (BCAT), his or her supervisor of the rank of Sergeant or above may assume the responsibilities of the Division or Operations Commander as outlined above.
4. The supervisor in charge of the search will notify:
  - a. The supervisor in the division where a search is being conducted;
5. The supervisor directing the search will:
  - a. Review the affidavit and search warrant for accuracy and validity. (The reviewer should not sign, initial or mark the affidavit or search warrant.)
  - b. Identify any existing hazards.

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- c. Determine the personnel needed, giving consideration to utilizing on-duty deputies with special training.
  - 1) The supervisor may request the assistance of SRT.
  - 2) If it is determined to be a warrant service not needing the assistance of SRT, deputies making entry will have successfully completed the BCSO Basic Dynamic Entry School.
- d. Determine the equipment needed, (e.g., camera, extra handcuffs, and weapons).
- e. Notify an on-duty supervisor of that agency when the warrant is to be executed outside of BCSO jurisdiction.
- f. Ensure all deputies involved in the search have participated in the pre-search briefing. Instruct participating deputies of the plan for the search and of their job assignments; ensure that each individual understands his/her role and if necessary, reduce each assignment to writing. All deputies involved in the search must participate in the pre-search briefing.
- g. Call additional personnel if exigent circumstances develop during the search that requires additional personnel.
- h. Be present at the scene of the search.
- i. Ensure that the first deputy to enter the premises is a uniformed deputy.
- j. Ensure that all non-uniformed personnel are wearing proper BCSO search attire.
- k. Make every reasonable effort to ensure that the correct premises are being entered by verifying the address and by verifying the house or structure description.
- l. Ensure compliance by all personnel issued a BWC with BCSO Policy during the search.

### **E. Conducting the Search**

- 1. Entry into the premises:
  - a. If it is unclear whether anyone is present at the premises to be searched, notice must be given in a manner likely to be heard by anyone who is present.



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- b. The first person(s) to enter the premises must be in BCSO uniform. Non-uniformed deputies will wear proper BCSO search attire.
  - c. A supervisor will be on scene at the time when a search warrant for a commercial or residential structure where a search warrant is executed.
2. When entry is made, deputies will assist in securing the premises and its occupants, guarding exits, and providing communications support to the deputies conducting the search.
3. After the occupants are secure, the deputy in charge of the search, or his/her designee, must read the warrant (excluding application) and give a copy of the warrant application and affidavit to the person in charge of the premises. If the premises are unoccupied, a copy of the warrant must be left at the premises in a conspicuous location and the warrant does not need to be read aloud to an empty structure.
4. Securing the Occupants of the Premises
  - a. Prior to beginning the search, any person present can be patted down (frisk only) if the deputy reasonably suspects that the person is armed.
  - b. Persons present at a search of a private premise may be detained by the search party. If the search fails to produce the items named in the warrant, and those items may be concealed upon a person, then those persons present may then be searched for the same type of items which, if found, may be seized and used as evidence. (All controlled substances are considered the same type of property if any controlled substances are listed in the warrant). Any other type of property found during a search of persons under such circumstances may not be used for prosecution, but may be seized if it is contraband or stolen property.
5. Photographs of the premises will be taken before and after the search if applicable.
6. The supervisor will designate an individual responsible for collecting and submitting evidence.
7. Evidence discovered in different locations on the premises will be placed in separate envelopes or containers by the deputy responsible for collecting evidence, and marked to indicate where it was found and by whom.
8. Notes will be taken describing the location of evidence.



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9. The deputy who obtains the search warrant will make every reasonable effort to determine the identity of the owner or occupant of record for the premises where the search was conducted.

### **F. Raid and Search Report:**

At the completion of the search, the supervisor in charge will initiate an incident report prior to the supervisor completing his/her shift.

### **G. Return of Search Warrant:**

A search warrant must be executed within 48 hours of issuance. After service, the deputy responsible for drawing the search warrant will return the warrant, with a written inventory of the seized items, to the Magistrate's Office without unreasonable delay.

The deputy will obtain a signed copy of the returned warrant to put in the deputy's own court file. The inventory must be signed and sworn to by the deputy who obtained the warrant.

### **H. Receipt after Seizure of Property:**

If property is seized during the course of a search, even if by consent, the deputy in charge will deliver a copy of the BCSO Inventory, listing the property taken, to the party from whom the property was taken, or to the party in charge of the premises from which the property was taken. If no one is present to accept a copy of the form, the deputy will leave the copy in a conspicuous location in the premises or vehicle that was searched.

### **I. Impounded Coin and Currency:**

Impounded coin and currency will be itemized on a Property voucher, not combined with other property (wallets, checkbooks, etc.) and in compliance with BCSO Policy Currency and Asset Forfeiture Procedures.

### **J. Federal Search Warrants:**

Task Force Deputies (TFD's) or other BCSO deputies working in conjunction with federal law enforcement agencies will follow the listed guidelines of the respective agency.

## **XI. DEFINITIONS:**

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**Buccal Swab:** A swabbing of the cheek area for a person's DNA to compare to evidence collected from a crime scene or from a victim.

**Computer Forensic Specialist:** A member of the department specially trained in the techniques of computer data recovery and seizure. It is the role of the Computer Forensic Specialist to conduct evidentiary searches of electronic media and to report the findings to the employee assigned to investigate the involved case.

**Computer System:** Computer monitor, CPU, communication device, PDA, data storage device, or peripherals configured to work together as a unit or cabled together externally.

**Consent Search:** A clear and voluntary expression by a person to allow a deputy to search their person or property of the consenting party or property over which the consenting party has apparent control. Consent may be requested when there is a non-arbitrary, articulable reason.

**Crime Scene:** A location where a crime has occurred or where evidence of a crime is located and there is an apparent need for investigative action and/or emergency services. (Examples: homicide scenes, fire scenes, scenes of burglaries or break-ins, etc.) Note: The mere presence of contraband or evidence in private premises does not make such premises a "crime scene" for purposes of this definition.

**Electronic Device:** Smart Phone, Digital Camera, CD ROM, CDR, floppy drive, tape drive, zip drive, jazz drive, magneto-optical drive, hard drive, and/or other mechanical, electrical, optical, or combination device used to store data that may or may not be currently connected to an operating system.

**Electronic Media:** Any material, written or photographic, that is actually stored on an electronic device.

**Frisk:** During a lawful detention and when the deputy has reasonable suspicion to believe the person is armed and dangerous; the deputy may frisk the person by patting down the person's outer clothing to determine whether the person has a weapon. During the pat-down, if a deputy feels a weapon, the deputy may retrieve that weapon. If during the frisk, a deputy feels an item that the deputy immediately knows is contraband (i.e. probable cause) then the deputy may seize that item.

**High Risk Warrant:** An arrest or search warrant for which one or more of the following factors is reasonably likely to exist (note: the more factors that exist, the higher the risk).

- a. The subject of the warrant has a history of violence and/or has several arrests for violent offenses or has violently resisted apprehension in the past.
- b. The occupants of the structure or area to be searched are armed with dangerous weapon(s) and armed resistance is likely.
- c. The structure is fortified or barricaded and special equipment is needed to gain entry.

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- d. The safe execution of the warrant requires the use of specialized skills, tactics, and/or equipment.

**Impounding Deputy:** The deputy responsible for collecting and submitting evidence.

**Inventory Search:** An administrative action to protect and account for property located on a detained or arrested person. The inventory search is necessary to isolate dangerous items from police and jail facilities.

**Manual Body Cavity Search:** A digital touching or probing of the anal or vaginal cavity by another person.

**Network:** Any two or more computer systems connected together that can communicate with each other and share resources.

**No-Knock Warrant:** A search warrant authorizing deputies to enter certain premises without first knocking and announcing their presence or purpose prior to entering. Such warrants are issued where an announcement prior to entry would lead to the destruction of evidence or would compromise the safety of the deputy(s) or another individual.

**Non-consensual Entry:** An entry into premises which is made by deputies without first obtaining consent from a person who has lawful authority to give consent. Such an entry may or may not be accompanied by some degree of force or damage to the premises.

**Non-Testimonial Orders (NTO) and applications:** An order issued by a judge upon the request of the ADA with the deputy as the affiant for the collection of identification procedures requiring the presence of the suspect.

**Operating System:** Software used to allow the equipment in an electronic device to interact with any applications and the user. Examples include DOS, Windows 3.x, Windows 95/98, 2000, XP, Windows NT, Macintosh, Unix, Linux, OS/2, and Novell.

**Private Location:** The physical location where a person search takes place out of the public view.

**Private Parts:** The pelvic area which is below the beltline of a male or female and the breasts of a female.

**Probable cause search of a person:** Probable cause to search a person when a deputy believes a person is in possession of contraband or an illegal item, the deputy may search the person for that item and may contemporaneously arrest the person.

**Protective Sweep:** A limited search of a structure or vehicle when a deputy has reasonable suspicion to believe that a person is dangerous and a weapon could be nearby and be used against an deputy.

**Public Vehicular Area:** Any area that is used by the public for vehicular traffic at any time, including hospitals, educational institutions, houses of worship or any facilities maintained and supported by the State of North Carolina or any of its subdivisions. Any commercial business,



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residential, or municipal establishment providing parking space whether the business or establishment is open or closed. Any road used by vehicular traffic within or leading to a gated or non-gated subdivision or community, whether or not the subdivision or community roads have been offered for dedication to the public or portion of private property used by vehicular traffic and designated by the private property owner as a public vehicular area.

**Raid and Search Report:** The electronic report required to be entered by the lead deputy in an emergency search of a structure or in a search executed pursuant to a search warrant.

**Raid and Search Supervisor IACMS Report:** An electronic report required to be completed by a supervisor containing all written documents and relevant photographs related to an emergency search of a structure or a search executed pursuant to a search warrant.

**Search:** The organized, planned search of a person, vehicle, structure, or an area to locate and to secure evidence and/or apprehend suspects.

**Search Attire:** Deputies must be wearing a bulletproof vest, BCSO duty gear, handcuffs, flashlight and a gun. If not in uniform the outer most garments must be immediately recognizable as being a sworn BCSO deputy.

**Search Incident to Arrest:** The right of a deputy to search a person placed under arrest. Separate from the right to search the arrestee's person, deputies may additionally search a limited area to prevent the arrestee's use of a weapon and/or the destruction of evidence. The scope of the search will depend on the location of the arrest.

**Search Incident to the Arrest of a Person:** When a person is arrested, a deputy automatically has the right to conduct a search of arrestee's person and the area, within the arrestee's immediate control.

**Search Warrant:** A written order, signed by a magistrate or other judicial authority, directing a police deputy to search a specific location for specified property or persons.

**Strip Search:** A search involving the removal of some or all of a person's clothing covering any private body parts, a search of the clothing and a squat and cough.

**Supervisor:** A person of the rank of sergeant or above.

**Electronic Evidence Tool Kit:** Used to document, remove, package, and transport electronic evidence and consists of:

- a. Cameras;
- b. Crime scene tape;
- c. Stick-on labels;
- d. Notepads, markers, evidence forms, and sketchpads.
- e. Anti-static bags (original silver or chrome packages in which hard drives are shipped) used to store hard drives, floppy disks, zip disks, etc. in an effort to prevent electrostatic charges and magnetic fields. Appropriately sized paper bags may also be used if anti-static bags are unavailable.

# Exhibit B