

Search Warrants for Suicide Scenes

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Here's a question that comes up from time to time: May a search warrant issue for a residence in which an apparent suicide has taken place, in order to rule out the possibility of foul play? Generally, I don't think so, for the reasons given below.

A search warrant requires probable cause to believe a crime has been committed. Under G.S. 15A-245(b), a judicial official must issue a search warrant if the application shows that "there is probable cause to believe that the search will discover items . . . subject to seizure under G.S. 15A-242." The latter statute encompasses stolen property; contraband; items used to commit a crime; and evidence of a crime. If no crime has been committed, there is no statutory authority to issue a search warrant. Likewise, as a constitutional matter, a warrant may issue only where "there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213 (1983).

Suicide isn't a crime. G.S. 14-17.1 provides "[t]he common-law crime of suicide is hereby abolished." So a search warrant can't be based on probable cause to believe that a suicide took place.

Ruling out homicide isn't probable cause. In some cases, there will be reason to suspect that a reported suicide is in fact a homicide, as when there are signs of forced entry together with the "suicide," or when the "suicide" was committed by stabbing or another means indicative of homicide. In such a case, an officer may have probable cause sufficient to obtain a search warrant. But in the "routine" suicide, where there is no particular reason to suspect that a death is a homicide and the deceased has been depressed or otherwise vulnerable to suicide, the desire to "rule out" homicide does not provide probable cause. Suicide is twice as common as homicide, [according to the CDC](#). Probable cause may be a "relatively undemanding" standard, *Kayley v. United States*, __ U.S. __, 134 S. Ct. 1090 (2014), but it is hard to argue that it is such a low hurdle that the mere existence of a dead body, even under circumstances suggestive of suicide and where there is no immediate evidence of foul play, provides probable cause.

Other approaches. My understanding is that, notwithstanding the foregoing, some judicial officials will issue search warrants in cases of apparent suicide. It's understandable to want to be sure that a death is a suicide, and the privacy interests at stake may be reduced by the death of one of the people who might have a reasonable expectation of privacy in the location in question. But other options exist for accomplishing the goal of looking a little harder at apparent suicides. The medical examiner should be called to the scene under G.S. 130A-83, and he or she may be able to confirm that the death is a suicide or to identify signs of a possible homicide that would support further investigation. Furthermore, the next of kin or any surviving co-occupants of the residence in question will often consent to reasonable investigation by a law enforcement officer. And of course, if a report concerns an attempted rather than a completed suicide, an officer almost certainly could enter the residence without a warrant to provide emergency aid, though the officer could not conduct a complete search under such circumstances.

Conclusion. The legal analysis seems fairly straightforward to me. But this may be one of those instances where, in the real world, legal analysis sometimes gives way to practical considerations. As always, I welcome comments, especially from those with experience around the investigation of apparent suicides.