

Legal Update

2007

Cases of Interest to Law Enforcement

North Carolina and Federal Decisions from 2006

Instructor

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**The cases below are in sequential order with the power point presentation.
Additional cases are listed by topic.**

State v. Branch, 162 N.C. App. 707 (February 17, 2004) (reversed)

Use of canine to sniff vehicle during license check:

Police used a canine to conduct a sniff for drugs while the defendant's vehicle had been stopped and officers were running a license check. The Court of appeals ruled that the sniff was unlawful because no reasonable suspicion existed. "Allowing the dog sniff of defendant while she was detained on suspicion of carrying an invalid license would not be consistent with this reasoning." (reversed)

This case has been reversed by the Caballes decision and by the North Carolina Supreme Court.

In the Matter of J.L.B.M. ___ N.C. App. ___ (March 21, 2006)

Detention ---unlawful, not based upon reasonable suspicion, a mere hunch.

Georgia v. Randolph, ___ United States Supreme Court (March 22, 2006)

Consent search: A consent is invalid when two co-tenants are present and one objects.

Brigham City, Utah, v. Stuart, ___ United States Supreme Court (May 22, 2006)

Exigent circumstances for entry into home: Objectively reasonable basis to believe that an occupant is seriously injured or threatened with serious injury.

Hudson v. Michigan, ___ United States Supreme Court (June 15, 2006)

Knock and announce: A knock and announce violation is not a constitutional violation which requires suppression of evidence as a remedy. However, N.C. G.S. 15A-249 is the applicable law in North Carolina.

State v. Johnson, ___ N.C. App. ___ (April 4, 2006)

Consent search---scope: It was not objectively reasonable for a law enforcement officer (under the facts of this case) to conclude that consent to search a vehicle included dismantling the vehicle.

State v. Forte, ___ N.C. ___ (May 5, 2006)

Interrogation: Assertion of right to silence (or counsel) must be clear and unambiguous to require the interrogation to cease.

State v. Jacobs, N.C. Court of Appeals (October 18, 2005)

Right to silence: change in circumstances and honoring request

By refusing to offer a statement to an investigator (while in custody), Jacobs invoked his Fifth Amendment right to silence. Two days later, defendant was questioned by a different investigator about a different crime. His statement was admissible because his right to silence had been "scrupulously honored".

State v. Boyd, N.C. Court of Appeals (April 18, 2006)

Interrogation---Miranda and booking questions: A question which is reasonably likely to illicit an incriminating response under the circumstances is not subject to the "routine booking" exception to the Miranda rule. Defendant's admission of residency was a violation of Miranda where the booking question was intended to establish an element of the offense.

Davis v. Washington, 126 S. Ct. 2266 (2006)

Statements---testimonial or non-testimonial:

Statements are nontestimonial when made in the course of a police investigation where the primary purpose is to enable police assistance in an emergency.

State v. Lewis, 360 N.C. 1 (2005)

Statements----testimonial or nontestimonial: lack of clarity in North Carolina

Cockerham v. Town of Jonesville, North Carolina Court of Appeals (March 7, 2006)

Public Duty Doctrine: Officers promise of protection (to arrest a 50B violator) established a special relationship and the Public Duty Doctrine did not protect the officers from civil liability.

Topic: Interrogation and Confession

Sanchez-Llamas v. Oregon, U.S. Supreme Court (June 28, 2006)

Vienna Convention Treaty: When defendant was arrested after an exchange of gunfire with police, officers did not inform him that he could ask to have the Mexican Consulate notified of his detention. During interrogation, he made incriminating statements regarding the shootout.

The Court held that suppression is not an appropriate remedy for a violation.

State v. Ortez, N.C. Court of Appeals (July 5, 2006)

Miranda warnings: Although the Spanish translation of the warnings may not have been precisely as the warnings are given in English, the defendant was adequately advised of his rights and understood his waiver.

In the Matter of W.R., N.C. Court of Appeals (October 3, 2006)

Juvenile interrogation: Juvenile was in custody when questioned in the principal's office.

State v. Nguyen, N.C. Court of Appeals (July 18, 2006)

The use of a police officer as both an interpreter and interviewer was permissible.

Topic: Vehicular Stops and Searches

State v. Bowden, N.C. Court of appeals (June 6, 2006)

Check point: Evasive action by a driver, although not illegal, was sufficient grounds to stop the vehicle and investigate.

State v. Ivey, N.C. Supreme Court (August 18, 2006)

Traffic stop: Probable cause required for most stops. Officer lacked PC to believe that a turn signal violation had occurred.

Topic: Elements of Criminal Offenses

In the Matter of BCD, N.C. Court of Appeals (May 16, 2006)

Ethnic Intimidation: A student's hate filled e-mail to a school administrator was sufficient to meet the elements of the offense.

State v. Brooks, N.C. Court of Appeals (June 20, 2006)

Breaking and entering: Defendant entered a law office which was open to members of the public seeking legal assistance. The firm had a reception area where members of the public were generally welcome and also areas beyond this reception area which were not open to the public. When defendant entered the reception area of the firm, he did so with implied consent from the firm. However, defendant took action which rendered this consent void when he went into

areas of the firm that were not open to the public so that he could commit a theft. Therefore, defendant illegally entered the firm.

State v. Hocutt, N.C. Court of Appeals (June 2, 2006)

Public Intoxication: Officers recognized defendant and observed that he was very intoxicated. They placed him in handcuffs and took him to jail for “detox purposes,” “to sober up.” The next morning defendant was charged with assault with a deadly weapon with intent to kill inflicting serious injury, and attempted murder.

G.S. 122C-303 (2002) provides, in pertinent part, that an officer may assist an individual found intoxicated in a public place by directing or transporting that individual to a city or county jail.

Since defendant was observed staggering, barefoot, dirty, and very scratched up on the shoulder of a highway in an isolated area late at night, he was “apparently in need of and apparently unable to provide for himself” clothing and possibly shelter.

State v. Harris, N.C. Court of Appeals (August 1, 2006)

Drug screening results: Defendant had positive urine test for controlled substances pursuant to his probation requirements. A positive urine test, without more, does not satisfy the intent or the knowledge requirement inherent in the North Carolina statutory definition of possession.

State v. Nipper, N.C. Court of Appeals (June 6, 2006)

Arson: defendant may be properly charged with arson when he burns an outbuilding within the curtilage of an inhabited house.

State v. Sink, N.C. Court of Appeals (June 20, 2006)

False Pretenses (aiding and abetting): Defendant was a County Commissioner. Richardson was the Director of the County Buildings and Maintenance Department. Richardson fixed a toilet in defendant's residence. (This was one of a number of times Richardson admitted using county property and county employees on county time to perform services for himself, other friends and officials.)

The court ruled that the defendant was guilty of aiding and abetting false pretense.

State v. Hart,

Constructive possession----good case: Officers found a rent receipt and a utility receipt for the premises with defendant's name on it, indicating defendant's control of the premises. Although defendant did not have exclusive possession of the premises (found receipts in the name of another person), other incriminating circumstances existed such as defendant's presence on the premises, the fact that the receipts existed and were found in a dresser drawer at the time of the search of the premises, miscellaneous drug paraphernalia on the premises, and the fact that defendant had \$2,609.00 in cash on him in denominations of fives, tens, and twenties at the time of the search. The State presented additional evidence that defendant was in close proximity to the controlled substances at the time of the raid. This evidence constitutes substantial evidence of constructive possession .

Topic: **Liability and Personnel Issues**

Finger v. Gaston County, N.C. Court of Appeals (July 5, 2006)

Separation Allowance, contract, pre-audit certificate: Finger was employed by Gaston County as a police officer until March 1999, when she retired on medical disability. Two and a half years later County Human Resources Director informed Finger that she was entitled to receive the separation allowance because her retirement was the result of medical disability. The Gaston County Attorney, told Finger that the County owed her arrearages because of the County's failure to pay her the special allowance. Finger signed a "Memorandum of Understanding with the County. However, the agreement did not include a pre-audit certificate.

The General Assembly has in N.C. Gen. Stat. § 159-28(a) made a policy determination to forbid counties from entering into contracts for payment of money that lack a preaudit certificate.

Wiggs v. Edgecomb County, N.C. Court of Appeals (August 1, 2006)

Separation Allowance: Wiggs began his employment with the Edgecombe County Sheriff's Office on May 1, 1976. On March 31, 2004, the Retirement System certified Wiggs as having thirty years of creditable service with the Retirement System. Therefore, on 31 March 2004, Wiggs' contractual right to receive the special separation allowance became a vested contractual right. As of that time, Edgecombe County had declined to exercise its authority pursuant to North Carolina General Statutes, section 143-166.42 to restrict plaintiff's ability to collect this special separation allowance should he choose to accept employment with any local government participating in the North Carolina Local Government Employees Retirement System.

On 12 July 2004, Edgecomb County enacted a Resolution that sought to rescind Wiggs' contractual rights under the Retirement System to receive a special separation allowance. The Resolution impaired the obligation of the state's contract with Wiggs under the Retirement System to provide a special separation allowance pursuant to North Carolina General Statutes, section 143-166.42 and was therefore not binding as to Wiggs.

Jones v. Durham, N.C. Supreme Court (December 16, 2005) (reversed December 2006)

Pursuit driving liability: The plaintiff is entitled to a jury trial on the issue of gross negligence because the officer: 1) was not chasing a felon; 2) knew other officers were answering the same call; 3) knew the dangerous nature of the intersection; 4) knew the safest maximum speed was 45 MPH; and 5) did not apply his brakes when he saw the plaintiff (Jones) in the roadway.

Topic: **Search and Seizure**

United States v. Grubbs, U.S. Supreme Court (March 21, 2006)

Anticipatory search warrants: When an anticipatory warrant is issued, the fact that the contraband is not presently at the place described is immaterial, so long as there is probable cause to believe it will be there when the warrant is executed. Anticipatory warrants are, therefore, no different in principle from ordinary warrants.

U.S. v. Currence, 4th Circuit Court of Appeals (May 4, 2006)

Search incident to arrest----bicycle: The search of the bicycle handle- bar was permissible as a search incident to Currence's lawful arrest. When the detectives first encountered **Currence**, he was on the bicycle, and during the entire time before they discovered the crack cocaine, he was in close proximity to the bicycle. The bicycle was therefore within Currence's "immediate control" and was subject to being searched incident to his lawful arrest. There was no basis to treat the handlebar differently from other items within the immediate control of an arrestee that may be opened during a search incident to an arrest.

State v. Stone, N.C. Court of Appeals (September 5, 2006)

“Strip search” and consent: The officer exceeded the scope of the defendant’s consent when he pulled back the defendant’s waistband and inspected his genital area.

- This case has been appealed by the State (see the dissenting opinion of Justice Steelman)

Samson v. California, U.S. Supreme Court (June 19, 2006)

Searches of parolees: “The Fourth Amendment does not prohibit a police officer from conducting a suspicionless search of a parolee. “

Note: California has a statute which permits this type of search.

State v. McKinney, N.C. Court of Appeals (October 18, 2005), remanded by the N.C. Supreme Court, December 15, 2006.

Exigent circumstances: No exigent circumstances were present. (Case remanded to the trial court to determine if the defendant had standing to challenge the search (victim's home) and whether sufficient evidence existed as an "independent source" to support probable cause in the warrant.)

"There is no indication that, had the officers left the scene in order to obtain a warrant, defendant's arrest would have been thwarted or the victim would have survived. In light of the foregoing, we conclude that the State failed to establish any exigent circumstances authorizing the officers' warrantless entry into the residence."

State v. Pickard, N.C. Court of Appeals (July 5, 2006)

Search warrants---timeliness of probable cause: Defendant argued that the affidavit supporting the warrant to search his house was invalid because it contained stale information. The warrant was based upon information from a teenaged sexual assault victim that was 15-18 months old, and information from other minors which did not have specific dates. As events alleged in the affidavit showed on-going criminal activity by Defendant (porn and child molestation), and the items to be seized were of continued utility to Defendant (computer, etc.), the court ruled that probable cause existed to support the warrant to search Defendant's home.

Topic: **Miscellaneous Issues**

Shavitz v. High Point, N.C. Court of Appeals (May 16, 2006)

Camera traffic enforcement: The clear proceeds of High Point's red light camera program must be paid to the Board of Education, not to the City's benefit.

State v. Alexander, N.C. Court of Appeals (April 18, 2006)

Officer's testimony is not hearsay: Hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. The testimony of the officer regarding his interaction with the detective and witness was nonhearsay and proper to explain his subsequent actions.

State v. Taylor, N.C. Court of Appeals (July 18, 2006)

Discovery: Defense counsel requested the trial court to order the lead investigator to be interviewed by counsel prior to trial. The investigator had refused to speak to the defense counsel. The court denied the request for the order, noting both that the police department did not have a "policy" of prohibiting detectives from speaking to defense lawyers and that the investigator in the defendant's case had no obligation to be interviewed.