



CMPD POLICE LAW BULLETIN

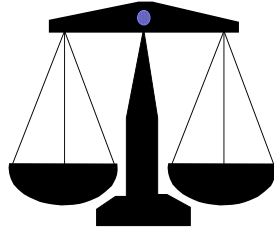
A Police Legal Newsletter

February 2000

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Did you know...

- The U.S. Supreme Court has agreed to review the following issues: the legality of searching luggage on the overhead rack of a bus; the use of a drug sniffing dog at a vehicle checkpoint; and whether a reliable anonymous tip justifies a detention
- A school administrator may search a student's book bag if the administrator has reasonable suspicion
- An officer may enter a home under exigent circumstances to investigate a probable burglary.
- State law requires officers to contact the owner of a towed vehicle.



Forward: In this issue we review several cases recently heard by the North Carolina Court of Appeals. The Court addressed issues concerning a school administrator's search of a student's book bag and whether officers may enter a home without a warrant to investigate a probable burglary in progress. Also presented is a review of the law on towed vehicles. Finally, we have included a section addressing some of the most common questions we receive on juveniles.

HIGHLIGHTS:

PENDING UNITED STATES SUPREME COURT CASES

FOURTH AMENDMENT/ SEARCH OF CARRY-ON LUGGAGE

- The Court agreed to review *U.S. v. Bond*, 167 F.3d. 225 (5th Cir. 1999) and decide whether a search occurs when an officer manipulates a bus passenger's personal carry-on luggage to determine its contents. Oral argument scheduled for Feb. 29. For Lower Court's ruling see p. 2

FOURTH AMENDMENT/ DRUG DETECTION ROADBLOCKS

- Court agreed to decide whether using a drug-sniffing dog at a checkpoint is unconstitutional

4TH AMENDMENT/FRISKS/ ANONYMOUS TIPS

- The Supreme Court agreed to review *Florida v. J.L., a minor*, 727 So. 2d 204 (1999) and decide whether an anonymous tip that a person was carrying a concealed firearm at a specific location along with a detailed description of the person is sufficiently reliable to justify an investigatory detention and frisk.

NORTH CAROLINA COURT OF APPEALS:

FOURTH AMENDMENT/ SCHOOL SEARCH/ REASONABLE SUSPICION

- In the case of *Patrick Jason Murray, a juvenile*. _ N.C. _ App. (2000) the Court of Appeals upheld a search by a school administrator in the presence of a school resource officer of a student's book bag upon reasonable suspicion that the student possessed contraband. See p. 2

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HOMICIDE/CIRCUMSTANTIAL

EVIDENCE: In *State v. Sokowloski*, 522 S.E. 2d 65 (1999) the Court held that the mysterious disappearance of the suspect's girlfriend coupled with additional evidence including finding the victim's ear in an ice tray was sufficient to establish premeditation and deliberation even though police never recovered the victim's body. See p. 3

EXIGENT CIRCUMSTANCES/ BURGLARY In *State v. Woods*, _S.E. 2d_ (Jan. 18th, 2000) the Court held officers may enter a home without a warrant for the purpose of investigating a probable burglary.

PENDING UNITED STATES SUPREME COURT CASES

FOURTH AMENDMENT/ SEARCH OF CARRY-ON LUGGAGE

U.S. v. Bond, 167 F.3d. 225 (5th Cir. 1999)

FACTS: Bond was a passenger on a bus that was stopped at a border checkpoint. An immigration officer entered the bus and after determining that all passengers were lawfully present in the U.S., he began to squeeze luggage stored in the overhead compartments.

He felt a brick like substance in one bag and asked who owned the bag. After admitting that he owned the bag, Bond consented to a search where the officer found a brick of methamphetamine.

ISSUE: Whether squeezing Bond's luggage constituted a search for Fourth Amendment purposes?

RULE: The lower court held that manipulation of a bag stored in an overhead compartment was not a search within the meaning of the Fourth Amendment

DISCUSSION: Governmental action amounts to a search when it infringes on an expectation of privacy that society is prepared to accept as reasonable. The lower court found that by placing his bag in the overhead bin, Bond exposed the bag to the public and, therefore, did not have a reasonable expectation that his bag would not be handled or manipulated by others. Consequently, the Officer's manipulation of the bag was not a search.

COURT OF APPEALS OF NORTH CAROLINA

FOURTH AMENDMENT/ SCHOOL SEARCH/ REASONABLE SUSPICION

Patrick Jason Murray, a juvenile. _ N.C. (Feb. 15, 2000)

FACTS:

A student told Principal, Smith that Murray had something in his book bag that "he should not have at school." Murray at first denied that he had a book bag but within a few moments admitted the bag was his and told Smith there was nothing in the bag. Smith called for assistance from a school resource officer after Murray refused to let Smith search the book bag. Smith explained to the officer that she wanted to search the bag. The officer handcuffed Murray after Murray began to struggle with Smith. Smith, **without assistance from the officer**, opened the bag and found a pellet gun

ISSUE: Was the search legal?

RULE: Yes, a search conducted by a school official is justified if the school official has

reasonable suspicion to believe that the student has or is violating either the law or the rules of the school

DISCUSSION: The students tip plus Murray's lie that the bag was not his provided a reasonable suspicion for Smith to search the book bag. The school resource officer did not conduct the investigation or participate in the search. As such, the higher standard of probable cause did not apply.

HOMICIDE/CIRCUMSTANTIAL EVIDENCE:

State v. Sokowloski, 522 S.E. 2d 65 (1999)
State v. Graves, ____ N.C. App. ____, October 5, 1999)

FACTS: Defendant's girlfriend disappeared. When police came to investigate he gave several conflicting statements concerning the reasons for her disappearance. Police were told that Defendant had several large bonfires in his backyard and upon inspecting the site found several charred bone fragments and a skull. The skull was determined not to belong to the missing girlfriend. The officers conducted a search of the house and found two ears under the

porch, another ear in the refrigerator and one hidden in a hollowed out gourd. An earring that belonged to the missing girlfriend was attached to one of the ears. Officers also found some bloody clothing and other personal items belonging to the girlfriend.

ISSUE: Did the state have to offer direct evidence that the Defendant caused his girlfriend's death?

RULE: No, 1st degree homicide may be established by direct or circumstantial evidence.

DISCUSSION: The Court reasoned that there was sufficient evidence to convict the defendant due to the numerous inconsistent statements made by the defendant before and after the disappearance of the woman, coupled with the evidence found at and around his residence.

EXIGENT CIRCUMSTANCES/ BURGLARY *State v. Woods*, __S.E. 2d__(Jan. 18th, 2000)

FACTS: An officer was dispatched to an residential burglary alarm. Upon arrival, he heard the alarm and found the rear door open. He announced his presence and entered

the residence. He found the house in disarray and a broken window. After a backer arrived, Officers re-entered the home "searching for persons, either injured or suspects or the owners of the house" and therefore "searched in every bedroom and every area that was large enough to conceal a human being" Officers also searched the drawers inside the master bedroom finding a small amount of marijuana. The also searched the underside of a chair and found a bag containing a large sum of money (\$44,890.00). The officers then secured the residence and obtained a search warrant. While serving the warrant the officers found significant amounts of drugs and \$40,000.00 in cash.

ISSUE 1: Did the officers violate the defendants Fourth Amendment rights by entering without a warrant?

RULE: No, an officer is justified in making a warrantless entry when he or she has probable cause to believe that a crime is occurring and exigent circumstances exist.

DISCUSSION:

Probable cause existed because the officer heard the alarm and noticed the back door was open. Exigent circumstances existed because it was reasonable for the officers to believe that intruders or victims could still be on the premises. As such, the entry was lawful.

ISSUE 2: Did the officers exceed the lawful scope of the search?

RULE: Yes, the scope of the search is defined and limited by the exigency.

DISCUSSION: Officers performing a search under exigent circumstances may seize evidence that is in plain view. The officers were only allowed to search an area that might contain a human being. As such, the officers were not allowed to look into the drawers or into a tear on the bottom of a chair.

FOR YOUR INFORMATION: EXIGENT CIRCUMSTANCES – A QUICK REVIEW:

“The Fourth Amendment grants individuals the right to be secure against unreasonable searches and seizures. The warrant requirement,

imposed on government agents or officers who seek to enter for the purpose of search, seizure or arrest , is a principal protection against unreasonable intrusions into a private dwelling. Under the general rule, a warrant supported by probable cause is required before a search is considered reasonable. The warrant requirement is subject to only a few specially established and well-delineated exceptions. The exigent circumstances exception has been extended to various circumstances where law enforcement officers are responding to an emergency, and there is a ‘compelling need for official action and no time to secure a warrant’. Where for example, officers believe that persons are on the premises in need of immediate aid or where there is a need to prevent or preserve life or avoid serious injury . . . To justify a warrantless entry into a residence, there must be both probable cause and exigent circumstances which would warrant an exception to the warrant requirement. The burden rests with the state to prove the existence of the exigent

circumstances” *State v Woods*, __ S.E.2d __ N.C. App (2000)

IMPORTANT REMINDER

OFFICERS MUST ATTEMPT TO NOTIFY OWNERS OF TOWED VEHICLES

Note: The City has received numerous claims requesting payment for towing and/or storage costs due to the failure of officers to follow the law and the CMPD directive requiring officers to notify the registered owner of a towed vehicle. Please review the North Carolina statute and the directive on the procedures that are outlined below.

NCGS § 20-219.11 states the following:
(a) Whenever a vehicle with a valid registration plate or registration is towed as provided in G.S. 20-219.10, the **authorizing person** shall immediately notify the last known registered owner of the vehicle of the following:
(1) A description of the vehicle;
(2) The place where the vehicle is stored;
(3) The violation with which the owner is charged, if any;
(4) The procedure the owner must follow to

have the vehicle returned to him; and
(5) The procedure the owner must follow to request a probable cause hearing on the towing. If the vehicle has a North Carolina registration plate or registration, notice shall be given to the owner within 24 hours; if the vehicle is not registered in this State, notice shall be given to the owner within 72 hours. This notice shall, if feasible, be given by telephone. Whether or not the owner is reached by telephone, notice shall be mailed to his last known address unless he or his agent waives this notice in writing.

(b) Whenever a vehicle with neither a valid registration plate nor registration is towed as provided in G.S. 20-219.10, ***the authorizing person shall make reasonable efforts, including checking the vehicle identification number, to determine the last known registered owner of the vehicle and to notify him of the information listed in subsection (a).*** Unless the owner has otherwise been given notice, it is presumed that the authorizing person has not made reasonable efforts, as required under this subsection, unless notice that the vehicle would be towed was

posted on the windshield or some other conspicuous place at least seven days before the towing actually occurred; except, no pretowing notice need be given if the vehicle impeded the flow of traffic or otherwise jeopardized the public welfare so that immediate towing was necessary.

The CMPD Directive 600-013 I (2) also addresses the requirements and duties of an Officer ordering that a vehicle be towed. The directive requires that the Tow-in and Storage report be ***thoroughly*** completed and also requires the officer, if the vehicle is registered in North Carolina, to do the following:

- As soon as possible, but at least within ***2 hours of towing***, attempt to contact the registered owner by telephone.
- If the number is busy or there is no answer, the officer ***must*** attempt to call again ***within 24 hours***.
- If, after reasonable efforts, the officer is unable to speak to the registered owner, the officer should leave a message concerning the location and status of the towed vehicle.

FREQUENT QUESTIONS CONCERNING JUVENILES AGE 16 OR 17

Question: What can an Officer do when faced with a 16 or 17 year old who has runaway?

Answer: 16 or 17 year old juveniles who are regularly disobedient to and beyond the disciplinary control of the juvenile's parent, guardian, or custodian, or are regularly found in places where it is unlawful for a juvenile to be, or have run away from home for a period of more than 24 hours, are ***undisciplined juveniles and are subject to the jurisdiction of the juvenile court.*** G.S. 7B-1501(27)b.

Question: What is an Officer allowed to do with this 16 or 17 year old who has not committed a criminal offense?

Answer: If there is no court order and the officer has reasonable grounds to believe that the juvenile is an undisciplined juvenile, the officer may take the juvenile into physical (temporary) custody.

Question: Now that the officer has the juvenile, where does he or she take them?

Answer: When an officer takes a 16 or 17-year-old juvenile into temporary custody as an undisciplined juvenile,

the officer shall do the following:

1. Notify the parent, guardian or custodian that the juvenile has been taken into temporary custody and of their right to be present with the juvenile until further determination is made as to the need for secure or nonsecure custody.
2. Release the juvenile to the juvenile's parent, guardian, or custodian if the officer decides that continued custody is unnecessary.
3. If continued custody is necessary, the officer may request a petition be drawn for an undisciplined juvenile through the Intake counselor at the Office of Juvenile Justice.
4. A juvenile taken into temporary custody shall not be held for more than 12 hours or for more than 24 hours if any of the 12 hours falls on a Saturday, Sunday, or legal holiday, unless a petition has been filed and an order for secure or nonsecure custody has been entered. (The court may find that a runaway juvenile may need secure custody for up to 24 hours,

excluding Saturday, Sundays, and State holidays, and where circumstances require, for a period not to exceed 72 hours to evaluate the juvenile's need for medical treatment or facilitate reunion with parent or guardian.) G.S. 7B-1901, 7B-1903(b)(7).

Question: What is the role of the Law Enforcement Officer when he takes a juvenile into temporary custody?

Answer: The officer should select the most appropriate course of action to the situation, the needs of the juvenile, and the protection of the public safety. The officer may:

1. Release the juvenile, with or without first counseling the juvenile.
2. Release the juvenile to the juvenile's parent, guardian, or custodian.
3. Refer the juvenile to community resources;
4. Seek a petition; or
5. Seek a petition and request a custody order. G.S. 7B-2100

Question: Is a runaway juvenile the same as a missing person?

Answer: No. There is no time requirement for a missing person prior to making a report. A juvenile may be reported missing and also have an undisciplined petition filed against him or her. A missing person report does not allege a criminal act

while an undisciplined petition alleges a "status" offense for which the juvenile may be adjudicated.

Question: Is Juvenile Intake the same as the old "Juvenile Services"?

Answer: Juvenile Services is now part of the Office of Juvenile Justice but it is still located at 720 East Fourth Street on the 4th floor. The phone number is 347-7842.



