



# CMPD POLICE LAW BULLETIN

## A Police Legal Newsletter

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**Forward:** In this issue we review recent cases from the Fourth Circuit Court of Appeals and the North Carolina Court of Appeals. The Fourth Circuit cases discuss the constitutionality of a stop of a vehicle with temporary tags and an employee's right to privacy in the work place. The North Carolina Court of Appeals Case addresses a Charlotte case involving a search warrant and the applicability of N.C.G.S. §15A-256. Finally, in this issue we review the jurisdiction and authority of company police and include a domestic violence update.

### HIGHLIGHTS:

#### FOURTH CIRCUIT COURT OF APPEALS:

##### Fourth Amendment/Vehicle Stop/Reasonable Suspicion:

In *United States v. Wilson*, \_\_\_ F.3d \_\_\_ (2000), the Fourth Circuit Court of Appeals held that the Fourth Amendment does not permit an officer to stop a vehicle based solely on the fact that the vehicle has a temporary license tag with an undetermined expiration date where there is no evidence that the tag is illegible, smudged or otherwise concealed, and there is no evidence that the driver has violated the law. See p. 2.

##### Fourth Amendment / Expectation of Privacy/

**Employees:** In *United States v. Simons*, \_\_\_ F.3d \_\_\_ (2000), the Fourth Circuit Court of Appeals held that a government employee did not have a reasonable expectation of privacy in his computer and Internet files where the employer's policy clearly indicated that it could audit, inspect and monitor employees' Internet activity. See p. 2

#### NORTH CAROLINA COURT OF APPEALS

##### Fourth Amendment/ Search Warrants/ Person Not Named in Warrant, But Found on

**Premises:** In *State v. Cutshall* \_\_\_ N.C. App. \_\_\_ (2000), the North Carolina Court of Appeals held that the search of a person not named in the warrant and who does not own or control the premises, is not authorized by N.C.G.S. §15A-256 if the search of the premises produced the item(s) sought in the warrant. See p. 3.

#### BRIEFS FOURTH CIRCUIT COURT OF APPEALS

##### Fourth Amendment/Vehicle Stop/Reasonable Suspicion:

*United States v. Wilson*, \_\_\_ F.3d \_\_\_ (2000).

**Facts:** The Defendant was wanted on a federal warrant. After fleeing Missouri, he purchased a car in North Carolina and placed the title in his wife's name. As required by law, a temporary tag was attached to the car. Two days later, he was

pulled over in South Carolina solely because the Officer could not read the expiration date on the temporary tag. During the course of the investigative detention, the Officer determined that the defendant was a fugitive. The officer conducted a search of the vehicle and found a loaded 9 mm handgun. Defendant moved to suppress the handgun on the ground that it was the fruit of an unconstitutional stop.

**Issue:** Whether the officer's inability to read the expiration date on the vehicle's temporary license tag was sufficient to establish reasonable suspicion to stop the vehicle?

**Rule:** No. The Fourth Amendment does not permit an officer to make a random stop of a vehicle based on unbridled discretion. Because the officer observed no violations and suspected no criminal activity, he did not have reasonable suspicion to stop the defendant's car.

**Discussion:** The stop of a vehicle is a seizure of the person, and therefore the stop must comply with the Fourth Amendment's requirement of reasonableness. Consequently, a vehicle stop must be supported by, at minimum, reasonable suspicion of unlawful conduct.

The Fourth Circuit Court of Appeals held that the officer in this case did not have reasonable suspicion of unlawful conduct, and therefore, the stop of the vehicle was unconstitutional. The Court compared this case to the leading United States Supreme Court case, *Delaware v. Prouse*, 440 U.S. 648 (1978). In *Prouse*, the officer saw a car and decided to check the driver's license and registration even though he had no reason to

stop the car. Upon approaching the vehicle, the officer saw marijuana on the floorboard of the car. The United States Supreme Court held that this suspicionless stop violated the Fourth Amendment. The Fourth Circuit found that the same type of a suspicionless stop had occurred in this case. The Court stressed that the officer testified that he had no suspicion at all that defendant was driving without a license, operating an unregistered vehicle or otherwise violating the law. Further, there was no evidence that the tag was faded, illegible, smudged or otherwise concealed. The Court determined that "upholding a stop on these facts would permit the police to make a random, suspicionless stop of any car with a temporary tag.

Finally, the Court expressly overruled *United States v. McDonald*, 61 F.3d 248 (1995), which held that under South Carolina law the presence of temporary tags on a car entitled the police to conduct an investigatory stop in order to determine whether the car's owner was in violation of state law requiring permanent tags within thirty days of a vehicle's purchase.

**Fourth Amendment/ Expectation of Privacy/ Employees:** *United States v. Simons*, \_\_\_ F.3d \_\_\_ (2000).

**Facts:** Defendant was employed as an engineer with a division of the CIA. As part of his job, the CIA provided him with an office and a computer with Internet access. In June 1998, defendant's employer instituted a policy on Internet usage by employees. The

policy stated that employees were to use the Internet for government business only, that accessing unlawful material was prohibited and that the employer would periodically audit, inspect and monitor employees' Internet usage as deemed appropriate. In July 1998, monitoring revealed a large number of "hits" on sex related websites originating from defendant's computer. It was determined that visits to these websites were not related to government business. Thereafter, the employer conducted a remote examination of defendant's computer and discovered that defendant had downloaded over 1,000 picture files from these Internet websites. Several of the images were pornographic. The employer then copied all the files from defendant's hard drive. A criminal investigator with the CIA viewed selected files from defendant's hard drive and discovered pictures of minors. In August 1998, the FBI also viewed images from defendant's hard drive and discovered over 50 images containing child pornography. The FBI and CIA subsequently obtained two search warrants to seize defendant's actual computer and hard drive, as well as diskettes and zip files.

Defendant was indicted on one count of receiving child pornography and one count of possessing child pornography. Defendant moved to suppress the evidence arguing that the warrantless searches of his computer violated his Fourth Amendment rights.

**Issue:** Whether defendant has a legitimate expectation of privacy in his computer files?

**Rule:** No. In light of his employer's Internet policy, Defendant lacked a legitimate expectation of privacy in his computer files and the files he downloaded from the Internet.

**Discussion:** To establish a violation of the Fourth Amendment a defendant must show that he had a legitimate expectation of privacy in the place searched or the item seized. The expectation of privacy must be one that society is prepared to accept as objectively reasonable.

Defendant's employer instituted a policy that clearly stated that it would audit, inspect and monitor employees' use of the Internet, including all files transferred, websites visited and all e-mail messages. The Court concluded that this policy effectively placed employees on notice that they could not reasonably expect that their Internet activity was private. Therefore, defendant's subjective belief that the files he downloaded from the Internet were private was not objectively reasonable.

The Court went on to state that even where an employee has a legitimate expectation of privacy (as in his personal office space), a warrantless search may be justified by "special needs, beyond the need for normal law enforcement." In this case, the Fourth Circuit noted that "a governmental employer's interest in the efficient and proper operation of the workplace may justify warrantless work-related searches."

## **COURT OF APPEALS OF NORTH CAROLINA**

**Fourth Amendment/ Search Warrants/ Person Not Named in Warrant, But Found on Premises:** *State v. Cutshall* \_\_\_\_ N.C. App. \_\_\_\_ (2000).

**Facts:** A CMPD police officer and an informant went to a residence to make a controlled buy. A white male, 6'1" weighing 150-160 pounds came out of a mobile home and walked to an adjacent shack. He then approached the vehicle and handed crack cocaine to the

officer and the informant, who made the buy.

The officer then left the scene and obtained a search warrant authorizing the search of the mobile home and all outbuildings for crack cocaine. The search warrant also explicitly authorized the officers to search the white male described above who sold the crack cocaine to the officer.

Upon executing the search warrant, the officer discovered several people in the mobile home, including the defendant who did not match the description of the white male in the warrant. The officer handcuffed the defendant while other officers secured the mobile home. Thereafter, the officer searched the defendant and found one rock of crack cocaine and three crack pipes in his jacket pocket. Defendant filed a motion to suppress.

**Issue No. 1:** Were the officers authorized to search defendant's person?

**Rule No. 1:** No. An officer is still required to have probable cause to conduct the search of a person who is not named in the warrant and does not own or control the premises, but is found at the premises named in the warrant. Probable cause does not arise from defendant's mere presence on the premises. N.C.G.S. §15A-246, which in limited circumstances establishes probable cause to search an individual, is inapplicable to the facts of this case.

**Issue No. 2:** Does N.C.G.S. §15A-246 authorize the search of an individual not named in the warrant, but found on the premises named in the warrant?

**Rule No. 2:** Yes, in limited circumstances. N.C.G.S. §15A-246 authorizes the search

of a person who is not in control of the premises, but is found there at the time a search warrant is executed, **only** if a search of the premises fails to produce the items named in the warrant.

**Discussion:** The Fourth Amendment requires officers to have probable cause particularized to an individual prior to searching that individual. "A person's mere proximity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person." Therefore, unless the officers in this case had probable cause particularized to defendant, the search of defendant was unlawful. Under N.C.G.S. §15A-246 an officer conducting a search warrant may detain and search persons found on the premises if the search of the premises or persons specified in the warrant fails to yield the items named in the warrant. The Court of Appeals held that probable cause particularized to persons present on the premises can be inferred from the statute. Thus, under N.C.G.S. §15A-246, probable cause to search an individual found on the premises exists from the fact that a search pursuant to a warrant failed to yield the items sought and those items could be concealed on the individual.

In this case, crack cocaine was found in the shack adjacent to the mobile home, but not in the mobile home. The state argued that the search of the defendant's person was authorized by N.C.G.S. §15A-246 because the search of the mobile home in which defendant was found failed to produce the item sought.

The Court of Appeals rejected that reasoning stating that the warrant specifically included the mobile home and all

outbuildings. Because crack cocaine was found in the outbuilding, N.C.G.S. §15A-246 was not applicable to the facts of this case.

**Issue No. 3:** Whether outbuildings and vehicles must be expressly included in the search warrant?

**Rule No. 3:** No, North Carolina cases have uniformly allowed searches of outbuildings within the curtilage under authority of a search warrant for the premises address.

**Discussion:** Citing numerous North Carolina cases, the Court held that “the premises of a dwelling house include, for search and seizure purposes, the area within the curtilage and a search pursuant to a warrant describing a dwelling does not exceed its lawful scope when outbuildings or vehicles located within the curtilage are also searched.” *State v. Travatello*, 24 N.C.App. 511 (1975); *State v. Trapper*, 48 N.C.App. 481 (1980); *State v. Courtright*, 60 N.C.App. 247, disc. Review denied, 308 N.C. 192 (1983). Thus, under North Carolina law the same result would have been reached even if the warrant had not expressly included the outbuildings.

**FYI . . .**

### **COMPANY POLICE - AUTHORITY AND JURISDICTION**

The specifics of the Company Police Program are found in Chapter 74E of the North Carolina General Statutes. The Company Police Act gives the Attorney General the authority to certify an agency as a company police agency and to commission individuals as company police officers. Pursuant to the statute, a public or private educational institution or hospital, a state institution, or a corporation

engaged in providing on-site police security personnel services for persons or property may apply for certification as a police agency. Once the agency is certified, the Attorney General may then commission an individual(s) to act as company police officers.

N.C.G.S. §74E-6(b) establishes three distinct categories of company police officers and defines them as follows:

- (1) **Campus Police Officers -** Company police officers who are employed by any college or university that is a constituent institution of The University of North Carolina or any private college or university that is licensed or exempted from licensure as prescribed by G.S. 116-15.
- (2) **Railroad Police Officers -** Company police officers who are employed by a certified rail carrier and commissioned as company police under this Chapter.
- (3) **Special Police Officers -** All company police officers not designated as a campus police officer or railroad police officer.

### **JURISDICTION**

While in the performance of their employment duties, company police officers have the same powers as municipal and county police officers to make arrests for both felonies and misdemeanors and to charge for infractions. Their territorial jurisdiction, however, is generally limited to the following properties:

- (1) Real property owned by or in the possession and control of their employer.
- (2) Real property owned by or in the possession and control of a person who has

contracted with the employer to provide on-site company police security personnel services for the property.

(3) Any other real property while in continuous and immediate pursuit (i.e. hot pursuit”) of a person for an offense committed upon property as described above.

Campus police officers may also exercise their powers upon that portion of any public road or highway passing through or immediately adjoining the property owned by their employer. Railroad police officers also have

powers and authority granted by federal law.

Special police officers do not have the authority to enforce the motor vehicle laws on public streets or highways that pass through or adjoin property owned by or in the possession of their employer or property that is owned by or in the possession of a person who has contracted with their employer to provide security services. For example, a special police officer who was hired to provide security for a subdivision could not enforce the motor vehicle laws on the streets of that subdivision.

Company police officers may use blue lights and sirens on motor vehicles used by them in the performance of their duties, but only on property within their territorial jurisdiction, as described above.

Although not entirely clear, company police officers are probably not included within the provision of North Carolina law that prohibits assaults on governmental officers or employees (N.C.G.S. 14-33(c)(4)). However, another statute, N.C.G.S. 14-34.2, expressly provides that an

assault on a company police officer is a Class F felony if a deadly weapon is used.

Company police officers, like public law enforcement officers, must comply with N.C.G.S. 15A-401, requiring officers to take an arrestee before the magistrate or other judicial official without unnecessary delay. Thus, when a company police officer makes an arrest on his employer's premises, he is authorized and should transport the arrestee from the premises to the magistrate. Unlike public enforcement officers, company police officers have no "off-duty" arrest authority, even on their employer's premises. However, they do retain the statutory detention powers of private citizens. Further, a company police officer outside his territorial jurisdiction has no jurisdiction as a law enforcement officer. If, therefore public law enforcement officer requests assistance from a company police officer who is outside his jurisdiction, the company officer could lend assistance only as a private citizen. Finally, company police officers, if duly authorized by the superior officer in charge, have the same authority as public law enforcement officers to carry concealed weapons while off-duty.

In order to become commissioned as a company police officer, an applicant must meet and maintain the same pre-employment and in-service standards as are required for State law enforcement officers by the North Carolina Criminal Justice Education and Training Standards Commission. Additionally, company police and agencies are governed by and are subject to various administrative rules and

regulations imposed by the Attorney General's Office.

For example, all company police officers must, when on duty, wear a badge bearing the name of the certified company police agency and either the general title of company police officer or the specific designation of railroad police, campus police, or special police. Company police agencies which employ both commissioned company police and noncommissioned security personnel must provide the commissioned officers with a distinctive uniform. This uniform must include shoulder patches that identify the officer as a railroad, campus, or special police officer.

The following company police agencies were certified as of October 17, 1997, and located in Mecklenburg County:

- (1) Davidson College
- (2) Duke Power Company
- (3) Hoosier Investigations & Security Services
- (4) Independent, Inc.
- (5) Johnson C. Smith University
- (6) McGee Corporation (Matthews)
- (7) Norfolk Southern Corp.
- (8) Queens College

UNC-Charlotte police officers are not certified under the Company Police Program. They are certified as campus police officers pursuant to a separate statute (N.C.G.S. 116-40.5) pertaining only to UNC campuses and providing that university officers have the same authority and must meet the same requirements of public law enforcement officers.

UNCC police officers are considered governmental officers for the purposes of the statute that prohibits assaults on governmental officers or employees (N.C.G.S. 14-33(c)(4)).

## DOMESTIC VIOLENCE UPDATE

### Some Facts About Domestic Violence:

- **Although men are sometimes assaulted, over 98% of the domestic violence victims in 1994 were females.**
- **In NC, more than 1 out of 3 women murdered in 1992 were killed by husbands, former husbands, or boyfriends.**
- **The FBI estimates a woman is severely beaten in the U.S. every 15 seconds.**
- **Violence against wives will occur at least once during 2/3 of all marriages.**
- **Some studies suggest that 1 out of every 2 women will be in a battering relationship during her lifetime.**
- **An estimated 3 to 4 million American women are battered each year by their husbands or partners.**
- **50 to 75% of male batterers also abuse their children.**
- **Some estimates indicate that 3.3 to 4.3 million children witness domestic violence in the home each year based on reported cases of domestic violence.**
- **80% of runaways are from abusive homes.**
- **63% of all boys ages 11-20 arrested for homicide have killed their mother's assailant.**
- **Kids from abusive homes are 1000 times more likely to abuse when they become adults.**

**MAJOR CHANGES IN NORTH CAROLINA LAW EFFECTIVE 12/01/99:**

1. Out of state orders **must** be enforced by NC law enforcement agencies even if the order has not been registered.
  - Officers may rely on a copy of the order and a statement by the person protected that the order remains in effect. (Officers should still consider any other information that may assist in determining if order is still in effect.)
  - Advantage to registering order is that clerk must give copy to sheriff for input into NCIC.
2. 50B-4.1 A person is in violation of a valid protective order entered by court in NC or another state or Indian tribe is guilty of a Class A1 misdemeanor.
3. 50B-4.2 A person making a false statement to law enforcement agency or officer that a protective order is still in effect is guilty of a Class 2 misdemeanor.
- NOTE: Officers may continue to charge a violation of the 50B order in addition to any new criminal offense.

**NORTH CAROLINA LAW REQUIRES OFFICERS TO MAKE AN ARREST IN THE FOLLOWING SITUATIONS ONLY:** (If there is probable cause and the circumstances for warrantless arrest exist, officers are expected to make the arrest.)

- Officer **shall** arrest without a warrant if officer has probable cause to believe person violated a valid protective order that:
  1. Excludes the person from the residence or household occupied by the victim, or
  2. Directs the person to refrain from threatening, abusing, or following the other party;

3. Directs the person to refrain from threatening, abusing, or following the other party;
4. Harassing the other party, by phone, visiting home or workplace or other means, or otherwise interfering with the other party.
  - Officer should check protective order to be certain that the order prohibits that specific conduct. The mandate to arrest if for those specific prohibitions. No mandatory arrest for failure to meet financial obligations, returning kids late, etc.
5. Officer doesn't have to actually see the defendant on the property to make the mandatory arrest if there is probable cause to believe it occurred. (i.e. credible information from victim, information from neighbors, children, etc.)

**North Carolina Law states that self-defense is NOT domestic violence:**

**Definition:** Self-defense in the context of non-deadly force means the use of such force is necessary to defend oneself against the attack. The victim may not use more force than appears reasonably necessary or continue to use force after the need has disappeared. Self-defense is not punishment or retaliation

Factors to look for to determine self-defense may include:

1. Offensive vs. defensive injuries (bite marks or scratches on one individual could be defensive wounds as well as the location of the wounds).

2. Seriousness of injuries. (Officer may ask if clothing hides any injuries.)
3. Old injuries that may be healing.
4. Relative height and weight of parties.
5. History of violence between the parties.

**EXAMPLE:** If Officer knows the male previously assaulted the female and male is now accusing the female of assaulting him, then the officer should consider that factor when evaluating the credibility of the victim for probable cause purposes. If the male has minor scratches and the male has routinely been the aggressor, you are **NOT** required to arrest the female.

