



# CMPD POLICE LAW BULLETIN

## A Police Legal Newsletter

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**Forward:** In this issue we review the Supreme Court's recent decision in *Dickerson v. United States*. In *Dickerson*, the Supreme Court held that its decision in *Miranda v. Arizona* announced a constitutional rule requiring that *Miranda* warnings be given prior to custodial interrogation. The Supreme Court further held that a federal statute that purported to determine the admissibility of statements without regard to *Miranda* was invalid. We also review a North Carolina Court of Appeals case concerning *Miranda* warnings and routine booking questions.

### HIGHLIGHTS:

#### UNITED STATES SUPREME COURT:

**Fifth Amendment/ Miranda Warnings:** In *Dickerson v. United States*, \_\_\_ S. Ct. \_\_\_ (2000), the United States Supreme Court held that *Miranda* is a constitutional decision governing the admissibility of statements made during custodial interrogation in both state and federal courts. Consequently, Congress had no power to supercede the Supreme Court's decision in *Miranda* by enacting 18 U.S.C. §3501. See page 2.

warnings are required for the gathering of biographical information necessary to complete the booking process if the questions are designed to elicit a response the police know or should know is reasonably likely to be incriminating. See page 2.

#### NORTH CAROLINA COURT OF APPEALS

**Fifth Amendment/ Miranda Warnings/ Routine Booking Questions:** In *State v. Locklear* \_\_\_ N.C. App. \_\_\_ (2000), the North Carolina Court of Appeals held that *Miranda*



## BRIEFS:

### UNITED STATES SUPREME COURT

**Fifth Amendment/Miranda Warnings/Admissibility of Statements:** *Dickerson v. United States*, \_\_\_ S.Ct. \_\_\_ (2000).

**Facts:** Defendant was indicted for bank robbery and other federal crimes. Before trial, Defendant moved to suppress a statement he made to the FBI on the ground that he had not received *Miranda* warnings before being interrogated. The District Court granted his motion and the government appealed to the Fourth Circuit Court of Appeals. The Fourth Circuit reversed the suppression order, holding that although Defendant had not received *Miranda* warnings, the statement was admissible under 18 U.S.C. §3501. That statute provides that the trial court shall determine whether a statement was voluntarily made by considering the totality of the circumstances. The statute lists factors to consider without regard to any warning requirement. The case was appealed to the United States Supreme Court.

**Issue 1:** Whether the decision in *Miranda v. Arizona* announced a constitutional rule or merely exercised judicial authority to regulate evidence in the absence of specific statutory rules?

**Rule:** *Miranda v. Arizona* announced a constitutional rule requiring warnings prior to custodial interrogation.

**Discussion:** The Supreme Court noted that support for the conclusion that *Miranda* is a

constitutional rule is demonstrated by the fact that *Miranda* and all subsequent cases applied the rule to proceedings in state court. The Supreme Court reasoned that as it has no supervisory authority over state courts, the only way in which *Miranda* could lawfully have been applied to the states was to enforce the U.S. Constitution. Additionally, the Supreme court noted that the *Miranda* opinion itself contains numerous statements indicating that the Court thought it was announcing a constitutional rule. Stating that “no constitutional rule is immutable”, the Supreme Court stressed that exceptions to the *Miranda* rule are merely a normal part of constitutional law and are not evidence that *Miranda* is not a constitutional rule.

**Issue 2:** Whether Congress had the authority to overrule *Miranda* by enactment of 18 U.S.C. §3501?

**Rule:** No. Congress may not legislatively supercede decisions of the United States Supreme Court that interpret and apply the Constitution.

**Discussion:** Congress has the ultimate authority to modify or supercede judicially created rules of evidence and procedure that are not required by the Constitution. However, the Supreme Court has the final authority to interpret and apply the Constitution. Because the Supreme Court determined that *Miranda* announced a constitutional rule, Congress did not have the authority to enact 18 U.S.C. §3501 in an

attempt to overrule *Miranda*.

**BOTTOM LINE:**  
**This case did not change the law! You are still required to give *Miranda* warnings and get a waiver prior to custodial interrogation.**



### COURT OF APPEALS OF NORTH CAROLINA

**Fifth Amendment/Miranda Warnings/Booking Questions – Biographical Information:** *State v. Locklear*, \_\_\_ N.C. App. \_\_\_ (2000).

**Facts:** In August 1996, a 13 year old female reported to her mother that she had sexual intercourse with Defendant on or about August 13, 1996. On September 13, 1996, Detective Halliburton arrested Defendant for statutory rape. In connection with the arrest, Halliburton filled out an arrest report and obtained information from Defendant which she recorded on the “Arrestee Information” section of the

arrest report. Halliburton testified that the form was routinely used to get information about an arrestee, including name, date of birth, address, height, weight, hair color, marks or tattoos and next of kin. Halliburton did not read Defendant his *Miranda* rights prior to questioning Defendant about this information. At trial, Defendant moved to suppress his statement regarding his date of birth. The trial court denied Defendant's motion and Defendant subsequently appealed.

**Issue:** Whether a defendant's incriminating statement given to the investigating officer, during the booking process and without the benefit of *Miranda* warnings, is admissible as evidence?

**Rule:** No. Defendant is entitled to *Miranda* warnings prior to routine booking questions where the officer knows or should know that the questions are likely to elicit an incriminating response.

**Discussion:** Generally, *Miranda* does not apply to the gathering of routine biographical information necessary to complete the booking process. However, *Miranda* does apply to questions about biographical information if the officer knows or should know that they are likely to elicit an incriminating response.

In this case, the officer completing the arrest report

was also the investigating officer on the charge of statutory rape. Consequently, the Court found that the officer should have known that questioning the defendant about his date of birth was likely to elicit an incriminating response where age was an essential element of the offense with which Defendant had been charged. Therefore, Defendant was entitled to *Miranda* warnings prior to being questioned about his date of birth and his statement was inadmissible. The Court noted that *Miranda* warnings were not required prior to questions asked by a non-investigating officer, during the booking process, who is not interrogating the suspect for the purpose of eliciting incriminating information.

**FYI . . . . .**



**BEGGING AND  
“PANHANDLING” is  
NOT AGAINST THE  
LAW!**

Although begging or soliciting for alms, also known as “panhandling” is often a problem in the uptown area, there are

additional elements that must be met before such activity violates City ordinance §15-24. This ordinance makes it unlawful for any person to ask, beg or solicit alms or contributions **by accosting another or by forcing oneself upon the company of another**. The ordinance reads as follows:

Sec. §15-24. Begging or Soliciting Alms by Accosting or Forcing Oneself Upon the Company of Another; Prohibited Conduct

- (a) Except when performed in the manner set forth in subpart (b)(1) of this ordinance, it shall not be unlawful to beg or solicit alms.
- (b) Prohibited conduct while begging or soliciting alms.
  - (1) It shall be unlawful for any person to ask, beg or solicit alms or contributions, or exhibit oneself for the purpose of begging or soliciting alms or contributions, by (i) accosting another, or (ii) forcing oneself upon the company of another
  - (2) For purposes of this ordinance, “ask, beg or solicit” shall include, without limitation, the spoken, written or printed word or such other acts as are conducted in furtherance of the purpose of obtaining alms or contributions.
  - (3) For purposes of this section, “accosting” shall be defined as

approaching or speaking to someone in such manner as would cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon his or her person, or upon property in his or her immediate possession.

- (4) For purposes of this section, “**forcing oneself upon the company of another**” shall be defined as (i) continuing to request, beg or solicit alms in close proximity to the person addressed after the person to whom the request is directed has made a negative response; or (ii) blocking the passage of the person addressed; or (iii) otherwise engaging in conduct which would reasonably be construed as intended to compel or force a person to accede to demands.

A violation of this ordinance is a Class 3 misdemeanor and requires a mandatory court appearance.

The following charging language should be used when citing someone for a violation of this ordinance:

Section §15-24.

. . . . the named defendant did unlawfully and willfully ask, beg or solicit alms or contributions by accosting another, to wit: insert name of officer/victim, in violation of Sec. §15-24 of the City Code of Charlotte, NC. This offense

having occurred within the corporate limits of the City of Charlotte.

. . . . . the named defendant did unlawfully and willfully ask, beg or solicit alms or contributions by forcing (himself/herself) upon the company of another, to wit: insert name of officer/victim, in violation of Sec. §15-24 of the City Code of Charlotte, NC. This offense having occurred within the corporate limits of the City of Charlotte.



### **DELAY IN MAKING MISDEMEANOR ARRESTS WITHOUT A WARRANT**

Officers who are making an arrest for a misdemeanor that occurred in their presence [G.S. §15A-401(b)(1)] must make the arrest immediately upon witnessing the misdemeanor or having a reasonable belief that a misdemeanor occurred. An officer may briefly delay making an immediate arrest for law-enforcement related matters but cannot delay for matters unrelated to the arrest. There is no specific time frame articulated by the cases but if an officer becomes involved in unrelated matters before making a warrantless arrest, he will lose his/her authority to make the arrest.

### **TRANSPORTING OFFICERS and PROCESSING ARRESTEES**

Often, situations develop where the arresting officer is not the one who transports an arrestee to the intake center and completes arrest processing. This may occur when the arresting officer is a vice officer, the arrest occurs near a shift change and the arrestee is handed off, the arresting officer is working off-duty, or when an investigator calls for a uniformed officer to transport the arrestee. In these situations, the transporting officer is the one who swears to the statement contained on the back of the arrest affidavit (pink sheet). Since this is a sworn statement, the transporting officer should ensure that he/she is familiar with the facts of the case and that the facts are sufficient to establish probable cause. In order to ensure this, the transporting officer should thoroughly discuss the case with the arresting officer.

There are certain things that should NEVER occur when completing arrest paperwork. The transporting officer should not submit an arrest affidavit to court services for notarization that has been signed only by the arresting officer (who is not present). A notary cannot lawfully authenticate the signature of an officer who does not appear before him/her.

While the transport-only officer may identify him/herself as such on the arrest affidavit form, he/she should not be reluctant to sign an affidavit for fear of a magistrate finding there was no probable cause for the arrest, or because he/she may be called to testify at trial. Also, a transporting officer should not sign or swear to statements he/she has not read or does not believe are accurate. Normally, a prosecutor will only call a transporting officer to testify in order to establish a necessary link in a chain of custody or if the arrestee made incriminating statements during transport. Generally, the arresting officer is the main prosecution witness on matters relating to the arrest.

## **HOTEL/MOTEL GUESTS-- EVICTION OR TRESPASS?**

The Police Attorney's Office frequently receives questions concerning hotel guests and their rights as "tenants" under North Carolina law.

Generally speaking, hotel and motel guests are not considered "tenants" under North Carolina law, and therefore, eviction proceedings are not required. This means that a hotel or motel manager may order a guest to leave the property for violation of the rooming agreement (i.e. non-payment, noise, too

many occupants, etc.). If the guest refuses to leave, CMPD officers may make a warrantless arrest for trespass. The guest should be allowed to retrieve their personal belongings from the room.

However, in limited circumstances, long-term hotel/motel guests may be considered "tenants" and eviction proceedings are required to remove them from the premises. For example, a person has been renting a room week-to-week. The room contains kitchen facilities, but the motel provides daily maid service. The basic furnishings in the room are the property of the motel, but the guest has bought some additional furnishings for the room. Most of the guests are transient, but this guest has been staying here for four months and has no other address. The manager decided he wants this guest to leave because he wants to rent the room to a friend. The guest has always made the weekly rental payment on time.

This appears to be a landlord/tenant situation because the room has a kitchen, the guest has added his own furnishings to the room, he has been staying there for four months and has no other residence. Thus, if the manager wants the guest to leave he must initiate eviction proceedings. If the officer is unsure whether a particular situation is a landlord/tenant or motel/guest, the officer should advise the

hotel/motel manager to go to the Magistrate's Office and attempt to get a warrant for trespass.

For a refresher on other types of eviction/trespass scenarios, consult the May 1995 issue of the Police Law Bulletin.



## **HEARSAY TIPS**

Hearsay is a rule of evidence that officers frequently encounter. Officers should record a statement that is hearsay. However, the officer should attempt to locate the source that made the statement. Some tips on the hearsay rule are outlined below.

1. **Hearsay is anything you know because someone else told you.** Yes, that is over broad. It is simpler than the legal definition and will keep you erring on the safe side.
2. **Hearsay is inadmissible to prove elements in court.** You need to find your own evidence of each element. Do not rely on what someone told you they saw. If you rely on another person's observations, they will be subpoenaed to court to testify to that fact.



3. **Hearsay can be written as well as oral.** Putting the information on paper in the form of a statement does not alter the fact that it is hearsay.
4. **There are many exceptions to the hearsay rule.** There are many legal exceptions to the hearsay rule. Some of the most common are listed below.
5. **BEWARE of hearsay within hearsay.** Don't tell Ron who told John who told you. Every time the story is retold, a layer of hearsay is added. Trace it to the true source. Each layer removed from the source requires its own hearsay exception to be admissible.

### COMMON EXCEPTIONS TO THE HEARSAY RULE

1. **Statement by the Defendant.** If the defendant makes comments or statements, these may be used against him. If it is a custodial statement, *Miranda* applies.
2. **Excited Utterances.** If the person making the statement was under the stress of excitement while informing you of the cause of their excitement, then it may be admissible. Look for

signs of excitement---yelling, jumping, crying, etc.

3. **Business/Public Records.** Records kept in the ordinary course of business are generally admissible. Common examples are phone or bank records. You will need a records custodian to show that the records are authentic. Police records are not admissible in criminal cases.
4. **Certified Copies of Public Records.** Driving, registration or insurance records are admissible without a custodian if they are certified and sealed. These are needed to prove that the defendant's license was revoked.
5. **Chemical Analyst Affidavit.** This is not listed as a hearsay exception, but that is how it works. Double-check the analyst's affidavit on DWIs. Make sure it is signed, notarized, and lists the dates of preventative maintenance.

**Remember that what other officers tell you is considered reliable hearsay and you can use it for probable cause, but you CANNOT use it to prove elements in trial.**



### CHANGES IN DWI LAW!

#### Ignition Interlock System for Limited Driving Privilege

For DWI offenses committed on or after July 1, 2000, N.C.G.S. §20-179.3(g5) applies to persons who receive a limited driving privilege and the person had an alcohol concentration of **0.16 or more**. This condition of the limited driving privilege allows the operation of a vehicle having an approved ignition interlock system that is personally activated by the driver. An ignition interlock is a device which requires the driver to blow his or her breath into a tube in a predetermined manner and then enter a code on a keypad before a car will start. The device analyzes the driver's breath for alcohol. If the driver has an alcohol concentration greater than the specified amount, the car will not start. The alcohol level set for a limited privilege will be 0.00. This same procedure must be repeated after the car has been driven for a period of time or the car will stop. If the person drives in violation of any

of the conditions related to the use of the interlock system, the person should be charged with the offense of driving while license revoked pursuant to N.C.G.S. §20-28. The condition will be noted on the Limited Privilege form.

## **IGNITION INTERLOCK DEVICES AS CONDITION OF RESTORATION**

Article 2 of Chapter 20 is amended by the addition of **G.S. § 20-17.8**, which governs restoration of a license after certain DWI convictions, and requires the use of ignition interlocks. Upon reinstatement of a person's drivers license after a revocation for a conviction of DWI, G.S. § 20-138.1, DMV will impose as a condition of reinstatement installation of an ignition interlock device if the person had an alcohol concentration of 0.16 or more, or a prior impaired driving offense conviction within seven years immediately preceding the date of the offense for which the person's license was been revoked. **The ignition interlock condition will be printed on the drivers license by DMV.** The driver must personally activate the ignition interlock system and may only operate a vehicle that is equipped with a functioning ignition interlock system of a type approved by the DMV Commissioner. A person who fails to meet these requirements may be charged with driving with a revoked license. The ignition interlock requirement shall remain in effect for a period of:

- ◆ 3 years from the date of restoration if original revocation was for 4 years,
- ◆ 7 years from the date of restoration if original revocation was a permanent revocation.

This information is summarized in a quick reference chart on the following page.



- ◆ 1 year from the date of restoration if the original revocation was for 1 year,

## Lower Alcohol Concentrations for Offenders

For any person **charged** with DWI, DWI in a commercial motor vehicle, driving after drinking by a person under age 21, or a vehicular homicide based upon DWI **on or after July 1, 2000**, when DMV restores the drivers license, DMV will place a restriction on the person's drivers license to limit the alcohol concentration of the person when driving. DMV must place a condition on the driver's license that the driver not operate the vehicle with an alcohol concentration greater than (1) 0.00 or (2) 0.04 or more, depending upon the offense. This lower alcohol concentration restriction will remain on the drivers license for either 1 year, 3 years, or 7 years, depending upon the type of revocation. The following chart summarizes the new drivers license conditions.

Offense	<u>First Restoration of License</u>		<u>Second or Subsequent Restoration of License</u>	
	A/C	Length of time	A/C	Length of time
DWI G.S. 20-138.1	0.04	3 years	0.00	3 years unless permanent revocation, then 7 years
DWI in another state	0.04	3 years	0.00	3 years unless permanent revocation, then 7 years
DWI in federal court	0.04	3 years	0.00	3 years unless permanent revocation, then 7 years
DWI Commercial MV	0.04	3 years	0.00	3 years unless permanent revocation, then 7 years
Under 21 drink & drive	0.00	until age 21	0.00	3 years unless permanent revocation, then until age 21
Felony Death by Vehicle	0.00	3 years	0.00	3 years unless permanent revocation, then 7 years
Manslaughter/DWI	0.00	3 years	0.00	3 years unless permanent revocation, then 7 years
Negligent Homicide/DWI	0.00	3 years	0.00	3 years unless permanent revocation, then 7 years
Conviction of Homicide/DWI in Other states	0.00	3 years	0.00	3 years unless permanent revocation, then 7 years
Conviction of Homicide/DWI in Federal court	0.00	3 years	0.00	3 years unless permanent revocation, then 7 years

**The reduced alcohol concentration condition will be printed on the drivers license by DMV.**

An officer who has reasonable grounds to believe the driver is operating a motor vehicle on the highway in violation of the alcohol concentration condition shall request the driver to submit to a chemical analysis. If the driver refuses to submit to the analysis or has an alcohol concentration in excess of the alcohol concentration condition, the officer must forward an affidavit to DMV. DMV is required to revoke the person's driver's license for one year. The one year begins at the end of any period remaining from the original revocation.