



# CMPD POLICE LAW BULLETIN

## A Police Legal Newsletter

September 2000

Volume 18, Issue 9

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Did you know...?

... The District Attorney's Corner returns this month with an updated roster of all the Assistant District Attorneys and their telephone numbers? See page 7.

... That information concerning an individual's communicable disease status is confidential? See page 5.

... Did you know that the greatest predictor of future delinquency and criminal behavior of juveniles is chronic absenteeism? Read about the new and improved Tolerate No Truancy Program. See page 7.

... That Nontestimonial Identification orders may only be obtained when there is probable cause to believe a felony or a Class A1 or Class 1 misdemeanor has been committed? See page 6.

... That Officers should immediately notify the dispatcher when the officer discovers a street sign missing or removed from its proper location? See page 6.

**Forward:** In this issue we review the most recent Fourth Circuit decision in *Jean v. Collins* which governs police officers' liability for failing to disclose exculpatory evidence. The Fourth Circuit also distinguished a face to face encounter with an informant from an anonymous tip for purposes of a *Terry* frisk in *United States v. Christmas*. We also review a North Carolina Court of Appeals case that addresses reasonable suspicion for a DWI stop and a Court of Appeals case dealing with reasonable suspicion for the limited pat down search of a passenger in a vehicle.

### HIGHLIGHTS:

#### FOURTH CIRCUIT COURT OF APPEALS:

##### POLICE OFFICERS/ EXCULPATORY EVIDENCE:

In *Jean v. Collins*, \_\_\_ F.3d \_\_\_ (2000) the Fourth Circuit reviewed again the issue of whether or not police officers are liable under a §1983 action for allegedly withholding exculpatory evidence from the defendant. The Court equally divided on this issue. See page 2.

##### FOURTH AMENDMENT/ INFORMANT'S TIP/ REASONABLE SUSPICION/ FRISK:

In *United States v. Christmas*, \_\_\_ F.3d \_\_\_ (2000) the Fourth Circuit distinguished an anonymous tip from a face to face encounter with an informant and found reasonable suspicion for a *Terry* frisk of a suspect. See page 3.

#### NORTH CAROLINA COURT OF APPEALS:

##### FOURTH AMENDMENT/ DWI TRAFFIC STOP/ REASONABLE SUSPICION:

In *State v. Bonds*, \_\_\_ N.C. App. \_\_\_ (August 2000) the Court found an officer had reasonable suspicion to stop a driver for DWI after observing the driver with his window rolled down in twenty-eight degree weather, driving ten miles below the posted speed limit and staring with a blank look on his face. See page 4.

##### TRAFFIC CHECKPOINT/ REASONABLE SUSPICION/ SEARCH OF PASSENGER:

In *State v. Pulliam*, \_\_\_ N.C. App. \_\_\_ (August 2000), the Court found officers

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Mark H. Newbold • J. Bruce McDonald  
Judy C. Emken • Simone F. Alston  
John D. Joye

lawfully ordered the passenger in a vehicle to exit in order to conduct a search of the vehicle. The officers' subsequent observations of an unusual bulge in the passenger's pocket constituted reasonable suspicion for a limited pat down search for weapons. See page 4.

### **POSSESSION OF FIREARM BY A FELON/ INOPERABILITY OF WEAPON:**

In *State v. Jackson*, \_\_\_N.C. App. \_\_\_ (August 2000), the Court found that a defendant on trial for possession of a firearm by a felon, who raises an affirmative defense that the weapon was inoperable, is entitled to a jury instruction that the weapon must be operable in order to convict. See page 5.



### **BRIEFS:**

### **FOURTH CIRCUIT COURT OF APPEALS:**

#### **Police Officers/ Exculpatory Evidence**

*Jean v. Collins*, (July 31, 2000), on remand from the United States Supreme Court.

**Background:** The Fourth Circuit previously held in *Jean v. Collins*, 155 F.3d 701 (4<sup>th</sup> Cir. 1998)(en banc) that police officers did not violate the Plaintiff's Fourteenth Amendment due process rights by failing to turn over exculpatory evidence to the prosecutor. Therefore no 42 USC §1983 liability existed. (Civil Rights Statute) The Supreme Court granted certiorari and vacated the judgment. The case was remanded to the Fourth Circuit Court of Appeals for further consideration in light of *Wilson v. Layne*, 526 U.S. 603, 119 S.Ct.1692 (1999). (See the June/July 1999 edition of the PLB) The Court of Appeals was equally divided on the issues.

**Facts:** Law enforcement officers in Jacksonville, NC, were originally sued for failing to disclose exculpatory evidence during defendant Jean's criminal trial for rape and first degree sex offenses. Several witnesses, including a police officer were hypnotized in an effort to assist their memory concerning the suspect's appearance and voice. The victim also listened to several voice identification recordings in an attempt to identify the suspect. The recordings of these sessions were not disclosed to the defense nor did the prosecutor disclose that hypnosis was utilized to obtain the victim's statement, until she testified at trial. Jean was convicted and filed suit against the police officers in their individual capacities.

The Fourth Circuit ultimately ruled that Jean's due process rights under *Brady v. Maryland* were violated when the prosecution failed to disclose to the defense that witnesses had been hypnotized. Jean was released after serving nine years in prison.

**Issue:** Whether or not police officers are liable under §1983 for allegedly withholding exculpatory evidence from the prosecution?

**Rule:** Yes. Police officers acting in bad faith can be subject to monetary damages for failure to disclose exculpatory evidence to the prosecutor.

**Discussion:** The Court is evenly divided over this issue with several concurring and dissenting opinions. The Court, in affirming the judgement, held that police knowledge is plainly imputed to the prosecution for purposes of the prosecutor's *Brady* duties. The majority held that the officers did not violate due process because they acted in good faith. However, if the officers had intentionally withheld information for the purpose of depriving a criminal defendant of the use of that evidence, then the officers would have violated due process.

The dissenting opinions maintain that there was a *Brady* violation on the part of the officers as *Brady* applies to officers and prosecutors alike. Therefore a violation of Jean's due process rights

occurred when the hypnosis evidence was withheld from the prosecutor. The dissent found that there was a basis for a §1983 action and that the nine years Jean spent in prison were a deprivation of his liberty without due process of law.

**NOTE:** The status of the law is somewhat unclear in the Fourth Circuit due to the equally divided decision. The better practice is to provide ALL documents, notes, interviews, reports, etc. to the prosecutor, who ultimately decides what information will be provided to the defense.

#### **Fourth Amendment/ Informant's Tip/ Reasonable Suspicion/ Frisk:**

*United States v. Christmas*,  
\_\_\_\_F.3d. \_\_\_\_ (2000)

**Facts:** Officers were interviewing residents of a neighborhood in Durham, NC as part of a homicide investigation. During this process, a citizen approached the officers and stated that instead of conducting interviews, they should be investigating the "drugs and guns that these guys have on the porch two doors down from me." The informant provided the address where the suspected criminal behavior was occurring, which was a short distance from the officer's location. The informant did not give her name and was intoxicated when she spoke to the officers.

The officers went to the

location to investigate the informant's report. Upon arrival, the officers observed several individuals on the front porch. One of the officers recognized the defendant. The officers explained that they were investigating a report that drugs and weapons were at the residence and indicated they would conduct a pat-down search for weapons. The defendant denied that he had any weapons but a pat down of his person revealed a loaded .357 Magnum. Defendant was placed under arrest for Carrying a Concealed Weapon. A search incident to his arrest revealed a large bag of crack cocaine and marijuana.

The defendant plead guilty to possession with intent to distribute cocaine but reserved the right to appeal the denial of his motion to suppress the drugs and the firearm seized during his arrest.

**Issue:** Whether a face to face, unsolicited encounter with an unnamed informant can furnish reasonable suspicion for a protective pat down of a suspect for weapons?

**Rule:** Yes. A face to face unsolicited encounter with an unnamed informant may be sufficient to provide reasonable suspicion for a pat down search.

**Discussion:** The defendant claimed that a tip from a woman living two doors away did not provide reasonable suspicion for a protective pat down of his person based on *Florida v. J.L.*, 120 S. Ct. 1375

(2000) (See the April 2000 edition of the PLB). [ In *Florida v. J.L.*, the police received an anonymous tip that a young black male standing at a bus stop wearing a plaid shirt was carrying a gun. The police did not know the informant and could not verify his credibility. They had no other details to indicate that the individual was involved in criminal behavior and the Supreme Court found that the anonymous tip without more, was insufficient to justify a Terry stop and frisk for weapons.]

In this instance, the Court was persuaded by several factors. First, the informant approached the officers in a public place near the target location. Secondly, the informant provided her address, which was two doors down from the target location, thereby increasing the likelihood that these individuals would see her speaking to law enforcement. These factors enhanced her credibility and trustworthiness as an informant.

The Court distinguished cases involving face to face informant encounters from cases involving anonymous tips. The information provided by this informant made the tip trustworthy whereas the anonymous telephone tip in *Florida v. J.L.* lacked this type of reliability.

The Fourth Circuit affirmed the lower court's denial of the defendant's motion to suppress.



## NORTH CAROLINA COURT OF APPEALS:

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

*State v. Bonds*, \_\_\_N.C. App.\_\_(August 2000)

**Facts:** Officer Wyatt of the Lexington Police Department observed defendant operating a motor vehicle with the driver's window completely down despite the twenty-eight degree temperature. The officer also observed defendant driving ten miles below the posted speed limit with a blank look on his face and staring straight ahead. The officer stopped the defendant at the city limit sign, as he believed the defendant was driving while impaired. The defendant's intoxilyzer test revealed he was a .13. Defendant was also driving without a valid driver's license. The defendant moved to suppress the evidence, which he claimed was the result of an illegal investigatory stop. The motion was denied and defendant plead guilty to the charges, reserving his right to appeal the motion.

**Issue:** Whether or not the officer had reasonable suspicion to stop the defendant's vehicle?

**Rule:** Yes. The officer's

observations of the defendant constituted reasonable and articulable suspicion that the driver was impaired and justified the stop.

**Discussion:** The officer articulated three reasons for suspecting the defendant was driving while impaired. The officer testified that he had been trained to look for certain indicators of intoxication in his ten years of experience. He also testified that he initially observed the defendant with a blank look on his face and staring straight ahead. The defendant was driving ten miles below the posted speed limit and had the driver's window completely down in twenty-eight degree weather. The Court found that all these factors, when viewed together, constituted reasonable and articulable suspicion to justify the stop of the vehicle. The judgment of the trial court was affirmed.

**Traffic Checkpoint/ Reasonable Suspicion/ Search of Passenger:**  
*State v. Pulliam*, \_\_\_N.C. App. \_\_\_\_ (August 2000).

**Facts:** Law enforcement officers were conducting a traffic checkpoint and randomly asking drivers for consent to search their vehicles. Officers recognized the driver of one of the vehicles at the checkpoint as a convicted drug dealer. The driver claimed he did not know the name of his front seat passenger.

Officers obtained consent

from the driver to search the vehicle. The defendant passenger was requested by officers to exit the vehicle in order to conduct the search in a safe manner. He became belligerent, argumentative and appeared to be intoxicated as he exited the vehicle. Upon exiting the vehicle, the officers observed a large bulge in the defendant's front pants pocket. They conducted a pat down search for weapons and located a utility razor knife. The defendant was placed under arrest for carrying a concealed weapon. A search incident to his arrest revealed nine rocks of crack cocaine and a baggie of marijuana. The defendant's motion to suppress the evidence was denied and he pled guilty. He appealed the denial of the motion to suppress.

**Issue:** Did law enforcement officers have reasonable suspicion to search the defendant passenger for weapons?

**Rule:** Yes. Officers may conduct a pat down search for weapons only if they can articulate that the suspect is armed and dangerous.

**Discussion:** The Court found that the initial check point stop was proper as was the driver's consent to the search of his vehicle. The officers could lawfully require the defendant passenger to exit the vehicle to conduct the search. The subsequent observations of what appeared to be a weapon constituted reasonable suspicion for a limited pat down search for weapons. The resulting drugs that were found incident to the lawful

arrest were lawfully seized. The Court upheld the denial of the motion to suppress.



### **POSSESSION OF FIREARM BY A FELON/ INOPERABILITY OF WEAPON:**

*State v. Jackson*, \_\_\_ N.C. App. \_\_\_ (August 2000).

**Facts:** Charlotte-Mecklenburg Police Department (CMPD) officers were dispatched to investigate a call of a man brandishing a gun. When the officers arrived at the scene, they observed an individual fitting the description and they proceeded to speak with him. The officer requested the defendant to raise his arms and upon doing so, the officer observed a chrome-plated handgun in the defendant's waistband. The defendant was charged with possession of a firearm by a convicted felon.

At trial, the defendant called the CMPD firearm's examiner. The examiner testified that the handgun "was not normally operable," due to a missing spring and pin in the gun. The trial court did not instruct the jury on the issue of inoperability and

the defendant was convicted of carrying a concealed weapon, possession of a firearm by a felon, and resisting a public officer. The Court of Appeals reversed the decision of the trial court and remanded for a new trial on the firearm charge.

**Issue:** Whether or not a firearm must be operable in order for a defendant to be convicted of possession of a firearm by a felon?

**Rule:** Yes. When the defendant presented evidence that the firearm was inoperable, thereby raising an affirmative defense, the Judge was required to instruct the jury that the inoperability of the firearm is a defense to the charge.

**Discussion:** The Court found that operability of the firearm is not an element that must be proven by the state for the charge of possession of a firearm by a convicted felon. However, it was an affirmative defense raised when the defendant presented evidence that the gun was not operable. The court must instruct the jury on this matter regardless of whether the defendant requested the instruction. The Court remanded for a new trial on the charge of possession of a firearm by a felon.



### **FOR YOUR INFORMATION:**

**Confidentiality Requirements regarding communicable diseases:**

- G.S. 130A-143 governs the confidentiality of **all** information or records that are publicly or privately maintained that identify a person with certain conditions that are required to be reported by the North Carolina Administrative Code.

**NOTE:** This includes information officers may receive about an arrestee's condition, regardless of how the officer learns about the illness.

- G.S. 130A-25 makes it a misdemeanor to violate the confidentiality provisions of G.S. 130A-143.
- Some of the more common communicable diseases that require confidentiality are listed below:
  1. AIDS
  2. HIV
  3. E. coli 0157
  4. Hepatitis A
  5. Hepatitis B
  6. Tuberculosis
  7. Measles
  8. Rabies
  9. Rubella
  10. Botulism
  11. Gonorrhea
  12. Syphilis
  13. Lyme Disease

Please remember that there is **no** law enforcement exception to this statute!

### **DID YOU KNOW?**

- That the Drug **Ketamine** is a Schedule III Controlled Substance? Ketamine is also known as "Special K" or the "Cat drug."
- That the drug, **Ecstasy** (3,4-methylenedioxymethamph

etamine or MDMA) is a Schedule 1 Controlled Substance? Possession of Ecstasy is a Class H felony but if a person sells, manufactures, delivers, transports or possesses 100 or more tablets they are guilty of trafficking, a Class G felony.

## DID YOU KNOW?

- That **Nontestimonial Identification Orders** may be obtained for identification by fingerprints, palm prints, footprints, measurements, blood specimens, urine specimens, saliva samples, hair samples, or other reasonable physical examination, handwriting exemplars, voice samples, photographs, and lineups or similar identification procedures requiring the presence of a suspect?

The grounds for the order are the following:

1. Probable cause to believe that a felony, or Class A1 or Class 1 misdemeanor has been committed;
2. There are reasonable grounds to suspect that the person named or described in the affidavit committed the offense; and
3. The results of the identification procedures will be of material aid in determining whether the person named in the affidavit committed the offense.

The provision concerning the Class A1 or Class 1 misdemeanor is noted on the new non-testimonial forms, which can be obtained in the Police Attorney's Office.



## REMINDER TO PATROL OFFICERS:

### Missing Street Signs:

It is important that if an officer discovers a street sign missing or removed that the dispatcher is notified immediately. The dispatcher will contact the appropriate individuals for the necessary repairs.

This requirement applies to **all city, county and state signs.**

Communications will document that the appropriate individuals were contacted for the repairs and when the contact was made.

If an officer is investigating an accident related to a missing sign, it is important to note in the report that communications was notified of the missing sign, in the event there is a future dispute.



## TOLERATE NO TRUANCY IS BACK!!!

Did you know that the greatest predictor of future delinquency and criminal behavior of juveniles is chronic absenteeism?

CMPD in conjunction with the Charlotte-Mecklenburg School System has revamped the old "TNT" program.

Highlights of the Program include:

- Citizens may call 911 to report suspected truants.
- CMS is providing regular reports to CMPD concerning children returned to school by CMPD with information about their attendance.
- Officers should use the 10-98 Code whenever they come into contact with a suspected truant to assist with the analysis of the program.
- CMS has hired an individual to handle truancy-related issues.
- CMS has assigned an individual counselor to an office in the Transit Center to address potential dropouts.

# **“THE DISTRICT ATTORNEY’S CORNER”**

*Written and edited by  
Steve Ward*

**DA Liaison to CPD  
CHANGES AT THE  
DA’S OFFICE**  
336-6333 or 358-6252

This summer has seen a significant number of personnel changes in the District Attorney’s Office. The attrition has been a little heavier than we normally experience and so there have been a number of new faces and team reassignments. Just as the old saying goes “that you can’t tell the players without a program,” perhaps what follows will help with showing you who is currently on board and where they are assigned. I have also included their direct dial phone numbers.

***Please note that these numbers are for your use only and are not to be given to the public.***

ADA’s can also be reached via email. They are listed in your address book and their name will have a small globe to the left of it. I will update this list as other changes occur.

## **DISTRICT ATTORNEY’S OFFICE**

District Attorney, Peter Gilchrist 347-7891  
Deputy District Attorney, Bart Menser 358-6476

### Homicide Team

Marsha Goodenow, Chief 358-6299  
Gentry Caudill 358-6258  
David Graham 358-6286  
Carla Archie 358-6269  
Bob Gleason 358-6270

### Person’s Team

Nate Proctor, Chief 358-6251  
Jack Knight 358-6250  
Glenn Cole 417-1889  
Jay Ashendorf 358-6260  
Eric Cottrell 358-6281  
John Ross 417-1882  
Amanda Mingo 358-6257  
Laura Gormican 417-1886

### Property Team

Barry Cook, Chief 358-6253  
David Wallace 358-6268  
Greg McCall 358-6297  
Heather McKaig 358-6267  
Amy Sigmon 417-1873  
Laura Skinner 417-1883

### Juvenile Team

Barbara Ardizzone, Chief 417-1832  
Betsy Bare 417-1818  
Samantha Pendergrass 417-1891

### Drug Team

Bruce Lillie, Chief 358-6255  
Maria Long 358-6274  
Kathy Lucchesi 417-1892  
Sean Perrin 417-1817

### Misdemeanor Team

David Maloney, Chief 358-6265  
Christian Hoel 417-1887  
Sheena West 417-1837  
Lou Waple 358-6273  
Al Williams 358-6269  
Janiere Monroe 358-6263  
Pat Ford 417-1890  
Leila Zahlan 417-1853  
Christa Cox 417-1891  
Meagan Jones 358-6298  
Mary Frasche 417-1830  
(Domestic Violence)  
Roberta Tepper, 358-6275  
Regina Edwards, 417-1933  
Angela George 417-1888