



CMPD POLICE LAW BULLETIN

A Police Legal Newsletter

January 2001

Volume 19, Issue 1

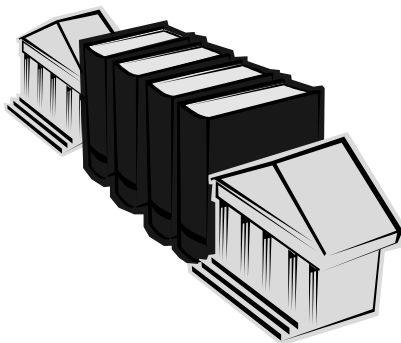
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... Drug interdiction checkpoints violate the Fourth Amendment. See page 2.

... A public strip search violates a clearly established right and qualified immunity is not available as a defense. See page 3.

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... Fourth Amendment does not judge reasonableness of officer's suspicion based on specialized knowledge of a given industry. See page 5.



Forward: In this issue we review the Supreme Court's decision in *Indianapolis v. Edmonds*. In *Edmonds*, the Supreme Court held that drug interdiction checkpoints violate the Fourth Amendment. This case does not affect DWI checkpoints or license/registration checkpoints which are still permissible. We also review a Fourth Circuit Court of Appeals case concerning strip searches and a North Carolina Supreme Court case concerning anonymous tips.

HIGHLIGHTS:

UNITED STATES SUPREME COURT:

Fourth Amendment/Suspicionless Seizures/Drug Interdiction Checkpoints: In *Indianapolis v. Edmonds*, 121 S. Ct. 447 (2000), the United States Supreme Court held that drug interdiction checkpoints violated the Fourth Amendment because the stops were not justified by individualized suspicion. The Court distinguished other types of checkpoints designed to serve special needs beyond the need for normal law enforcement. See page 2.

FOURTH CIRCUIT COURT OF APPEALS:

Fourth Amendment/Search Incident To Arrest/Strip Search/Qualified Immunity: In *Amaechi v. West* ___ F.3d ___ (4th Cir. 2001), the Fourth Circuit Court of Appeals held that an officer was not entitled to qualified immunity

where the officer conducted a public strip search of a woman arrested on a misdemeanor noise ordinance charge. See page 3.

NORTH CAROLINA SUPREME COURT:

Fourth Amendment/Seizure/Reasonable Suspicion/Anonymous Tip: In *State v. Hughes*, ___ N.C. ___ (2001), the North Carolina Supreme Court held that where the arresting officers relied on information from an officer who could not verify the informant's reliability, the information must be treated as an anonymous tip. The tip, itself, did not create reasonable suspicion where it did not contain sufficient detail and had not been independently corroborated by police. See page 5.

NORTH CAROLINA COURT OF APPEALS:

Fourth Amendment/Seizure/Reasonable Suspicion: In *State v. Munoz*, ___ N.C. App. ___ (2001), the Court of Appeals clarified that in determining whether reasonable suspicion exists, the court must view the facts through the eyes of a reasonable, cautious officer, guided by his experience and training and not based on specialized knowledge of a particular industry.

BRIEFS:

UNITED STATES SUPREME COURT

Fourth Amendment/Suspicionless Seizures/Drug Interdiction Checkpoints: *Indianapolis v. Edmonds*, 121 S. Ct. 447 (2000).

Facts: The City of Indianapolis operated 6 vehicle checkpoints in an effort to interdict unlawful drugs between August and November 1998. At each checkpoint officers stopped a predetermined number of vehicles. One officer approached the vehicle and advised the driver that he or she was being stopped at a drug interdiction checkpoint and asked for license and vehicle registration. The officer also looked for signs of impairment and conducted an examination of the vehicle from the outside. Finally, a narcotics-detection dog walked around each of the stopped vehicles. Pursuant to written directives the officers conducted each stop in the same manner and had no discretion to stop a vehicle out of sequence. Officers could conduct a search only by

consent or based on the appropriate level of particularized suspicion. The total duration of each stop, absent other factors, was about five minutes.

Issue: Whether drug interdiction checkpoints violate the Fourth Amendment?

Rule: Yes. Drug interdiction checkpoints violate the Fourth Amendment because they are not based on individualized suspicion.

Discussion: The Fourth Amendment prohibits unreasonable seizures. A seizure is ordinarily unreasonable in the absence of individualized suspicion of wrongdoing. The Supreme Court has recognized limited exceptions to this rule (Border Patrol checkpoints, sobriety checkpoints). Such seizures are permissible because they serve a special need beyond the normal need for law enforcement. However, the Court has never approved a checkpoint whose primary purpose was to detect evidence of ordinary criminal wrongdoing.

In determining whether individualized suspicion is required, the court must consider the nature of the interests threatened and their connection to the particular law enforcement practices at issue. Drug interdiction checkpoints are aimed at discovering illegal drugs. Unlike sobriety checkpoints or border patrol checkpoints which are justified based on special needs related to highway safety and national security, drug interdiction checkpoints do not serve

interests separate and distinct from the general interest in crime control. Although, the drug problem poses a severe and intractable problem, the gravity of the threat alone cannot determine what methods law enforcement officers may employ to address the problem. Consequently, the Supreme Court refused to sanction stops "justified only by the generalized and ever-present possibility that interrogation and investigation may reveal that any given motorist has committed some crime."

The Court also held that *Whren v. United States* did not preclude the Court from inquiring into the primary purpose of the checkpoint program. In *Whren*, the Supreme Court held that an officer's subjective intentions were irrelevant to the validity of a traffic stop that is justified objectively by probable cause to believe that a traffic violation has occurred. However, in deciding that case, the Supreme Court expressly distinguished cases addressing the validity of searches conducted in the absence of probable cause. The Court reasoned that *Whren* reinforces the principle that, while "[s]ubjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis, programmatic purposes may be relevant to the validity of Fourth Amendment intrusions

undertaken pursuant to a general scheme without individualized suspicion." To hold otherwise would allow law enforcement authorities to establish checkpoints for almost any purpose as long as they also included a license or sobriety check. The Court cautioned, however, that the inquiry into the "primary purpose" is to be conducted only at the programmatic level and is not "an invitation to probe the minds of individual officers acting at the scene."

FOURTH CIRCUIT COURT OF APPEALS

Fourth Amendment/Search Incident To Arrest/Strip Search/ Qualified

Immunity: *Amaechi v. West* ___ F.3d ___ (4th Cir. 2001).

Facts: Ms. Amaechi lived with her husband and five children in a townhouse community in Virginia. Ms. Amaechi's children frequently played music too loudly causing neighbors to complain. On August 12, 1997, Officers West and Pfluger went to Ms. Amaechi's residence to execute an arrest warrant for violation of the town noise ordinance. Ms. Amaechi, who appeared at the door dressed in a house dress, cooperated fully with the officers. When told she was to be handcuffed, she told officers that she was naked under the dress and would be unable to hold the dress closed while handcuffed. Despite this, her request for permission to put on other clothes was denied by the officers. Ms. Amaechi's hands were cuffed behind

her back causing her dress to fall open below her chest. Officer West then escorted Ms. Amaechi to the police car where he searched her. Despite her protests that she didn't have on any underwear, the officer searched her person by squeezing her hips, swiping his ungloved hand across her bare vagina (penetrating her genitals with the tip of his finger), and kneading her buttocks. The search took place in full view of Ms. Amaechi's husband and five children as well as her neighbors and the other officers on the scene.

Issue: Whether the right to be free from this type of public strip search was a clearly established right such that the officer was not entitled to qualified immunity?

Rule: Yes. The case law limiting strip searches and other types of sexually intrusive searches is well established and put the officer on notice that his actions were unconstitutionally unreasonable and violated a clearly established right. As a result the officer was not entitled to qualified immunity.

Discussion: Qualified immunity is a defense that protects an officer from personal liability for civil damages as long as his conduct does not violate a clearly established statutory or constitutional right. To determine whether an officer is entitled to qualified immunity a court must

determine (1) whether there has been a violation of a statutory or constitutional right, and (2) whether that right was clearly established at the time of the violation.

It is clear that Ms. Amaechi had a constitutional right to be free from an unreasonable search of her person. Accordingly, the court must determine if the search of Ms. Amaechi was unreasonable. The Court must analyze "the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted." Ms. Amaechi was arrested on a misdemeanor noise violation. She submitted peacefully to officers, did not pose a threat to officer safety because any weapons would have been immediately apparent under the house dress and there was no possibility that she could destroy or conceal evidence related to the noise violation. The search was conducted on a public street in view of officers, neighbors and family members. The Court concluded that "[b]ecause the invasiveness of Amaechi's search far outweighed any potential justification for the scope, manner and place under which it was conducted, . . .the search was unreasonable and, therefore, unconstitutional."

The Court then turned to the question of whether the right to be free from this kind of sexually invasive search was clearly established at the time of the search. The Court reasoned that the search to which Ms. Amaechi was subjected was a body cavity or strip search as defined by federal law and that federal

law clearly prohibited public strip searches absent clear justification or exigent circumstances. Moreover, the officer's conduct violated state statutory law governing procedures for conducting strip searches. As a result, the Court found that the officer had no reason to believe that his search of Ms. Amaechi fell within a questionable area of the law. "The entire body of jurisprudence applying limits on the type of sexually intrusive search conducted by [the officer] provides [the officer] with notice that his search of Amaechi was unconstitutionally unreasonable. There was absolutely no justification for this type of public search, . . ." and the officer is not entitled to qualified immunity.

NORTH CAROLINA SUPREME COURT

Fourth Amendment/ Seizure/Reasonable Suspicion/Anonymous Tip: *State v. Hughes*, ___ N.C. ___ (2000).

Facts: On the morning of March 13, 1998, Captain Matthews of the Onslow County Sheriff's Department received a phone call from a confidential, reliable informant who said that an individual nicknamed "Markie" would be arriving that day in Jacksonville by way of a bus coming from New York City, possibly the 5:30 p.m. bus. "Markie" was described as "a dark-skinned Jamaican from New York who weighs over three hundred pounds and is approximately six foot, one inch tall or taller, between twenty or thirty years of age who would be clean cut with a short haircut and wearing

baggy pants, and who would have marijuana and powdered cocaine in his possession. The informant also indicated that Markie "sometimes" came to Jacksonville on weekends before it got dark, that he "sometimes" took a taxi from the bus station, that he "sometimes" carried an overnight bag, and that he would be headed to North Topsail Beach. Captain Matthews relayed this information to Detective Imhoff of the Jacksonville Police Department who was sitting in his office. Later that day, Imhoff relayed this information to Detective Bryan of the Jacksonville Police Department and told him to go to the bus station. When Detective Bryan and his partner reached the station, one bus from New York had already arrived, but a bus coming from Rocky Mount was scheduled to arrive around 3:50 p.m. Detective Bryan knew that Rocky Mount was a transfer point between New York and Jacksonville, as were some other cities. When the bus arrived, it pulled in with its door facing away from the officers, blocking the officers' view of the arriving passengers so that they could not see whether defendant stepped off of the bus. However, defendant was not in the parking lot before the bus arrived and he had stepped from behind the bus after it arrived. According to Bryan, defendant matched the exact description he had been given and was carrying an overnight bag. Defendant immediately stepped into a taxi and headed down Highway 17

South, toward an area called the Triangle, where Highway 17 splits in two directions--towards Wilmington and Topsail Beach, North Carolina, or towards Richlands, North Carolina. A person must pass through the Triangle before it can be determined in which of these directions he or she is going. The officers stopped defendant's taxi before it reached the Triangle area, and asked defendant if he would consent to a search. Defendant agreed. Marijuana was found in the toes of defendant's shoes and bags containing cocaine were later found in the tongues of the shoes.

Issue: Whether the evidence seized from defendant was illegally obtained?

Rule: Yes. Because there was insufficient indicia of reliability concerning the informant, this was treated as an anonymous tip. On its own, and without independent corroboration, the anonymous tip was not sufficient to create a reasonable suspicion to stop defendant's taxi.

Discussion: The determination of the legality of a stop and subsequent search is dependent on the reliability of the information used by arresting officers in making the stop. In order to determine the reliability of the information received by the arresting officers, the court must first determine whether the information received was obtained from an anonymous informant or

a confidential and reliable informant.

Reliability of an informant is determined by evaluating the totality of circumstances including, evidence that the informant had been used previously and had given reliable information and that the informant demonstrated personal knowledge by giving clear and precise details in the tip. In the present case, Detective Imhoff had never spoken with the informant and knew nothing about the informant other than Captain Matthews' claim that he was a confidential and reliable informant. There was no indication that the informant had been previously used and had given accurate information nor was there any other indication of reliability. The Court reasoned that the officers lacked objective proof as to why this informant was reliable and credible, other than just Captain Matthews' assertion passed to Detective Imhoff, and by him to the arresting officers. Consequently, the Court treated the information as having come from an anonymous source.

An anonymous tip can form the basis of reasonable suspicion as long as there is sufficient indicia of reliability either from the tip alone or after police corroboration. In this case, the officers had a physical description of a dark skinned Jamaican whose name and clothing description could not be recalled, who was going to North Topsail Beach, who "sometimes" came to Jacksonville on weekends

before dark, who sometimes" took a taxi, and who "sometimes" carried an overnight bag. The only other information the officers had was that defendant might be arriving on the 5:30 p.m. bus. This tip did not contain enough details to sufficiently predict defendant's specific future action. As well as being vague, the information was broad enough to be applied to many of the bus station patrons.

Moreover, the Court found that the tip was not made sufficient by independent police corroboration. The only information actually confirmed by the officers before the stop was that they saw a man meeting the suspect's description come from around a bus that had arrived in Jacksonville at approximately 3:50 p.m., that he was carrying an overnight bag, and that he left the station by taxi. Furthermore, the officers did not see defendant get off the bus, the bus arrived an hour and a half earlier than predicted, and the officers did not confirm the suspect's name, the fact that he was Jamaican, or whether the bus from Rocky Mount had originated in New York City. The Court found that these details were insufficient to corroborate the tip because they could apply to many individuals. Given the totality of the circumstances, the officers did not have reasonable suspicion resulting from either the tip itself or their subsequent corroboration and, therefore, the stop of defendant's taxi was unlawful.

NORTH CAROLINA COURT OF APPEALS

Fourth Amendment/ Seizure/Reasonable

Suspicion: *State v. Munoz*,
___ N.C. App. ___ (2001).

Facts: Defendant was driving his tractor trailer north on I-85 transporting a Ford Aerostar and a Nissan Sentra. Sergeant Lowry of the North Carolina Highway Patrol determined that defendant was traveling in excess of 75 miles per hour. When Lowry caught up to defendant, he had already been pulled over by Trooper Gray of the Highway Patrol. Gray stopped defendant because the tractor trailer was "drifting back and forth in its lane of travel and at times driving over the divided lines to the left," did not have its headlights on, and had only the driver's side windshield wiper in operation despite steady rain. Gray requested and defendant produced his license and registration as well as his log book and a clipboard holding shipping documents and bills of lading. Defendant sat in the front seat of the patrol car while Gray checked his Texas driver's license. Upon inspection of defendant's documents, the troopers found inconsistencies in the log book and in the shipping documentation. The clipboard contained documents entitled "bill of lading" for the Aerostar and for other vehicles that were no longer on the carrier. There was no bill of lading for the Sentra. Defendant told the troopers that he was receiving \$200 per vehicle to transport the van to Delaware and the Sentra to New Jersey. The troopers noted that defendant smelled strongly of grease or

fuel. Trooper Gray issued defendant a warning citation for driving out of his lanes and for operating a vehicle without headlights, and returned all of the documentation. About 45 minutes elapsed between the time defendant was stopped until he was issued this citation.

As defendant was leaving the patrol car, Gray asked him whether there were any weapons or drugs in the truck. Defendant responded “no” to both questions. Gray then asked defendant if he could search the truck; defendant agreed and signed a consent form. Gray noted the rear tags and the rear trunk lock were missing on the Sentra and he smelled the same grease or fuel-like odor he had detected on defendant in the interior of the car. He also noticed that the back seat on the passenger's side had been pulled out. He found two kilo bundles of cocaine behind the seat. Lowry handcuffed defendant and seated him in the back seat of the patrol car. A subsequent search of the Sentra revealed additional packages of cocaine hidden under the floor of the car.

Issue: Whether the officers had reasonable suspicion to detain the defendant after the initial stop based on the information known to them?

Rule: Yes. In order to determine whether an officer has a reasonable suspicion based on specific and articulable facts, the court must view the facts through the eyes of a reasonable, cautious officer, guided by his experience and training.

Discussion: In order to further detain a person after lawfully stopping him, an officer must have reasonable suspicion, based on specific and articulable facts, that criminal activity is afoot. The test is not whether the circumstances would raise the suspicions of someone knowledgeable about the trucking industry. The Court must view the facts 'through the eyes of a reasonable, cautious officer, guided by his experience and training' at the time he determined to detain defendant.

Noting that the law in North Carolina as to what constitutes a reasonable suspicion following traffic stops is evolving, the Court of Appeals found that reasonable suspicion existed based on the following: (1) the log book was not properly filled out and there were discrepancies in it; (2) defendant did not have a bill of lading or an inspection for the Sentra but did have one for the van and other cars he had previously transported; (3) defendant smelled like grease, and (4) the economics of traveling from Texas to Delaware and New Jersey for \$200 per car seemed suspicious. Consequently, the Court held that the further detention of defendant was lawful. The Court also concluded that the 45 minute delay was not unreasonable where the troopers checked the defendant's out-of-state license”, checked the fuel stickers, the EPIC system to see if there were any previous violations, and also reviewed defendant's log books.

Issue 2: Whether the search

of defendant's vehicle was lawful?

Rule: Yes. Defendant consented to the search of his vehicle and said consent was voluntarily given.

Discussion: Although that the initial stop of defendant's vehicle and the subsequent detention of the defendant beyond the initial stop was supported by reasonable suspicion, reasonable suspicion by itself is not sufficient to justify the search of defendant's vehicle. In order to conduct a search of a lawfully stopped vehicle, an officer must have probable cause or consent to search. An individual's consent to search must be freely given and cannot be the product of coercion by police. In the present case, the Court found that the defendant voluntarily consented to the search of his vehicle as shown by his signature on the consent form. Moreover, there was no evidence in the record that defendant denied that his consent was voluntary or claimed that it was the product of coercion. Accordingly, the search of defendant's vehicle was lawful.

NOTE: CMPD is currently reviewing its policy concerning when officers may conduct consent searches. Officers are advised that they should have some articulable reason why they are conducting a consent search.