



# CMPD POLICE LAW BULLETIN

## A Police Legal Newsletter

February 2001

Volume 19, Issue 2

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... **Animal Control Ordinance Amended.**

See page 4.

... **“Racial Profiling”: The Issue and the Proposed Policy.** See page 3.

... **Reminders From The Clerk’s Office:**

- Courtroom **2205 HAS CHANGED**. Citizens **MUST** appear on their court date. They **CANNOT** appear before the court date.
- Court dates **CANNOT** be changed over the phone. Citizens **MUST** appear in person at the Criminal Clerks Office to ask that a court date be modified.
- Officers **MUST** remember to set 2205 court dates on citations they write.
- Officers **MUST** write citations in legible handwriting.
- Note: Anyone who pays a citation by mail must include a self-addressed stamped envelope in order to receive a receipt for the payment.



**Forward:** In this issue we review the Supreme Court’s decision in *Illinois v. McArthur*. In *McArthur*, the Supreme Court held that officers may restrict a person from entering their own home without a police escort while the police wait for a search warrant for the home to be obtained. The Court found that the police interest in preserving easily destroyed contraband drugs outweighed the citizen’s liberty and property interests. We also review a North Carolina Court of Appeals case that reaffirmed the right of officers to use legal means other than N.C.G.S. §20-16.2 to obtain evidence for chemical analysis in D.W.I. cases.

### HIGHLIGHTS:

#### UNITED STATES SUPREME COURT:

##### Fourth Amendment/Warrantless Seizure/Awaiting Search Warrant:

In *Illinois v. McArthur*, \_\_\_ S. Ct. \_\_\_ (Feb. 20, 2001), the United States Supreme Court held that it was lawful for police to prevent a man from re-entering his home, unaccompanied by a police officer, when the officers had probable cause to believe that illegal drugs were in the home and that the man would destroy the drugs if allowed to re-enter his home. The man was only prevented from re-entry long enough for a search warrant for the dwelling to be obtained and served. The Court found that the officers placed a reasonable restriction on the dwelling, and that the

seizure was therefore legal under the 4<sup>th</sup> Amendment. The Court noted that the officers used only a limited restriction on the dwelling, that it was narrowly tailored to fit the situation, and that the officers were diligent in obtaining a warrant within two hours. See page 2.

#### NORTH CAROLINA COURT OF APPEALS

##### Fifth Amendment/Due Process Clause/Right to Refuse/Driving While Impaired:

In *State v. Davis, Jr.*, \_\_\_ N.C. App. \_\_\_ (Feb. 6, 2001), the North Carolina Court of Appeals reaffirmed that a defendant’s refusal to submit to a chemical analysis DOES NOT preclude the state from testing the defendant for

impaired substances under procedures of law independent of North Carolina's implied consent statute, N.C.G.S. 20-16.2. See page 3.

## BRIEFS

### Fourth Amendment/ Warrantless Seizure/Awaiting Search

**Warrant:** In *Illinois v. McArthur*, \_\_\_ U.S. \_\_\_ (Feb. 20, 2001).

**Facts:** On April 2, 1997, Tera McArthur asked Officers John Love and Richard Skidis to accompany her to the trailer she shared with her husband in order to keep the peace while she removed her belongings. The officers went with her to the trailer and remained outside on the porch while she went inside. Her husband Charles was home, but everything remained peaceful.

Tera McArthur emerged shortly thereafter with her belongings. As soon as she stepped onto the porch, she told the officers that "Chuck had dope in there." She had seen him "slide some dope under the couch." Officer Love knocked and Mr. McArthur came to the door. The officers asked for permission to search the trailer. Mr. McArthur stepped onto the porch and denied them permission to search.

At that point, Officer Love told Charles McArthur that he would not be allowed to re-enter the trailer and Officer Skidis was dispatched with Tera to obtain a search warrant. It took Officer Skidis approximately two hours to

return with a search warrant for the trailer. While they were waiting on the search warrant, Officer Love allowed Mr. McArthur to re-enter the trailer two or three times to place phone calls and obtain cigarettes. While Mr. McArthur was in the trailer, Officer Love stood just inside the door and watched him.

When the search warrant was served, marijuana and related paraphernalia was found under the couch. Mr. McArthur was then placed under arrest. He was charged with two misdemeanors, possession of marijuana and possession of drug paraphernalia.

**Issue:** Was it a violation of the Fourth Amendment for the police to refuse to allow the defendant to reenter the trailer unaccompanied while a search warrant was being obtained?

**Rule:** No. The brief seizure of the premises was permissible under the Fourth Amendment because of the limited nature of the intrusion and the law enforcement interest involved

**Discussion:** The Court found that the warrantless seizure of the trailer, based on an urgent law enforcement need or "exigent circumstances," was reasonable under the Fourth Amendment. In reaching that conclusion, the Court took into consideration several factors. First, the police had probable cause to believe that the trailer contained evidence of a crime and contraband. They had spoken with Mrs. McArthur and had some opportunity to assess her credibility. Furthermore, they knew that she had had an opportunity to

personally observe the defendant's conduct.

Second, the police had good reason to believe that, unless the defendant was restrained, he would destroy the drugs before they could obtain a search warrant. It was reasonable to think that the defendant realized that his wife knew about the drugs and that she had communicated with the police. Therefore, the police could reasonably assume that the defendant, suspecting that a search of the trailer was imminent, would get rid of the drugs fast, if given an opportunity.

Third, the police made reasonable efforts to balance their law enforcement needs with the defendant's right to privacy. They neither searched the trailer nor arrested the defendant before obtaining a search warrant. Rather, they merely prevented him from reentering the trailer unaccompanied. They left his home and belongings intact until a neutral magistrate made a determination that there was probable cause and issued a warrant.

Fourth, the police imposed the restraint on the defendant for a limited period of time, two hours, which was no longer than reasonably necessary for them, acting diligently, to obtain the search warrant.

The defendant claimed that since the offenses

involved were both relatively minor, the officers could not justify their actions based on exigent circumstances. However, the Court stated that both crimes were “jailable” offenses and the

need to preserve the evidence was sufficiently urgent to justify the restriction the police imposed, that is, preventing the defendant from entering the trailer unaccompanied. The Court specifically stated that it was not necessary to decide whether the circumstances of the case would have justified a greater restriction by the police (such as entering the trailer). Nor was it necessary to decide whether the restriction imposed in this case would have been justified if a “nonjailable” offense had been involved.



## NORTH CAROLINA COURT OF APPEALS

### Fifth Amendment/Due Process Clause/Right to Refuse/Driving While Impaired:

*State v. Davis, Jr., \_\_\_ N.C. App. \_\_\_ (Feb. 6, 2001)*

**Facts:** Defendant ran a red light and struck another vehicle. Officer Walsh arrived at the scene and observed that the defendant's eyes were bloodshot and watery, that his speech was slow and

slurred, and that he had a moderate odor of alcohol about him.

Defendant failed three field sobriety tests and then confessed to Officer Walsh that he had taken a drug

called Trilog. Officer Walsh arrested the defendant and took him to a nearby hospital for a blood test. After being read his rights, the defendant refused the blood test. Officer Walsh instructed another officer to remain with the defendant while he got a search warrant.

A magistrate issued a search warrant and blood and urine samples were collected from the defendant. Approximately three and one-half hours had passed since the accident had occurred. The samples tested positive for Xanax, Valium and alcohol.

At trial, the defendant moved to suppress the results of the blood and urine tests arguing that the compelled production of blood and urine violated the Due Process Clause of the Fifth Amendment. The motion to suppress was denied. The defendant was convicted of driving while impaired.

**Issue:** Whether collecting blood and urine samples from a defendant who has exercised his statutory right to refuse testing violates the Due Process Clause?

**Rule:** No. Under the plain language of N.C.G.S. §20-16.2(c), defendant's refusal to submit to testing does not preclude testing pursuant to other applicable procedures of law.

**Discussion:** Defendant argued that (1) the officer told him he had a right to refuse testing; (2) that he exercised his right to refuse; and (3) that the collection of blood and urine samples following his refusal to be tested violates due process. In holding that none of the defendant's constitutional rights had been violated, the Court reasoned that although N.C.G.S. §20-16.2 allows a suspect to refuse to submit to testing, it expressly states that, "the refusal does not preclude testing under other applicable procedures of law." Moreover, N.C.G.S. §20-139.1 (governing admissibility of chemical analyses) provides that, "[t]his section does not limit the introduction of other competent evidence as to a person's alcohol concentration or results of other tests showing the presence of an impairing substance, including other chemical tests." As a result, the Court found that the collection and testing of the defendant's blood and urine were conducted pursuant to other applicable procedures of law (a search warrant), and therefore, the test results were admissible as "other competent evidence" under N.C.G.S. §20-139.1. The Court specifically held that "it is not necessary for the admission of such "other competent evidence" that it be obtained in accordance with N.C.G.S. §20-16.2."

The Court reiterated that a search warrant is not required in order to collect samples for chemical analysis from a suspect who has refused to submit to testing pursuant to N.C.G.S. §20-16.2. Relying on *Schmerber v. California, 384 U.S. 757 (1966)* and *U.S.*

*v. Reid*, 929 F.2d 990 (4<sup>th</sup> Cir. 1991), the Court noted that the rate at which alcohol and drugs are eliminated from the blood stream created an exigency with regard to

collection of evidence that relieved officers from the need to obtain a search warrant. Thus, the police are allowed to test impaired drivers without first having to obtain a warrant due to the exigency of the defendant's body constantly and rapidly ridding itself of the impairing substances.

**Issue 2:** Whether the officer's failure to warn the defendant that testing could be conducted even after his refusal, and that these tests results could be used against him, violated due process?

**Rule:** No. The officer's failure to warn the defendant that, upon his refusal, the officer would seek alternate means to collect and test the defendant's blood and urine was not so fundamentally unfair so as to violate Due Process.

**Discussion:** N.C.G.S. §20-16.2 requires that a defendant be offered the right to refuse and warned that, if he refuses, evidence of his refusal is admissible against him. The Court found that this does not require officers to warn a defendant that, upon his refusal, the officers may seek to collect blood and urine samples via a search warrant or other lawful means. Because the officer's conduct was authorized by statute, there was no due process violation and evidence of defendant's refusal to submit to testing was admissible against him.

## **ANIMAL CONTROL ORDINANCE AMENDED**

On January 8, 2001, the Charlotte City Council amended Section 3-24 of the City Code to provide the Animal Control Bureau with an enforcement option in dealing

with nuisance animals. The new provision authorizes the bureau to seize an animal when the owner fails to comply with a nuisance declaration order.

Section 3-24 of the Code makes it unlawful for any person to own, keep, possess or maintain an animal in such a manner as to constitute a public nuisance or a nuisance to neighbors. The ordinance sets forth a number of examples of the type of activities or conditions that constitute a nuisance. The ordinance also provides that an animal may be declared a nuisance and the owner may be required to confine the animal in accordance with specific directives. It is a violation of the ordinance for an owner to fail to comply with the directives.

The ordinance amendment authorizes the bureau manager or any supervisor designated by the manager to make a nuisance declaration and to issue a seizure order for the animal if the owner fails to comply with the directives. After the animal is seized, the owner has five (5) days, not including the day of seizure, in which to file a written challenge to the seizure order. If the order is

challenged, a superior administrative hearing is held, at which both parties present evidence. The owner has the opportunity to appeal an adverse decision at the hearing to court for review by a judge. The bureau prepared a similar amendment to the

Mecklenburg County Animal Control Ordinance that was presented to the County Commission on February 6, 2001. The amendment was adopted by the Commission and now applies uniformly within the entire county.



## **RACIAL PROFILING: THE ISSUE AND THE POLICY DRAFT**

CMPD is in the process of adopting a policy regarding what has been termed as "racial profiling". The policy is still in the drafting stage. The policy gives officers clear guidance on the issue, assures citizens that CMPD is sensitive to the impact police work has on the community, and makes clear CMPD's position on the issue.

This article is meant to address rumors concerning the policy. Racial Profiling is a controversial issue. Below is a discussion of the issues concerning racial profiling.

## The Issues

Racial profiling is the popular term used to describe an alleged law enforcement practice of unevenly applying or enforcing criminal laws based on a stereotype or prejudice against a defined group. Although the term is "racial" profiling, race is not the only stereotype that should be included. Age, gender, and sexual orientation are examples of other characteristics that stereotypes might be based on.

The Equal Protection Clause of the 14<sup>th</sup> Amendment requires that laws be applied evenly. Recent caselaw has recognized that selective enforcement of the law can be the basis for a violation of the 14<sup>th</sup> Amendment. If the law is enforced against a person because of that person's race, sex, or ethnicity, then that person's 14<sup>th</sup> Amendment rights have been violated. The court's have not yet made it clear what traits other than race, sex, or ethnicity, if any, are covered by the 14<sup>th</sup> Amendment.

According to Gallup Polls, a majority of the American public believes that the practice of racial profiling is widespread. Additionally many special interest groups, as well as the U.S. Department of Justice, have begun to sue local police departments nationwide on the basis of alleged racial profiling. Many state legislatures, North Carolina's being the first, have enacted statutes that require law enforcement agencies to

devise and implement a procedure to gather data on citizen stops made by their officers. North Carolina's statute currently only applies to state law enforcement agencies. However, there is a bill currently before the North Carolina Senate that would extend the requirement of data collection to local agencies in at least the larger cities in the state.

## The CMPD Policy Draft

CMPD follows a community-based policing philosophy. As such, CMPD's success is closely tied to how it is received and perceived by the public it serves. The national public perception that racial profiling is widely used by police is intolerable to CMPD and a significant detriment to both the community and the department. That national perception should not be allowed to take root in Charlotte-Mecklenburg. The proposed policy has three purposes:

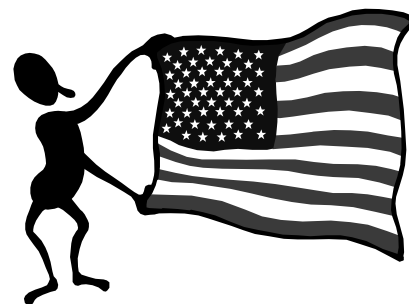
1. To give officers clear guidance on the issue.
2. To assure the community that CMPD is sensitive to the impact of police work.
3. To make it clear that CMPD will not tolerate the use of arbitrary stereotypes.

The proposed CMPD policy does not hamper or prevent effective police work. Officers will still be able to, and still be expected to, vigorously enforce the law and strengthen the community through crime

prevention. Officers will certainly be able to continue to make voluntary citizen contacts and to make motor vehicle tag record checks. activities.

CMPD officers have never been allowed to initiate any police activity because of an arbitrary stereotype. This policy is simply a re-affirmation of that fact. Officers must continue to articulate why they chose certain courses of action.

The proposed policy aids officers in properly complying with the Constitution and gives them the knowledge they need to understand the many legal issues that define modern police work. The policy also reassures the Charlotte-Mecklenburg community that, despite any national perceptions about police and racial profiling, this community's police department has never and does not its officers to rely on arbitrary stereotypes.



## **NON-RESIDENT VIOLATOR COMPACT**

### **(N.C.G.S. §20-4.18 THRU §20-4.20)**

The following is a current list of the states with which North Carolina has a reciprocal agreement. Pursuant to the Non-Resident Violator Compact (NRVC), if a violator commits an offense which would not result in the suspension or revocation of his license, he shall be cited and required to complete a "Personal Recognizance for Appearance by Non-Resident" form.

Alabama	Maine	South Carolina
Arizona	Maryland	South Dakota
Arkansas	Massachusetts	Tennessee
Colorado	Minnesota	Texas
Connecticut	Mississippi	Utah
Delaware	Missouri	Vermont
District of Columbia	Nebraska	Virginia
Florida	Nevada	West Virginia
Georgia	New Hampshire	Wyoming
Hawaii	New Jersey	
Idaho	New Mexico	
Illinois	New York	
Indiana	North Carolina	
Iowa	North Dakota	
Kansas	Ohio	
Kentucky	Oklahoma	
Louisiana	Pennsylvania	
Maine	Rhode Island	

The following states are not a member of the NRVC: Alaska, California, Michigan, Montana, Oregon, Wisconsin