



# CMPD POLICE LAW BULLETIN

## A Police Legal Newsletter

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We wish to acknowledge the tremendous tragedy that has rocked our nation and extend our heartfelt thanks to all of the local law enforcement community.

We pay tribute to our fellow law enforcement personnel who lost their lives in this horrific attack on America.

We also remember the families and friends of law enforcement and other victims who are grieving as a result of this tragedy.

We are also thankful for all the CMPD officers who serve our country in the armed services.

**Forward:** In this issue we review two North Carolina cases which address the use of deceptive tactics by law enforcement. The North Carolina Supreme Court, in *State v. Bone*, discussed the impact of a detective's exaggerations to a suspect that shoe prints were of the same evidentiary value as fingerprints. In *State v. Harris*, the North Carolina Court of Appeals discussed the use of deceptive tactics by officers who enticed a suspect to voluntarily open a closed hotel room door. The warrantless search of a pager, including the pager's memory, was also addressed by the Court of Appeals.

### IN THIS ISSUE:

... **Several Reminders for transporting Officers.** See page 5.

... **Setting 2205 Dates on Citations.** See page 6.

...**Soliciting from the median is prohibited.** The complete **City Ordinance** is reprinted on page 5.

Court also found that a detective's exaggerations did not affect the voluntariness of the defendant's confession.

### NORTH CAROLINA COURT OF APPEALS:

**Deception by Law Enforcement/Exigent Circumstances/Warrantless Search of Pager:** In *State v. Harris*, \_\_\_N.C. App. \_\_\_(2001), the Court found that an officer's ruse, which caused the defendant to voluntarily open a hotel room door, did not violate the Fourth Amendment. The subsequent warrantless search of a pager that had been used in illegal drug transactions and was seized incident to the defendant's arrest, was also a lawful search.

### HIGHLIGHTS:

#### NORTH CAROLINA SUPREME COURT:

**Plain View/Exigent Circumstances/ Seizure/ Misstatements by Detective:** In *State v. Bone*, 354 N.C. 1 (2001), the Court applied the plain view doctrine and exigent circumstances to justify a search and seizure of the defendant's shoes. The

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Charlotte-Mecklenburg Police Department  
Mark H. Newbold · J. Bruce McDonald  
Judy C. Emken · Simone F. Alston  
John D. Joye



## **BRIEFS:**

### **NORTH CAROLINA SUPREME COURT**

#### **Plain View/ Exigent Circumstances/ Seizure/Misstatements by Detective:**

*State v. Bone*, 354 NC 1  
(2001)

**FACTS:** An eighty-eight year old woman was found murdered in her apartment in Greensboro. A window screen had been cut to gain entry. Various pocketbooks were emptied and their contents scattered about the apartment. The victim was found lying face down with her legs tied up with window curtains. A police dog followed the scent from the murder scene to an apartment nearby. That apartment had also been burglarized by way of a cut window screen. Items belonging to the eighty-eight year old victim were located behind this apartment.

The State Bureau of Investigation was summoned and used "Coomassie Blue" dye to stain the murder scene. The dye adheres to any fingerprints or shoe prints, allowing impressions to be made for comparison. The shoe print impressions lifted from the murder scene

indicated the shoe print pattern belonged to a Converse athletic shoe with the model name of "Chuck Taylor".

Six weeks after the murder, an anonymous caller reported to the police that the murderer was an individual named Tony Bone. The caller provided numerous details about the murder scene and the suspect. The caller described the suspect's method of entry into the victim's apartment, the murderer's place of employment at a moving company in Greensboro and that he lived in Trinity, NC. The tipster also stated that Tony Bone had recently been released from prison. A Greensboro Detective verified all the information in this tip although he determined that Bone lived in Liberty, NC rather than Trinity, NC. Both communities, however, are similar in size and are located near one another in Randolph County.

Based on the corroboration of the tip, the Detective approached Bone at his work site. He immediately noticed that Bone was wearing Converse "Chuck Taylor" athletic shoes. Bone agreed to accompany the Detective to the Police Department.

Upon arrival, the Detective asked to examine Bone's shoes. When he refused, the Detective left to obtain a search warrant. Bone was left in an unlocked interview

room although a uniformed officer was stationed outside. A search warrant was served on Bone approximately one hour and twenty minutes later. His shoes were seized from him and compared to the shoe print impressions lifted from the murder scene. In the interim, Bone was left in the interview room without his shoes and with an uniformed officer outside the room. Based on his personal observation, the Detective believed that the shoe prints were substantially similar to those found at the murder scene.

Bone subsequently waived his Miranda rights. The Detective informed Bone that he believed Bone killed the victim. He told Bone that his shoe prints matched the ones from the scene and that shoe prints were "just like" fingerprints. Bone refused to sign a waiver form and made no incriminating statements.

Bone was then placed under arrest and served with an arrest warrant by another officer. At that time, he requested to speak with the Detective. Bone then waived his rights and confessed to the murder and the burglaries. He was convicted of the murder at trial and sentenced to death.

**ISSUE 1:** Whether or not the Detective's seizure of the Defendant's shoes was lawful?

**RULE 1: YES.** The seizure

was lawful as a search incident to arrest as probable cause existed for the arrest of the defendant, prior to the seizure of the shoes.

**DISCUSSION:** The Court determined that the information provided in the affidavit and application for the search warrant was insufficient to support the seizure. However, the Court upheld the seizure of the defendant's shoes on other grounds.

The Court found that probable cause existed to arrest the defendant *before* the shoes were seized. Although the detective testified that he did not believe he had probable cause to arrest the defendant prior to the seizure of the shoes, the Court found probable cause to arrest did exist. The Courts are not "bound by an officer's mistaken legal conclusion as to the existence or non-existence of probable cause or reasonable grounds for his actions. The search or seizure is valid when the objective facts known to the officer meet the standard required." Therefore, the Detective's corroboration of the details in the informant's tip, in addition to observing the shoes on the defendant, constituted probable cause to arrest the defendant. The subsequent search of the shoes was justified as a search incident to arrest.

The Court found an additional ground to support the seizure of the shoes under the plain view doctrine and exigent circumstances. Initially, the Detective knew

that the murderer had worn Converse shoes based on shoe impressions taken from the scene. The Detective then observed the defendant wearing Converse "Chuck Taylor" shoes when he approached him at his workplace. The Court noted that an exigency was present as the defendant could have altered or discarded the shoes if they were not seized immediately. Once the Detective seized the shoes and left the defendant in the interview room without his shoes, the defendant was effectively immobilized. The Court found that the detention became an arrest after the seizure of defendant's shoes. Therefore, the search was incident to the arrest and no search warrant was required.

**ISSUE 2:** Was the defendant's confession voluntary due to the misstatements and false promises made by the detective?

**RULE 2: YES.** Under the totality of the circumstances, the defendant's confession was voluntary.

**DISCUSSION:** The Detective's representations that shoe prints were "just like" fingerprints and that the defendant's shoes matched those found at the murder scene were not "outright fabrications." The Detective's comment that the defendant "might" receive a lesser sentence if he confessed was not a commitment, nor did the defendant respond to that comment. The defendant's confession was

given only after his formal arrest and subsequent initiation and request to speak to the Detective. Based on the totality of the circumstances, the defendant's confession was voluntary and not triggered by any improper police conduct.



## **NORTH CAROLINA COURT OF APPEALS**

### **Deception by Law Enforcement/Exigent Circumstances/Warrantless Search of Pager:**

*State v. Harris*, \_\_\_\_\_ N.C. App. \_\_\_\_\_ (August 2001)

#### **FACTS:**

A Greensboro Detective, investigating narcotics activity, conducted a consent search at the home of a suspected drug user. During the search, the Detective located a piece of paper bearing a phone number and the name "Heavy." The homeowner identified "Heavy" as her source for cocaine and provided a physical description of "Heavy". The Detective telephoned the pager number, and entered the homeowner's telephone number. When a person identified as "Heavy" returned the page, the Detective answered the phone and negotiated a drug deal with him, which was to

take place at the residence. During this time period the homeowner had made several calls outside the presence of the police, possibly to warn "Heavy." When "Heavy" did not appear at the appointed time, the Detective again dialed the pager number and "Heavy" telephoned in response but stated that he was not in the drug business.

A few days later, the Detective paged "Heavy" again and left the number of two Greensboro Police Department phones. When the phones subsequently rang, the Caller ID indicated that the calls came from an Extended Stay Hotel in Greensboro.

As a result, the Detective and other officers went to that Hotel. The Hotel management informed them that an individual fitting the description of "Heavy" was registered in Room 308. According to the management, this room was receiving a large amount of foot traffic and telephone calls. The officers conducted surveillance of Room 308 for approximately 45 minutes but did not witness any suspicious activity.

The detective then telephoned Room 308 and spoke to "Heavy", whose voice he recognized from his previous conversations. The Detective identified himself as a member of the hotel's maintenance staff. He informed "Heavy" that a maintenance worker was on the way to Room 308 to repair a malfunctioning smoke detector.

The Detective, accompanied by additional officers, went to Room 308 and identified himself through the closed door as hotel maintenance. When the door was opened by a codefendant, the Detective then identified himself as a police officer. As the codefendant attempted to back away from the open door and flee to the bathroom, a baggie corner fell from his pocket. The detective pursued the codefendant into the room. The other officers also entered the room and secured the other two occupants. One of those occupants, fitting the description of "Heavy", refused to remove his hands from his pockets and lunged across one of the beds. A handgun was subsequently located beneath this mattress.

A search of the room revealed a large number of baggie corners that tested positive for cocaine. Also found in the room were razor blades which tested positive for cocaine, electronic scales, and a pager. A search of "Heavy's" person revealed a second pager and \$770.00 in currency. When the detective searched the memory of the pager that was removed from "Heavy", he located his cellular phone number and the police department numbers he had previously used to contact "Heavy".

Defendant Harris, aka "Heavy" was convicted of possession with intent to sell and deliver cocaine and conspiracy to possess with

intent to sell and deliver cocaine.

On appeal, defendant "Heavy" challenged the officer's ruse to enter the hotel room and the subsequent warrantless search of his pager.

**ISSUE 1:** Whether or not the officer's use of deception which caused the codefendant to voluntarily open the hotel room door, was a violation of the Fourth Amendment and the "knock and announce" rule?

**RULE 1: NO.** The use of deception to get a person to voluntarily open a door does not necessarily frustrate the purpose of the "knock and announce" rule and is not an unreasonable search under the Fourth Amendment.

**DISCUSSION:** In this case, deception was not used to enter the room. Rather, it was used to entice the occupants to voluntarily open the door. In addition, officers immediately identified themselves as police officers once the door was opened. The court explained that such a tactic did not violate the "knock and announce" rule.

**ISSUE 2:** Could the officers enter the room and conduct a search?

**RULE 2: Yes.** A warrantless entry and search may be conducted "if probable cause exists to search and the exigencies of the situation make search without a warrant necessary."

**DISCUSSION:** The Court found that the officers had

probable cause to believe that the defendant was selling illegal drugs from the hotel room. Probable cause was based on several factors. These included the information provided by the homeowner who indicated that she regularly purchased her cocaine from "Heavy." The Detective had also paged "Heavy" who had negotiated a drug deal by telephone. Caller ID indicted that "Heavy" was calling from this hotel room. The hotel management also indicated that there was heavy foot traffic coming from the room and numerous phone calls, which indicated possible drug dealing. The detective also recognized "Heavy's" voice when he telephoned Room 308.

Exigent circumstances existed when upon the suspect opening the door, the officers observed specific indications of illegal drug sales coupled with the codefendant's attempts to destroy this evidence. Therefore, the search was not unreasonable under the Fourth Amendment.

**ISSUE 3:** Could the Detectives access the numbers stored in the pager?

**RULE 3: Yes.** If officers have probable cause to believe the pager contains numbers that would assist in the investigation of the crime for which the

suspect was arrested, then they are entitled to access the numbers without a warrant.

**DISCUSSION:** Two essential elements must be in place in order to access the memory of a pager. First, the pager must be seized incident to an arrest. Second, the officer must have probable cause to believe that information contained in the pager would assist in the investigation of the crime.

Here, officers seized the pager in the course of the arrest of the suspect. Therefore, the seizure of the pager was lawful. In addition, the officers had probable cause to believe the pager contained evidence of the crime charged. The Detective knew that the pager had been used to set up drug deals as he himself had used that pager number to negotiate a drug deal with the defendant. Based on these specific reasons, the Court found that the officers did not have to obtain a warrant to access the pager's memory.

**NOTE:** A pager or cell phone that is seized under other circumstances may require a search warrant, prior to a search of its memory.



## **FOR YOUR INFORMATION:**

### **SOLICITING FROM THE STREET OR MEDIAN STRIP:**

The Police Attorney's Office receives many calls from citizens and officers concerning this City Ordinance. We reprint the entire section for your reference.

#### **Charlotte City Code §14-155:**

- (a) No person shall stand in a roadway or median strip for the purpose of soliciting a ride, employment or business from the occupant of any vehicle.
- (b) No person shall stand on or in proximity to a street or highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street or highway or parking lot.
- (c) It shall be unlawful for any person to stand, sit or loiter in any street or highway, including the shoulders or median strip but excluding sidewalks, and to stop or attempt to stop any vehicle for the purpose of soliciting or accepting contributions from the occupants of any vehicle or for the purpose of distributing merchandise to the occupants of any vehicle. It also shall be unlawful for any person to stand, sit or loiter in any street or highway, including the shoulders or median strip but excluding sidewalks, and to solicit or accept contributions from the occupants of any stopped vehicle or to distribute merchandise to the occupants of any stopped vehicle.

A violation of this ordinance is a misdemeanor but arrests should **not** be made without a supervisor's approval.

The **sidewalk** is the only place from which individuals or groups may solicit or accept contributions or distribute merchandise. The only permissible activity that is allowed on a median strip would be First Amendment speech such as the holding of placards or signs advocating a particular message or viewpoint.

A state statute also prohibits the impeding of traffic in these circumstances. N.C.G.S. § 20-174.1 prohibits any person from standing, sitting or lying upon the highway or street in such a manner as to impede the regular flow of traffic. A violation of the G.S. § 20-174.1 is a Class 2 misdemeanor.



**REMINDER:  
TRANSPORTING  
OFFICERS AND ARREST  
AFFIDAVITS:**

Questions continue to come up as to whether or not it is appropriate for a transporting officer to sign an arrest affidavit ("pink sheet") on behalf of the arresting officer. The transporting officer **can and should** sign the affidavit, even though the arresting officer completed it. In addition, the transporting officer should discuss the case thoroughly with the

arresting officer.

The transporting officer should print his/her name and place his/her signature on the appropriate lines on the back of the affidavit. The transporting officer should sign the affidavit in the presence of the Sheriff's Office employee, who will then notarize the signature. The arresting officer should **not** sign the affidavit. **NOTE:** The transporting officer should **never** leave the Intake Center without signing the arrest affidavit and having it notarized.

In order to avoid being subpoenaed for court, the transporting officer should put "C" (for "complainant") beside his/her name on the arrest worksheet. The transporting officer should designate the arresting officer as a witness ("W") on the arrest worksheet, which will ensure that the arresting officer will be subpoenaed for court.

**REMINDER:  
TRANSPORTING  
ARRESTEES FOR  
AIRPORT POLICE:**

Please be reminded that, upon request, CMPD officers should transport arrestees for the Airport Police.

**REMINDER:  
SETTING 2205 DATES  
ON TRAFFIC  
CITATIONS:**

The Clerk's Office has requested that officers set the Courtroom 2205 dates on traffic citations at least three (3) weeks from the day the

ticket is written. This will give the Clerk's Office enough time to enter the citations into the computer and it will also allow defendants the opportunity to sign up for and attend the driving school. In addition, officers should set the cases on their court dates so that, if necessary, the ADA in 2205 can speak with them about a case in which the defendant is going to plead guilty.

**REMINDER: NO  
CONTINUANCE OF  
COURT CASES BY  
TELEPHONE:**

The Clerk's Office has also requested that officers be instructed **not** to tell defendants that they can call the Clerk's Office to get their cases continued, as this is not possible.

**MAGISTRATE'S  
OFFICE TELEPHONE  
NUMBER:**

The Magistrate's Office has requested that officers **not** give members of the public or the media their private telephone number at the Intake Center. The number that officers should refer individuals to is **(704) 347-7844**.

