CMPD POLICE LAW BULLETIN

A Police Legal Newsletter

October 2001 **Volume 19, Issue 10**

IN THIS ISSUE:

Forward: In this issue we review a Fourth Circuit Court of Appeals case concerning custodial interrogations and a North Carolina Court of Appeals decision involving the statutory requirements for vehicle checkpoints. We also provide a brief legislative update of statutes that have recently become effective.

HIGHLIGHTS:

FOURTH CIRCUIT COURT OF APPEALS

Fifth Amendment/*Miranda* Warnings/ Determination of "In Custody": In *United States v. Parker, 262 F.3d 415 (2001),* the Fourth Circuit Court of Appeals held that for purposes of *Miranda*, custody determinations depend on the objective circumstances of the interrogation, rather than the subjective views of the officer or the person being questioned.

NORTH CAROLINA COURT OF APPEALS

Fourth Amendment/Search & Seizure/Impaired Driving Checkpoint: In *State v. Colbert, ___ N.C.App. ___ (2001),* the Court of Appeals reversed the trial court's ruling granting the defendant's motion to suppress. The Court found that the impaired driving checkpoint established by the Butner Public Safety Department met the requirements of N.C.G.S. §20-16.3A(2).

BRIEFS:

UNITED STATES COURT OF APPEALS

Fifth Amendment/ *Miranda* Warnings/ Determination of "In Custody": *United States v. Parker, 262 F.3d 415 (2001).*

Facts: ATF agents conducting surveillance at a gun shop observed the defendant make a purchase, return to her car and speak on a cell phone. The agents then observed the defendant meet with an individual who was later identified as her brother, Tracy Parker.

During the meeting, the defendant gave her brother the merchandise she had purchased at the gun shop and he paid her for it. When the agents attempted to stop Tracy Parker's vehicle, he resisted, assaulted one of the agents and was arrested. A search of the

Published by Office of the Police Attorney
Charlotte-Mecklenburg Police Department
Mark H. Newbold · J. Bruce McDonald
Judy C. Emken · Simoné F. Alston
John D. Joye

vehicle uncovered 50 rounds of .38 caliber ammunition purchased by the defendant.

At about 5:30 a.m. the next day, ATF agents went to the defendant's home to question her. Shortly after they arrived, the defendant's grandmother came out of the house. Believing her to be the defendant, the agents ordered the grandmother onto the ground and handcuffed her. It is disputed whether the grandmother consented to the agents' entry into the house. However, the defendant's grandfather met the agents at the front door and admitted them at their request. While gathered at the kitchen table, the grandfather signed a form consenting to a search of the home.

Shortly after entering the house, the agents asked to speak with the defendant who was in her bedroom in the basement. The defendant joined her grandfather and aunt in the kitchen and after about 20 minutes the agents asked to speak privately with the defendant.

Two agents escorted the defendant to a bedroom and interviewed her for approximately 30 minutes with the door closed or nearly closed. The defendant sat on the bed, while one agent stood and another sat in a chair. The defendant was advised during the interview that she was not under arrest and she was not handcuffed at any time.

The defendant's aunt came into the bedroom at least twice during the interview to speak with her. The agents did not give *Miranda* warnings to the defendant. Eventually she read and signed a statement written by one of the agents wherein she confessed to providing ammunition to a convicted felon. The defendant later moved to suppress the confession and the motion was denied by the trial court.

Issue: Whether the defendant was in custody during the interview in her home, thereby entitling her to *Miranda* warnings prior to any interrogation?

Rule: Absent formal arrest, *Miranda* warnings are required only where, under the totality of the circumstances, a person's freedom is restricted to a degree associated with formal arrest such that he is "in custody."

Discussion: The Fourth Circuit Court of Appeals noted that the rule adopted in *Miranda v. Arizona* requires warnings prior to custodial interrogations. The Court looks to the totality of the circumstances to determine whether an individual is in custody such that *Miranda* warnings must be given prior to questioning.

In this case, the Court concluded that the defendant was told that she was not under arrest, she was not handcuffed at any time during the interview, the interview was conducted in her own home and her relative was allowed to enter the room where the interview was conducted at least twice. The court also focused on the fact that the defendant was not forced to go in the bedroom with the agents and was never told that she was not free to leave.

Based on these circumstances, the Court held that the defendant was not in custody during the interview and therefore, *Miranda* warnings were not required. Thus, the trial court properly denied her motion to suppress the confession.

On appeal, the defendant argued that one of the agents testified that she would not have been allowed to leave the house and therefore she was, in effect, in custody at the time of the interview. The Fourth Circuit Court of Appeals rejected this argument stating that, "[c]ustody determinations do not depend on the subjective views of either the interrogating law enforcement officers or of the person being questioned, but depend instead on the objective circumstances of the interrogation." Consequently, the agent's unarticulated view is not relevant to the inquiry of custody.

NORTH CAROLINA COURT OF APPEALS

Fourth Amendment/ Search & Seizure/ Impaired Driving Checkpoint: *State v. Colbert, ___ N.C.App. ___ (October 2001).*

Facts: In July 1998, the Chief of the Butner Public Safety Department solicited the cooperation of

neighboring law enforcement agencies in conducting an impaired driving checkpoint.

The guidelines for the checkpoint were set forth in a memorandum to the head of each law enforcement agency. The checkpoint plan required that every vehicle driving through the checkpoint be stopped, that officers administer alcohol screening tests to every driver and that if an officer possessed a reasonable articulable suspicion of impaired driving, the driver would be removed to a secondary location for administration of an alco-sensor test.

On July 18, 1998, the defendant, Michael Colbert, was stopped at the impaired driving checkpoint. An officer asked the defendant for his driver's license and engaged the defendant in conversation to determine if there was an odor of alcohol about him or if his speech was slurred. The officer also observed the defendant's eyes for signs of impairment.

Based on these initial observations, the officer directed another officer who had also observed defendant operating the vehicle to take him to a secondary location and perform an alco-sensor test. Based on the results of the test, the second officer arrested the defendant for impaired driving.

Prior to trial the defendant moved to suppress any evidence obtained during the stop of his vehicle at the checkpoint. The trial court granted the motion to suppress on the grounds that the checkpoint plan failed to meet the requirements of N.C.G.S. §20-16.3A(2) in that it did not designate in advance the pattern for requesting drivers that are stopped to submit to alcohol screening tests. The State appealed.

Issue: Whether a checkpoint plan requiring drivers to submit to further alcohol screening tests based upon reasonable suspicion violates N.C.G.S. §20-16.3A(2) in that it gives an officer discretion to determine which drivers are requested to submit to alcohol screening tests.

Rule: An officer may stop a driver at a checkpoint without individualized suspicion if the stop of the vehicle and preliminary questioning and observation of the driver are brief and the intrusion on the individual's privacy is minimal. More extensive field sobriety tests must be supported by reasonable suspicion.

Discussion: N.C.G.S. §20-16.3A(2) provides that a law enforcement officer may make impaired driving checks of vehicles if the agency designates in advance the pattern both for stopping vehicles and for requesting screening tests?

That section goes on to state that no officer may be given discretion to decide which vehicle is stopped or, of the vehicles stopped, which driver is requested to submit to alcohol screening tests. The defendant argued that the checkpoint plan did not comply with statute because officers could request that some drivers complete further alcohol screening tests while others did not. The trial court agreed, finding that while the checkpoint plan designated in advance a pattern for stopping vehicles, it did not designate a pattern for requesting alcohol screening tests.

The Court of Appeals noted that similar checkpoints had been approved by the United States Supreme Court in *Michigan Police Dept. v. Sitz, 496 U.S. 444 (1990)* and by the Court of Appeals in *State v. Barnes, 123 N.C.App. 144 (1996).* "[T]he fact that an officer must make a judgment as to whether there is a reasonable and articulable suspicion" does not violate the statutory prohibition against the exercise of unfettered discretion.

The Court noted that G.S. §20-16.3 provides that an officer may require a driver to submit to an alcohol screening test if the officer has an articulable reasonable suspicion that the driver has committed an implied consent offense and the driver has been lawfully stopped by the officer. Thus, the Court of Appeals reversed the trial court's ruling granting the motion to suppress.

LEGISLATIVE UPDATE 2001

The 2001 Legislature is still in session although some bills have been ratified that have ramifications for law enforcement. A brief highlight of selected laws is provided below. More detailed information will be provided in our Legislative Update after the General Assembly

adjourns this session.

G.S. §15A-146. ***Expunction of records when charges are dismissed or there are findings of not guilty***.
This statute and related provisions were amended to provide for expungement of DNA records under certain circumstances. The amendments also provide a defendant access to DNA material or any other biological material collected from the defendant, whether it be the crime scene, the defendant's residence or the defendant.

The statute also requires the preservation of biological material relating to the case. It also provides procedures for post-conviction testing and disposal of the evidence after appropriate notification to the defendant, the attorney for defendant, Indigent Defense Services and the Attorney General.
EFFECTIVE: 10/01/01

G.S. §15A-147. Expunction of records when charges are dismissed or there are findings of not guilty as a result of identity fraud.
A new section was added to the expunction of records provisions that provides that a person improperly charged with a criminal offense as a result of identity fraud may have his or her record expunged.
EFFECTIVE: 10/01/01

G.S. § 14-318, Child Abuse. G.S. §7B-500, Taking a juvenile into temporary custody.
These and related statutes were amended to decriminalize abandonment of an infant less than seven days old if voluntarily delivered to particular individuals, including law enforcement. Other procedures regarding abandoned juveniles were also modified.
EFFECTIVE: 7/19/01

G.S. § 20-171.6, Operation of Bicycles.
The Child Bicycle Safety Act requires that all bicycle operators and passengers, who are under 16 years of age, must wear approved protective bicycle helmets. A violation of this section is punished as an infraction with a $10.00 penalty that may be waived for a first offense upon proof of purchase or acquisition of a protective bicycle helmet.
EFFECTIVE: 10/01/01
*** The waiver fee shall be $10.00 only (i.e. NO court costs).*

G.S. §20-11. Issuance of limited learner's permit and provisional drivers license to person who is less than 18 years old.
Subsection (k) was rewritten to provide that grandparents may act as supervising drivers for drivers holding limited learner's permits.
EFFECTIVE: 6/13/01

G.S. § 20-157. Approach of police, fire department or rescue squad vehicles or ambulances.
This statute was amended to provide for how drivers shall operate their motor vehicles when passing parked or standing emergency vehicles that have emergency lights illuminated.
EFFECTIVE: 10/01/01

G.S. §20-4.01. Division of Motor Vehicles, Definitions. G.S. §121.1. Motor vehicle to be equipped with safe tires.
These statutes were amended to define and regulate the operation of low-speed vehicles including golf carts and utility vehicles.
EFFECTIVE: 8/01/01

G.S. §20-354.1. ***New Motor Vehicles Warranties Act, Definitions.***
This statute clarifies the Automotive Bill of Rights governing motor vehicle repair shops.
EFFECTIVE: 7/01/01

G.S. §90-90. Schedule II controlled substances.
This statute amended the classification of certain controlled substances to make them consistent with federal law governing controlled substances.
EFFECTIVE: 6/14/01

G.S. §114-10. Division of Criminal Statistics.
This statute provides for the collection of traffic law enforcement statistics on stops made by local law enforcement. Previously, this provision applied only to state law enforcement officers. The expanded definition of law enforcement includes all county sheriff and police departments, all police departments in municipalities with a population of 10,000 or more persons; and those departments with five or more full time sworn officers for every 1,000 in population. The Division of Criminal Statistics will publish and distribute by December 1 of each year, a list indicating which law enforcement officers are subject to this provision. The Division of Criminal Statistics will print and supply all the necessary forms.
EFFECTIVE : 1/01/02

****