



CMPD POLICE LAW BULLETIN

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Forward: In this issue we review three North Carolina Court of Appeal Cases: *State v. Hunt* (Search Warrant/Probable Cause), *State v. Chadwick* (Informant's Tip), and *In the Matter of Christopher Brown* (Disorderly Conduct By School Disruption/ Sufficiency of Evidence) We also discuss the categories of Company Police along with their authority and jurisdiction.

HIGHLIGHTS:

NORTH CAROLINA COURT OF APPEALS

Fourth Amendment/Search Warrant/Probable Cause : In *State v. Hunt*, ___ N.C. App. ___(2002), the North Carolina Court of Appeals Held that constant citizen complaints regarding heavy vehicular traffic engaging in brief stops at a residence, even when verified by an experienced drug interdiction officer, IS NOT sufficient to establish probable cause to believe that drug trafficking is occurring at the residence.

Fourth Amendment/ Informant's Tip/ Probable Cause: In *State v. Chadwick*, ___ N.C. App. ___ (2002), the North Carolina Court of Appeals held that a tip from a known informant with a history of reliability, coupled with a Deputy's verification of predictive information included in the tip, established probable cause to arrest the suspect. The fact

that the suspect was arrested before the deputies observed any controlled substance or illegal activity did not dispel the probable cause created by the combination of the informant's tip and the deputy's verification of the tip's predictive details.

North Carolina General Statute § 14-288.4(a)(6)/Disorderly Conduct/School Disruption Standard: In, *In the Matter of Christopher Brown*, ___ N.C. App. ___ (2002), the North Carolina Court of Appeals further defined the level of school disruption that is required to support a conviction of disorderly conduct by disrupting a school. It is now clear that a mere tantrum thrown by a student is DOES NOT, under normal circumstances, rise to the level of criminal disorderly conduct.

BRIEFS:

Fourth Amendment/ Search Warrant/Probable Cause:

State v. Hunt, ___
N.C. App. ___ (2002).

FACTS: On September 23, 1997, Robeson County Sheriff's Deputy J.W. Jacobs applied for a warrant to search the residence of Russell Hunt. The warrant application included the following key facts:

The Robeson County Sheriff's Department had been receiving constant complaints from concerned citizens in reference to drug trafficking taking place at the suspect's residence. Specifically, the complaints advised that "a lot of vehicles were going to the residence" and staying only for short periods of time, with one passenger going to the door of the residence and then returning to the vehicle.

On September 22, 1997, Deputy Jacobs, went to the residence and observed heavy traffic and the exact behavior as reported in the citizen complaints. The Deputy stated in the warrant application that based on his training and experience (ten years of experience and involvement in over 500 controlled substance arrests), that the vehicular traffic and its behavior was evidence of "drug trafficking from this dwelling."

The search warrant was granted and the suspect's residence was searched. Controlled substances were found and Russell Hunt

was arrested and convicted for felonious possession with intent to sell and deliver a controlled substance. He appealed his conviction on the basis that the search warrant was not supported by probable cause and thus the controlled substances revealed by the search should have been suppressed at trial.

ISSUE: Was there sufficient evidence presented to the magistrate to establish probable cause for the issuance of a search warrant.

RULE: NO. Heavy traffic engaging in brief stops at a residence, without more, does not give rise to the inference that drug trafficking is occurring at the residence.

DISCUSSION: Probable cause arises when enough evidence has been gathered to warrant a prudent person in believing that a crime has been or is being committed, or that evidence of a crime will be found in a particular place. A magistrate must be presented with sufficient information in order to find that probable cause exists; a magistrate's actions cannot be a mere ratification of the conclusions of another.

Officers must be careful that the information submitted to magistrates in application for search or arrest warrants contain the basic facts that support the necessary conclusions

that a crime is occurring. Conclusions alone, whether correct or not, are insufficient to establish probable cause.

In order for the magistrate to find probable cause for the search in this matter, Deputy Jacobs needed to submit facts that linked the vehicular traffic to controlled substance distribution. The deputy only informed the magistrate that in his experience, such vehicular traffic indicated drug trafficking. Such a conclusion, without a factual basis, cannot provide the necessary link between the vehicular traffic and criminal activity.

The probable cause that supports a warrant can be established only by the information that is actually submitted to the magistrate. In order to avoid the suppression of evidence based on an invalid warrant, officers should be careful to include all of the facts available to them, as well as their analysis of those facts based on their specialized training and experience.



Fourth Amendment/ Informant's Tip/ Probable Cause:

State v. Chadwick, ___
N.C. App. ___ (2002).

FACTS: On December 16, 1999, Deputy Newkirk of the Onslow County Sheriff's Department received a tip from a known informant that a large drug transaction was about to occur. Specifically, the tip revealed that: "Breeze", A.K.A. Jermaine Chadwick, was about to deliver a large amount of cocaine to a specific Texaco station at the corner of Highway 17 North and Piney Green Road. Breeze would be in an older four-door black Nissan Sentra that would be driven by a black female because Breeze did not have a driver's license. The Nissan would come from a certain direction and park next to the telephone booth. Breeze was to act like he was using the phone and then the transaction would take place. Breeze was known to Deputy Newkirk.

Moments after receiving the tip, Deputy Newkirk set up surveillance of the Texaco station. In less than one hour, a black Nissan Sentra pulled into the parking lot and parked next to the phone booth. All of the details of the tip were observed to be true. The deputies moved in immediately and arrested Breeze before any drug transaction could take place. 112.4 grams of powdered cocaine were found on Breeze's person.

At trial he moved to suppress the cocaine as the product of an illegal arrest.

ISSUE: Did the deputies have probable cause to arrest Breeze?

RULE: YES. The arrest in this case was supported by probable cause and therefore legal.

DISCUSSION: A known informant's tip may establish probable cause based on a reliable track record. An anonymous informant's tip may provide probable cause if the tipster's information can be independently verified. Every tip must be analyzed under the totality of the circumstances to determine if it is reliable enough to support probable cause.

In this case, Deputy Newkirk testified that he knew the informant and that he had proven reliable in the past. In addition, the specific tip at issue in this case was verified in great detail before the arrest was made.

Specifically, the tip contained a large amount of highly predictive information. The informant was able to say approximately when (within one hour) and exactly where the suspect would arrive. The exact vehicle was predicted, along with exactly where the vehicle would park. The tip gave descriptions of the occupants and even said why the prime suspect would not be driving. The tip indicated that a drug transaction would occur, which the arrest forestalled.

Such detailed predictions, when verified, are certainly sufficient to warrant a prudent person's belief that Breeze was in fact committing a drug crime (probable cause).

This case should be considered in comparison with *Florida v. J.L.*, 529 U.S. 266, 120 S.Ct. 1375, 146 L.Ed.2d 254 (2000). In that case, a purely anonymous tipster informed police that a young black male was standing at a particular bus stop wearing a plaid shirt and was carrying a gun. The United States Supreme Court held that the tip was not sufficient to support even a reasonable suspicion, much less probable cause.

A major difference in the two cases, besides the obvious disparity in the amount of detailed information, is that the *Florida v. J.L.* tip contained virtually no information that a casual passerby could not observe. The tip, even when completely verified as to location and description, shows no evidence of inside information or predictive reliability. Deputy Newkirk's tip, however, provided detailed information and was highly predictive, thus it was sufficient to support probable cause.

North Carolina General Statute § 14-288.4(a)(6)/ Disorderly Conduct/ School Disruption Standard:

In the Matter of Christopher Brown, ___ N.C. App ___ (2002).

FACTS: On March 17, 2000, Christopher Brown, a thirteen year old student at Myrtle Grove Middle School, was charged with disorderly conduct by

disrupting students at school. Young Mr. Brown was removed from a classroom quiz for talking and was taken into another classroom to finish his quiz. He had already been admonished that talking would result in a grade of zero for his quiz.

When the teacher returned to retrieve Mr. Brown, she again found him talking to another student. She reminded him of his potential zero, to which he responded, "well give me a zero." Mr. Brown then went back to the original classroom and slammed the door in the teacher's face. The teacher called Mr. Brown back into the hall and began writing out a referral slip to send Mr. Brown to the office for discipline.

Mr. Brown began crying and begging the teacher not to refer him to the office. He also attempted to stay in front of her in order to prevent her from walking to the office. His actions were described as "kind of throwing a temper tantrum." Mr. Brown held the teacher's arm to attempt to block her and then released it after being asked to do so three or four times. He then ran to the office. Mr. Brown was charged with disorderly conduct by disrupting the school and convicted in juvenile court. He appealed his conviction to the North Carolina Court of Appeals.

ISSUE: Was the defendant's behavior sufficient to support a conviction for a violation of North Carolina General Statute 14-288.4(a)(6)?

RULE: NO. The behavior exhibited by the defendant did not rise to the required level of a substantial interference with the operation of a school in its program of instruction and training of students.

DISCUSSION: The plain language of North Carolina General Statute N.C.G.S. 14-288.4 (a)(6) states:

(a) Disorderly conduct is a public disturbance intentionally caused by any person who:
(6) Disrupts, disturbs, or interferes with the teaching of students at any public or private educational institution or engages in conduct which disturbs the peace, order or discipline at any public or private educational institution or on the grounds adjacent thereto.

In order to rise to the level of a violation of NCGS 14-288.4 (a)(6), a person's conduct must be a "**substantial interference** with, disruption of and confusion of the operation of the school in its program of instruction and training of students there enrolled." *State v. Wiggins*, 272 N.C. 147, 158 S.E.2d 37 (1967). The conduct in this case simply did not rise to the level of a **substantial interference**.

The court focused on the limited effect the disruptive behavior had in this case. It assumed that some students were probably briefly distracted, but could not say that there was a substantial interference in the operation of the school. As illustrations of conduct that would support

a violation of this statute, the court pointed to prior cases in which schools were picketed in ways that caused students to leave class in large numbers, classes to be cancelled, school days ended early, and even school offices barricaded and the bell system manipulated to cause the school to shut down early.

On the other hand, the Court pointed to prior decisions also holding that mere loud talking in class, even when requiring several reprimands to quiet, did not rise to the level of a substantial interference. This case, when read with prior decisions, shows that for conduct to reach the level of substantial interference, and thus be a criminal violation, the conduct must have a broad effect and be greater than the normal discipline problems routinely encountered by the schools.

Factors that officers should consider when deciding if disruptive school conduct is at the level of a substantial interference are:

- 1) Duration of the disturbance;
- 2) Irregularity of the conduct;
- 3) Degree to which school activities are adversely affected;
- 4) Intent to disrupt school operations.

COMPANY POLICE: AUTHORITY AND JURISDICTION

The Company Police Program, as established by the North Carolina General Assembly, is found in

Chapter 74E of the North Carolina General Statutes, and is entitled the Company Police Act. Under the Act, the Attorney General is given the authority to certify an agency as a company police agency and to commission individuals as company police officers.

Pursuant to the statutory provisions, a public or private educational institution or hospital, a state institution, or a corporation engaged in providing on-site police security personnel services for persons or property may apply to the Attorney General for certification as a police agency. Once the agency is certified, it may then ask the Attorney General to commission a particular individual or individuals to act as its company police officers.

The Act, in § 74E-6(b), establishes three distinct categories of company police officers and defines them as follows:

(1) Campus Police Officers - Those company police officers who are employed by any college or university that is a constituent institution of The University of North Carolina or any private college or university that is licensed or exempted from licensure as prescribed by N.C.G.S. 116-15.

(2) Railroad Police Officers – Those company police officers who are employed by a certified rail carrier and commissioned as company police under this Chapter.

(3) Special Police Officers - All company police officers not designated as a campus police officer or railroad police officer.

Chapter 74E further states that while in the performance of their employment duties, company police officers have the same powers as municipal and county police officers to make arrests for both felonies and misdemeanors and to charge for infractions. Their territorial jurisdiction, however, is generally limited to the following properties:

(1) Real property owned by or in the possession and control of their employer.

(2) Real property owned by or in the possession and control of a person who has contracted with the employer to provide on-site company police security personnel services for the property.

(3) Any other real property while in continuous and immediate pursuit (i.e. "hot pursuit") of a person for an offense committed upon property as described above.

Moreover, the Act gives additional powers and expands the territorial jurisdiction of certain company police officers. Campus police officers have the powers upon that portion of any public road or highway passing through or immediately adjoining the property owned by their employer. Railroad police officers also have powers and authority granted by federal law.

Special police officers do not have the authority to enforce the motor vehicle laws on public streets or highways that pass through or adjoin properties within their territorial jurisdiction.

For example, a special police officer that was hired to provide security for a subdivision could not enforce the motor vehicle laws on the streets of that subdivision. However, special police officers may enforce motor vehicle laws that apply to public vehicular areas (PVAs), on PVAs that are part of property owned by or in the possession of their employer or property that is owned by or in the possession of a person who has contracted with their employer to provide security services.

Examples of motor vehicle laws that are enforceable on such PVAs include Driving While Impaired (N.C.G.S. 20-138) and Reckless Driving (N.C.G.S. 20-140).

Company police officers may use blue lights and sirens on motor vehicles used by them in the performance of their duties, but only on property within their territorial jurisdiction, as described above.

Company police officers, by definition, are not included within the provision of North Carolina law that prohibits assaults on governmental officers or employees (N.C.G.S. 14-33(c)(4)). Another statute, N.C.G.S. 14-34.2, expressly provides that an assault on a company police officer is a Class F felony if a deadly weapon is used. Additionally, company police officers are considered public officers and may charge a person with a violation of N.C.G.S. 14-223 if that person resists, delays, or obstructs their lawful authority.

Company police officers, must comply with N.C.G.S. 15A-401, which requires officers to take an arrestee before a magistrate or other judicial official without unnecessary delay. Therefore, when a company police officer makes an arrest on his employer's premises, he is authorized and should transport the arrestee from the premises to the magistrate.

Unlike public law enforcement officers, company police officers have no "off-duty" arrest authority, even on their employer's premises. However, company police officers would still have the statutory detention powers of private citizens.

Further, a company police officer outside his territorial jurisdiction (off his employer's premises) has no jurisdiction as a law enforcement officer. If, therefore, a public law enforcement officer requests assistance from a company police officer that is outside his jurisdiction, the company officer could lend assistance only as a private citizen.

As a result of a recent statutory amendment by the State legislature, company police officers, if duly authorized by the superior officer in charge, have the same authority as public law enforcement officers to carry concealed weapons while off-duty.

In order to become commissioned as a company police officer, an applicant must meet and maintain the same pre-employment and in-service standards as are

required for State law enforcement officers by the North Carolina Criminal Justice Education and Training Standards Commission.

Additionally, company police agencies and officers are governed by various administrative rules and regulations imposed by the Attorney General's Office. Those regulations are recorded in the North Carolina Administrative Code under Title 12 Subchapter 2I. The North Carolina Administrative code may be found at <http://ncrules.state.nc.us>.

Examples of the regulations include requirements such as these: all company police officers must, when on duty, wear a badge bearing the name of the certified company police agency and either the general title of company police officer or the specific designation of railroad police, campus police, or special police. Company police agencies which employ both commissioned company police and noncommissioned security personnel must provide the commissioned officers with a distinctive uniform. This uniform must include shoulder patches that identify the officer as a railroad, campus, or special police officer.

The following is a list of company police agencies certified as of May 21, 2002, and located in Mecklenburg County:

- (1) Accessible Special Police (Minichello Hunter)
- (2) Carolina Special Police (Alexander Draft, Chief)

- (3) Davidson College (Samuel McKelvey, Chief)
- (4) Duke Power Company (Gary L. Hoyle, Chief)
- (5) Independent, Inc. (John W. Jett, Chief)
- (6) Interstate Company Police (Corrie Lumpkin, Chief)
- (7) Johnson C. Smith University (Guy F. Martin, Chief)
- (8) McGee Corporation (Charles Lawson Smith, Chief)
- (9) Metro Special Police (Reed Houston Laney, Chief)
- (10) Norfolk Southern Corporation (Ron Smith)
- (11) Queens College (Johnnie Ravenell, Chief)

University of North Carolina at Charlotte police officers are not certified under the Company Police Program. They are certified as campus police officers pursuant to a separate statute (N.C.G.S. 116-40.5) which pertains only to University of North Carolina campuses and provides that university officers have the same authority and must meet the same requirements of public law enforcement officers. UNCC police officers are considered governmental officers for the purposes of the statute that prohibits assaults on governmental officers or employees (N.C.G.S. 14-33(c)(4)).

