CMPD POLICE LAW BULLETIN

A Police Legal Newsletter

January-February 2004 Volume 23, Issue 1 Page 1 of 8

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Forward: In this issue we'll examine three recent U.S. Supreme Court cases. In *U.S. v. Banks,* the Court ruled it was constitutional when officers knocked and then waited 15 to 20 seconds before entering a residence to execute a search warrant for drugs. This case gives us an opportunity to review North Carolina requirements for executing a search warrant and a brief outline is contained in this issue. The Supreme Court also decided in *Illinois v. Lidster* that it was constitutional for officers to set up an information gathering traffic checkpoint while trying to solve a serious crime. Finally, in *Feller v. U.S.,* the Court dealt with the Sixth Amendment right to counsel which applies after a defendant has been formally charged with a crime.

We'll also look at the authority of local law enforcement officers to seize drivers licenses based on DMV license pickup orders. Questions have been asked concerning custody orders for involuntary commitment that will be addressed and advice will be provided on whether or not officers should assist a private company trying to take custody of runaways. In addition, we'll introduce you to the CMPD Nuisance Abatement Coordinator and tell you how to find the new Charlotte City Code on-line.

BRIEFS:

UNITED STATES SUPREME COURT

Fourth Amendment/Search Warrant/Delay Prior To Entry: *U.S. v. Banks, ___ U.S. ___, 124 S.Ct. 521 (2003)*

Facts: Officers arrived at 2:00 pm Wednesday afternoon to execute a search warrant for cocaine at a residence. They knocked and announced "police, search warrant" loud enough so that officers stationed at the back of the two bedroom apartment could hear the announcement. The officers waited for fifteen to twenty seconds and did not hear any noises, then broke down the front door with a battering ram. Banks was in the shower and claims he did not hear anything until the crashing of his front door. Banks contends the crack cocaine and weapons found in his apartment can not be used against him in his criminal trial because the short time period between the officer's announcement and forced entry into his apartment violated the Fourth Amendment which prohibits unreasonable searches and seizures.

Issue: Did the officers' 15-20 second delay before forcible entry into a residence to execute a search warrant for drugs violate the Fourth Amendment?

Holding: No. It is reasonable for officers to believe that drugs would be destroyed if they waited longer than 15 to 20 seconds to enter a

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residence; therefore; the entry and subsequent seizure were constitutional.

Discussion: Officers are required to knock and state they have a search warrant prior to entering a residence unless they have reason to believe their lives or the lives of others would be endangered by announcing their presence. This case dealt with the question of how much time must elapse before the officers may enter a residence (whether by force or by simply entering the residence) when executing a search warrant for drugs. The Court did **not** hold that 15 to 20 seconds is a sufficient period to wait in all cases, just that it was reasonable under the facts of this case.

EXECUTION OF SEARCH WARRANTS

Officers should remember that in executing a search warrant there are constitutional and statutory requirements which must be followed. The statutory requirements for executing a search warrant are found in the North Carolina General Statute sections 15A-241 to 15A-259; here is a brief summary:

ISSUANCE OF SEARCH WARRANTS

1. A search must be conducted within 48 hours after the search warrant has been issued.
2. Officers should check the warrant and make sure the search warrant is signed by the Magistrate (or other judicial official) with the date and time.
3. There is no statutory requirement that all searches be conducted in the daytime, although the Court of Appeals has held that officers must have some justification for execution of a search warrant at night.
4. A search warrant can be executed by any law enforcement officers acting within their territorial jurisdiction.
5. Officers must knock and announce that they have a search warrant. The **only** exception to this rule is when there are reasonable grounds to believe giving notice will endanger lives.

ENTRY INTO RESIDENCE

1. Even if officers have reason to believe no one is home, they must knock and announce loud enough for anyone in the residence to hear.
2. If officers see someone looking out the window as they approach a residence, they still must knock and announce.
3. When officers knock and announce and hear running or people calling out “police”, they may immediately enter.
4. If officers knock and announce and hear no response, the length of time to wait will depend on what property is to be seized and whether it can be disposed of in a short period.
5. When officers have a right to enter a residence they can enter by force, although it is best to check and see if the door is unlocked before forcing it open.
6. Once in the residence, officers can secure the premises and detain individuals while conducting the search. If officers reasonably believe their safety or the safety of others require a pat down for dangerous weapons they may frisk the outer clothing of the individuals present. In the course of the frisk if an object appears to be a weapon, officers may take possession of the object.
7. After securing the residence, an officer must read the warrant to the person in apparent control of the residence and give the person a copy of the warrant application and affidavit. If no one is home the same information must be left in a conspicuous location in the residence.

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SCOPE OF SEARCH

1. The scope of the search is limited to items and individuals specified in the warrant and places where **those** items could be located.
2. If in the course of the search officers **inadvertently** discover contraband or evidence of a crime or evidence concerning the identity of a person participating in a crime they may seize those items.
3. If the search of the residence **fails** to produce any of the items named in the warrant, officers may search those people present who were not identified in the warrant for items listed in the warrant that could be concealed on the person. No item of a different type may be the basis for prosecution of the person searched.

LIST OF ITEMS SEIZED

1. Officers must give a receipt itemizing the items taken pursuant to a search warrant. If the items were taken from the person, the receipt must be given to the person.
2. If the items were taken from the residence, the receipt must be given to the owner or a person in apparent control of the premises. If no one is home, the receipt must be left at the residence.

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Fourth Amendment/Information Checkpoint: *Illinois v Lidster, ___ U.S. ___, 124 S.Ct. 885 (2004)*

Facts: On Saturday, August 23, 1997, just after midnight, a 70 year old bicyclist was struck and killed on the eastbound lane of an Illinois highway by a hit and run driver. One week later, police set up a checkpoint around midnight on the eastbound lane of the highway near the point where the fatality occurred. Marked patrol cars with flashing lights partially blocked the road and at times the cars were backed up to 15 vehicles. The officers would ask the driver if they had any information concerning the hit and run and hand out a flyer asking for assistance. On average, each stop took approximately 15 to 20 seconds.

Lidster drove his minivan toward the checkpoint and almost hit an officer. When the officer approached Lidster, he noticed the odor of alcohol and asked him to move his vehicle to a side road where Lidster failed field sobriety tests and was arrested for DWI. Lidster claimed the checkpoint violated the Fourth Amendment.

Issue: May officers conduct an information gathering checkpoint to help solve a serious crime?

Holding: Yes. The reason for the checkpoint and the minimal intrusion on the motorist made this checkpoint reasonable in both its purpose and operation and, therefore, constitutional.

Discussion: In determining whether the checkpoint was constitutional, the Court balanced the seriousness of the public concern that lead to the checkpoint and how the checkpoint assisted that concern against the severity of the intrusion on the motorists during the checkpoint. In this case, the checkpoint was to gather information about a serious crime and its location and time were related to investigation of the crime. In analyzing the operation of the checkpoint itself, the Court noted that

every car was stopped and questioning was limited to information about the crime being investigated. Finally, the actual stop was for a few seconds and the contact would not cause alarm or panic to the motorists.

This case does **not** mean that all investigative checkpoints are constitutional. Officers should restrict use of such checkpoints using the following as guidelines: (1) Information checkpoints should be used only in serious crimes, in *Lidste*r it was a homicide. (2) The time, location and questioning should be limited to the purpose of the investigation. For example, if the checkpoint was to gather information about a homicide that occurred near a roadway, it would be unwise to check licenses and registration of the motorists. (3) There should be minimal delay to the motorists, in *Lidster*, cars were stopped for a few minutes and officer contact was limited to seconds with each motorist. (4) The checkpoint must be conducted in a systematic manner; the officers in this case stopped every vehicle and asked the same information of each motorist to ensure there was not unbridled officer discretion.

OTHER CHECKPOINT CASES

1. *Delaware v Prouse*, 440 U.S. 648 (1979)
   A checkpoint to examine driver's license and vehicle registration was constitutional, due to the government interest in highway safety. The checkpoint was related to the government interest in that the individuals were motorists required to have a license and registration. Furthermore, in its operation there was limited officer discretion and minimal intrusion to the motorist.

2. *Michigan Dep't of State Police v Sitz*, 496 U.S. 444 (1990)
   Impaired driving checkpoint conducted under established guidelines that involve a brief stop of the motorists was constitutional. Balancing the need for highway safety and the fact the checkpoint was a reasonable method to enforce the DWI laws, against the minimal intrusion to the driver; the Court found that the checkpoint was reasonable under the Fourth Amendment.

3. *City of Indianapolis v Edmond*, 531 U.S. 22 (2000)
   Vehicle checkpoint set up to search for illegal drugs was **unconstitutional.** The purpose of the checkpoint was not for highway safety, but rather to check for criminal violations. The Court recognized that drug activity is a public concern; however, there are other means available to detect illegal drug use without detaining motorists. The use of the checkpoint was unreasonable.

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Sixth Amendment Right to Counsel: *Fellers v U.S., ___ U.S. ___, 124 S.Ct. 1019 (2004)*

Facts: Fellers was indicted by a federal grand jury for conspiracy to distribute methamphetamine. Officers arrived at his home to arrest him and asked if they could come in and talk to him. Fellers allowed officers in the house and during a fifteen minute conversation with officers admitted to the conspiracy and use of methamphetamine. Fellers was then transported to jail where he was advised of his *Miranda* rights and signed a waiver prior to repeating the information he had given earlier to the

officers at his home. Fellers claimed both statements must be suppressed because he was denied his Sixth Amendment right to counsel.

Issues:

(1) Is it a violation of Sixth Amendment right to counsel when officers deliberately elicit incriminating statements about a crime for which a defendant is under indictment?

(2) Is a subsequent identical statement made after a valid waiver suppressed if the first statement was obtained in violation of the Sixth Amendment?

Holding:

(1) Yes. The Sixth Amendment right to counsel is triggered at or after the time that judicial proceedings have been initiated whether by way of formal charge, first appearance, indictment, or arraignment. Once the right to counsel has attached officers may not elicit statements from a defendant concerning those crimes unless defendant's counsel is present or when defendant has waived his right to have his counsel present.

(2) Uncertain. The Supreme Court would not decide this issue and sent it back to the lower court to make a determination.

Discussion: It is important for officers to know there is a difference between obtaining statements before and after a person is formally charged with a crime.

Before a person is formally charged if an officer has an individual **in custody** and wishes to obtain a statement, the Fifth Amendment requires that the officer advise the individual of their *Miranda* rights.

After an individual has been formally charged (first appearance or indictment whichever occurs first) the Sixth Amendment limits an officer's ability to elicit statements from the individual about those crimes whether the individual is in custody or not. In order for an officer to question the individual about the pending cases, the individual's counsel must be present or the individual must initiate the contact and waive their right to have counsel present.

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AUTHORITY TO SEIZE A DRIVER'S LICENCE BASED ON A PICKUP ORDER

G.S.20-29 provides the authority for local officers to serve DMV license pickup orders or retrieve a license pursuant to a pickup order during a traffic stop. The relevant portion of the statute states:

"*Pickup notices for drivers' licenses or revocation or suspension of license notices and orders or demands issued by the Division for the surrender of such licenses may be served and executed by patrolmen or other peace officers or may be served in accordance with G.S. 20-48 [mail]. Patrolmen and peace officers, while serving and executing such notices, orders and demands, shall have all the power and authority possessed by peace officers when serving the executing warrants charging violations of the criminal laws of the State.*"

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CUSTODY ORDERS FOR INVOLUNTARY COMMITMENT CASES

North Carolina law provides for custody orders which begin the process that could ultimately lead to an involuntary commitment order issued by a district court judge. Officers are asked to take a person in custody pursuant to these custody orders and some questions have come up concerning the execution of these orders. Custody orders are to be executed in the same manner as arrest warrants, except the officers will always have the custody order in their possession.

Who Can Issue A Custody Order And What Information Is Necessary?

Custody orders may be issued by a magistrate, clerk, assistant clerk or deputy clerk of Superior Court directing law enforcement officers to take an individual in custody within 24 hours because a person with knowledge has demonstrated to the issuing official that there are reasonable grounds to believe the individual in question is one of the following:

1. mentally ill and either a danger to himself or others or;
2. in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness or;
3. a substance abuser who is dangerous to himself or others.
   {G.S. 122C-261(a) and 122C- 281(a)}

Can Entry Be Forced In A Private Residence Listed On The Custody Order?

In limited circumstances officers may use force to gain entry into a residence to enforce a custody order. Officers should be mindful that in some circumstances a forced entry may escalate the danger to both the officer and the person named in the order. The person named in the order may be unable to understand your commands or react in an unpredictable manner to a forced entry. For these reasons officers should consider other alternatives available to them. In the event no other alternatives are feasible and a forced entry is necessary the following must exist:

1. The officers have the custody order in their possession.
2. The officers have probable cause to believe the named individual is present in the residence.
3. The officers give notice of their authority and purpose, unless doing so would endanger life.

What Amount Of Force May Be Used To Take The Person In Custody?

Officers may use reasonable force to restrain the individual if it appears necessary to protect the officer, the individual, or others. If feasible, an officer should advise the individual that they are not under arrest and have not committed a crime, but are being transported to receive treatment. No officer may be held criminally or civilly liable for assault, false imprisonment, or other torts or crimes on account of reasonable measures taken under the authority of these provisions.
{G.S. 122C-251 (c), (e)}

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What If There Is An Immediate Need To Take Action Because A Person Is Likely To Harm Themselves Or Others And A Custody Order Has Not Been Issued?

There are three provisions of North Carolina law that deal with such emergencies:

1 G.S. 122C-262(a) provides special emergency procedures allowing officers to take custody of a person who requires immediate hospitalization to prevent harm to themselves or others due to a mental illness. Officers may transport the individual directly to CMC Randolph.

2 G.S. 122C-282 deals with individuals who are substance abusers that are violent and require restraint. In that situation, officers may take the individual in custody and bring them immediately to a magistrate or clerk. The officer then will execute an affidavit setting forth facts to show the individual is a substance abuser and facts to show the person is violent and requires restraint. The magistrate or clerk may then order the officer to take the individual directly to a facility.

3. G.S. 15A-285 allows officers to enter buildings or vehicles for non-law enforcement purposes when there is reason to believe it is necessary to save lives or prevent serious bodily harm. This provision does **not** authorize the seizure of individuals for non-law enforcement purpose. Such authority is found in Chapter 122C.

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JUVENILE RUNAWAYS – WEST SHIELD ADOLESCENT SERVICES – CMPD OFFICERS SHOULD USE CAUTION

Several months ago, officers in the Independence Division encountered a situation involving a sixteen year-old runaway who was located in the Charlotte area. The parent of the child had retained West Shield Adolescent Services ("West Shield") to take custody of and transport the child. The agents for West Shield requested the assistance of CMPD officers in going to the residence where the child was located and obtaining custody of the child.

The agents presented officers with a "Declaration of Authority" given to West Shield by the parent, authorizing West Shield to locate, hold, restrain, and transport the child. The Police Attorney's Office advised the officers **not** to provide assistance to West Shield in forcing entry into the residence and gaining custody of the child.

West Shield is a private corporation founded by a licensed private investigator and is headquartered in Huntington Beach, CA. According to its website, the company has an extensive base of agents in most major cities throughout the United States and is involved in transporting adolescents to programs and facilities, locating runaways, and providing crisis intervention.

The "Declaration of Authority", a form used by West Shield, refers to and contains a quote from the United States Supreme Court case of Parham v. J.R., 99 S.Ct. 2493 (1979). That case dealt with a statutory procedure in the state of Georgia whereby parents and guardians could have their minor children admitted to mental hospitals. The decision did not deal with the issue of the authority of an individual or agency to take custody of or transport a runaway juvenile.

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Officers should **not** provide assistance to West Shield agents in forcing entry into a residence or in taking custody of a child **solely** on the basis of a "Declaration of Authority" signed by a parent or guardian. Rather, officers should handle the situation in the same manner as they would any other involving a runaway. Officers should contact the Police Attorney's Office if they have any questions.

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JUST A REMINDER

Pat Barker is the Nuisance Abatement Coordinator for the Police Department. She is part of the Police Attorney's staff and her office is in the West Service Center. One of her responsibilities is to meet with community members and promote community involvement in the solving of their nuisance problems. If you need Pat to attend a community meeting, either call her or e-mail her with your request.

Another of Pat's responsibilities is to assist officers with nuisance locations by sending a Nuisance Letter (when appropriate) to the landowner and by being a liaison between the officer, the landowner, and the community. For a Nuisance Letter to be sent to a landlord Pat must be made aware of the violation whether it is from a Search Warrant, Knock and Talk or other investigation. Sending a copy of your information to Vice does not make Pat aware of it. The best procedures to follow for these situations are:

1. For Knock and Talks: Send Pat an e-mail with the attached Knock and Talk report or the complaint number listed so she can pull it up in KBCOPS.
2. For Search Warrants: Send Pat an e-mail with the complaint number and submit a copy to her via inter-office mail.
3. For Other Investigations: Send Pat an e-mail and/or call her, telling her about the investigation and the results of it.

If you have any questions pertaining to this or to a nuisance problem in your area, please do not hesitate to call Pat at 704-398-6777 or e-mail her at pbarker@cmpd.org.

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NEW CITY CODE AVAILABLE ON-LINE

The Charlotte City Code underwent a tremendous overhaul in 2003 and as of **JANUARY 1, 2004**, is entirely new and re-numbered. Officers should not use any version of the City Code published before January 1, 2004, or reference any other publication regarding the City Code published before that date. (I.E. the Citation Language Booklet)

The new City Code is now available on the internet at http://www.municode.com To locate the City Code at that website, click "on-line codes", click North Carolina, then Charlotte.

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