



CMPD POLICE LAW BULLETIN

A Police Legal Newsletter

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Forward: In this issue, we examine the United States Supreme Court case of *U.S. v. Santana* and the issue of forcing entry into a residence following an arrest that is initiated in a public place for a non-serious crime. We also include an article on the regulations that apply to the operation of mopeds and motorcycles. Officers John Heifner and Mike Doan contribute an article reviewing the North Carolina sex offender registration statute. We also include an article on the proper use of KBCOPS mugshots. Finally, we review a new City ordinance that regulates the operation of carnivals.

UNITED STATES vs. SANTANA / FORCIBLE ENTRY INTO PRIVATE PREMISES

The Police Attorney's Office has received several questions recently concerning whether an officer should force entry into a residence to effect an arrest that began in public for a non-serious crime. In order to legally enter a private dwelling, an officer must have consent, a warrant, or exigent circumstances. The most common questions received by the Police Attorney's Office have centered on exigent circumstances. Therefore, this article will focus on exigent circumstances and the rule established in the United States Supreme Court case of *United States v. Santana*.

In the *Santana* case, narcotic agents who had probable cause to arrest "Mom" Santana pulled-up in front of her residence. The residence was situated extremely close to the public street and the agents were within 15 feet of the threshold of the residence when they exited their vehicle. Santana was standing in the threshold of her dwelling at the time. The agents immediately shouted "police" and approached Santana. Santana retreated into the vestibule (front hallway) of her residence. The agents followed through her open front door and arrested her inside the home. The charge against Santana was distribution of heroin and the officers had probable cause to believe that she would have drugs, as well as marked bills from an undercover buy, in her possession at the time the arrest was made. *U.S. v. Santana*, 427 U.S. 38, 96 S. Ct. 2406, 49 L.Ed.2d 300 (1976).

The Supreme Court held that, while the threshold of a dwelling is considered private property under traditional common law, the Fourth Amendment distinguishes private versus public areas based upon a person's reasonable expectation of privacy in a given area. The Court stated that what a person knowingly exposes to the public, even in his own house, is not a subject of Fourth Amendment protection. Further, it held that Santana, while standing in the threshold, was not merely visible to the public but was exposed to public view, speech, hearing, and touch



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as if she had been standing completely outside her house. The rule from *Santana* was stated as this: "... a suspect may not defeat an arrest which has been set in motion in a public place, ... by the expedient of escaping to a private place." *U.S. v. Santana*, 427 U.S. 38, 96 S. Ct. 2406, 49 L.Ed.2d 300 (1976).

The above rule seems straightforward enough: a public arrest cannot be defeated by retreat to a private area. However, the *Santana* opinion was couched in terms of exigent circumstances. The Court said that "[t]his case, involving a true hot pursuit, is clearly governed by *Warden*", and that "[o]nce *Santana* saw the police, there was likewise a realistic expectation that any delay would result in the destruction of [critical] evidence." Because the Court tied the *Santana* case to the earlier exigent circumstances case of *Warden v. Hayden*, 387 U.S. 294, 87 S.Ct. 1642, 18 L.Ed.2d 782 (1967), it is thus certain that *Santana* is an exigent circumstances case.

The Supreme Court later made it clear in *Welsh v. Wisconsin*, 466 U.S. 740, 104 S.Ct. 2091, 80 L.Ed.2d 732 (1984), that exigent circumstances are only supported by serious/dangerous crimes. Exigent circumstances have been found when person(s) are in physical danger within a private area, when the suspect in a serious/dangerous crime will escape prosecution completely unless immediate entry is made, when it is likely that critical evidence will be lost if immediate entry is not made or, finally, in hot pursuit situations. Hot pursuit is perhaps the exigent circumstance that is the least well defined.

While the rule of *Santana* makes no distinction regarding the seriousness of the underlying crime for which an arrest is being made, the decision in *Welsh* could be read to limit *Santana* to arrests that begin in public for serious or dangerous offenses. Although the *Welsh* case did not specifically hold that *Santana* was limited in that manner, *Welsh* did refer to *Santana* as a "hot pursuit of a fleeing felon" case.

The *Santana* case involved a felony and lower courts are split as to whether the *Santana* rule applies to arrests for non-serious/non-dangerous crimes, or is limited to arrests involving serious/dangerous crimes. No court with authority over North Carolina has published a ruling that clearly answers that question.

Conclusion: The law of *Santana* has not been fully developed. For this reason, it is **NOT** recommended that officers force entry in order to complete the arrest of a person that began in a public area if that arrest was for a non-serious/non-dangerous offense, unless officers have another legal justification for the entry, such as exigent circumstances based on the officer's belief that the occupants of the residence may be endangered by the suspect's entry. In the event no additional exigent circumstances exist, officers should obtain valid consent to enter or immediately secure the residence and obtain the appropriate warrant (arrest or search warrant).

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IS IT A MOPED OR A MOTORCYCLE???

There are a number of types of vehicles that are now being operated on the streets and sidewalks, including pocket scooters and bikes, mini sports bikes, dirt bikes, gas scooters, and electric ("razor") scooters. Questions arise as to how they are regulated, who can ride them, and where they can be ridden. This article will attempt to answer those questions.



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The first step in the process is to determine which classification the vehicle falls under. The two classifications that apply under state law are “mopeds” and “motorcycles”.

Moped

A moped is defined in G.S. 105-164.3(23) as follows:

1. Vehicle with two (2) or three (3) wheels;
2. No external shifting device;
3. Motor that does not exceed 50 cubic centimeters piston displacement (“cc’s”); and
4. Cannot exceed 30 miles per hour on a level surface.

The former requirement that a moped be equipped with pedals no longer applies. In addition, even if the vehicle is electric-powered, and therefore has no pistons, it can **still** be classified as a moped. For example, electric razor scooters, which are very popular with young children and are marketed as such, should be classified as mopeds, since they meet the statutory definition.

If a vehicle meets the definition of a moped, the following regulations apply:

1. The operator must be sixteen (16) years of age (applies to streets/highways and public vehicular areas);
2. The operator and passengers must wear helmets;
3. Front and rear lights are required from sunset to sunrise (when operated on streets/highways); and
4. The vehicle cannot be operated by anyone on a city sidewalk.

The following violations apply to mopeds:

1. Operator under 16 years of age – G.S. 20-10.1
 - Class 2 misdemeanor
 - Juvenile petition used to charge the violator
2. Helmet violation – G.S. 20-140.4(a)(2)
 - Infraction
 - \$25.00 fine + \$50.00 court costs (or juvenile petition)
3. Lights required (sunset to sunrise on streets/highways) – G.S. 20-129(a)(1)
 - Infraction
 - \$10.00 fine + court costs (or juvenile petition)
4. Operating on city sidewalk – C.O. 14-130
 - Infraction
 - \$10.00 fine + court costs (or juvenile petition)
 - **OR**
 - Civil penalty
 - \$25.00 penalty (written on a city parking ticket, but cannot issue a ticket to a juvenile)



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The following are **not** required in order to operate a moped:

1. Driver's license – G.S. 20-7(a)
2. Registration – G.S. 20-111(1)
3. Inspection – G.S. 20-183.8(a)(1)
4. Insurance – G.S. 20-313(a)

Motorcycle

A motorcycle is defined in G.S. 20-4.01(27)d. as follows:

1. Motor vehicle having a saddle for the rider;
2. Not more than three (3) wheels;
3. Includes a motor scooter and motor-driven bicycle that does not meet the definition of a moped.

A vehicle that has an external shifting device, an engine that exceeds 50 cc's, **or** that is capable of exceeding 30 miles per hour on a level surface should be classified as a motorcycle, and **not** a moped.

If a vehicle meets the definition of a motorcycle, the following regulations apply:

1. The operator must have a driver's license (except when operating on a public vehicular area);
2. The operator must have a motorcycle endorsement on the license;
3. The operator and passengers must wear helmets;
4. The vehicle must have a headlight and tail light;
5. Lights must be operated at all times (streets/highways and public vehicular areas);
6. The vehicle must be registered (except when operated on a public vehicular area);
7. The vehicle must be inspected;
8. The vehicle must be insured; and
9. The vehicle cannot be operated by anyone on any sidewalk.

The following violations apply to motorcycles:

1. No driver's license – G.S. 20-7(a)
 - Class 2 misdemeanor
 - \$50.00 fine + court costs (or juvenile petition)
2. No motorcycle endorsement – G.S. 20-7(a1)
 - Class 2 misdemeanor
 - \$50.00 fine + court costs (or juvenile petition)
3. Helmet violation – G.S. 20-140.4(a)(2)
 - Infraction
 - \$25.00 fine + \$50.00 court costs (or juvenile petition)



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4. No headlight – G.S. 20-129(c); No tail light – G.S. 20-129(d)
 - Infraction
 - \$25.00 fine + court costs (or juvenile petition)
5. Fail to burn headlight – G.S. 20-129(c); tail light – G.S. 20-129(d)
 - Infraction
 - \$10.00 fine + court costs (or juvenile petition)
6. No registration – G.S. 20-111(1)
 - Class 2 misdemeanor
 - \$25.00 fine + court costs (or juvenile petition)
7. No inspection – G.S. 20-183.8(a)(1)
 - Infraction
 - Court costs/no fine (or juvenile petition)
8. No insurance (only applies to the owner) – 20-313(a)
 - Class 1 misdemeanor
 - Mandatory court appearance (or juvenile petition)
9. Operating on sidewalk – G.S. 20-160(b)
 - Infraction
 - \$10 fine + court costs (or juvenile petition)

PLEASE NOTE: The classification of the vehicle and, therefore, the type of enforcement action taken, should be based on the state law definitions and not on the label given to the vehicle by the manufacturer or retailer. Also, some vehicles, such as pocket scooters, may have engines less than 50 cc's, but have the capability of traveling faster than 30 miles per hour. Such vehicles should be treated as motorcycles, instead of mopeds. However, other pocket scooters may meet the definition of mopeds and should be treated as such.

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SEX OFFENDER REGISTRATION

By Officers John Heifner and Mike Doan

Individuals convicted of certain sex offenses are required to register with the sheriff of their county of residence. There are two separate registries for such offenders. Those registries are:

1. Sex Offender and Public Protection Registration Program ("Sex Offender" registry);
2. Sexually Violent Predator Registration Program ("Sexual Predator" registry).



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The sex offenses that require a convicted person to register in the "Sex Offender" registry are:

- Rape or Sex Offense;
- Attempted Rape or Sex Offense;
- Intercourse or sex act with certain victims (i.e. guardian/teacher/minor);
- Incest;
- Using a minor in an offense against public morality (G.S. 14-190.6);
- Sexual exploitation of a minor (including promoting prostitution of a minor);
- Indecent liberties with a minor.

The sex offenses that require a convicted person to register in the "Sexual Predator" registry are:

- Any criminal offense involving sexual penetration via force or threat of serious violence;
- Any criminal sexual act involving a minor under 12 years of age;
- Recidivists.

The "Sexual Predator" registration requirements are identical to the "Sex Offender" requirements, except that the sexual predator registry includes more offender information and is presumed to be a lifetime registration, as opposed to a ten (10) year registration for the "Sex Offender" registry. (Note: after ten (10) years, a person can be removed from the "Sexual Predator" registry by court order.)

Registration

When: Registration is required:

- immediately upon conviction, if no active sentence is imposed;
- within ten (10) days of release from a North Carolina prison;
- within ten (10) days of establishing residency in North Carolina;
- within fifteen (15) days of simply being present in North Carolina.

If person who is required to register changes his address, he must notify the sheriff of the county of his residence within ten (10) days of the address change.

Who: Persons convicted of the specified sex crimes, or released from prison after conviction for such crimes, on or after January 1, 1996.

- Includes persons convicted of sex crimes outside of North Carolina, as long as the sex crime is substantially similar to a North Carolina crime that requires registration.

Time: Registration in the "Sex Offender" registry is required to be maintained for ten (10) years after the later of the date of conviction or the date of release from incarceration. The same beginning dates are used for the "Sexual Predator" registry (the expiration of the ten (10) year period merely allows a person to petition a court for removal from the "Sexual Predator" registry).



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Registered sex offenders are listed in NCIC/DCI. Included in the NCIC/DCI "hit" is the agency with which the subject is registered, his address, the date on which he first registered, and the date that the registration requirement expires. The state maintains the following website regarding sex offender/predator registration: <http://sbi.jus.state.nc.us/DOJHAHT/SOR/Default.htm>.

Failure to Comply

Failure to comply with the registration requirements, including failure to notify the sheriff of a change of address, is a Class F Felony under N.C.G.S. 14-208.11. CMPD Directive 500-001 requires that officers "paper" felony cases with the District Attorney's Office prior to arrest. However, the directive allows for arrests to be made prior to papering in the event that probable cause exists for an arrest and delaying the arrest would:

- Be likely to endanger the public; or
- Be likely to prevent the apprehension of the offender.

In the event that an arrest is made prior to papering, the case must be papered as soon as possible after the arrest in compliance with the District Attorney's Office papering schedule. Sex offender registration cases must be papered with Assistant District Attorney Barry Cook.

Probable Cause

In developing probable cause to charge a person with a violation of N.C.G.S. 14-208.11, officers should be careful to establish the elements of the crime using evidence that will be admissible in court. A charge for failure to register is more easily established than one for failure to change the residence address. A person's actual residence is not always easily established and it is not uncommon for people to "live" at multiple locations. Officers should look for different types of evidence, keeping in mind the limits on the admissibility of hearsay evidence.

Statements from the suspect regarding his address and status as a registered sex offender are often the best evidence. Officers may also obtain statements from roommates with whom the suspect claims to live or from his neighbors. In addition, officers should look for evidence of the suspect's current address, such as driver's license, ID cards, mail, checkbooks, or other items that list his address. Of course, officers must determine what information a suspect has supplied to the sheriff in order to show that the address was not properly updated. Dee Beckley is the registration contact person with the Mecklenburg County Sheriff's Office. Ms. Beckley's office is located at 3333 North Tryon Street and her telephone number is (704) 336-3679.

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USE OF KB COPS MUGSHOTS

KB COPS RMS users currently have access to mugshot pictures attached to the arrest records in the system or attached to the suspect screen in an offense report, if the suspect was arrested in that case.

PLEASE NOTE: A mugshot attached to a suspect screen in an offense report is based solely on the arrest number entered by the officer or detective clearing the case. An error in entering that arrest number may result in the display of an incorrect photo with the offense report. Therefore, before using a mugshot, officers should verify that the correct mugshot is being displayed.

Mugshots may be used by officers to personally confirm the identity of suspects or wanted persons. A single mugshot, as opposed to a photo line-up, should only be shown to a victim/witness in order to confirm the identity of a suspect the victim/witness knows or is familiar with, but should not be used to conduct a field "show-up" procedure.

Mugshots should **not** be released to the media without the approval of a supervisor.

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CITY COUNCIL ADOPTS CARNIVAL ORDINANCE

On October 11, 2004, the Charlotte City Council amended Chapter 15 of the City Code by adopting an ordinance to regulate the operation of carnivals within the city limits. Basically, the ordinance requires that a permit be obtained from the CMPD before operating a carnival. Permit applications are processed by the Vice and Narcotics Bureau (Detective Ginger Lowe – 336-8404).

The ordinance defines a "carnival" as an enterprise engaged in the operation of mechanical rides, amusement or skill devices, concessions, and side shows. The definition specifically excludes public assemblies which have been issued permits by the City and amusement parks operating at permanent locations. In addition, a permit is not required for a carnival that is operated by a governmental entity or a tax exempt organization, such as a charity, civic group, or church.

The permit application fee is \$300.00. The permit may be denied if the operator does not have a business license, the operation of the carnival would not comply with zoning regulations or fire codes, or the carnival would present an unreasonable danger to the public health or safety. As a condition of obtaining a permit, an operator is required to hire law enforcement security (off-duty or special police) and emergency medical technicians to work at the carnival.

If a permit is denied or revoked, the operator can appeal the denial or revocation and is given a hearing by the city manager. The decision of the city manager is subject to review by a superior court judge.

A violation of the ordinance is punishable as a Class 3 misdemeanor. The types of violations include violating a provision of the ordinance or a permit condition, operating a carnival without a permit, and operating a carnival with a revoked permit.

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