

# CMPD POLICE LAW BULLETIN

## A Police Legal Newsletter

Summer 2007

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#### **Officer Reminders**

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**Forward:** We begin this edition with three U.S. Supreme Court cases. The first deals with the importance of utilizing in-car video during a vehicular chase. The second case examines a passenger's right to contest the legality of a traffic stop. The last case reviews the reasonableness of the execution of a search warrant where the occupants are a different race than the suspects. We also provide guidelines on South Carolina suspects apprehended or encountered in North Carolina. FAQs are featured dealing with motorized skateboards and electric Razor scooters. We conclude this issue with some helpful reminders.

### **BRIEFS:**

#### **U.S. SUPREME COURT CASES**

**Civil Liability Standard In Pursuit Cases; Importance Of Video Recording:** *Scott v. Harris*, \_\_\_ U.S. \_\_\_, 127 S.Ct. 1769 (2007)

**Facts:** A Georgia sheriff's deputy clocked a speeder going 73 mph in a 55 mph zone. The deputy hit his blue lights, but the speeder, Harris, refused to stop. Deputy Scott heard the radio transmissions about the fleeing traffic offender and joined in the chase. The chase was captured on the deputies' in-car video system.

The ensuing chase reached speeds approximately 90 mph down two and four lane roads and lasted for nearly ten minutes. When Harris drove into a shopping center, officers tried to box him in; but Harris evaded the trap, collided with Scott's vehicle in the process and then continued on down a two lane road.

Following the collision in the parking lot, Scott took over as the lead pursuit vehicle. Six minutes and about ten miles after the chase had begun; Deputy Scott decided to try to terminate the pursuit. He radioed in for permission to use a "Precision Intervention Technique" or PIT maneuver. The PIT maneuver causes a fleeing vehicle to spin to a stop. Scott was granted permission; but then he decided that the PIT maneuver couldn't be done safely because the cars were going too fast.

Instead, Scott hit the rear of Harris' car with his front push bumper. Harris lost control of his vehicle, ran down an embankment, overturned, and crashed. Harris was rendered a quadriplegic.

**Issue 1:** Should the civil action against the officer be dismissed because hitting the suspect's vehicle was reasonable under the Fourth Amendment?

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**Rule 1:** Yes. “A police officer’s attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death.” (emphasis supplied)

**Discussion:** The Supreme Court found that the civil case against the officer should be dismissed because the suspect’s actions posed an actual and imminent threat to the lives of innocent bystanders. The Court noted that the officer was confronted with a difficult choice. Should he let the suspect continue fleeing in a reckless manner or should he take some action that would end the pursuit, even if that action would place the suspect at a substantial risk of serious injury? In determining whether the force applied by the officer was reasonable, the court focused on the specific threat to the public posed by the suspect’s actions. After reviewing the facts confronting the officer including the video recording, the Court sided with the officer and reasoned that “it was [the suspect], after all, who intentionally placed himself and the public in danger by unlawfully engaging in the reckless, high speed flight that ultimately produced the choice between two evils that [the officer] confronted . . . By contrast, those who might have been harmed had [the officer] not taken the action he did were entirely innocent. We have little difficulty in concluding it was reasonable for [the officer] to take the action that he did.”

**Issue 2:** How should the court consider videotape evidence when the Plaintiff’s version differs from the videotape?

**Rule 2:** The Court does not have to rely on the Plaintiff’s version of events if the video accurately records the pursuit.

**Discussion:** This case underscores the importance of video/digital recorders and the need for officers to continuously operate the camera from start to finish during a pursuit. Recording of the actual chase in *Harris* was a decisive factor in dismissing the case. CMPD Directive 600-022 requires the use of the Mobile Video Recording System when an officer is engaged, assisting or responding to a vehicle pursuit.

**Impact on CMPD:** Under our current CMPD Directive 600-022, Pursuit Driving, CMPD officers could not initiate a pursuit under the facts of this case because the initial reason for the pursuit was simply speeding.

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**Passengers’ Right To Contest Vehicle Stop:** *Brendlin v. California*, \_\_\_ U.S. \_\_\_, 127 S.Ct. 2400 (2007)

**Facts:** Prosecutors admitted that a Deputy Sheriff had no justification to stop a car in which Brendlin was a passenger. After stopping the car the deputy recognized Brendlin who had an outstanding warrant for a parole violation. Brendlin was arrested and in the search incident to arrest, deputies found a syringe cap on his person, tubing, scale and methamphetamine production material. Brendlin contested the stop and subsequent arrest and search. The California Supreme Court ruled that because Brendlin was a passenger he could not raise any issues concerning the legality of the stop.

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**Issue:** Can a passenger contest a traffic stop which leads to his subsequent arrest?

**Rule:** Yes. Once the car is stopped by police, the driver and all occupants have been seized under the Fourth Amendment and may contest the legality of the seizure.

**Discussion:** Here, Brendlin was seized because no reasonable person would believe that he or she was free to terminate the encounter. "Any reasonable passenger would have understood the officers to be exercising control to the point that no one in the car was free to depart without police permission. A traffic stop necessarily curtails a passenger's travel just as much as it halts the driver, diverting both from the stream of traffic to the side of the road, and the police activity that normally amounts to intrusion on "privacy and personal security" does not normally (and did not here) distinguish between passenger and driver."

**Impact on law enforcement:** This ruling works both ways; so that when officers observe a passenger violating the law, they may lawfully stop the vehicle. This case emphasizes again the importance of having a strong factual basis for reasonable suspicion or probable cause to stop a vehicle.

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### **Execution Of Search Warrant When There Is A Mistake And The Occupants Are Not The**

**Suspects:** *Los Angeles County v. Rettele*, \_\_\_ U.S. \_\_\_, 127 S.Ct. 1989 (2007)

**Facts:** Sheriff's Department executed a search warrant for a house believed to be occupied by four African-Americans, one of whom had a registered Glock handgun. The deputies entered the home of Rettele and his girlfriend who were a Caucasian couple naked in bed. The deputies ordered the couple out of bed and held them at gunpoint for one to two minutes before allowing them to dress. The deputies realized the African-American suspects no longer owned the residence, apologized, and left after fifteen minutes. Rettele and his girlfriend sued the deputies and the sheriff's department.

**Issue:** Should the civil action be dismissed because the deputies' actions in executing the search warrant were reasonable?

**Rule:** Yes. Officers while serving a valid search warrant at a residence may detain any occupant in a reasonable manner and for a reasonable period of time to secure the premises.

**Discussion:** The Court held the civil suit should be dismissed because the deputies acted reasonably in requiring Rettele and his girlfriend to come out from their bed to ensure there were no weapons. After securing Rettele and his girlfriend it was reasonable for the deputies to search the house for the African- American suspects. The fact that the Rettele and his girlfriend were Caucasian did not mean the suspects could not also be present. Fifteen minutes was a reasonable time to secure the residence, realize the error, and leave." In executing a search warrant officers may take reasonable action to secure the premises and to ensure their own safety and the efficacy of the search. The test of reasonableness under the Fourth Amendment is an objective one. Unreasonable actions include the use of excessive force or restraints that cause unnecessary pain or are imposed for a prolonged and unnecessary period of time."

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### **Guidelines For Dealing With South Carolina Suspects**

Last year South Carolina enacted a law (S.C. Code § 17-13-47) giving law enforcement from North Carolina, in fresh pursuit of a suspect from North Carolina into South Carolina, the same authority to arrest and hold in custody as a South Carolina officer. North Carolina also gives the same right to South Carolina officers (G.S. § 15A-403). The following guidelines outline how to deal with suspects from South Carolina who are apprehended or encountered in Charlotte or Mecklenburg County:

#### **South Carolina officer pursues and apprehends a suspect who commits other offense(s) after entering Charlotte-Mecklenburg**

- SC officer can take suspect into custody (per G.S. 15A-403)
- SC officer should take suspect to magistrate
- suspect **cannot** waive extradition before magistrate (only judge or clerk of court)
- CMPD officer should charge suspect with any NC offense(s) committed
- magistrate will set bond to give SC time to charge suspect there and send PIN message so that suspect can be charged as fugitive
- suspect can agree to return voluntarily to SC without being extradited (per G.S. 15A-746) – however, this is the responsibility of the SC officer and, if possible, it should be done before/instead of charging suspect with NC offense(s)

#### **South Carolina officer pursues and apprehends a suspect who does not commit other offense(s) after entering Charlotte-Mecklenburg**

- SC officer can take suspect into custody (per G.S. 15A-403)
- SC officer should take suspect to magistrate
- SC officer should make arrangements immediately to have suspect charged in SC and PIN message sent so that suspect can be charged as fugitive
- suspect **cannot** waive extradition before magistrate (only judge or clerk of court)
- suspect can return voluntarily to SC without being extradited (per G.S. 15A-746)

#### **CMPD officer encounters a suspect who has committed a felony in South Carolina and the suspect has already been charged in South Carolina**

- CMPD officer can arrest suspect (per G.S. 15A-734)
- CMPD officer should take suspect to magistrate
- if necessary, CMPD officer should contact SC to send PIN message so that suspect can be charged as fugitive

#### **CMPD officer encounters a suspect who the officer has probable cause to believe has committed a felony in South Carolina, but the suspect has not been charged**

- CMPD officer should detain suspect and contact SC

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- SC should charge suspect immediately and send PIN message so that suspect can be charged as fugitive
- CMPD officer should charge suspect for any offense(s) committed in NC

The Police Attorney's portal contains relevant statutes on arrest authority, (G.S. 15A-734), waiver of extradition (G.S. 746), and arrest without a warrant (G.S. 15A-734).

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### SKATEBOARDS / SCOOTERS

The South Division of the Charlotte-Mecklenburg Police Department has received several questions regarding the use of motorized skateboards (four wheels) and electric Razor scooters (two wheels). The following are the most common questions, along with the answers.

**Q:** Is my 13-year old child allowed to ride a motorized skateboard in the street?

**A:** No. A motorized skateboard qualifies as a "motor vehicle" under state law; therefore, the operator must have a valid driver's license. In addition, the skateboard must be registered, inspected, and insured. Since, as a practical matter, those requirements cannot be met, the result is that no one, regardless of age, can ride a motorized skateboard in the street.

**Q:** Is my 13-year old child allowed to ride a motorized skateboard on the sidewalk?

**A:** No. Riding a motorized skateboard on the sidewalk is prohibited by city ordinance (C.O. 14-130) and state law (G.S. 20-160(b)). This applies to all ages.

**Q:** Is my 15-year old child allowed to ride an electric Razor scooter on the street or sidewalk?

**A:** No. A Razor scooter qualifies as a "moped" under state law. The operator of a moped must be at least 16 years old, use an approved safety helmet, and obey all traffic laws. In addition, a moped cannot be legally operated on the sidewalk.

**Q:** Are children allowed to ride skateboards (non-motorized) or rollerblade in the street?

**A:** No. There is a city ordinance (C.O. 14-3) that prohibits the use or operation of roller skates, skateboards, inline skates, coasters, toy vehicles, or similar devices on the street, except when crossing at a crosswalk. Again, this applies to all ages.

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### INCREASED COURT COSTS AND FEES EFFECTIVE AUGUST 1, 2007

Criminal court costs increased by ten dollars (\$10.00) effective August 1, 2007 unless the defendant was charged before that date and disposes of the offense by waiver. District Court costs would therefore increase to one hundred and twenty dollars (\$120.00). The eCitation program was updated to reflect the increase.

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- Adult front seat belt violations (G.S. § 20-135-2A) and motorcycle/moped helmet violations (G.S. § 20-140(e)) have seventy-five dollars (\$75.00) court costs and a twenty-five dollar (\$25.00) penalty.
- No court costs are assessed for adult rear seat belt violations which contains a ten dollar (\$10.00) penalty.

Below is the link to the Administrative Office of the Courts memo setting forth the costs and fees affected by the legislation.

<http://www.nccourts.org/Courts/CRS/AOCAdmin/Documents/costsmemo2007.pdf>

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### OFFICER REMINDERS

#### **Finger(s) Alone Not A Threat**

Use of a finger or combination of fingers toward an officer does NOT constitute communicating threats under G.S. §14-277.1 or disorderly conduct by abusive language provoking retaliation under G.S. § 14-288.4(a)(2). Simply displaying a finger or combination of fingers toward an officer without accompanying threatening language to injure an officer or his property does not constitute communicating a threat. Likewise, such action alone is not recognized as plainly likely to provoke the violent retaliation of an officer and is therefore not disorderly conduct.

#### **Requests From Private Attorneys**

When officers receive requests for criminal investigative documents directly from an attorney, in a civil or criminal case, please contact the Police Attorney's Office for guidance. In the majority of cases, documents should never be provided directly to an attorney.

#### **Subpoenas To Officers**

When officers receive subpoenas *duces tecum* (a subpoena to provide documents or non-testimonial evidence) for various information in DWI cases, the District Attorney's office is prepared to file a Motion to Quash. If you receive one of these subpoenas, either contact the ADA or notify Court Liaison who will contact the appropriate ADA.

#### **Request From District Attorney's Office**

Please remember to advise all suspects in custody of their *Miranda* rights to determine if they will waive their *Miranda* rights and give a statement. Do not assume they will invoke their right to remain silent. The District Attorney's Office would like all reports to indicate whether the suspect waived or invoked the *Miranda* rights.

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