

CMPD POLICE LAW BULLETIN

A Police Legal Newsletter

Volume 36, Issue 5

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In addition to some cases, this Bulletin contains important information from the District Attorney's Office concerning Pre-Trial Readiness Conferences.

CASE BRIEFS:

FOURTH CIRCUIT

Search Warrant/Interrogation:

[U.S. vs. Bell, 901 F. 3d 455 \(4th Cir. 2018\)](#)

Facts: Officers obtained a search warrant to search a house for drugs and firearms. The officers located the defendant in the basement and handcuffed him and brought him upstairs and seated him next to his wife, who was also handcuffed. The wife was the owner of the house so the officer explained why they were there and asked her if there were any weapons in the house. Before she could respond, the defendant told the officers there was a gun under the couch next to them. Officers searched under the couch and located a Mini-14 Ruger semiautomatic rifle. The defendant was indicted on drug and firearm charges.

Issue: Should the defendant have been given his *Miranda* rights as he was in custody and the question was reasonably likely to elicit an incriminating response from him?

Holding: No, the defendant was not subjected to express questioning nor the functional equivalent of questioning. The question was not posed to the defendant but to his wife and the court refused to find that the officer should have known that the question to his wife would likely elicit a response from him.

NORTH CAROLINA SUPREME COURT

Maintaining a Vehicle

[State v. Rogers, 371 N.C. 397 \(2018\)](#)

FACTS: Officers conducted surveillance for about ninety minutes on the defendant's hotel room and vehicle, and observed him enter the hotel room and leave in the vehicle. The vehicle was stopped by officers as the defendant had outstanding warrants. While executing a search warrant for the vehicle and hotel room, officers found plastic bags containing crack

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cocaine hidden in a gas-cap compartment that was only accessible by operating a switch inside the vehicle. Inside the vehicle they also found cash and a service receipt for the vehicle from about two months earlier with the defendant's name on it. In the hotel room officers found plastic bags with crack that were identical to the ones in the vehicle, in addition to a digital scale disguised as a MP3 player. The defendant was convicted of several drug crimes including maintaining a vehicle.

ISSUE: Was there was sufficient evidence the vehicle was used for the "keeping" of controlled substances?

HOLDING: Yes, the Court found that the word "keep" refers to possessing something for at least a short period of time or intending to retain possession of something in the future for certain use. There was substantial evidence that the defendant was using the vehicle to store crack cocaine and not just transport it, based on the defendant's sole use of the vehicle during the officers' surveillance, the location of the drugs in the gas-cap compartment, and the service receipt in the defendant's name.

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NORTH CAROLINA COURT OF APPEALS

Fourth Amendment/Knock and Talk [State v. Piland, 822 S.E.2d 876 \(2018\)](#)

FACTS: Officers in Buncombe County received a tip that the defendant was growing marijuana in his home so they drove there for a knock and talk. The defendant's vehicle was parked at the far end of the driveway beside the home and officers parked behind it. A garage was located next to the driveway. While an officer went to the door for the knock and talk, two officers remained by the garage. The officers could smell marijuana emanating from the garage. The defendant opened the front door and the officer could immediately smell marijuana. The officers then obtained a search warrant which located drugs.

ISSUE: Did the officers engage in an unlawful entry and search by being present in the defendant's driveway and lingering by his garage?

HOLDING: No, any citizen going to the defendant's front door would drive in the driveway, get out, walk between the car and the path so as to stand next to the garage, and continue on the path to the front porch. The officers conduct was legally permitted as they remained within the permissible scope afforded by the knock and talk.

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Fourth Amendment/Prolonging Traffic Stop [State v. McNeil, 822 S.E.2d 317 \(2018\)](#)

FACTS: Raleigh officers on routine patrol ran a vehicle's tag and learned the registered owner was a male with a suspended license. The vehicle was stopped on this basis and the officer immediately saw

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the driver was a female and not the owner of the vehicle. The driver was ultimately charged and convicted of DWI.

ISSUE: Did the stop become unlawful after the officer verified that the driver was not the owner who had the suspended license?

HOLDING: No, the defendant's challenge was based on the erroneous assumption that officers can discern the gender of a driver from a distance based simply on outward appearance. Officers can request a driver's license to confirm sex. The time needed to complete a stop includes the time for ordinary inquiries incident to the stop, including checking the driver's license, determining whether there are outstanding warrants and inspecting the vehicle's registration and proof of insurance. In this case, while the officer was conducting these tasks, he observed the defendant fumble with her wallet trying to find her license and she avoided rolling her window all the way down. When the officer leaned closer, he smelled the odor of alcohol. These observations provided reasonable suspicion that the defendant was intoxicated. Because the officer developed reasonable suspicion while completing the original mission of the stop, there was no Fourth Amendment violation.

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PRE-TRIAL READINESS CONFERENCES

Purpose: The purpose of the Pre-Trial Readiness Conference (PTRC) is to make sure both the defense attorney and the ADA assigned to the case have all material related to the investigation of the case. Pursuant to G.S. § 15A-903, the defendant has a right to the State's evidence. Accordingly, the State makes the complete file of all law enforcement agencies involved in the investigation of the crime committed available to the defendant. G.S. § 15A-903(c) requires law enforcement officers to make available to the prosecutor's office "a complete copy of the complete file" related to an investigation, and officers "shall ensure that such information and materials are fully disclosed" on a timely basis for disclosure to the defendant.

Failure to comply with these discovery obligations will negatively impact the case and could result in a judge granting a continuance, declaring a mistrial, suppressing evidence or even dismissing the case. G.S. § 15A-910. Further, any person who willfully omits or misrepresents evidence or information required to be disclosed is guilty of a criminal offense. G.S. § 15A-903(d).

What to Expect: At the PTRC, the ADA, defense attorney and officer in charge of the case will meet in the designated courtroom on the officer's subpoena. At that point, the defense attorney will request to see the officer's investigative file, and he/she will go through the file and make sure that they have all documents in it. If they are missing anything, the ADA will make a copy of the missing documents to give to the defense attorney. Once all parties have all the documents, the officer will sign an "Expedited Pretrial Readiness Conference Order." This document is placed in the court file and may be reviewed by a judge prior to the case being called for trial. The document certifies that the ADA, defense counsel, and officer in charge of the case have met, discussed the investigative case file and affirm by signature

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that the information and documents provided represent the entire investigatory file. The officer in charge will be released from the subpoena after all parties sign the document.

General Rules:

- Respond to the PTRC subpoena.
- Bring the complete investigative file** to court including, but not limited to, the papering packet, electronic files, notes, statements, and all other documents scanned into the report after the case was papered, etc.
****Please Note:** At CMPD's request, all ADAs have been instructed to notify the Division Captain if an officer or detective fails to bring his or her case file to the PTRC.
- If you have any questions or concerns, please reach out to the ADA assigned to the case or to ADA Maria Caino at 704-686-0819 or Maria.F.Caino@nccourts.org.

FAQs:

- Can we continue the court date?
 - No. PTRC's are set on predetermined administrative court dates that cannot be moved.
- I have a conflict that day – what do I do?
 - Contact the assigned ADA to discuss the issue and determine if there is another officer/detective involved in the case that can bring the investigative file to court.
- Will I have to testify?
 - No, the purpose of the PTRC is to go through the investigative file to ensure everything related to the case has been provided.
- What do I wear?
 - Regular work attire – patrol officers usually wear their uniform; detectives are usually in business casual attire; and, undercover detectives are usually in plain clothes.
- I lost my case file – what do I do?
 - Contact to the assigned ADA immediately.

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