

CMPD POLICE LAW BULLETIN

A Police Legal Newsletter

May 2019

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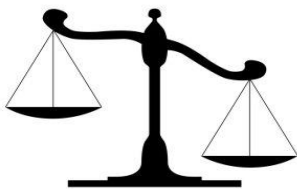
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Cases reviewed in this Issue include: Fourth Circuit Court of Appeals cases discussing the use of trash pulls as probable cause for search warrants and delays in obtaining a search warrant for a cellphone. There is also a North Carolina Supreme Court case discussing the voluntariness of confessions. Also included are reminders about Juvenile Miranda Waiver forms and a new law governing South Carolina Temporary License Plates.

CASE BRIEFS:

4th CIRCUIT COURT OF APPEALS

[Fourth Amendment/Search Warrants and Trash Pulls](#) [United States v. Lyles, 910 F.3d 787 \(2018\)](#)

Issue: Does probable cause exist to search a home based on a single trash pull that reveals marijuana plant stems, rolling papers, and a piece of mail?

Holding: No. Evidence from a single trash pull alone was not sufficient to support a finding of probable cause that officers would find evidence of ongoing marijuana possession inside a residence.

Facts: While conducting a homicide investigation police in Prince George's County, Maryland decided to search four trash bags located on the curb of defendant's residence. During the search officers located three marijuana plant stems, three empty packs of rolling papers and one piece of mail addressed to the residence. Officers applied for a search warrant to seize evidence of marijuana possession, intent to distribute, and money laundering from the residence based on this single trash pull.

A magistrate granted the warrant which gave broad authority to seize cell phones, jewelry, diaries, books, safes, electronic equipment and firearms among other items. During the execution of the search warrant officers located four handguns, ammunition, marijuana, and drug paraphernalia.

The defendant was indicted by a federal grand jury for possession of a firearm by a convicted felon. The defendant filed a motion to suppress evidence based on a lack of probable cause for the search warrant. The District Court suppressed the evidence finding that three marijuana stems and rolling paper does not establish a fair probability that marijuana will be located in the home. The Government appealed to the 4th Circuit Court of Appeals.

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Discussion: The Fourth Circuit Court of Appeals affirmed the ruling of the District Court. The Court reasoned that a single trash pull is less likely to reveal evidence of ongoing activity. Evidence of three marijuana plant stems did not provide any indication of how recent the marijuana use was in the home and there was no additional corroborating evidence noted in the search warrant application. The Court also spent a great deal of time discussing the warrant granting police very broad seizure authority. It was noted that the search warrant used appeared to be from a general template used for trafficking and sale cases since in this particular case the attached affidavit did not provide any evidence of intent to distribute controlled substances or money laundering. Police were able to seize almost everything in the home based on a small quantity of marijuana located in the trash, which ultimately would only be punishable by a \$100 civil fine for first time offenders in Maryland. The Court determined this was unreasonable.



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Fourth Amendment/ Search Warrant Delay **[United States v. Pratt, 915 F.3d 266 \(2019\)](#)**

Issue: Did a 31-day delay in obtaining a search warrant for a cellphone unreasonably infringe upon the defendant's Fourth Amendment right to the cellphone?

Holding: Yes. A 31-day delay in obtaining a warrant without evidence of a strong government interest to do so violated the defendant's Fourth Amendment possessory rights to his cellphone.

Facts: FBI agents in North and South Carolina conducted an undercover investigation into the defendant for running a prostitution ring that included juveniles. Agents located a Backpage post the defendant created that advertised the sexual services of a seventeen-year-old girl (R.M.). An agent set-

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up a “date” with R.M. for February 3, 2016. Agents arrived at the hotel and identified themselves to R.M. She then identified the defendant as her boyfriend, stated she was working as a prostitute, and that she had sent nude photos of herself to the defendant’s phone.

While speaking with the defendant in the hotel parking lot, agents asked if he had nude photos of R.M. on his phone. He replied that he did. Agents seized the phone. The defendant did not consent to the seizure of the phone nor did he give officers the passcode. A warrant was obtained to search the phone 31 days after seizing it on March 4, 2016. Nude images of R.M were located on the phone.

Prior to trial the Defendant filed a motion to suppress the evidence obtained from his cellphone. He argued that the delay between the phone being seized and officers obtaining a search warrant was unconstitutional. The government argued that the delay was a result of deciding whether to seek the search warrant in North Carolina or South Carolina. The District Court denied the motion and the defendant was subsequently convicted at trial. The Defendant appealed.

Discussion: In this case the government’s only reason for the delay in getting a search warrant was deciding where to obtain the warrant. The Court reasoned that a longer delay may be justified if judicial resources are limited or overwhelmed. That was not the case here since this was simply a month-long debate among the agents about where to obtain the warrant.

The government also alternatively argued that the phone was an “instrument of the crime” and therefore, could be held indefinitely as evidence. The Court ruled that it was the data not the phone itself that was evidence of the defendant’s crimes. The data could have been copied and the phone returned to the defendant. By keeping the phone and failing to get a warrant the seizure of the phone became unreasonable.

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NORTH CAROLINA SUPREME COURT

5th Amendment and 14th Amendment/Voluntariness of Confessions **[State v. Johnson, 821 S.E.2d 822 \(2018\)](#)**

Issue: Do statements made by detectives inducing a hope that a confession will benefit a suspect render subsequent statements by the suspect involuntary?

Holding: No. The N.C. Supreme Court held that the trial court made sufficient findings of fact that given the totality of the circumstances the defendant’s statements to detectives were voluntary.

Facts: On May 2, 2007, three men robbed a Charlotte motel where the victim worked as a manager and her husband worked as a security guard. The victim’s husband was pistol whipped and robbed in the parking lot. Two of the three robbers then entered the victim’s room and shot and killed her. No one was captured on scene. DNA eventually linked the defendant to the crime.

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The defendant agreed to meet with detectives in October 2011 at the police department. During the meeting he was questioned in an interview room. At some point during the interview the defendant was told "the District Attorney would work with him and go easier on him if he cooperated." After several hours of interrogation, he was placed under arrest and read his Miranda rights. He signed a waiver of those rights and made statements linking himself to the crime.

The defendant was subsequently indicted for first degree murder. Pre-trial the defendant filed a motion to suppress his statements to law enforcement on the grounds that all of his statements were made in response to detectives giving him hope that his statements would benefit him and were therefore not voluntary. The trial court denied his motion and he was convicted. The Court of Appeals concluded that the statements were given under the influence of fear or hope caused by the detective's statements and therefore involuntary and should have been suppressed. The North Carolina Supreme court granted the State's and the defendant's petition for review.

Discussion: The Supreme Court considered a totality of the circumstances in deciding that the defendant's confession was voluntary. Some of the factors considered were:

1. Circumstances under which the interrogation was conducted:
 - a. Location;
 - b. Use of restraints;
 - c. Suspect allowed to communicate with family or an attorney.
2. Treatment of the suspect:
 - a. Duration of the interview;
 - b. Availability of food and drink;
 - c. Opportunity to take breaks or use the restroom;
 - d. Use of actual physical violence or psychologically strenuous interrogation tactics.
3. Appearance and demeanor of the officers:
 - a. Were officers in uniform;
 - b. Whether weapons were displayed;
 - c. Whether they used raised voices or made shows of violence.
4. Statements made by the officers:
 - a. Threats or promises made to the suspect;
 - b. Use trickery or deception by officers.
5. Characteristics of the defendant:
 - a. Age;
 - b. Mental condition;
 - c. Familiarity with the criminal justice system;
 - d. Demeanor during questioning.

In the Court's analysis of these factors they determined that the defendant went to the police department on his own, he was not handcuffed, and retained possession of his cellphone while inside the interview room. Officers also made no threats of violence but at times did raise their voices. The Court also found that the officers did not stand guard outside of the interview room door and at times the defendant was left alone. Additional findings included the defendant's eagerness to help in the investigation and offering

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to wear a wire to assist. The Court found that even though the detectives offered the defendant hope that a confession may benefit him, given the totality of the circumstances his “will was not overborne such that his capacity for self-determination was so impaired that his confession could not be voluntary.” The confession was a “free and unconstrained choice.”

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Juvenile Miranda Waiver Form

An updated form for juvenile *Miranda* waivers is available. A [quick link](#) can be found on the [Police Attorney's Office](#) portal page. The new form reflects which adult(s) the juvenile has the right to have present during custodial interrogation (a parent, guardian, or custodian). **Note:** Currently a stepparent who has not legally adopted a child does not qualify as a parent for interview purposes.

South Carolina Temporary Tags

Beginning on **May 15, 2019**, all South Carolina car dealers should start issuing temporary license plates that are traceable and regulated by the South Carolina Department of Motor Vehicles. All tags will be linked to the individual vehicle and the vehicle's owner in the department's vehicle database. You can read the updated South Carolina Code Section 56-3-210 [here](#). As a grace period, dealers will have until **November 10, 2019** to use up their current inventory of temporary tag stock. Beginning **November 11, 2019**, no non-traceable temporary plates will be legal in South Carolina. Given the grace period, **officers should not stop a vehicle based solely on a non-traceable South Carolina dealer tag until November 11, 2019.** The South Carolina DMV created a newsletter for car dealers explaining the new law, showing what the new tags will look like, and answering some frequently asked questions: please check out the newsletter [here](#).

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