

CMPD POLICE LAW BULLETIN

A Police Legal Newsletter

Fall 2019

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Forward: This issue will review several cases with address the Fourth Amendment.

NORTH CAROLINA COURT OF APPEALS

Warrantless Search/ Probation Search

[State v. Jones, 2019 N.C. App. Lexis 795 \(2019\)](#)

Issue: Whether a warrantless search of a probationer's residence, conducted by probation officers acting in coordination with law enforcement, is permissible?

Holding: Yes, law enforcement may accompany probation officers in warrantless searches that are directly related to probation supervision. Since law enforcement only entered after probation conducted the initial sweep of the residence and was only present for protection, this activity is allowed.

Facts: The defendant was on probation for a conviction of possession of a firearm by a convicted felon. On February 1, 2017, Jones met with his probation officer and completed a risk assessment. It was determined that Jones was a level 1 for supervision purposes, which makes him an extreme high risk for supervision, and he needs closer supervision.

In May 2017, based on the high-risk designation, the gun conviction, and positive drug screens, Jones was selected by his probation officer for a warrantless search by a newly formed task force, which included law enforcement. Upon arrival at the Jones' residence, probation officers were the first at the door. They informed Jones of the warrantless search of the home. At all relevant times, law enforcement officers remained outside while probation was the first into the residence and completed the initial sweep. While sweeping the common areas, the probation officers located marijuana in several places and a marijuana plant growing in the backyard.

Discussion: The Court distinguished from State v Powell, 253 N.C. App. 590. In Powell, a U.S. Marshals task force conducted warrantless searches of random probationer's homes as part of an ongoing operation for their own purposes and did not notify the probation office. The Court held that those warrantless searches were not directly related to probation supervision. However, in this case, the defendant was selected for the enforcement action by his probation officer. The actions of his probation

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officer considered his risk assessment, suspected gang affiliation, and positive drug screen, the purpose of the search was to give the added scrutiny and closer supervision required of extreme high-risk probationers such as Mr. Jones. The search was, therefore, directly related to his supervision.

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Search Warrants/ Probable Cause

[State v. Williams, 2019 N.C. App. Lexis 800 \(2019\)](#)

Issue: Can an unknown middle man provide probable cause for an officer to obtain a search warrant?

Holding: No, an unknown middle man may not provide probable cause for a search warrant.

Facts: On April 20, 2017, detectives with the Brunswick County Vice Narcotics Unit participated in a controlled buy targeting Defendant, Ashleigh Williams. Detectives set up the buy through a confidential informant referred to as Ms. Smith. Smith stated she purchased drugs from the Defendant in the past and was aware of how to purchase more. However, at the time of the controlled buy, Williams would only sell to one person, Mr. Vaughn. Since Williams would only sell to Vaughn, Smith set up the purchase with him and transported him to the general location of the Defendant's home. Ms. Smith could see Vaughn run into the yard but could not see the house from where she was parked. After "the deal was done," Vaughn returned to the car, and they left the area.

Based on the above facts, Agent Melvin obtained a search warrant for Williams' residence, car, and person. In the search warrant affidavit, it described Vaughn as "an unknown black male, alleged to be Vaughn." The search warrant affidavit provided information relating to the reliability of Smith but failed to provide any information about Vaughn.

Discussion: The Court of Appeals found the search warrant to be invalid because it was based on the actions of Vaughn, a person unknown to law enforcement at the time of application. Since the affidavit was based upon Vaughn's interactions with Williams, his reliability as an informant was essential. The only reliable information Smith could provide is that she drove him to the general area of the defendant's home, and she did not see him enter the defendant's home or purchase the heroin. Smith did not establish that there was no other potential source of drugs in the area where she took Vaughn or that he did not already have the drugs on him. The affidavit did not create any direct link to Ms. Williams, whose property was the subject of the search warrant. Therefore, it lacked probable cause.

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FOURTH CIRCUIT

EXIGENT CIRCUMSTANCE

[United States v. Curry, 937 F.3d 363 \(4th Cir. 2019\)](#)

Issue: Do exigent circumstances support a stop and flashlight search of the defendant where officers responded to gunshots in a residential area within seconds?

Holding: Yes, officers may use the exigent circumstances in this situation.

Facts: On September 8, 2017, four uniformed officers with the Richmond Police Department's Focus Mission Team, were patrolling the Creighton Court neighborhood. This area was identified as a target area because there were six shootings and two homicides in the previous three months. The last homicide was ten days earlier. At around 9:00 pm, the officers, while on patrol, heard around a half-dozen gunshots coming from the direction of a street called Walcott Place. Upon hearing the gunshots, the officers made a U-turn and drove northeast across a field toward Walcott Place. It was estimated that it took them thirty-five seconds to arrive. At the same time, the officers' radio indicated there was a 911 call about gunfire on Walcott Place. As officers arrived at what they believed to be the site of the shooting, they spotted several individuals walking away from Walcott Place, away from where the gunshots originated.

Using their flashlights, the officer fanned out and began approaching different individuals. They shined the lights on their waistbands and hands looking for any handguns or firearms. The officers encountered the group and asked them to lift their shirts and submit to a visual inspection of their waistbands for concealed firearms. One person in the group refused to comply, Curry. After the refusal, officers attempted to pat Curry down, and a scuffle ensued. After Curry was handcuffed, the officers then recovered a silver revolver from the ground near Curry. Curry was subsequently indicted for possession of a firearm by a felon.

Discussion: The court identified exigent circumstances as a subset of the special needs doctrine of the Fourth Amendment. Even without suspicion of criminal activity, a search or seizure may still be reasonable when special governmental needs, beyond the normal need for law enforcement justify the intrusion. This exception is limited and applies where the government's interest is something more than ordinary crime control, such as responding to the threat of a terrorist attack. To determine whether special needs apply, the court must consider the primary goal of the officers' actions at the time of the seizure by looking at the totality of circumstances. The Court had to determine if the primary objective of the search or seizure was to generate evidence for law enforcement purposes or to serve a need beyond the normal need for law enforcement.

The Court weighed the following factors identified in *Brown v. Texas*, 443 U.S. 47 (1979):

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The gravity of the public concerns served by the seizure,
The degree to which the seizure advanced those concerns, and
The severity of the interference with the individual's liberty.
Ultimately, the Court decided the search without individual suspicion was reasonable in this circumstance. This was based on shots that had been fired in a densely populated residential neighborhood only seconds before officers arrived. The officers' primary purpose in shining flashlights on the men was to protect themselves and the public from the shooter. The flashlight search was complete in under a minute, and asking the men to expose their waistbands was a less intrusive way to determine if the men were armed. The flashlight search occurred within the area and close in time to the gunshots. Therefore, the Court found the search to be reasonable under the Fourth Amendment.

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North Carolina Supreme Court

Driving While Impaired/ Probable Cause to Arrest

[State v. Parisi, 831 S.E. 2d 236 \(N.C. 2019\)](#)

Issue: Whether the officer had probable cause to arrest for DWI after the defendant admitted to having three drinks, a moderate odor of alcohol emanating from his person, and performing poorly on the field sobriety test?

Holding: Yes, the officer had probable cause to arrest for the defendant for driving while impaired.

Facts: Around 11:30 pm on April 1, 2014, Officer Anderson of the Wilkesboro Police Department was operating a checkpoint. As the defendant drove up to the checkpoint, the officer heard what he believed to be an argument by the passengers. When the officer approached the vehicle, he shined his flashlight and observed an open box of beer on the passenger's side floorboard. Officer Anderson also detected an odor of alcohol and noticed the defendant's eyes were glassy and watery. Officer Anderson instructed the driver to pull to the side of the road and step out of the vehicle. Upon stepping out, the officer was able to confirm that a moderate odor of alcohol emanated from the defendant's person rather than the interior of the vehicle. Upon interacting with the defendant, Anderson asked had he consumed any alcohol, and the defendant replied that he had drunk three beers earlier in the evening. At that point, Officer Anderson requested that the defendant submits to several field sobriety tests. First, Officer Anderson administered the horizontal gaze nystagmus test to the defendant. In the course of administering the horizontal gaze nystagmus test, Officer Anderson observed that the defendant exhibited six clues indicating impairment. Secondly, Officer Anderson had the defendant perform a walk and turn test, during which the defendant was required to take nine heel-to-toe steps down a line, turn around, and take nine similar steps in the opposite direction. In performing the walk and turn test, the defendant missed the fourth and fifth steps while walking in the first direction and the third and fourth steps while returning. In Officer Anderson's view, these missed steps, taken collectively,

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constituted an additional clue indicating impairment. Finally, Officer Anderson administered the one leg stand test to the defendant. As the defendant performed this test, Officer Anderson noticed that he used his arms for balance and swayed, which Officer Anderson treated as equivalent to two clues indicating impairment. At that point, Officer Anderson formed an opinion that defendant had consumed a sufficient amount of alcohol to appreciably impair his mental and physical faculties. Officer Anderson then issued a citation for driving while subject to an impairing substance and placed the defendant under arrest.

Discussion: Probable cause for an arrest has been defined to be a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious person in believing the accused to be guilty. Whether probable cause exists to justify an arrest depends on the totality of the circumstances present in each case. In this case, the Court determined the factors considered by the officer sufficient to find probable cause for the arrest.

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City Ordinance 15-15, Public Solicitation and Begging

In light of a ruling by the Fourth Circuit, we are advising officers not to enforce the City Ordinance 15-15.

Instead, officers are encouraged to use:

1. G.S. [§20-174.1](#). Standing, sitting, or lying upon highways or streets prohibited. This a Class 2 misdemeanor and the activity of the person does not matter for this charge.
2. G.S. [§20-175](#). Pedestrians soliciting rides, employment, business or funds upon highways or streets. This is also a Class 2 misdemeanor.
 - Unlike the ordinance, both statutes require the offender have an observable impact on the regular flow of traffic.

Landlord Tenant/Trespassing

Officers are reminded that a tenant must contribute to the household in order to establish residency there. A contribution to the household is most often monetary (e.g., paying rent, utilities, or a portion thereof); however, tenants may also agree to contribute a lawful service as their contribution to the home. Residency may be established based on the tenant's agreement to do the cleaning, yard care services, or provide home healthcare in exchange for their ability to live at the residence. Although landlord-tenant agreements are often memorialized in a written lease, a written document is not required. Once a tenant has established residency, they can only be removed from the residence through an eviction process. These are civil matters, and officers should not arrest the tenant for trespassing unless an eviction order has been served, requiring them to vacate the premises.

There is no "toothbrush rule," nor does it matter whether the tenant receives mail at the residence. Additionally, there are no time requirements to establish residency. For example, a tenant can establish residency after only a few days of paying rent at a house. For more information, please review the [Landlord-Tenant Reference Sheet](#) on the Police Attorney's portal page.