

CMPD POLICE LAW BULLETIN

A Police Legal Newsletter

February 2022

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Forward: In this issue, we look at a case from the Fourth Circuit, addressing standing of a passenger in a vehicle to raise a 4th amendment challenge. Further we discuss two cases from the North Carolina Court of Appeals. The first examines the fleeing to elude statute and if officers were engaged in the “lawful performance of their duties” requirement of such statute. The second covers the sufficiency of the evidence for a conspiracy conviction.

CASE BRIEFS

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Fourth Amendment – Standing/ Search / Seizure: [United States v. Smith, 2021 U.S. App. LEXIS 37414 \(4th Cir. December 17, 2021\).](#)

Issues: 1) Does a passenger who exits a vehicle prior to a stop have standing under the 4th amendment to challenge the seizure of incriminating evidence against him found in the vehicle?

2) Can a passenger who leaves a vehicle challenge the underlying basis of a vehicle stop?

Holding: 1) No, a passenger who left the vehicle prior to the vehicle being stopped by police had no expectation of privacy.

2) No, since the passenger left the vehicle, he lacked standing to challenge the seizure.

Facts: Officers were conducting surveillance at a nightclub where a known convicted felon was inside. The suspect and two others, including the Defendant, Smith, left the club with the Defendant sitting in the front right seat. Police followed the vehicle and ran the license plate where their search indicated the plate was registered to a different vehicle. However, the officer inadvertently transposed one letter while reading the plate and the vehicle was followed to a gas station. When police arrived, the Defendant and one other occupant were inside the gas station already. Officers approached and shined a flashlight in the vehicle. This revealed a handgun protruding from underneath the rear of the front passenger seat to the footwell of the back seat. They also saw a handgun on the floorboard of the passenger seat where the defendant was.

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Other officers went inside the store, not knowing about the located handguns, and saw the Defendant standing at the counter as if he was going to pay for merchandise. Officers advised him he was being detained due to the fictitious tag, however, the Defendant said the car was not his. Officers searched the vehicle and seized 2 handguns, 2 cell phones and a bag of heroin in the front-right door pocket. The Defendant was indicted for possession with intent to distribute heroin, possession of a firearm in furtherance of drug trafficking, possession of a firearm by a felon and possessing a firearm subject to regulation under the National Firearms Act. He moved unsuccessfully to suppress the evidence and appealed. He first contended officers lacked reasonable suspicion or probable cause to seize and search the vehicle and thereby violated his reasonable expectation of privacy. He further argued that even if he lacked an expectation of privacy to the search, he could challenge the seizure due to the stop being made based on an unreasonable mistake.

Discussion: The Court first looked at the Defendant's contention the evidence against him should be suppressed since the search and seizure of the vehicle was based on an unreasonable mistake about the license plate. Before the Court answered that issue, they looked at whether the Defendant even had standing to raise this issue. The Court concluded he lacked standing so they did not look into the merits of the claim. The Defendant claimed no ownership interest in the vehicle and he explicitly disclaimed such ownership when he told an officer who the owner was. The Court reasoned just because he was in the vehicle with permission, such facts didn't provide him with an expectation of privacy. The Defendant was a guest of the owner and could have been removed from the vehicle at any time.

The Defendant also did not claim ownership or possession of the seized weapons. However, he did claim ownership of a cell phone found in the center console and claimed that this was sufficient to show an expectation of privacy since he left the phone behind. The Court rejected this saying ownership of the phone alone does not grant him standing. When he left the car, he lost control over his phone and other people could have moved it. The Defendant assumed the risk the car's owner would consent to a search of the car and that its contents would come into police view. The Court further described that bystanders and recent passengers have lesser privacy interests than passengers. Here, the Defendant was not a passenger at the proper time as he left the car and was not present when the seizure occurred. Any subjective intent by Smith to return to the car is insufficient.

The Court next examined the Defendant's contention he could challenge the seizure based on an unreasonable mistake involving the tag. The Court concluded again that he lacked standing to raise this as he was not inside the car when it was seized. When officers pulled behind it at the gas station, the Defendant was inside of the store. He claimed he was a party of the seizure since a reasonable person wouldn't have felt free to leave the gas station due to the police presence. The Court rejected this indicating the focus point of the investigation was the car, not the gas station. The Court said it would be wrong to say that everyone inside the gas station was seized due to police presence around the car. Smith was free to purchase items and walk around the store. Based on his lack of standing, the Court upheld the denial of his motion to suppress. [Return to Top](#)

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NORTH CAROLINA COURT OF APPEALS

Sufficiency of Evidence – Fleeing to Elude: [State v. Thompson, 2022-NCCOA-6 \(Jan 4, 2022\).](#)

Issue: Were officers acting in the lawful performance of their duties under the Fleeing to Elude Arrest statute when they detained the Defendant in his vehicle for suspected disorderly conduct, requested his identification, and Defendant later fled?

Holding: Yes, officers acted within the lawful performance of their duties because they had reasonable suspicion to detain the Defendant, probable cause to arrest the Defendant, and complied with N.C.G.S. 15A-401(e)(1) & (2).

Facts: The Defendant, Thompson, drove his son to school where they both arrived late. The school counselor instructed the parties to go get a tardy slip. At the front office, the Defendant became belligerent with staff by yelling and cursing. While the son eventually went to class, Defendant remained in the office. Due to his cursing in a loud manner while students were nearby, the Principal requested Defendant step outside of the building. Defendant did not comply immediately and continued cursing. The Defendant was asked to step outside again and the Principal's secretary was asked to call law enforcement. The Defendant agreed to step outside. Outside the building, Defendant continued to argue. He requested his son come back to him and the son was brought outside. As Defendant got into his truck with his son, law enforcement arrived.

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Bystanders were present looking towards the Defendants' truck and the principal was nearby as well. An officer approached the Defendant and informed him he was being detained. The principal further asked the officer to obtain his information to complete a ban sheet. While the truck was running, the officer approached and asked for the Defendant's ID. The Defendant stated he was not required to provide his ID and gave only his full name. Officer told him he could provide his license or go to jail due to his investigation being obstructed. While another officer was present, Defendant was ordered out of his truck to which Defendant refused. Officer observed Defendant "grab for the gearshift" and the officer reached inside to attempt to remove the keys from the ignition. The Defendant proceeded to push the officer's arm into the dash and the second officer attempted to break the Defendant's grip on the officer. The car accelerated forward and the Defendant placed the vehicle in reverse and backed up. Defendant proceeded to drive off at a high rate of speed with a brief pursuit following. Due to the son's presence in the car, the pursuit was halted but Defendant shortly thereafter crashed his truck and was arrested. Defendant was indicted for felony fleeing to elude an officer in performance of the officer's duties. He was ultimately convicted and appealed contending there was no reasonable suspicion to detain, no probable cause to arrest and, even if there was probable cause, the arrest did not comply with N.C.G.S. 15A-401.

Discussion: The Court concluded the officer possessed reasonable suspicion of a crime: Disorderly Conduct at a School which is a violation of N.C.G.S. 14-288.4(a)(6). The officer was responding to a

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report of a “disturbance” at the school and when he arrived the officer noticed parents watching the defendant’s conduct. This indicated there was reasonable suspicion of an ongoing interference with the operation of the school. The Court then discussed the lawfulness of the arrest. They concluded the officer made a lawful request for Defendant’s driver’s license to which Defendant refused to provide it. This constituted as Class 2 misdemeanor under N.C.G.S. 20-29 and, since this occurred in the officer’s presence, probable cause existed to arrest Defendant without a warrant. Furthermore, the officer made reasonable efforts to give Defendant notice of his intention to arrest. Defendant refused entry into the vehicle twice and the officer believed taking Defendant’s keys was necessary to keep him from escaping. Therefore, their use of force to enter the vehicle was proper. Ultimately, this evidence was sufficient to demonstrate the officer was acting in the lawful performance of his duties.

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Sufficiency of Evidence – Conspiracy: [State v. Draughon, 2022-NCCOA-58 \(February 1, 2022\).](#)

Issue: Did the evidence show a conspiracy existed among defendants to support a charge of Conspiracy to commit Assault with a Deadly Weapon with Intent to Kill Inflicting Serious Injury (AWDWIKISI).

Holding: Yes, the evidence, taken as a whole, demonstrated the existence of a conspiracy between the parties.

Facts: The Victim, McBryde, was living with Mull (Defendant), on a large, 35 acre property. They began a close relationship where they had a child together and the Defendant’s name was added to the deed for the property. A few years later, their relationship began to deteriorate but they stayed together for the benefit of their daughter. One day, McBryde picked his daughter up from school and returned home. When they went inside, they saw Mull in the kitchen with another man. After some back and forth, the man revealed his name as Draughon (Defendant). McBryde asked him to leave but Draughon failed to do so. McBryde and his daughter then decided to leave.

About a month later, McBryde came home and when he tried to open the door, it shut back on him. The door then swung open and McBryde saw Draughon and another man in the doorway. He also saw Mull behind them. Draughon then struck McBryde above his left eye with a blunt object. McBryde tried to escape but he fell over the tongue of the trailer on his truck and fell onto his back. The other man put McBryde in a chokehold and McBryde, in self-defense, pulled out a box cutter he kept with him. However, McBryde was then hit in the back of the head with an object. Eventually, the attackers left and McBryde called 911. Responding officers observed McBryde lying on his back and it appeared he was beaten severely. Mull was found in the bedroom with their child but denied seeing or hearing anything. McBryde was diagnosed with two broken arms, a left eye laceration, two scalp lesions, three right lower extremity wounds and two upper left extremity wounds. He also had fractures in his arms and legs. He was placed in casting throughout his body. The Jury ultimately found Defendant Draughon guilty of Assault with a Deadly Weapon with Intent to Kill Inflicting Serious Injury (AWDWIKISI) and conspiracy to commit AWDWIKISI. Defendant Mull was found not guilty of AWDWIKISI but guilty of

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conspiracy to commit AWDWIKISI. Draughon and Mull appealed their convictions of conspiracy to commit AWDWIKISI. Draughton argued the evidence only raised a mere suspicion of an agreement.

Discussion: The Court reviewed how a criminal conspiracy is an agreement among two or more people to do an unlawful act or do a lawful act in an unlawful way. They further explained that no overt act is necessary to complete the crime of conspiracy and that the offense is committed “as soon as the union of wills for the unlawful purpose is perfected.” The Court said the facts showed Draughton’s presence at the home raised a conflict and that Draughton worked with the other man to use a blunt object to beat the victim. This was done until the victim “played dead.” Also, the victim testified he saw the three parties near one another.

The Court said each of these facts, alone, had smaller weight. However, taken as a whole, they showed substantial evidence that a conspiracy existed between Draughton and Mull or the other man to assault the victim. The Court also examined the sufficiency of the conspiracy evidence against Defendant Mull. The evidence showed Mull was seen with Draughton at the home the night of the assault, standing in the doorway just before the assault began. There was also evidence of a large volume of phone calls and text messages between Mull and Draughton shortly after the assault. Also, Mull was present when the police arrived and later gained possession of McBryde’s boxcutter. The Court said this “evidence points unerringly to the existence of an agreement between Mull and Draughton for Draughton and an unidentified man to assault McBryde with a deadly weapon, with intent to kill.” The court said the totality of the evidence indicated the existence of an agreement between the defendants to assault the victim, upholding their conspiracy convictions.

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