

## ARREST

### **Officer Had Probable Cause to Arrest Defendant Based on Information Given by Anonymous Caller Who Later Revealed His Identity Before Defendant's Arrest, and Caller's Information Was Corroborated by Officer's Investigation**

*State v. Brown*, \_\_\_ N.C. App. \_\_\_, 681 S.E.2d 460 (18 August 2009).

The court ruled that an officer had probable cause to arrest the defendant for murder based on information given by an anonymous caller who later revealed his identity to the officer before the arrest, and the caller's information was corroborated by the officer's investigation. (See the court's opinion for the facts establishing probable cause.)

### **Search of Vehicle Incident to Arrest of Vehicle's Driver Did Not Violate Fourth Amendment**

*State v. Carter*, \_\_\_ N.C. App. \_\_\_, 661 S.E.2d 895 (17 June 2008).

An officer stopped a vehicle because he noticed that the temporary tag was old or worn and with an obscured expiration date. The officer learned after the stop that the registration for the temporary tag had expired several days earlier. The officer also saw several pieces of paper lying on the passenger seat. The officer arrested the defendant for the expired temporary tag and conducted a search of the vehicle incident to the arrest. The officer put the pieces of paper together and found a change of address form for a credit card belonging to the victim. The court ruled, citing *State v. Logner*, 148 N.C. App. 135 (2001), *State v. Brooks*, 337 N.C. 132 (1994) (arrest of vehicle occupant permits search of entire interior of vehicle including containers), and other cases, that the search incident to arrest did not violate the Fourth Amendment. The court rejected the defendant's argument that an officer may lawfully search incident to arrest only property connected to the crime with which he is charged and the illegal nature of the evidence must be readily apparent.

### **Specific Duty the Officer Was Performing When Felony Fleeing to Elude Arrest Occurred is Not Required in Indictment**

*State v. Teel* 180 N.C. App. 446 (2006)

The trial court did not err by denying defendant's motion to dismiss the charge of felony fleeing to elude arrest based on the indictment failing to describe the lawful duties the officers were performing at the time of defendant's flight because, unlike the offense of resisting an officer in the performance of his duties under N.C.G.S. § 14-223, the offense of fleeing to elude arrest under N.C.G.S. § 20-141.5 is not dependent upon the specific duty the officer was performing at the time of the offense.

## **Arrest -- Defendant Initially Detained as Intoxicated -- Unable to Provide Shelter for Himself -- No Fourth Amendment Violations**

*State v. Hocutt* 177 N.C. App. 341 (2006).

The initial seizure and incarceration of a first-degree murder defendant, which led to a recorded inculpatory telephone conversation, did not violate defendant's Fourth Amendment rights where defendant (who had consumed much alcohol during the day) was observed staggering, barefoot, dirty and very scratched up on the shoulder of a highway in an isolated area late at night. He was apparently in need of and unable to provide for himself clothing and shelter, and N.C.G.S. § **122C-303 allows an officer to take an intoxicated person to jail under these circumstances. New South Carolina Law Permitting Hot Pursuit Entry Into South Carolina to Arrest for North Carolina Felony.** South Carolina has enacted a law, effective February 17, 2006, that **permits a North Carolina law enforcement officer in pursuit of a person who is in the immediate and continuous flight from the commission of a felony in North Carolina to enter and arrest the offender in South Carolina**, where the officer must taken the person before a judicial official in South Carolina. [Author's note: The law requires that the offense be punishable by death or imprisonment in excess of one year, which makes the law applicable only to North Carolina felonies. North Carolina's lowest class felony, a Class I felony, qualifies as an offense under this law because the maximum punishment for the offense is 15 months. The South Carolina law also requires that the North Carolina offense must also be an offense under South Carolina law.] You may access this law [http://www.scstatehouse.net/sess116\\_2005-2006/bills/293.htm](http://www.scstatehouse.net/sess116_2005-2006/bills/293.htm). For a **discussion of an officer's authority to enter the states of Virginia and Tennessee to arrest**, see page 16 of Robert L. Farb, *Arrest, Search, and Investigation in North Carolina* (3d ed. 2003).

## **Suppression of a Defendant's Statements to Law Enforcement is Not a Remedy for a Violation of the Vienna Convention on Consular Relations Treaty**

*Sanchez-Llamas v. Oregon*, (28 June 2006). *US Sup. Ct.*

The Court ruled, assuming without deciding that the Vienna Convention on Consular Relations (an international treaty requiring law enforcement to inform an arrested foreign national of the right to consular notification) creates judicially enforceable rights, (1) suppression of a defendant's statements to law enforcement is not a remedy for a violation of the treaty; and (2) a state may subject claims of treaty violations to the same procedural default rules that apply generally to other federal law claims. [Author's note: For a discussion of law enforcement obligations under the treaty, see the text on page 44 and note 347 on page 63 of Robert L. Farb, *Arrest, Search, and Investigation in North Carolina* (3d ed. 2003).]

**Fourth Amendment Requires Only That Officer Make Arrest Based on Probable Cause That Crime Was or is Being Committed; Court Rejects Requirement That Offense Establishing Probable Cause Must Be Closely Related to, and Based on Same Conduct as, Offense Officer Identified When Arrest Occurred**

*Devenpeck v. Alford* December 13, 2004

Based on information that the plaintiff had impersonated a law enforcement officer while using his vehicle to stop a motorist, an officer stopped the plaintiff's vehicle to investigate. The officer's suspicions about the plaintiff's impersonating an officer increased based on information learned after the stop. Another officer joined the stopping officer and discovered that the plaintiff had been taping his conversations with the two officers. The two officers discussed the possible violations to charge the plaintiff—a violation of state law concerning the taping of the conversations, impersonating an officer, and making a false representation to the officer—and arrested the defendant for the state law taping violation. However, a state appellate court ruling at the time of this arrest had clearly established that the plaintiff's taping was not unlawful. The plaintiff sued the officers for making an arrest without probable cause under the Fourth Amendment. A federal appellate court ruled that the officers did not have probable cause to arrest—it rejected the officers' claim that there was probable cause to arrest for impersonating an officer and making a false representation to an officer, because those offenses were not "closely related" to the offense (illegal taping) identified by the officers when they arrested the plaintiff. The Court reversed the federal appellate court's ruling. The Court ruled, relying on *Whren v. United States*, 517 U.S. 806 (1996), and *Arkansas v. Sullivan*, 532 U.S. 769 (2001), that the Fourth Amendment requires only that an officer arrest a person based on probable cause that crime was or is being committed. The Court rejected a requirement that an offense establishing probable cause must be closely related to, and based on same conduct as, the offense the arresting officer identified when the arrest occurred. The Court stated that an officer's subjective reason for making an arrest need not be the criminal offense for which the known facts provide probable cause. [Author's note: The Court's ruling effectively overrules the "sufficiently related" analysis in *Glenn-Robinson v. Acker*, 140 N.C. App. 606, 617 (2000).]

**Arrest -- Investigatory Stop -- Totality of Circumstances -- Late Night, Lonely Road -- Fleeing From Officer**

*State v. Martinez* 158 N.C. App. 105 (2003)

The trial court correctly concluded that an investigatory stop was justified by a reasonable suspicion of criminal activity where the stop occurred around 2:00 a.m.; there were no vehicles on the road other than defendant's car and patrol vehicles; a man on foot had fled from an officer a few minutes before and about fifty yards from the vehicle; and the officer inferred a connection between the two. Cocaine was found in defendant's pocket.

## **Law Enforcement Officer Had Probable Cause to Arrest Defendant Passenger and Other Occupants of Vehicle After Officer Had Found \$763 of Rolled-Up Cash in Glove Compartment and Five Baggies of Cocaine Between Backseat Armrest and Back Seat**

*Maryland v. Pringle, December 15, 2003*

After a vehicle was stopped by a law enforcement officer, a search revealed \$763 of rolled-up cash in the glove compartment and five baggies of cocaine between the backseat armrest and back seat. All three vehicle occupants—the driver; the defendant, a front seat passenger; and a backseat passenger—denied ownership of the cocaine and the money. The Court ruled that the officer had probable cause to arrest the defendant as well as the other occupants. The Court stated that it was a reasonable inference from the facts that any or all three occupants of the vehicle knew and exercised dominion and control over the cocaine. A reasonable officer could conclude there was probable cause to believe the defendant committed the crime of possession of cocaine, either solely or jointly. The quantity of drugs and cash in the car indicated the likelihood of drug dealing, an enterprise to which a dealer would be unlikely to admit an innocent person with the potential to furnish evidence against him. Distinguishing *United States v. Di Re*, 332 U.S. 581, 68 S. Ct. 222, 92 L. Ed. 210 (1948), the court noted that no one in the car was singled out as the owner of the cocaine and cash in this case.

## **Arrest and Bail -- Belief Defendant in Trailer -- Lawfulness of Officers' Entry**

*State v. Workman, 344 N.C. 482 (1996) 476 S.E.2d 301*

Officers had reasonable cause to believe that defendant was inside his trailer at the time they arrived to execute arrest warrants, even though defendant's car was not at the trailer, so that the officers did not make an unlawful entry into the trailer which would require the suppression of a T-shirt and boots observed in plain view and later seized pursuant to a search warrant where a codefendant had previously identified a car parked at the trailer as belonging to defendant; three officers were dispatched to watch the trailer to see if defendant left the trailer while the arrest warrants were obtained; those officers reported that they did not see anyone leave the trailer; and the officers noticed that lights were on in the trailer and heard noises inside the trailer before they entered it. N.C.G.S. § 15A-401(e)(1)(b).

## **Arrest and Bail -- Drug Courier Profile Object Under Clothes Flight Probable Cause**

*State v. Hendrickson, 124 N.C. App. 150 (1996) 476 S.E.2d 389*

SBI agents had probable cause to arrest defendant for trafficking in cocaine where the evidence reveals that the agents determined that defendant conformed to the drug courier profile, the agents confirmed by examining defendant's identification

that he was the person about whom they had received a tip; defendant made prolonged eye contact with the officers after deboarding the plane and quickly heading towards an airport exit; the agent noticed a round, rigid cookie shaped object in the lower abdomen under defendant's clothes while asking for defendant's identification; the agents were aware of defendant's past criminal conduct; and defendant attempted to flee when the agents seized his bag and again when they tried to arrest him.

### **Arrest and Bail -- Bail Bondsman - Arrest of Defendant - Failure to Return Premium - Insufficient Evidence**

*State v. Ipock, 129 N.C. App. 530 (1998)*

The State's evidence was insufficient to support a bail bondsman's conviction of failing to return a bail bond premium pursuant to N.C.G.S. § 58-71-20 after having the defendant arrested and returned to jail where two witnesses testified only that defendant stated that he was not going to return the premium, but there was no testimony by the person to whom the premium refund was due or anyone else that defendant had not returned the premium as of the date of trial.

### **Arrest and Bail -- Evidence and Witnesses -- Probable Cause for Arrest -- Incriminating Statements -- Recovery of Evidence -- Not Fruits of Unlawful Arrest**

*State v. Fletcher, 348 N.C. 292 (1998)*

Officers had probable cause to arrest defendant for breaking and entering an automobile where officers made an investigatory stop of defendant based upon his proximity in time and location to the crime scene and a physical description of the race, gender and clothing of the suspect by two witnesses, and a short time later one witness identified defendant as the person she had seen acting suspiciously near the automobile around the time of the breaking and entering. The hour-long detention of defendant in a patrol car was reasonable since probable cause was established shortly after the stop. Therefore, incriminating statements subsequently made by defendant about a murder and the recovery of property stolen from the murder victim as a result of those statements were not the fruits of an unlawful arrest.

### **(1) Arrest and Bail -- Pretrial Detention -- Domestic Violence -- Automatic Forty-Eight Hour Detention -- Substantive Due Process**

### **(2) Arrest and Bail -- Pretrial Release -- Domestic Violence -- Automatic Forty-Eight-Hour Detention -- Procedural Due Process**

### **(3) Arrest and Bail -- Pretrial Detention -- Domestic Violence - Unconstitutional as Applied**

*State v. Thompson, 349 N.C. 483 (1998)*

Defendant failed to carry his burden showing that the detention authorized by N.C.G.S. § 15A-534.1(b) is facially unconstitutional as violative of substantive due process where defendant was arrested on a warrant for charges including misdemeanor assault inflicting serious injury, a domestic violence charge; defendant arrived before a magistrate seeking a release order pending trial at 3:34 p.m. on October 28, immediately following his arrest; the magistrate completed a release order form but, under N.C.G.S. § 15A-534.1, designated defendant as a domestic violence arrestee and ordered him sent to jail with an Order of Commitment Form directing the custodian of the detention facility to bring defendant before a judge or magistrate on October 30 at 3:45 p.m. for bond; defendant remained in jail until Monday afternoon, almost forty-eight hours after his arrest; and there were at least two district court judges available early on Monday to conduct defendant's bond hearing, and probably two superior court judges. The United States Supreme Court has recognized a distinction between punitive measures that may not constitutionally be imposed prior to a determination of guilt and regulatory restraints that may; the statute here serves the General Assembly's legitimate interest in insuring that a judge rather than a magistrate consider the terms of a domestic violence offender's pretrial release and the detention authorized by the statute is properly classified as a regulatory restraint. (2) Defendant failed to carry his burden of showing that the detention authorized by N.C.G.S. § 15A-534.1(b) following a domestic violence arrest is facially unconstitutional as violative of procedural due process. The statute insures that an arrestee detained by a magistrate pending a judicial determination of the conditions of his or her pretrial release will be detained no longer than forty-eight hours without a hearing and the arrestee detained under N.C.G.S. § 15A-534.1(b) should receive a hearing as soon as possible following his or her arrest. The statute thus provides the procedural protection considered to be immune from systemic challenges. (3) N.C.G.S. § 15A-534.1(b) was unconstitutional as applied to defendant in this case where defendant was arrested at 3:45 p.m. on a Saturday, the order of commitment did not authorize his release from jail for a bond hearing until 3:45 the following Monday, he was not brought before a judge upon the opening of court on Monday morning, and it is clear that at least two district court judges were available early on Monday and probable that two superior court judges were available. Under these discrete facts, the magistrate's order automatically detaining defendant without a hearing until well into the afternoon while available judges spent several hours conducting other business violated defendant's procedural due process rights to a timely pretrial release hearing under N.C.G.S. § 15A-534.1(a). The constitutional violation deprived defendant of liberty unreasonably, well beyond any time period necessary to serve any governmental interest in detaining him without a hearing for regulatory purposes.

**(1) Arrest and Bail -- Arrest of Principal -- Authority of Bondsmen**

**(2) Arrest and Bail -- Arrest of Principal -- Authority of Bondsman -- Home of Third Party**

**(3) Arrest and Bail -- Arrest of Principal -- Authority of Bondsman -- Use of Force**

**(4) Arrest and Bail -- Assault and Breaking or Entering -- Prosecution of Bail Bondsman -- Authority of Bondsman -- Instructions**

*State v. Mathis, 349 N.C. 503 (1998)*

(1) Although the common law of North Carolina has always recognized the sweeping powers of sureties, or bail bondsmen acting as their agents, to apprehend the principal and use whatever force is reasonably necessary in the process, the arrest provisions of N.C.G.S. § 58-71-30 do not create a law enforcement officer in the person of the bail bondsman. (2) While the contract between a surety and principal authorizes a surety to exercise certain powers as to the principal, this contractual authority cannot be extended to cases where a surety is seeking the principal in the home of a third party where the principal does not reside. However, when the principal himself resides in the home of a third party, the bond agreements giving the principal's consent for the sureties or their agents to break and enter his residence authorize them to enter. (3) Sureties or their agents may use such force as is reasonably necessary to overcome the resistance of a third party who attempts to impede their privileged capture of their principal, but only such force as is reasonably necessary under the circumstances to accomplish the arrest. (4) The trial court erred in the prosecution of two bail bondsmen for assault and breaking or entering during an arrest by not instructing the jury concerning the common law and statutory authority of sureties and their agents to search for and seize their principal. A jury could find from the evidence here that the bondsmen had a reasonable belief that the principal was in his residence, that the owner of the residence was interfering with the arrest, and that the bondsmen were justified in using the force necessary to enter and seize the principal. Where competent evidence is introduced tending to show a surety or his agent acted as a matter of right pursuant to lawful authority, it is a substantial and essential feature of the case about which the court is required to properly instruct the jury.

**Arrest -- Probable Cause for Warrantless Arrest**

*State v. Goode, 350 N.C. 247 (1999)*

Officers had probable cause to arrest defendant where an officer observed three black males at the scene of two murders before they fled; one of the males had on a jacket with bright yellow showing at the collar and sleeve; defendant's brother was arrested near the scene with the wallet of one of the victims in his pocket; defendant thereafter arrived at the scene, indicated that his brother lived there, and inquired as to what had happened; an officer noticed that defendant had a large

bloodstain on the cuff of his bright yellow, long-sleeved shirt; and other officers noticed bloodstains on defendant's tennis shoes.