

SEARCH & SEIZURE

If a Reasonable Office Could have Believed a Party was in Need of Immediate Assistance, Entering Without a Warrant is Justified

State v. Cline, ___ N.C. App. ___, ___ S.E.2d ___ (July 20, 2010)

A police officer with more than ten years of experience, was summoned to a scene where motorists discovered a young, unattended toddler on the side of a major highway, near several residences. Officer was able to ascertain the identity and residence of the child, Defendant's son, with reasonable certainty. Officer proceeded to Defendant's mobile home where he knocked and then banged on the front door several times, without response. Officer also observed a vehicle parked in front of the mobile home, discovered a photo inside the vehicle that appeared to be of the child, searched the glove box for a vehicle registration card, and phoned another officer who was unable to locate the child's parents based on the address on the registration. Officer then walked to the rear of the mobile home where he observed a diaper lying on the top step and noticed that the back door was ajar. Officer indicated that it would have taken him 15 minutes to drive to the magistrate's office and another hour and a half to two hours to obtain a search warrant to enter the premises. Even though officer did not hear any sounds from within the residence, nor did he observe any blood or other signs suggesting criminal activity, a reasonable officer in that officer's position could have believed that a party was in need of immediate assistance inside the mobile home, such that entering without obtaining a warrant was justified.

Officer Conducting Frisk of Drug Suspect Lawfully Seized Digital Scale from His Pocket Because Its Identity Was Immediately Apparent Without Manipulating It

State v. Morton, ___ N.C. App. ___, ___ S.E. 2d ___ (15 June 2010).

The court ruled, relying on *Minnesota v. Dickerson*, 508 U.S. 366 (1993), that an officer conducting a frisk of a drug suspect lawfully seized a digital scale from his pocket because its identity was immediately apparent without manipulating it. (Author's note: "immediately apparent" means the same as probable cause). The officer testified that scales are often used to weigh controlled substances before distribution.

Defendant's Consent to Search Included Outbuilding Located Within Curtilage of Mobile Home

State v. Hagin, ___ N.C. App. ___, ___ S.E.2d ___ (20 April 2010).

The defendant was convicted of manufacture of methamphetamine. The defendant and his wife executed a written consent to search that permitted a search of the personal or real property located at an address in Wadesboro and described a single wide mobile home. The officer informed them that they could withdraw their consent at any time. The defendant accompanied the officer and another officer as they searched the mobile home. They then went outside to the

rear of the mobile home and one of the officers saw a small outbuilding located about 15-20 feet from the home's back porch. The officers searched the outbuilding, and neither the defendant nor his wife withdrew their consent to search their real property. The court ruled, relying on *State v. Williams*, 67 N.C. App. 519 (1984), and other cases, that the search of the outbuilding was within the scope of the consent given. A reasonable person who believed that his consent did not include the outbuilding would have objected to the search. The defendant's silence was some evidence that he believed the outbuilding to be within the scope of his consent. [Author's note: In preparing a written consent involving a residence, an officer may want to include a specific reference to "all outbuildings on the property, wherever located." A person giving consent would have a better understanding of the scope of the proposed search, and a reviewing court would more likely find that an outbuilding was included in the consent to search.]

Entirely Consensual Encounter Between Police and Defendant Does Not Count As A Seizure

State v. Williams, ___ N.C. App. ___, ___ S.E.2d ___ (December 22, 2009). An encounter between the defendant and an officer did not constitute a seizure. The officer parked his patrol car on the opposite side of the street from the defendant's parked car; thus, the officer did not physically block the defendant's vehicle from leaving. The officer did not activate his siren or blue lights, and there was no evidence that he removed his gun from its holster, or used any language or displayed a demeanor suggesting that the defendant was not free to leave. A reasonable person would have felt free to disregard the officer and go about his or her business; as such the encounter was entirely consensual.

(1) Trial Court Did Not Err in Not Ruling on Defendant's Pro Se Motion When He Was Represented by Counsel

(2) Court Did Not Lack Jurisdiction to Conduct Capital Sentencing Hearing When There Was Different Judge and Jury Than at Guilt/Innocence Phase

(3) Defendant's Right to Be Present at All Stages of Capital Trial Was Not Violated When Clerk Selected Forty-Eight Prospective Jurors From Pool in Jury Assembly Room

State v. Williams, 363 N.C. 689, 686 S.E.2d 493 (11 December 2009).

The defendant was convicted of two first-degree murders and sentenced to death.

(1) The court ruled that the trial court did not err in not ruling on the defendant's pro se motion to dismiss based on speedy trial grounds when he was represented by counsel. The court stated that defense counsel's statement to the trial court that the pro se motion needed to be ruled on did not represent counsel's adoption of the defendant's motion. (2) After the defendant was convicted of two counts of first-degree murder and before the beginning of the capital sentencing hearing, the defendant's two counsel met with him at a detention center. The defendant physically attacked one of the lawyers. Both counsel filed a motion to withdraw,

which the trial court granted. The trial court declared a mistrial as to the capital sentencing hearing and dismissed the jury. Three years later, a different judge presided over the capital sentencing hearing and with a new jury. The court ruled that the trial court did not lack jurisdiction to conduct the capital sentencing hearing under these circumstances. (3) The court ruled that the defendant's right to be present at all stages of a capital trial was not violated when a deputy clerk selected forty-eight prospective jurors from the pool in the jury assembly room outside the defendant's presence. The court stated that to the extent that the defendant was challenging the initial organization of the entire venire into separate panels that were later sent sequentially to the courtroom, such a process was a purely administrative matter and not a proceeding at which the defendant was entitled to be present.

Court, Per Curiam and Without Opinion, Reverses Ruling of Court of Appeals for Reasons Stated in Dissenting Opinion, Which Concluded That Officers Had Reasonable Suspicion to Conduct Frisk of Defendant

State v. Morton, 363 N.C. 737, 686 S.E.2d 510 (11 December 2009), reversing, ___ N.C. App. ___, 679 S.E.2d 437 (21 July 2009).

The court, per curiam and without an opinion, reversed the ruling of the North Carolina Court of Appeals for reasons stated in section I of the dissenting opinion, which concluded that officers had reasonable suspicion to conduct a frisk of the defendant. The dissenting opinion stated that under the totality of circumstances, the officers were aware of the following: (1) at least one confidential informant who had provided information in the past had implicated the defendant in a recent drive-by shooting; (2) several informants and anonymous tipsters had reported that the defendant sold drugs in the area; (3) the defendant was traveling in a path from a food mart to his grandmother's house as the informants and tipsters had claimed he would; (4) the defendant picked up his pace when he saw the officers looking in his direction; (5) the defendant was visibly nervous when the officers attempted to question him; and (6) the defendant was wearing red pants, which indicated to one of the officers, a gang analyst, that the defendant may be affiliated with a local gang. (See the complete analysis of the frisk issue in the dissenting opinion.)

Use of Drug Dog in Common Area of Storage Facility to Sniff Defendant's Storage Unit Did Not Violate Defendant's Fourth Amendment Rights

State v. Washburn, ___ N.C. App. ___, ___ S.E.2d ___ (17 November 2009).

An informant told an officer that the defendant kept a large quantity of drugs in a toolbox in his garage and rented a climate-controlled storage unit somewhere within the Kearnersville town limits. The informant provided additional details about the defendant, his vehicle, etc. Another officer, provided with this information, went to the only climate-controlled storage facility in Kearnersville. The officer had confirmed that the defendant rented a unit there as well as other details provided by the informant. With the consent of the facility's manager, a drug dog was permitted to walk the hallway within one of the buildings containing the defendant's unit. The dog alerted to the defendant's unit, and

officers then obtained a search warrant and searched it. Cocaine and drug paraphernalia were discovered, and officers then obtained a search warrant for the defendant's residence and searched it. The court ruled, relying on *United States v. Place*, 462 U.S. 696 (1983), and other cases, that the use of the dog to sweep the common area of the storage facility did not violate the defendant's Fourth Amendment rights. The dog sniff revealed only the presence of illegal drugs that does not compromise any legitimate privacy interest. In addition, the officers were legally in the common hallway of the building with the consent of the facility's manager. The defendant did not possess a reasonable expectation of privacy in the common hallway. The court also rejected the defendant's argument that there was no nexus between the presence of cocaine in the storage unit and the existence of illegal drugs at the defendant's residence to provide probable cause to issue a search warrant for the residence. The court discussed in its opinion the informant's reliability and basis of knowledge.

Officers Had Probable Cause and Exigent Circumstances to Enter House

State v. Stover, ___ N.C. App. ___, ___ S.E.2d ___ (3 November 2009). The court ruled that officers had probable cause and exigent circumstance to enter a home based on the following facts: Officers stopped a vehicle, noticed a passenger with marijuana, who then told them the house at which she had purchased the marijuana. Officers went to the house to conduct a knock and talk. When they arrived there, they perceived a strong odor of marijuana emanating from the house. An officer heard a noise from the back of the house and saw the defendant, whose upper torso was partially out of a window. The court noted that the officer could reasonably believe that the defendant was attempting to flee the scene, and they were also concerned about a possible destruction of evidence.

Court Remands to Trial Court to Determine Whether Officer's Handcuffing of Defendant During Investigative Stop Was Permissible

State v. Carrouters, ___ N.C. App. ___, 683 S.E.2d 781 (20 October 2009). The trial court granted the defendant's motion to suppress evidence obtained by an officer during an encounter with the defendant leading to his arrest. The trial court had concluded that the defendant was arrested when handcuffed by the officer because a reasonable person would not have felt free to leave, and there was no probable cause for the arrest. The court ruled that the trial court applied an incorrect standard to determine whether the defendant was under arrest. Instead, the trial court should have determined whether special circumstances existed that would have justified the officer's use of handcuffs as the least intrusive means reasonable necessary to carry out the purpose of the investigative stop. The court remanded the case to the trial court to make this determination.

Seizure and Search of Defendant's Cell Phone Was Justified as Incident to His Arrest

State v. Wilkerson, 363 N.C. 382, 683 S.E.2d 174 (28 August 2009).

The defendant was convicted of two first-degree murders and sentenced to death. The defendant was arrested for the two murders shortly after they were committed, and while in custody received a call on his cell phone. When a detective asked the defendant who the caller was, he answered that it was his friend, "Will." When the detective asked who else had called the defendant that morning, the defendant scrolled through his cell phone's log, showing her the numbers of the telephones that had called his phone and the times the calls were made. At trial, the cell phone was admitted into evidence, including the serial number located inside the phone, to prove that this phone was used to make calls to a person who was involved with the murder. The court ruled, relying on *United States v. Edwards*, 415 U.S. 800 (1974), and *State v. Steen*, 352 N.C. 227 (2000), the detective's seizure and subsequent search of the cell phone was justified as incident to the defendant's arrest.

Defendant, Inmate at Detention Center, Give Implied Consent to Recording of His Telephone Calls to People Outside Detention Center

State v. Troy, ___ N.C. App. ___, 679 S.E.2d 498 (21 July 2009).

The defendant was being held at a detention center in South Carolina. When he made telephone calls on March 31, 2002, both the defendant and the person he called heard a recorded message that stated, "[t]his call is subject to being monitored and recorded. Thank you for using Evercom." A fellow inmate arranged a three-way telephone on behalf of the defendant on April 2 and April 4, 2002. The defendant sought to suppress the contents of the recorded April telephone calls because the defendant was not provided with a recorded message that his conversations could be monitored or recorded. The court ruled, relying on *State v. Price*, 170 N.C. App. 57 (2005), that the recordings of the April telephone conversations did not violate federal or state eavesdropping laws because the defendant impliedly consented to the recordings. The defendant was aware from the March 31, 2002, calls that telephone calls from the detention center were subject to being recorded.

Officers Had Implied Consent to Enter House to Search For and Seize Weapon

State v. McLeod, ___ N.C. App. ___, 682 S.E.2d 396 (7 July 2009).

Officers responded to a disturbance between the defendant and his mother at a residence where both lived. After speaking with and calming both, the officers left. Within 30 minutes, the officers were called to the residence again. The defendant was locked out of the residence and sitting in the garage area. Officer A went into the residence and spoke with the mother. Officer B remained with the defendant. The mother told officer A that the defendant had a gun in his bedroom. Officer A then went outside to officer B. The defendant was asked if he had a weapon, and he responded yes, there was a gun in the house under his bed. After receiving this information, both officers accompanied the defendant inside the residence and went to the defendant's bedroom and seized the gun. The court ruled, relying on *United States v. Hylton*, 349 F.3d 781 (4th Cir. 2003), that the officers had implied consent to enter the house and search for and seize the

defendant's gun. The court reasoned that both the defendant and his mother gave consent through their words and actions.

Exigent Circumstances Supported Officers' Warrantless Entry Into Mobile Home To Arrest Defendant Pursuant To Outstanding Arrest Warrant

State v. Fuller, ___ N.C. App. ___, 674 S.E.2d 824 (21 April 2009).

The court ruled that exigent circumstances supported officers' warrantless entry into a mobile home to arrest the defendant pursuant to an outstanding arrest warrant when officers reasonably believed that the defendant was attempting to escape and also presented a danger to the officers and others in the home.

Officer Has Reasonable Articulable Suspicion to Stop and Frisk Suspect When Officer Arrives in Vicinity of Armed Robbery And Specific Facts Indicate That Suspect Was The Robber.

State v. Williams, ___ N.C. App. ___, ___ S.E.2d ___ (March 17, 2009).

The trial court properly determined that an officer had reasonable articulable suspicion to stop and frisk defendant (which led to a drugs arrest) where the officer arrived in the vicinity of an armed robbery minutes after the robber had fled in the direction traveled by defendant, defendant matched the corrected description of the robber, he was found within a few blocks of the robbery minutes after it occurred, he was traveling in the same direction as the robber, he froze when confronted, and he initially refused to take his hands out of his pockets when asked by the officer.

Defendant's Consent to Search His Residence Was Voluntarily Given Despite Officer's Untruthful Statement to Defendant

State v. Kuegel, ___ N.C. App. ___, 672 S.E.2d 97 (3 February 2009).

After receiving information that the defendant was selling marijuana and cocaine from his apartment, an officer decided to go to the apartment to conduct a knock and talk. Two other officers stationed themselves about three houses away. The officer identified himself, told the defendant that he knew that the defendant had both marijuana and cocaine in the apartment, and wanted his consent to search it without a search warrant. He untruthfully told the defendant that he had conducted surveillance of the apartment, saw a lot of people coming and going there, stopped their cars after they left the neighborhood, and each time recovered either marijuana or cocaine. The defendant said, "What if I give you what I got?" The officer explained that he needed to find all the drugs inside the apartment and if the defendant did not feel comfortable giving consent to

search, the officer would leave two officers at the apartment and apply for a search warrant. The defendant asked, "If I cooperate, what will you do for me?" The officer replied that he could not make any promises, but if he did not have a kilo or dead body in the apartment, he might be able to keep him out of jail for the holiday (it was December 21). The defendant invited the officers in and agreed to show them where everything was. The defendant argued on appeal that his consent to search was not voluntary because it was the product of the officer's deceptive practices. The court ruled, relying on *State v. Sokolowski*, 344 N.C. 428 (1996) (no coercion when eight officers disarmed defendant before asking consent to search), *State v. Fincher*, 309 N.C. 1 (1983) (no coercion when officers told defendant that if he did not consent officers would get search warrant and search anyway), and *State v. Barnes*, 154 N.C. App. 111 (2002) (officer's deception in telling pedophile that victim was pregnant, in effort to elicit confession, was not sufficient to overcome defendant's will and render confession inadmissible), the defendant's consent to search was voluntary based on the totality of circumstances.

Defendant's Flight from Officer Who Had Ordered Defendant to Stop and for Whom Officer Had Reasonable Suspicion to Make Investigative Stop Provided Probable Cause to Arrest Defendant for Resisting, Delaying, or Obstructing Officer Under G.S. 14-223

State v. Washington, ___ N.C. App. ___, 668 S.E.2d 622 (18 November 2008).

Officers were conducting surveillance of a house. The defendant drove his vehicle to the house and another person got into the vehicle as a passenger. The defendant then drove away. Officer A ran a license check of the vehicle and determined that its registration had expired and the vehicle was not covered by liability insurance. The vehicle stopped in parking lot. Officer A arrested the passenger, for whom there were outstanding felony arrest warrants. Officer B approached the defendant, who had left the vehicle and was walking toward a gasoline station. The officer identified herself and told the defendant that she needed to speak with him. The defendant asked why, and she replied that they had warrants for the passenger's arrest. The officer told the defendant to stop at least three times, but the defendant ran away. The officer did not have the opportunity to explain to the defendant that she needed to speak to him about the expired registration and insurance. The defendant was eventually stopped and then arrested for resisting, delaying or obstructing an officer under G.S. 14-223 (he was not arrested for the registration and insurance offenses because it was determined before the arrest that the vehicle did not belong to the defendant), and a search incident to arrest discovered

illegal drugs. The defendant contended on appeal that the search was unlawful because the arrest was not valid. The court ruled that the officer had reasonable suspicion to make an investigative stop of the defendant for the registration and insurance violations and when the defendant failed to stop when ordered by the officer, there was probable cause to arrest the defendant for a violation of G.S. 14-223; the court relied on the ruling in *State v. Lynch*, 94 N.C. App. 330 (1989). The court rejected the defendant's argument that the officer's failure to identify to the defendant the reason for her lawful investigative stop rendered the stop unlawful. The court noted that reasonable suspicion is determined by the officer's knowledge before the stop, not the defendant's. The court stated, however, that the officer did not have reasonable suspicion to stop the defendant merely because he was in a vehicle with another person for whom the officers had outstanding arrest warrants.

Collective Knowledge of Officers Investigating Drug Sale Was Imputed to Officer Who Searched Vehicle

State v. Bowman, ___ N.C. App. ___, 666 S.E.2d 831 (7 October 2008). A team of officers was positioned near a bank where they had probable cause to believe that one person was about to make a drug sale to another person. The seller arrived at the bank in a Pontiac and left the vehicle to make the drug sale. The Pontiac's driver, the defendant, remained in the vehicle. An officer confronted the seller and seized 100 Oxycodone pills. One officer radioed the other officers to block the Pontiac from leaving the bank's parking lot. An officer searched the vehicle although he was not specifically instructed to do so. Although some of the officers testified at the suppression hearing, the searching officer and the officer who had ordered the Pontiac to be blocked did not. The court ruled that the collective knowledge of the officers investigating the drug sale, which had established probable cause to search the vehicle, was imputed to the officer who searched the vehicle. The fact that some officers did not testify at the suppression hearing did not bar application of the collective knowledge theory.

Magistrate Did Not Have Substantial Basis for Finding Probable Cause to Issue Search Warrant

State v. Taylor, ___ N.C. App. ___, 664 S.E.2d 421 (5 August 2008). Between August 2, 2006, and September 27, 2006, a reliable, confidential informant made six controlled purchases of cocaine at 3095 Brewer Road in Faison, North Carolina, under the supervision of a law enforcement

officer. The search warrant application described two dwellings on the property to be searched: a mobile home and wood frame house located directly behind the mobile home. The application did not identify the owner or occupant of either dwelling. The affidavit was silent concerning where specifically on the property and from whom the informant made the controlled purchases. The affidavit lacked any facts concerning whether the officer saw the informant enter either the mobile home or the wood frame house to make the purchases. Distinguishing *State v. Riggs*, 328 N.C. 213 (1991), the court ruled that the magistrate did not have a substantial basis for finding probable cause to issue the search warrant.

(1) Hotel Personnel Have Implied Right to Enter Hotel Room to Keep Hotel in Reasonably Safe Condition and To Exercise Reasonable Care to Discover Criminal Acts That Might Cause Harm to Other Guests

(2) Officers' Entry into Hotel Room with Hotel Personnel Was Search Under Fourth Amendment and Was Not Justified

State v. McBennett, ___ N.C. App. ___, 664 S.E.2d 51 (5 August 2008). A waitress who delivered room service to the defendant's hotel room reported that the room was in disarray. A hotel manager decided to investigate and could not enter the room because the door caught on the interior lock. The defendant told the manager that he did not need housekeeping and did not open the door. The manager called law enforcement. When the defendant refused to open the door, the manager told the defendant that they would bust the door down. The defendant opened the door and an officer who was the first to enter the room saw marijuana and syringes in the room. (1) The court ruled that hotel personnel have the implied right to enter a hotel room to keep the hotel in a reasonably safe condition and to exercise reasonable care to discover criminal acts that might cause harm to other guests. The entry of hotel personnel for this purpose is not a search under the Fourth Amendment. (2) The court ruled that the officers' entry into the hotel room with the hotel personnel was a search under the Fourth Amendment and the discovery of the evidence in the room was not justified by the plain view theory because the officers' entry was not lawful. There were no exigent circumstances to authorize the entry. Also, the defendant did not voluntarily consent to allow the officers' entry.

Scope of Defendant's Consent to Search Included Strip Search

State v. Neal, ___ N.C. App. ___, 660 S.E.2d 586 (6 May 2008).

The defendant was convicted of several cocaine offenses. The court ruled, relying on the standards set out in *Florida v. Jimeno*, 500 U.S. 248 (1991), and *State v. Stone*, 362 N.C. 50 (2007), that the scope of the defendant's consent to search included a strip search. An officer detected a mild odor of marijuana coming from the passenger side of a car in which the defendant was seated. The defendant consented to a pat-down search of her person to check for weapons and also consented to a search of her purse. A drug dog reacted to the passenger side. While the canine search was being conducted, the defendant acted very nervously and often put her hands in and out of the back of the waistband of her pants. A bulge was noticed in the back of her pants, and she was instructed to keep her hands away from the waistband. An officer informed the defendant that he wanted to conduct a better search to determine what was located in the back of her pants, and he had contacted a female officer for assistance. The female officer conducted a search of the defendant in the women's bathroom, with another officer standing outside the door to prevent others from coming in. The female officer explained to the defendant that she would be conducting a more thorough search. The defendant indicated that she understood. During the search, the defendant was asked to lower her underwear and a package containing cocaine fell out. The female officer testified that the defendant was "very cooperative, extremely cooperative" during the search and never expressed any misgivings about the scope of the search.

(2) Officer's Discovery of Crack Cocaine in Film Canister During Frisk of Defendant Did Not Violate Fourth Amendment

State v. Robinson, 189 N.C. App. 454, 658 S.E.2d 501 (1 April 2008).

An officer was on bicycle patrol in a community known for drug activity. He saw a car speeding down a street, crossing over the road, and jumping the curb onto the grass. The driver then drove the vehicle behind a building out of the officer's view. The officer was informed by radio that the defendant owned the vehicle, and the officer recalled that his agency had received a tip that named this building as being a drug location and the defendant as selling a large amount of cocaine from it. The officer went to the building and saw the defendant talking to someone inside an apartment. The officer made eye contact with the defendant, who then stopped talking. The defendant straightened up abruptly and had a surprised or frightened look on his face. The officer thought he was going to take off running. When the officer asked him what he was doing, the defendant started to back away. He turned his right side away from the officer and reached into his right pocket. The officer told him to keep his hands out of his pockets. The officer did a pat frisk and felt a cylindrical

object that made a rattling sound when moved. The object felt like a film canister. The officer asked if there was crack in his pocket. The defendant responded, “no,” and lowered his head and slumped his shoulders. The officer then reached in the pocket, pulled out and opened the canister, and discovered rocks of crack cocaine. (2) The court ruled the officer’s discovery of the crack cocaine in the film canister during the frisk of the defendant did not violate the Fourth Amendment. Under the “plain feel” doctrine set out in *Minnesota v. Dickerson*, 508 U.S. 366 (1993), there was substantial evidence that the contents of the film canister were immediately identifiable by the officer as crack cocaine, based on the facts set out above.

(1) Officer Had Reasonable Suspicion to Stop Bicyclist in Early Morning Hours in Response to Report of Breaking and Entering at Nearby Residence

(2) Officer Did Not Violate Fourth Amendment By Handcuffing and Frisking Bicyclist During Investigative Stop

(3) Officer Had Probable Cause to Arrest Bicyclist for Possession of Burglary Tools

State v. Campbell, 188 N.C. App. 701, 656 S.E.2d 721 (19 February 2008).

The defendant was convicted of possession of burglary tools and possession of drug paraphernalia. (1) At approximately 3:40 a.m., officer A responded to a report of a breaking and entering in progress at a residence. While driving to the residence (he arrived within three minutes of the report), the officer saw the defendant riding a bicycle on a road that was near the reported break-in (about a quarter-mile). The officer did not see anyone else in the vicinity. The officer continued on to the dwelling without making any contact with the bicyclist. He saw that a window had been opened with a small, flathead screwdriver or a pry tool and he notified other officers of that information. Officer B, aware of officer’s A report about the bicyclist and the break-in, including the type of instrument that may have been used, eventually stopped the defendant, who had a backpack and was playing with something inside of it. Officer C arrived and recognized the defendant as having an extensive history of breaking and enterings as well as being a substance abuser. Officer B handcuffed the defendant and frisked him. A small flashlight and a Swiss Army-type knife were found in the defendant’s pockets. The defendant was then arrested. (1) The court ruled that the officer B had reasonable suspicion to stop the defendant, noting the defendant’s proximity to the break-in, the time of day, and the absence of other people in the area. (2) The court ruled that the officer did not violate the Fourth Amendment by

handcuffing and frisking the defendant during the investigative stop. Handcuffing was supported by knowledge of one of the officers that the defendant was a flight risk based on prior history. The frisk for weapons was justified by the late hour and the nature of the crime committed. The defendant could have been carrying anything from a pen that had an enclosed knife to a small handgun. (3) The court ruled that the officers had probable cause to arrest the defendant for possession of burglary tools.

Miranda Ruling Was Inapplicable to Officer's Request for Consent Search After Defendant Had Asserted Right to Counsel

State v. Cummings, 188 N.C. App. 598, 656 S.E.2d 329 (5 February 2008). The defendant was advised of his Miranda rights and waived them. Shortly after questioning began, he requested a lawyer and questioning stopped. However, an officer then asked for the defendant's consent to search his vehicle, which he granted. The court upheld the trial judge's denial of the defendant's motion to suppress evidence seized as a result of the consent search. The court noted that *State v. Frank*, 284 N.C. 137 (1973), had ruled that Miranda warnings are inapplicable to searches and seizures. The court also stated that it found persuasive many federal court cases that have ruled that asking for a consent search is not interrogation under Miranda; for example, *United States v. Shlater*, 85 F.3d 1251 (7th Cir. 1996), and *United States v. McCurdy*, 40 F.3d 1111 (10th Cir. 1994).

Assuming Without Deciding That Officer's Entry Into Defendant's Home Violated Fourth Amendment, Exclusionary Rule Did Not Bar Evidence of Defendant's Assault on Officer After Entering Home

State v. Parker, 188 N.C. App. 616, 655 S.E.2d 860 (5 February 2008). The defendant was convicted of assault with a firearm on a law enforcement officer. The court ruled, relying on *State v. Miller*, 282 N.C. 633 (1973), and *State v. Guevara*, 349 N.C. 243 (1998), that assuming without deciding that an officer's entry into the defendant's home violated the Fourth Amendment, the exclusionary rule did not bar evidence of the defendant's assault on the officer after entering the home.

Officer Did Not Have Reasonable Suspicion to Make Investigative Stop of Defendant

State v. Hayes, 188 N.C. App. 313, 655 S.E.2d 726 (15 January 2008). The court ruled, relying on *State v. Fleming*, 106 N.C. App. 165 (1992),

that an officer did not have reasonable suspicion to make an investigative stop of the defendant. The officer saw the defendant and his companion driving on a Sunday afternoon in an area where several prior drug-related arrests had been made. They got out of the car and walked back and forth along a nearby sidewalk. The officer looked in the car and saw a gun under the seat where the companion had been sitting. The officer did not know anything about the defendant and his companion and did not believe that either man lived in the neighborhood.

No Fourth Amendment Violation Occurred When Officer Without Search Warrant Viewed Videotape Supplied by Private Person Who Had Viewed It and Decided to Give It to Law Enforcement, Even Though Officer's Viewing of Videotape Was More Thorough Than Private Person's Viewing

State v. Robinson, 187 N.C. App. 587, 653 S.E.2d 889 (18 December 2007).

The defendant was convicted of multiple counts of first-degree statutory rape and sex offense with young girls. A videotape of the defendant's engaging in the sexual activities was introduced at trial. The court ruled, relying on *United States v. Runyan, 275 F.3d 449 (5th Cir. 2001)*, and *United States v. Simpson, 904 F.2d 607 (11th Cir. 1990)*, that no Fourth Amendment violation occurred when an officer without a search warrant viewed the videotape supplied by a private person who had viewed it and decided to give it to law enforcement, even though the officer's viewing of the videotape was more thorough than the private person. The private person's viewing of the videotape did not violate the Fourth Amendment because he was not acting under the authority of the state. The viewing effectively frustrated the defendant's expectation of privacy concerning the videotape's contents, and thus the officer's later viewing did not violate the defendant's Fourth Amendment rights. While the private person stated that he had only viewed portions of the videotape, his viewing "opened the container" of the videotape, and the later viewing of the entire videotape by the officer was not outside the scope of the private person's viewing.

Probable Cause Existed to Support Search Warrant of Defendant's Home and His Computer for Child Pornography

State v. Dexter, 186 N.C. App. 587, 651 S.E.2d 900 (6 November 2007).

Officers received an email tip from a person they later verified as the defendant's housemate. The email reported the defendant's having child pornography on his home computer. The court noted that although the

housemate later recanted her email tip, the officers confirmed the easily verified information from the tip which increased her credibility. The court reviewed the officers' additional corroboration of the tip (see the facts set out in its opinion) and ruled that probable cause supported the issuance of a search warrant for the defendant's home and his computer for child pornography.

(1) Magistrate Had Substantial Basis for Concluding There Was Probable Cause to Issue Search Warrant to Search Home for Illegal Drugs; Court Reverses Trial Judge's Grant of Defendant's Pretrial Motion to Suppress

State v. Edwards, ___ N.C. App. ___, 649 S.E.2d 646 (4 September 2007).

The trial judge granted the defendant's pretrial motion to suppress evidence on the ground that probable cause did not exist to issue a search warrant to search the defendant's home for illegal drugs. The judge then dismissed the indictments against the defendant. The state appealed. (1) The court ruled that the magistrate had a substantial basis for concluding there was probable cause to issue a search warrant to search the defendant's home for illegal drugs. The officer's affidavit stated that he had received information from a confidential and reliable informant who had seen hydrocodone (without a prescription) inside the defendant's home within the past 48 hours. He had known the informant for nine years, during which time the informant had provided "confidential and reliable" information that had proven true through independent investigations. The informant was familiar with hydrocodone and its uses. The officer had 24 years' experience with his law enforcement agency, including seven years of street level drug interdiction. The court stated that even though the officer did not set out in exact detail the connection between the informant and the prior drug investigations, the magistrate could properly infer that the informant had provided reliable information to the officer in these situations.

Although Officers' Forcible Entry into Residence During Execution of Search Warrant Violated Fourth Amendment and Was Substantial Violation of G.S. 15A-251, Evidence Seized in Residence Was Not Subject to Suppression Because There Was No Causal Relationship Between Violation and Seizure of Evidence

State v. White, 184 N.C. App. 519, 646 S.E.2d 609 (3 July 2007).

Officers executed a search warrant for illegal drugs. The trial court ruled that the officers' forcible entry into the residence violated the Fourth Amendment and was a substantial violation of G.S. 15A-251, and the substantial violation required suppression of the evidence seized in the

residence as a fruit of the poisonous tree. The state on its appeal of the trial court's ruling did not contest that the officers' entry into the residence violated the Fourth Amendment and was a substantial violation of G.S. 15A-251. The court ruled, relying on *State v. Richardson*, 295 N.C. 309 (1978), that the evidence seized in the residence was not subject to suppression because there was no causal relationship between the violation and the seizure of the evidence. The search was conducted sometime after the forced entry and only after the occupants were secured and the defendant was read a copy of the search warrant. The cocaine would have likely been located even in the absence of the forced entry. (Author's note: The Fourth Amendment's exclusionary rule was not applicable based on the ruling in *Hudson v. Michigan*, 126 S. Ct. 2159 (2006).

(2) Search and Seizure -- Search of Shop Within Curtilage -- Permission from Woman Living with Defendant

State v. Watkins, 181 NC App 502 (04-295-2) (6 February 2007).
Attempted murder and assault with a deadly weapon. (2) The trial court did not err by concluding that a search of a shop outside of defendant's house was constitutional where the court's findings, supported by the evidence, were that the woman who gave permission for the search had lived with defendant for 13 years, officers seeking her permission had known of her status as a resident of the house for about three or four years and had no reason to suspect that she lacked control over the premises, and her consent was voluntary and without hesitation.

(1) Court Rules That Officers Did Not Have Exigent Circumstances to Enter House Without Search Warrant to Look for Possible Missing Person

(2) Court Remands to Trial Court for Determination Whether Defendant Had Reasonable Expectation of Privacy in House to Contest Officers' Entry into House

(3) Court Remands to Trial Court for Determination Whether Independent Source Exception to Fourth Amendment's Exclusionary Rule Would Support Finding Probable Cause for Search Warrant With Exclusion of Illegally-Obtained Information That Had Been Included in Search Warrant's Affidavit

State v. McKinney, 361 N.C. 53, 637 S.E.2d 868 (15 December 2006),
affirming in part and reversing in part, 174 N.C. App. 138, 619 S.E.2d 901
(18 October 2005).

The defendant was convicted of first-degree murder and sentenced to life

imprisonment without parole. Amy advised law enforcement that her roommate, Aja, had told her that Aja's friend, the defendant, had killed his roommate. An address of the residence where the defendant and victim apparently lived was supplied to law enforcement. Officers arrived at the residence and were advised there that the defendant was reportedly driving the victim's vehicle, which was not in the driveway. The victim's sister arrived and informed officers that the victim lived there. The victim's brother arrived shortly thereafter. Officers learned that neither the brother nor sister had any contact with the victim in several days, and the victim had not reported for work the prior day, which was very unusual. The officers also learned that the defendant had told Aja that the victim had pulled a knife on the defendant, and the victim "wouldn't be coming back." The victim's brother then entered the house through a window and officers followed him. The officers saw what appeared to be blood spatter in the front bedroom and other indications of blood elsewhere in the house, secured the house, obtained a search warrant, and thereafter discovered the victim's body in a large garbage can in the house. (1) The court ruled that the officers did not have exigent circumstances to enter the house without a search warrant to look for the possible missing victim. (2) The court remanded to the trial court for a determination whether the defendant had a reasonable expectation of privacy in the house to contest the officers' entry into the house (had the defendant permanently abandoned the house?). (3) The court remanded to the trial court for a determination whether the independent source exception to the Fourth Amendment's exclusionary rule [Murray v. United States, 487 U.S. 533 (1988)] would support finding probable cause for the search warrant with the exclusion of illegally-obtained information (the apparent blood spatter and other indications of blood in the house) that had been included in search warrant's affidavit.

Search and Seizure--Motion to suppress evidence--Unlawful entry--Fruit of the poisonous tree

State v McKinney, 174 N. C. APP. 138 (2005)

The trial court erred in a first-degree murder case by denying defendant's motion to suppress the evidence found during the search of the victim's residence at which defendant also resided, and defendant is entitled to a new trial, where the victim's brother removed a window air conditioner in order to enter the residence and allowed officers to enter, officers entered without a search warrant and discovered what appeared to be bloodstains, and officers then obtained a search warrant and discovered the victim's body in the residence, because: 1) defendant

had an expectation of privacy in the residence and had standing to challenge the officers' initial warrantless entry into the residence; 2) exigent circumstances did not exist to justify the officers' warrantless entry into the residence; 3) the State waived claims that defendant had abandoned the residence and that the evidence would have been inevitably discovered by its failure to rely on those claims to defeat defendant's motion to suppress at trial; and 4) the officers' initial warrantless entry into the residence was unlawful and the subsequent search warrant was based upon "fruit of the poisonous tree."

Law Enforcement Officers may enter a home without a Search Warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury

Brigham City v. Stuart, 126 S. Ct. 1943 (2006)

It is a "basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable." *Groh v. Ramirez*, 540 U.S. 551, 559, 124 S. Ct. 1284, 157 L. Ed. 2d 1068 (2004) (quoting *Payton v. New York*, 445 U.S. 573, 586, 100 S. Ct. 1371, 63 L. Ed. 2d 639 (1980) (some internal quotation marks omitted)). Nevertheless, because the ultimate touchstone of the Fourth Amendment is "reasonableness," the warrant requirement is subject to certain exceptions. *Flippo v. West Virginia*, 528 U.S. 11, 13, 120 S. Ct. 7, 145 L. Ed. 2d 16 (1999) (*per curiam*); *Katz v. United States*, 389 U.S. 347, 357, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967). [***10] We have held, for example, that law enforcement officers may make a warrantless entry onto private property to fight a fire and investigate its cause, *Michigan v. Tyler*, 436 U.S. 499, 509, 98 S. Ct. 1942, 56 L. Ed. 2d 486 (1978), to prevent the imminent destruction of evidence, *Ker v. California*, 374 U.S. 23, 40, 83 S. Ct. 1623, 10 L. Ed. 2d 726 (1963), or to engage in "hot pursuit" of a fleeing suspect, *United States v. Santana*, 427 U.S. 38, 42-43, 96 S. Ct. 2406, 49 L. Ed. 2d 300 (1976). "Warrants are generally required to search a person's home or his person unless 'the exigencies of the situation' make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment." *Mincey v. Arizona*, 437 U.S. 385, 393-394, 98 S. Ct. 2408, 57 L. Ed. 2d 290 (1978). One exigency obviating the requirement of a warrant is the need to assist persons who are seriously injured or threatened with such injury. "The need to protect or preserve life or avoid serious injury is justification for what would be otherwise [**658] illegal absent an exigency or emergency." *Id.*, at 392, 98 S. Ct. 2408, 57 L. Ed. 2d 290 (quoting *Wayne v. United States*, 115 U.S. App. D.C. 234, 318 F.2d 205, 212 (CADC 1963) (Burger, J.)); see also [***11]

Tyler, supra, at 509, 98 S. Ct. 1942, 56 L. Ed. 2d 486. Accordingly, law enforcement officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury. *Mincey, supra*, at 392, 98 S. Ct. 2408, 57 L. Ed. 2d 290; see also *Georgia v. Randolph*, 547 U.S. ___, ___ 126 S. Ct. 1515, 1525, 164 L. Ed. 2d 208 (2006)("It would be silly to suggest that the police would commit a tort by entering . . . to determine whether violence (or threat of violence) has just occurred or is about to (or soon will) occur").

Fourth Amendment's Exclusionary Rule Does Not Apply to Bar Admission of Evidence Seized Pursuant to Valid Search Warrant for Home Even Though Officers Violated Fourth Amendment's Knock-and-Announce Requirement

Hudson v. Michigan, (15 June 2006) US Sup Ct.

Officers with a valid search warrant entered the defendant's home in violation of the Fourth Amendment's knock-and-announce requirement. The officers seized drugs and a firearm. The Court ruled that the Fourth Amendment's exclusionary rule did not apply to bar the admission of the seized evidence even though the officers violated the knock-and-announce requirement. The Court reasoned that because the privacy interests violated in this case had nothing to do with the seizure of the evidence, the exclusionary rule was inapplicable. The Court rejected the defendant's argument that there would be no deterrence without suppression of the seized evidence. The Court noted that misconduct by law enforcement officers is subject to a civil lawsuit under 42 U.S.C. § 1983 and by discipline of officers by their law enforcement agencies. [Author's note: A substantial violation of state law that requires notice of identity and purpose before executing a search warrant (G.S. 15A-249, with an exception in G.S. 15A-251(2)) would subject the seized evidence to suppression under North Carolina's statutory exclusionary rule set out in G.S. 15A-974(2).]

Fourth Amendment Did Not Prohibit Law Enforcement Officer from Conducting Suspicionless Search of Parolee as Permitted Under California Law

Samson v. California, (19 June 2006) US Sup Ct.

A California law requires every prisoner eligible for release on parole to agree in writing to be subject to a search or seizure by a parole officer or law enforcement officer without a search warrant and with or without

cause. The Court ruled that the Fourth Amendment did not prohibit a law enforcement officer from conducting a suspicionless search of a parolee as permitted under this California law. The Court noted that California law prohibits such a search if it is arbitrary, capricious, or harassing.

Court Rules That When Physically-Present Occupant Refuses to Consent to Search of Dwelling Even Though Co-Occupant Has Consented to Search, Fourth Amendment Prohibits Search of Dwelling Based on Co-Occupant's Consent

Georgia v. Randolph, (22 March 2006)US Sup Ct.

The defendant's wife called law enforcement about a domestic dispute with her husband, the defendant. She told law enforcement about the defendant's drug use and that there was drug evidence in the house. The defendant, who was physically present, unequivocally refused to consent to a search of the house. She then consented to a search. Officers relied on her consent and entered the house. They found drug evidence that was used to prosecute the defendant. The Court ruled, distinguishing *United States v. Matlock*, 415 U.S. 164 (1974) (valid consent of co-occupant with common authority over premises against absent occupant), and *Illinois v. Rodriguez*, 497 U.S. 177 (1990) (valid consent by person whom officer reasonably, but erroneously, believed to possess shared authority as an occupant), that when a physically-present occupant refuses to consent to a search of a dwelling even though another co-occupant has consented to a search, the Fourth Amendment prohibits a search of the dwelling based on the co-occupant's consent. The Court made clear that its ruling applies only to a physically-present occupant who refuses to consent, as long as officers do not remove a potentially-objecting occupant from the entrance to the residence to avoid a possible refusal to consent. The Court stated that when officers have obtained consent from a co-occupant, they have no obligation to seek out any other occupants to determine if they want to refuse to allow consent. The Court noted that the issue of consent is irrelevant when an occupant on his or her own initiative brings evidence from a residence to law enforcement, citing *Coolidge v. New Hampshire*, 403 U.S. 443 (1971). The Court also noted that an occupant can tell law enforcement what he or she knows, which in turn can lead to the issuance of a search warrant. In footnote six, the Court stated that the exchange of this information in the presence of the non-consenting occupant may render consent irrelevant by creating an exigency that justifies immediate action. If the occupant cannot be prevented from destroying easily disposable evidence during the time required to get a search warrant, *Illinois v. McArthur*, 531 U.S. 326 (2001) (preventing suspect's access to residence while law enforcement

sought search warrant), a fairly perceived need to act then to preserve evidence may justify entry and search under the exigent circumstances exception to the warrant requirement. The Court also stated that additional exigent circumstances might justify warrantless searches: hot pursuit, protecting officers' safety, imminent destruction to a residence, or likelihood that suspect will imminently flee. The Court stated that this case has no bearing on the authority of law enforcement to protect domestic violence victims. The issue in this case is about an entry to search for evidence. The Court stated that no question could reasonably be made about law enforcement authority to enter a residence without consent to protect an occupant from domestic violence: as long as officers have a good reason to believe such a threat exists, officers could enter without consent to give an alleged victim the opportunity to collect belongings and get out safely, or to determine whether violence or a threat of violence has just occurred or is about to (or soon will) occur. And because officers would be lawfully on the premises, they could seize any evidence in plain view or take further action supported by consequent probable cause. [Author's note: When an occupant has a superior privacy interest over another occupant of a residence, such as most living arrangements involving a parent and child, the parent's consent would override any expressed refusal to consent by a physically-present child.]

Search and Seizure--Warrantless search of student at school--School resource officer--Motion to suppress drugs

In re: S.W. 171 N. C. APP. 335 (2005)

The trial court did not err in a delinquency hearing arising out of possession with intent to sell or deliver a schedule VI substance by denying defendant juvenile's motion to suppress evidence of drugs obtained during a search by a deputy, because: 1) the deputy was exclusively a school resource officer who was present in the school hallways during school hours and was furthering the school's educational related goals when he stopped the juvenile; 2) the deputy was not conducting the investigation at the behest of an outside officer who was investigating a non-school related crime; 3) the deputy's employment mandated that he help maintain a drug-free environment at the school, and the deputy smelled a strong odor of marijuana when defendant walked past him in the hall which gave the deputy a reasonable grounds to suspect that a search would turn up evidence the juvenile violated or was violating the law and/or school rules; 4) the search was reasonably related to the objective and was not excessively intrusive in light of the age and gender of the juvenile and the nature of the suspicion; and 5) the juvenile consented to the search even though the search could have been performed

without his consent. Consistent w/ New Jersey v TLO standard.

Searches and Seizures--Search warrant for house--Marijuana in curbside garbage--Criminal history--Probable cause

State v. Sinapi 359 NC 394 (2005) Rev'd Ct Appeals 164 N. C. APP. 56 (2004)

Magistrates are entitled to draw reasonable inferences from the material supplied to them and their determination of probable cause is entitled to great deference. Here, the trial court erred by suppressing evidence seized from inside defendant's house pursuant to a search warrant that was based on marijuana plants in a garbage bag taken from defendant's curb, defendant's drug-related criminal history, and information that defendant was linked to a heroin sale and overdose. See Farb P. 3

Search and Seizure--Standing to challenge--Car not owned by defendant--Left open at scene of crime

State v. Boyd, 169 N. C. APP. 204 (2005)

The trial court erred by granting defendant's motion to suppress drugs seized from a car which defendant did not own or lease and where defendant left the car open as he fled from police at the scene of an assault. Defendant did not have a legitimate expectation of privacy and lacked standing.

1. Search and Seizure--Gunshot residue test--No court order--Exigent circumstances

State v. Page, 169 N. C. APP. 127 (2005)

The trial court's findings supported its conclusion that, under the circumstances, exigent circumstances and or probable cause existed to conduct a gunshot residue test without a nontestimonial identification other order. The results of the test were correctly admitted.

2) Search and Seizure--Gunshot residue test--Consent

State v. Page, 169 N. C. APP. 127 (2005)

The trial court's finding of fact supports its conclusion that defendant consented to a gunshot residue test and, even if defendant had objected to this finding, it was supported by properly admitted testimony from

officers who participated in administering the test.

3) Search and Seizure--Motion to suppress evidence--Contents of safe in bedroom--Voluntariness of consent

State v. Houston, 169 N. C. APP. 357 (2005)

The trial court did not err in a trafficking in cocaine by possession of more than 200 but less than 400 grams case by denying defendant's motion to suppress evidence found in the safe in his bedroom, because: 1) there was ample competent evidence in the record to show defendant, although in custody at the time consent was requested, voluntarily consented to the search of the bedroom; and 2) physical evidence obtained as a result of statements by a defendant made prior to receiving the necessary Miranda warnings need not be excluded. See Farb p. 25

1) Detention of House Occupant in Handcuffs for Two to Three Hours During Execution of Search Warrant Concerning Gang Shooting Was Reasonable Under Fourth Amendment (2) Questioning Concerning Immigration Status of House Occupant Detained During Execution of Search Warrant Concerning Gang Shooting Did Not Violate Fourth Amendment When Questioning Did Not Prolong Length of Detention

Muehler v. Mena, (22 March 2005).

Officers obtained a search warrant for a house and premises to search for deadly weapons and evidence of gang membership related to an investigation of a gang-related drive-by shooting. A SWAT team and other officers (a total of 18 officers altogether) executed the warrant. Aware that the gang was composed primarily of illegal immigrants, an INS officer accompanied the officers. One or two officers guarded four occupants detained at the scene, who were handcuffed for about two to three hours while the warrant was executed. In addition, an INS questioned the occupants about their immigration status while the warrant was executed. One of the occupants (the plaintiff in this case) sued the officers for allegedly violating her Fourth Amendment rights during the execution of the search warrant. 1) The Court ruled that the detention of the plaintiff in handcuffs was reasonable under the Fourth Amendment. The two to three hour detention in handcuffs in this case did not outweigh the officers' continuing safety interests. 2) The Court ruled that the questioning of the plaintiff about her immigration status did not violate the Fourth Amendment because the plaintiff's detention during the execution of the search warrant was not prolonged by the questioning. Mere questioning by law enforcement does not constitute a seizure.

[Author's note: This ruling appears to affirm validity of cases that have ruled that law enforcement questioning during a traffic stop is not limited by the Fourth Amendment, even though the questioning is unrelated to the traffic stop, when the questioning does not prolong the detention of the motorist during the stop. See cases in note 163 on page 55 of Robert L. Farb, *Arrest, Search, and Investigation in North Carolina* (3d ed. 2003).]

Search and Seizure--Permission by live-in girlfriend--Constitutional

State v. Watkins, 169 N. C. APP. 518 (2005)

A search of a shop outside a home was constitutional where defendant's live-in girlfriend (Riley) gave permission for the search. The court found that Riley had been defendant's girlfriend for thirteen years and had lived in defendant's home the entire time; her status as a resident of the home had been known by the officers seeking permission for the search for three or four years before the search; the officers had no reason to suspect that she did not have control over the premises, including the shop; and Riley's consent was voluntary and without hesitation. *People v. Robert Christmann* (No. 03110007), Village Court of Village of Newark, Wayne County, New York, decided Jan. 16, 2004., New York 2004 WL 190270. Case that ruled an officer's warrantless retrieval of information from the Sensing Diagnostic Module of a vehicle after it had struck and killed a pedestrian did not violate the Fourth Amendment. This is the first reported case on this issue of which I am aware. I realize that it is a lower court ruling, but I believe it is consistent with U.S. Supreme Court rulings.

When Officer as Part of Interrogation Technique Deliberately Failed to Give Required Miranda Warnings and Obtained a Confession, Then Twenty Minutes Later Gave Miranda Warnings and Obtained a Confession, Neither the First Nor Second Confessions Were Admissible

Missouri v. Seibert, Sup Ct. (28 June 2004).

An officer arrested the defendant for her involvement with a unlawful burning of a mobile home and the resulting death of a person inside. As part of an interrogation technique, the officer deliberately failed to give the defendant Miranda warnings, interrogated her for 30 to 40 minutes, and obtained a confession. The defendant was then given a twenty-minute break. The same officer then gave Miranda warnings to the defendant, obtained a waiver, interrogated her again (referring in this second interrogation to her statements she had made in the first interrogation), and obtained another confession. The trial judge suppressed the first

confession but admitted the second confession. The issue before the United States Supreme Court was the admissibility of the second confession. Distinguishing *Oregon v. Elstad*, 470 U.S. 298 (1985) (second voluntary incriminating statement obtained with Miranda warnings and waiver at police station was admissible even though it occurred after the defendant had made voluntary incriminating statement at his house that was inadmissible under Miranda because warnings had not been given), an opinion announcing the judgment of the Court and representing the views of four Justices (a plurality opinion) ruled that the second confession was inadmissible. The opinion stated that it would have been reasonable for the defendant to regard the two interrogation sessions as a continuum in which it would have been unnatural to refuse to repeat at the second interrogation what had been said before. These circumstances challenged the comprehensibility and efficacy of the Miranda warnings given before the second interrogation such that a reasonable person in the defendant's shoes would not have understood the warnings to convey a message that she retained a choice about continuing to talk. A fifth Justice concurred in the judgment that the second confession was inadmissible, although he disagreed with the reasoning of the plurality opinion. He stated that the admissibility of post-Miranda warning statements should continue to be governed by *Oregon v. Elstad* except if the second statement is obtained in the two-step interrogation technique deliberately used in this case to undermine the Miranda warning. In such a case, post-Miranda warning statements that are related to the substance of the pre-Miranda warning statements must be excluded unless curative measures are taken before the post-Miranda warning statement is made. The curative measures discussed in his opinion were not taken in this case, so he concluded that the second confession was inadmissible. [Author's note: When a fifth vote is necessary to support a judgment of the Court, the concurring opinion defines the scope of the ruling. See, e.g., *Chandler v. Florida*, 449 U.S. 560 (1981).]

Government's Authority to Conduct Inspections Without Reasonable Suspicion or Other Justification at International Border Includes Authority to Remove, Disassemble, and Reassemble Vehicle's Fuel Tank

United States v. Flores-Montano Sup Ct March 30, 2004:

The Court ruled that the government's authority to conduct inspections without reasonable suspicion or other justification under the Fourth Amendment at an international border includes the authority to remove, disassemble, and reassemble a vehicle's fuel tank.

1) Search Warrant Was Invalid Under Fourth Amendment Because It Did

Not Describe Things to Be Seized and Did Not Incorporate by Reference Application's Description of Things to Be Seized

Groh v. Ramirez, Sup Ct. February 24, 2004:

An officer with the Bureau of Alcohol, Tobacco and Firearms prepared and signed an application for a search warrant to search a ranch for specified weapons, explosives, and records. The application was accompanied by a detailed affidavit setting out the basis for believing that the items were on the ranch and was accompanied by a warrant form that he completed. The magistrate signed the warrant form even though it did not describe the things to be seized; instead, the space on the warrant for listing those items merely described the house on the ranch. The warrant did not incorporate by reference the application's list of the items to be seized. 1) The Court ruled that the search warrant was invalid under the Fourth Amendment because it did not describe the things to be seized and did not incorporate by reference the application's description of the things to be seized. [Author's note: This ruling does not affect the validity of AOC-CR-119, Rev. 9/02 (Search Warrant), because the warrant language specifically incorporates by reference the items to be seized that are described on the accompanying application.]

2) Officer Was Not Entitled to Qualified Immunity Because No Reasonable Officer Could Believe That Search Warrant Complied with Fourth Amendment

Groh v. Ramirez, Sup Ct. February 24, 2004:

The Court ruled that the officer was not entitled to qualified immunity because no reasonable officer could believe that the search warrant complied with the Fourth Amendment.

Forcible Entry Into Apartment With Search Warrant for Cocaine After Wait of Fifteen to Twenty Seconds, When Officers Had Previously Knocked on Door and Announced Their Authority, Did Not Violate Fourth Amendment

United States v. Banks, US Sup Ct.

Officers with knowledge that the defendant was selling cocaine at his residence obtained a search warrant to search his two-bedroom apartment. As soon as they arrived there in the afternoon, officers at the front door called out "police search warrant" and rapped hard enough on the door to be heard by officers at the back door. There was no indication

whether anyone was at home, and after waiting for 15 to 20 seconds with no answer, they broke open the front door with a battering ram. The Court ruled that the forcible entry into the apartment under these circumstances did not violate the Fourth Amendment. [Author's note: This ruling did not set fifteen to twenty seconds as a Fourth Amendment required minimum waiting time before using force to enter a residence with a search warrant. The Court in its opinion stressed that each case must be decided on the totality of circumstances presented to the officers as they attempt to execute a search warrant.]

Search and Seizure--Basis for warrant--Trash pick-up--insufficient connection to house

*State v. Sinapi, 164 N. C. APP. 56 (2004) *** Rev'd State v. Sinapi 359 NC 394 (2005)*

The trial court correctly suppressed evidence of marijuana seized from defendant's residence where the seizure was based on a search warrant supported by an affidavit stating that marijuana had been found in a trash bag near the curb in defendant's front yard. The affidavit did not contain sufficient facts and circumstances linking the bag to defendant's residence and failed to establish probable cause for a warrant to search the house.

Search and Seizure--Video tapes seized during drug raid--Identity of people controlling premises

State v. Adams, 159 N. C. APP. 676 (2003)

Defendant's motion to suppress videotapes seized during a narcotics search of his home was properly denied (sic). The tapes portrayed defendant having sex in the bedroom where marijuana and drug paraphernalia were found and the warrant under which the mobile home was searched included articles of personal property tending to establish the identity of those in control of the premises. N.C.G.S. § 15A- 242(4).

Search and Seizure--Search warrant--Motion to suppress cocaine

State v. Rodgers 161 N. C. APP. 311 (2003)

The trial court did not err by denying defendant's motion to suppress cocaine found in his home as the result of a search warrant, because: 1) the law does not require absolute certainty, but only requires that probable cause exists to believe there are drugs on the premises; and 2) based on a confidential informant's tip and the officer's training and experience, the

totality of circumstances provided sufficient probable cause to support issuance of the search warrant for defendant's home.

1) Search and Seizure--Search 24 hours after arrest--Not incident to arrest

State v. McHone, 158 N. C. APP. 117 (2003)

A search of defendant 24 hours after his arrest was not contemporaneous with the arrest and was thus not incident to the arrest. The permissibility of a warrantless search while defendant was in custody was not raised at the suppression hearing and was not addressed on appeal.

2) Search and Seizure--Affidavit supporting warrant--Insufficient

State v. McHone, 158 N. C. APP. 117 (2003)

The trial court correctly concluded that the affidavit supporting a search warrant was insufficient, and did not err by granting defendant's motion to suppress, where the affidavit referred to a lengthy interview of defendant but did not contain the substance of the interview, and concluded that probable cause existed but did not relate particular facts supporting that belief.

3) Search and Seizure--Exclusionary rule--Good faith exception--Not applicable

The "good faith" exception to the exclusionary rule was not applicable where a search was suppressed under North Carolina statutes rather than on federal constitutional grounds.

Search and Seizure--warrantless entry into house--no exigent circumstances

State v. Barnes 158 N. C. APP. 606 (2003)

The entry into a house by officers was a warrantless, nonconsensual search, presumptively in violation of the Fourth Amendment, where the officers suspected drug activity at the house, approached quietly at night, and followed when defendant ran from the porch into the house. The State does not argue that exigent circumstances were present.

State v. Harper 158 N. C. APP. 595 (2003)

1) Search and Seizure--Permission to enter hotel room--Nonverbal conduct

State v. Barnes 158 N. C. APP. 606 (2003)

A cocaine defendant's nonverbal conduct in a doorway (stepping back and

opening the door) constituted a valid consent for officers to enter the hotel room. Defendant did not contend that he lacked authority to consent or that his consent was obtained through duress or coercion.

2) Search and Seizure--Plain view doctrine--Scales seen in hotel room

State v. Barnes, 158 N. C. APP. 606 (2003)

Scales were lawfully observed and seized from a cocaine defendant under the plain view doctrine in the totality of the circumstances. A detective had received information that the occupants of a hotel room possessed drugs, the behavior of the occupants of the room indicated drug activity, and the detective saw the scales in the room after he knocked on the door, talked with defendant, and gained entry through a voluntary consent.

3) Search and Seizure--Warrantless--Scene frozen awaiting warrant--Exigent circumstances

State v. Barnes, 158 N. C. APP. 606 (2003)

Officers were justified in lifting a mattress and in opening a nightstand drawer in a hotel room prior to obtaining a search warrant. Under the totality of the circumstances, the officers had probable cause to believe that a drug crime was being committed and they were justified in freezing the scene pending issuance of a search warrant. Their warrantless search of the area toward which defendant repeatedly moved was justified under the exigent circumstances exception.

Search and Seizure - Warrantless search - Motion to suppress - Plain view

State v. Earwood, 155 N.C. App. 698 (2003)

The trial court did not err in a first-degree murder case by denying defendant's motion to suppress the evidence taken by officers from the home of the victim on 13 August 1998 without a search warrant, because: 1) officers were responding to information provided to them by the eventual defendant; 2) the officers' entry into the house was lawful since officers are authorized to enter buildings when they believe it reasonably necessary to save a life or prevent serious bodily harm; 3) it was not an illegal search and seizure for the detectives to come into the house later while it was still secure to collect the evidence that had already been seized; and 4) defendant did not object to anything that was seized as not being in plain view.

Confessions and Incriminating Statements--Statement inquiring about keys to truck--Custodial interrogation--Cocaine—Inevitable discovery doctrine

State v. Harris, 157 N. C. APP. 647 (2003)

Assuming that a detective's inquiry about whether defendant had keys to an old truck amounted to custodial interrogation without Miranda warnings, defendant's response that he had the keys and cocaine found in the truck's tool box by use of the keys were properly admitted in a prosecution for trafficking in and possession of cocaine because: 1) there was no reasonable possibility that the exclusion of defendant's statement that he had keys would have resulted in a different verdict when the keys to the old truck were in defendant's front jeans pocket and there was no suggestion that the jeans belonged to anyone else; 2) defendant made no attempt to demonstrate that he was subjected to actual coercion; and 3) the keys and cocaine would still have been admissible under the inevitable discovery doctrine when the officers had a search warrant authorizing them to search defendant's person.

Search and Seizure--Defendant's shoes--Bloodstain--Voluntariness

State v. Barden, 356 NC 316 (2002)

The trial court did not err in a capital first-degree murder prosecution by admitting evidence of blood derived from a pair of shoes seized from defendant that he was wearing on 5 April 1998 while he was being interviewed by police, because the totality of circumstances reveals that defendant voluntarily gave his shoes to the police when: 1) defendant was neither placed in a coercive environment where he surrendered the shoes to the officers nor subjected to duress to the point that defendant felt he had no other meaningful choice; 2) a reasonable person in defendant's position would not have believed that he was under arrest; 3) defendant voluntarily provided his shoes to the officers for inspection; and 4) the retention of the shoes did not immobilize defendant since investigators gave defendant a pair of slippers to wear home.

Search and Seizure—Warrant--Improper address--Failure to use full name--Motion to suppress

State v. Moore 152 N. C. APP. 156 (2002)

The trial court did not err in a trafficking in cocaine and knowingly maintaining a place to keep or sell a controlled substance case by denying

defendant's motion to suppress the evidence seized at defendant's home pursuant to a search warrant even though the warrant did not use defendant's full name and defendant's address was listed as "996" instead of "995," because: 1) the executing officer's prior knowledge of the house to be searched is relevant, and the officer had previously been to defendant's residence and observed defendant there; 2) the address described in the search warrant may differ from the address of the residence actually searched; and 3) a search warrant is not defective for failure to specifically name a defendant.

1) Search and Seizure--Photographs of defendant's shoes--Defendant in custody--Nontestimonial identification order not required

State v. Wilson 154 N. C. APP. 686 (2002)

Photographs of defendant's shoes taken without a nontestimonial identification order were admissible because defendant was in custody on another offense when the photographs were taken.

2) Search and Seizure--Photographs of defendant's shoes--Defendant in custody--Warrant not required

State v. Wilson, 154 N. C. APP. 686 (2002)

A defendant's constitutional rights were not violated by an officer taking photographs of defendant's shoes without a search warrant because defendant was in custody at the time.

1) Search and Seizure--Probable cause for warrant--Controlled buy--Sufficiency of affidavit

State v. Reid, 151 N. C. APP. 420 (2002)

An officer's affidavit was sufficient to establish probable cause for the issuance of a warrant to search an apartment leased by defendant for narcotics based upon a controlled buy of cocaine at the apartment by a confidential informant, although the affidavit did not indicate the identity of the specific person from whom the informant had purchased cocaine, where the affidavit stated that 1) the informant purchased cocaine from someone at the apartment within the previous six days, 2) the informant had told officers that a white female with the same first name as defendant and a black male were in the business of selling cocaine from the apartment, and 3) the informant had witnessed the white female and the black male in possession of cocaine within the previous six

days.

2) Search and Seizure--Search warrant--Knock and announce--Forcible entry--Delay of six to eight seconds

State v. Reid, 151 N. C. APP. 420 (2002)

A delay of only six to eight seconds between the time officers knocked on the door of defendant's apartment and announced "Sheriff's Office, search warrant" and their forcible entry into the apartment by breaking down the door with a battering ram did not violate defendant's statutory or constitutional rights so as to render inadmissible cocaine discovered in a search of the apartment where the officers were executing a warrant to search for narcotics which could have been easily disposed of by persons in the apartment.

Search and Seizure--Trash can--Warrantless search apart from collection

State v. Rhodes, 151 N. C. APP. 208 (2002)

The trial court erred by denying defendant's motion to suppress marijuana seized without a warrant from his trash can where the contents were not placed there for collection in the usual and routine manner and the trash can was within the curtilage of defendant's home. Defendant maintained an objectively reasonable expectation of privacy.

Search and Seizure--Warrantless search--Plain view doctrine

State v. Phillips, 151 N. C. APP. 185 (2002)

The trial court did not err in a first-degree murder case by allowing the admission of evidence seized by law enforcement officers during their warrantless search of the residence where decedent wife remained with her three daughters after the couple separated, because: 1) the only evidence seized was evidence observed in plain view during the police officers' protective sweep of the house after the discovery of decedent's body in the doorway of the residence; 2) the officers secured the residence by covering the door and roping off the area with yellow tape; 3) the subsequent entry by a detective and a lab technician did not constitute a separate search; and 4) the search and seizure was not unreasonable under the circumstances.

Search and Seizure--Fourth Amendment--Expectation of privacy--Letters from prison inmate

State v. Wiley, 355 NC 592 (2002)

The trial court did not err in a capital first-degree murder prosecution by admitting a letter written by defendant while in the New Hanover jail which was read by jail personnel pursuant to an announced policy. Defendant did not have a subjective expectation of privacy in the unsealed envelope he handed to a deputy and, even if he did, that expectation was not objectively reasonable.

1) Search and Seizure--Nontestimonial identification order--Affidavit--Reasonable grounds for suspicion

State v. Pearson, 356 NC 22 (2002)

A rape defendant's motion to suppress evidence gained from a nontestimonial identification order was properly denied where the affidavit sufficiently established reasonable grounds to suspect that defendant had committed the rapes. Defendant was a suspect based on more than a minimal amount of objective justification and more than a particularized hunch.

2) Search and Seizure--Nontestimonial identification order--Supporting affidavit--Reliance on information from another officer

State v. Pearson, 356 NC 22 (2002)

A rape defendant failed to produce evidence that a statement in an affidavit supporting a nontestimonial identification order was made in bad faith such that it was knowingly false or in reckless disregard of the truth where the affidavit alleged that defendant had been seen peeping into an apartment but defendant argued that the report did not show that defendant was actually seen peeping. A police officer making an affidavit for issuance of a warrant may do so in reliance upon information reported to him by other officers in the performance of their duties, and the officer making the affidavit from a report in this case had every reason to conclude that defendant had been secretly peeping.

3) Search and Seizure--Nontestimonial identification order--Procedures following collection of samples

State v. Pearson, 356 NC 22 (2002)

The trial court properly concluded that violations of statutory nontestimonial identification statutes were not substantial and correctly refused to suppress the seized evidence where a return was not made to the issuing judge within 90 days and defendant was not provided with a copy of the results in a timely manner. N.C.G.S. § 15A-974(2) mandates suppression when the evidence is obtained as a result of the violation, but these violations involved procedures to be followed after the samples are taken and the deviation was a mere unintentional oversight. The defense interests protected by the statutes are the requirement of an inventory of what was seized and the opportunity to move for the destruction of that evidence, but the defendant in this case was alert during the procedure, knew what was taken, and did not move for destruction of the evidence. Finally, a subsequent search warrant obtained as the result of an SBI agent's tenacity over ten years provided more conclusive DNA and factual evidence, and it is unlikely that defendant would have avoided prosecution if this evidence was destroyed. N.C.G.S. §§ 15A-280, -282.

Search and Seizure--Entry into residence--Simultaneous announcement of identity and purpose

State v. Sumpter 150 N. C. APP. 431 (2002)

The trial court did not err in a narcotics prosecution by denying defendant's motion to suppress evidence seized in a search of his residence where an officer announced his identity and purpose as he entered an unlocked door. The officer violated the literal requirements of N.C.G.S. § 15A-249 by not announcing his identity and purpose prior to opening the door and entering the residence, but the violation was not substantial.

1) Evidence--Crack cocaine--Motion to suppress--Excessive force

State v. Summey, 150 N. C. APP. 662 (2002)

The trial court did not err in a felony possession of cocaine case by denying defendant's motion to suppress evidence of crack cocaine seized after the stop of a truck in which defendant was a passenger even though defendant alleges an officer used excessive force in opening her hand, because: 1) the officer's use of force to pressure open defendant's hand was justifiable in view of the officer's need to ensure that defendant was not in possession of a weapon capable of inflicting injury or that defendant would destroy evidence; and 2) there is no evidence indicating that the officer's use of pressure was overly intrusive as to render the seizure of the crack cocaine unreasonable.

2) Evidence--Drugs--Motion to suppress--Probable cause for arrest warrant--Protective sweep of residence

State v. Bullin, 150 N. C. APP. 631 (2002)

The trial court did not err in a trafficking in drugs, conspiracy to traffic in drugs, and possession of controlled substances case by denying defendant's motion to suppress evidence seized at defendant's residence pursuant to his arrest, because: 1) the totality of circumstances reveals that there was probable cause to issue the arrest warrant against defendant including the chain of events, along with the information regarding defendant's reputation and previous involvement with drugs; 2) the officers legally entered defendant's residence pursuant to a valid arrest warrant, and given defendant's actions and his previous involvement with drugs, as well as the dangerous and unpredictable nature of drug trafficking, a prudent officer could reasonably believe that a protective sweep of defendant's home was necessary to make certain that no one else was hiding in the residence; and 3) the search was limited in scope and duration and aimed at ensuring the officers' safety.

Searches and Seizures—Consent--Nonverbal gesture

State v. Graham, 149 N. C. APP. 215 (2002)

The trial court properly concluded in a cocaine prosecution that defendant had voluntarily consented to a search of his person where an officer asked defendant if he could check his pocket, and defendant stood up and raised his hands away from his body accompanied by a gesture which the officer took to mean consent. The use of nonverbal conduct intended to connote an assertion is sufficient to constitute a statement within the meaning of consent under N.C.G.S. § 15A-221(b).

Search and Seizure—Tip--Crime in progress--Probable cause to arrest

State v. Chadwick, 149 N. C. APP. 200 (2002)

The trial court improperly granted a motion to suppress narcotics where an officer received detailed information from a known and reliable informant indicating that defendant would be delivering a large amount of cocaine to a specific location; surveillance was set up; and officers independently corroborated the information given by the known informant with particularity. The circumstances established sufficient indicia of reliability that defendant was engaged in criminal activity to give officers probable

cause to seize and arrest defendant. An officer may conduct a warrantless search incident to a lawful arrest; the large quantity of cocaine found on defendant was unnecessary to establish probable cause to arrest.

Search and Seizure--Warrantless seizure--Neglected horses *Bad Decision*****

State v. Nance, 149 N. C. APP. 734 (2002)

The trial court erred in a prosecution for misdemeanor cruelty to animals by denying defendant's motion to suppress evidence seized without a warrant where animal control officers responding to a telephone call viewed defendant's horses from a road and driveway beside the pasture leased by defendant; the horses were in open areas and were not in barns or closed structures; the horses were emaciated, standing in water and mud, and were without visible food; the officers left to make arrangements for transportation and care of the horses; and they returned 3 days later and seized the horses without a warrant. Knowledge that officers gain from plain-view observations does not constitute a search under the Fourth Amendment, but whether such observations can justify a warrantless seizure is a separate question. Here, there were no exigent circumstances and there was ample time to secure a warrant during the 3 days in which arrangements were made for the transportation and care of the horses. However, information (such as photographs) gathered before officers entered the property would be admissible.

Search and Seizure--Warrant--Reports of heavy traffic at residence--Drugs not observed--Affidavit insufficient

State v. Hunt, 150 N. C. APP. 101 (2002)

The trial court erred in a controlled substance prosecution by not granting defendant's motion to suppress evidence seized pursuant to a search warrant where the affiant stated in his application that drug trafficking was occurring at defendant's premises based on citizen complaints and officer verification of heavy vehicular traffic with short visits, there was no mention of anyone seeing drugs on the premises, and the affidavit was insufficient to establish probable cause.

Officers' Entry into Defendant's Home Without Arrest Warrant or Search Warrant Required Exigent Circumstances

Kirk v. Louisiana, (24 June 2002).

Officers entered the defendant's home to arrest him without an arrest warrant, search warrant, or consent to enter. A state appellate court ruled that the officers did not violate the Fourth Amendment because the officers had probable cause to arrest the defendant. The Court ruled that the state appellate court's reasoning plainly violated its ruling in *Payton v. New York*, 445 U.S. 573, 100 S. Ct. 1371, 63 L. Ed. 2d 639 (1980). Exigent circumstances must exist if officers enter a home to arrest a defendant without an arrest warrant, search warrant, or consent to enter. The Court did not decide whether exigent circumstances existed in this case.

Search and Seizure--Warrantless search--Presence in motel room of another

State v. McMillian, 147 NC App 707 (2001)

The trial court did not err in a robbery with a dangerous weapon case by admitting evidence obtained from a warrantless search of the motel room where defendant was found, because: 1) the room was rented to a person other than defendant; 2) there was no evidence that defendant had any luggage in the room, and there was no evidence that defendant had spent the night or planned on staying overnight; and 3) while defendant may have had a subjective expectation of privacy in the room, it was not a reasonable expectation of privacy.

1) Search and Seizure--Initial exclusion of heroin--Subsequent inclusion by a different judge--Inevitable discovery

State v. Woolridge 147 N. C. APP. 685 (2001)

There was no error in a heroin prosecution where the judge who heard defendant's motion to suppress the heroin ruled that there were no exigent circumstances for the warrantless search and granted defendant's motion; the State moved during pretrial motions before a different judge to admit the heroin under the inevitable discovery doctrine; and this judge granted the motion. A second judge is not precluded from hearing a new motion to suppress if new allegations are presented; in this case, the only question in the first hearing was whether the heroin was properly seized without a warrant.

2) Search and Seizure--Inevitable discovery--Bad faith by officer irrelevant

State v. Woolridge, 147 N. C. APP. 685 (2001)

There was no error in admitting heroin under the inevitable discovery

doctrine where there was sufficient evidence upon which the judge could conclude that the State fulfilled its burden of proving that the evidence would have been inevitably discovered in a search pursuant to a valid search warrant. Any bad faith on the part of the investigating officer in searching without a warrant is not relevant to the determination of inevitable discovery.

3) Search and Seizure--Home of another--Overnight guest--Standing

State v. Woolridge 147 N. C. APP. 685 (2001)

The trial court did not err in a trafficking in cocaine case by finding that defendant lacked standing to object to the search of his coparticipant's home where contraband was found under the stairwell located in the laundry room even though defendant contends he was an overnight guest temporarily residing in a living area located in the basement area which was connected to the garage and a laundry room, because: 1) defendant has failed to show that he personally has an expectation of privacy in the place searched and that his expectation was reasonable; and 2) at most, the evidence established that defendant was legitimately on the premises.

1) Search and Seizure--Search by parole officer--Not in lieu of search warrant

State v. Robinson, 148 N. C. APP. 422 (2002)

The trial court did not err by denying a defendant's motion to suppress marijuana eventually found after a parole officer attempted to gain entry into defendant's house pursuant to a parole condition allowing warrantless searches where defendant contended that the use of the parole officer's authority was in lieu of police officers obtaining a search warrant and was not in furtherance of the supervisory goals of probation. The fact that other police officers were in the area of defendant's home when the parole officer approached defendant did not affect the legality of the parole officer's conduct, and the Fourth Amendment does not limit searches pursuant to probation conditions to those searches that have a probationary purpose.

2) Search and Seizure--Unlawful warrantless entry--Subsequent warrant--Independent source doctrine

State v. Robinson, 148 N. C. APP. 422 (2002)

Assuming that a warrantless entry by officers into defendant's home was not justified by exigent circumstances and was unlawful, evidence

thereafter seized from the home pursuant to a subsequently obtained search warrant was admissible under the independent source doctrine where the search warrant was obtained on the basis of an informant's tip that defendant was growing marijuana in his home, corroborating evidence obtained while officers were lawfully on the premises attempting to gain consent to search, and defendant's refusal to consent to a search; the warrant application contained no information concerning what the officers observed when they initially entered the home without a warrant; and there was no indication that the warrant was prompted by what the officers saw during the warrantless entry.

3) Search and Seizure--Warrant--Probable cause--Corroboration of tip

State v. Robinson, 148 N. C. APP. 422 (2002)

A detective's affidavit provided a sufficient showing of probable cause to support issuance of a search warrant where an informant's anonymous tip was not reliable standing alone, but the information in the tip was sufficiently corroborated to provide reasonable cause to believe that a search of defendant's house would reveal marijuana.

State v. Nowell, 355 N.C. 273 (2002)

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, 144 N.C. App. 636, 550 S.E.2d 807 (2001), reversing in part and reversing and remanding in part judgments entered 8 December 1999 by Allsbrook, J., in Superior Court, Halifax County. On 4 October 2001, the Supreme Court granted the State's petition for discretionary review of an additional issue. Heard in the Supreme Court 12 February 2002. AFFIRMED.

1) Search and Seizure--Juvenile on school grounds--Not a student--Officer involvement--Reasonableness

IN RE D.D., 146 N.C. App. 309, 2001

The trial court properly denied a juvenile's motion to suppress in a proceeding based upon an allegation that she was in possession of a knife on school property where a substitute teacher relayed to the principal an overheard conversation that a group of girls were coming onto the campus at the end of the day for a fight; the principal and several officers found four girls in a parking lot where their presence was unusual; and an eventual search in the principal's office revealed the knife. In balancing the students' privacy interest against the principal's obligation to maintain both

a safe and educational environment, the facts of this case weigh in favor of applying the standard of *New Jersey v. T.L.O.*, 469 U.S. 325, 83 L. Ed. 2d 720, 105 S. Ct. 733, even though some of the students were not from that school. Moreover, the T.L.O. standard should apply when school officials bring police officers into the school setting because the officers are there to assist the school in creating and sustaining a safe environment conducive to learning. Given the totality of the evidence, the officers' involvement here was minimal relative to the actions of the principal.

2) Search & Seizure – Items seized during arrest in hotel room – Ruse to open door – Search of pager memory

State v. Harris, 145 N. C. APP. 570 (2001)

Trial Ct did not err in a cocaine prosecution by denying defendant's motion to suppress evidence seized during his arrest where officers called defendant's hotel room and told him that maintenance would be coming to fix a smoke detector, then knocked on the door and answered "maintenance" when asked who was there. Officers may have used a ruse to get the room door open, but the identity of the officers was immediately obvious and they did not step into the room until additional exigent circumstances arose. Defendant's pager, the numbers therein, and currency were found on defendant's person after he had probable cause to believe that the pager contained information that would assist in the investigation of the crime.

Search and Seizure--Motion to suppress--Drugs--Plain view

State v. Green, 146 N. C. APP. 702 (2001)

The trial court did not err in a possession with intent to sell and deliver a controlled substance case by denying defendant's motion to suppress drug evidence which resulted in defendant's guilty plea in a situation where an officer inadvertently discovered a plastic baggie of drugs on defendant's body when defendant raised his arms in response to the officer's ordering defendant to remove his hands from his front pants pocket for safety reasons, because the totality of circumstances reveals that: 1) the officer saw in plain view approximately two inches of a plastic baggie sticking out of defendant's pants; 2) the officer testified that before seizing the baggie, he believed it contained a controlled substance since that is the way the officer finds it packaged every day, he saw the same packaging of narcotics in his narcotics classes, plus he had made numerous drug arrests with the same type bags; 3) the officer testified he observed in the baggie a green vegetable material which he recognized as

marijuana based on his education, experience, and training; 4) the officer had probable cause to seize the baggie from defendant's pants, regardless of whether defendant consented to a search when he raised his arms, since the raising of defendant's arms brought the plastic baggie into the officer's plain view; and 5) the officer came upon defendant late at night in an area known for drug activity and at a particular intersection known for drug transactions and arrests.

Search and Seizure--Narcotics--Strip search--Warrant not exceeded

State v. Johnson, 143 N.C. App. 307, 2001

Officers executing a search warrant for narcotics did not exceed the scope of the warrant by performing a strip search of defendant where the warrant was executed for the express purpose of finding controlled substances on the premises or the persons described in the warrant, including defendant; such substances could be readily concealed on the person; an officer testified that there is a trend toward hiding controlled substances in body cavities; the search of the premises had revealed electronic scales and an initial search of defendant had revealed almost \$ 2,000 in small denominations; and the search was done in a reasonable manner in that defendant was taken into his bedroom by two male officers who did not touch him.

Search and Seizure--Defendant's shoes--Confession--Plain view doctrine--Exigent circumstances--Search incident to lawful arrest

State v. Bone, 354 N.C. 1, 2001

Although the trial court improperly concluded a magistrate had probable cause to issue a search warrant to seize defendant's shoes in a first-degree burglary and capital first-degree murder trial, other proper grounds were available to uphold the seizure including: 1) the plain view doctrine coupled with exigent circumstances when defendant could discard or disfigure the shoes once he had knowledge of the detective's interest in the shoes; and 2) the search was incident to a lawful arrest when the detective had probable cause to arrest defendant based on an anonymous tip that the detective was able to corroborate, the detective independently had reason to believe the murderer wore "Chuck Taylor" shoes, and the detective found defendant wearing this type of shoe when he went to speak with him.

1) Search and Seizure--Warrantless search of residence--Exigent circumstances--Drugs

State v. Nowell, 144 N.C. App. 636, 2001

The trial court erred in a drug possession and trafficking in marijuana case by concluding there were exigent circumstances to permit the law enforcement officers' warrantless entry into a defendant's residence and the evidence obtained as a result of this unlawful entry must be suppressed, because: 1) evidence the parties were going to destroy the amount of marijuana required for one "joint" from the approximately fifty pounds of marijuana present in the residence is not an exigent circumstance; and 2) defendant's consent to the search was tainted by the illegal entry into the residence.

2) Search and Seizure--Probable cause--Informants' tips

State v. Holmes, 142 N.C. App. 614, 2001

The trial court did not err in a narcotics prosecution by denying defendant's motion to suppress evidence seized in a search based upon information from informants where the court found that the tips included a physical description of the perpetrators and their vehicle as well as the time and place the sale of the heroin was to occur; the informants had been reliable, providing information leading to multiple arrests and convictions; the informants had first-hand knowledge of the illegal drug activities involved in this case; and the reliability of the tips was established by police observations leading up to the arrest.

3) Search and Seizure - Warrantless search - Permissible scope of search exceeded

State v. Woods, 136 N.C. App. 386 (2000)

Even though the officers' warrantless entries into defendant's residence did not violate the Fourth Amendment since the security alarm was sounding at the time officers arrived, the back door of the residence was ajar, and a cursory inspection revealed a recently broken window, the trial court erred in denying defendant's motion to suppress evidence of marijuana and \$44,890 cash based on the ensuing search and seizure violating the permissible scope of searches.

4) Search and Seizure - Warrant - Tainted evidence

State v. Woods, 136 N.C. App. 386 (2000)

Even though the officers' prior warrantless entries into defendant's residence did not violate the Fourth Amendment since the security alarm was sounding at the time officers arrived, the back door of the residence was ajar, and a cursory inspection revealed a recently broken window, the officers' search violated the permissible scope, and the trial court erred in denying defendant's motion to suppress the additional evidence the officers obtained pursuant to a warrant because the illegally discovered marijuana and cash obtained during the warrantless search comprised more than a minor portion of the evidence establishing probable cause for the warrant, and thus, the fruits obtained pursuant to the search under the warrant are inadmissible.

Search and Seizure - Warrant for premises - Search of individual - Probable cause

State v. Cutshall, 136 N.C. App. 756 (2000)

Even though police officers had a warrant to search a mobile home and all outbuildings at the residence for crack cocaine and other controlled substances, the trial court violated defendant's Fourth Amendment right to be free from an unreasonable search and seizure by failing to suppress a rock of crack cocaine and the crack pipes obtained from defendant's jacket because the officers' search in the instant case yielded the exact object of the officers' investigation, crack cocaine, which meant the officers' statutory authority under N.C.G.S. 15A-256 to search defendant ceased to exist.

1) Search and Seizure--warrant--scope of search

State v. Miller 137 N.C. App. 450 2000

The trial court did not err in an indecent liberties with a minor, first-degree sexual exploitation, statutory sexual offense, and statutory rape case by denying defendant's motion to suppress evidence seized by police officers during the search of his residence pursuant to a search warrant based on an affidavit containing information about a police agent's interview of the minor, as well as information obtained in a consent search of defendant's home, because: 1) even if the minor had been subjected to custodial interrogation in which her statutory rights and constitutional rights had not been protected, defendant is without standing to assert that any violation of the minor's rights would protect defendant; 2) although defendant asserts the minor's statements to the police agent were coerced and untruthful, the veracity of the agent as the affiant, instead of the minor, is at issue; and 3) there is no evidence that the officers exceeded the scope of defendant's initial consent to search since a

copy of defendant's written consent to search is contained in the record on appeal, and there were no restrictions.

2) Search and Seizure - Investigatory stop - Erratic bicycle riding

State v. Steen, 352 N.C. 227 (2000)

Observation of the manner and place in which defendant was riding his bicycle was sufficient to raise a reasonable suspicion for an investigatory stop where the officers observed defendant weaving in heavy traffic, so that his operation of the bicycle constituted a traffic offense.

3) Search and Seizure - Clothing - Following arrest

State v. Steen, 352 N.C. 227 (2000)

A search of a first-degree murder defendant's clothing was not unconstitutional or otherwise unlawful where defendant was in custody and the effects in his possession could be searched without a warrant; his consent is irrelevant.

4) Search and Seizure - Hair and saliva samples - Six hours after arrest

State v. Steen, 352 N.C. 227 (2000)

The trial court did not err in a first-degree murder prosecution by concluding that neither a court order nor a search warrant was necessary for the police to take hair and saliva samples from defendant six hours after he was taken into custody.

1) Search and Seizure - Driving while impaired - Checkpoint avoidance - Criminal activity – Reasonable and articulable suspicion

State v. Foreman, 351 N.C. 627 (2000)

The Court of Appeals did not err in upholding defendant's DWI conviction based on the conclusion that under the totality of the circumstances, the arresting officer had a reasonable, articulable suspicion that defendant was engaged in criminal activity prior to any seizure because: 1) the officer observed a quick left turn away from the DWI checkpoint at the precise point where the driver of the vehicle would have first become aware of its

presence; 2) the officer did not stop defendant's vehicle once it turned away from the checkpoint, or at any point; and 3) after making a quick turn away from the checkpoint, defendant voluntarily parked in a residential driveway and remained hidden in the car until the officer approached the vehicle.

2) Search and Seizure - Driving while impaired - Checkpoint avoidance - Investigatory stop – Minimal intrusion

Even though the Court of Appeals incorrectly concluded that a legal turn away from a DWI checkpoint upon entering the checkpoint's perimeters cannot justify an investigatory stop, the Court of Appeals did not err in upholding defendant's DWI conviction based on the evidence derived from the police officer's observations because: 1) it is reasonable and permissible for an officer to monitor a checkpoint's entrance for vehicles whose drivers may be attempting to avoid the checkpoint; 2) it necessarily follows that an officer, in light of and pursuant to the totality of circumstances or the checkpoint plan, may pursue and stop a vehicle which has turned away from a checkpoint within its perimeters for reasonable inquiry to determine why the vehicle turned away; and 3) our state's interest in combating intoxicated drivers outweighs the minimal intrusion that an investigatory stop may impose upon a motorist under these circumstances. N.C.G.S. § 20-16.3A.

3) Searches and Seizures 28 (NCI4th) - Burglary, rape, murder - Warrantless entry into defendant's home - Exigent circumstances

State v. Worsley, 336 N.C. 268 (1994)

The trial court did not err by denying defendant's motion to suppress physical evidence seized from his home and statements made following his arrest where officers arrived at the scene of the murder to find the victim's body lying in a grassy common area of the apartment complex; she had been the victim of a brutal stabbing; an eyewitness identified defendant as the killer and another witness informed officers that he had seen defendant running toward the defendant's apartment shortly after the murder; the officers went to defendant's nearby apartment and discovered fresh blood on the doorknob; they had no way of knowing whether defendant was alone or might be harming someone else; they knocked loudly and announced themselves, but received no response; and they entered the apartment and found defendant. These uncontroverted facts constituted exigent circumstances sufficient to justify the officers' warrantless, nonconsensual entry into the defendant's home to effect his

arrest.

4) Searches and Seizures 71 (NCI4th) - Burglary, rape murder - Search of defendant's apartment - Consent of wife

Evidence obtained a result of the consent of defendant's wife for a search of their apartment was admissible in a prosecution for burglary, rape, and murder. Although it has been held in the past that a wife has no authority to consent to a search of the home she shares with her husband, those cases have been effectively overruled by N.C.G.S. 15A-221 and -222. Moreover, the prior cases were likely premised on the now untenable view that the husband was the master of the wife. Am Jur 2d, Searches and Seizures 100. Admissibility of evidence discovered in search of defendant's property or residence authorized by defendant's spouse (resident or nonresident) - state cases. 1 ALR4th 673.

5) Searches and Seizures 32 (NCI3d) - Unlawful interrogation - Discovery of handgun – Inevitable discovery exception to exclusionary rule

State v. Pope, 333 N.C. 106 (1992)

1) Searches and Seizures 3 (NCI3d) - Tip from informant - Officers' presence on defendant's porch – No violation of expectation of privacy

State v. Church, 110 N.C. App. 569 (1993)

2) Searches and Seizures 33 (NCI3d) - Search under plain view doctrine - Inadvertence not requirement

State v. Church, 110 N.C. App. 569 (1993)

Inadvertence is not a necessary condition of a lawful search pursuant to the "plain view" doctrine; therefore, officers who went to defendant's property without a warrant, suspecting that marijuana was grown there, could properly seize marijuana which they found growing in the yard pursuant to the plain view doctrine.

3) Criminal Law 1497 (NCI4th) - Search conducted by probation officer - Assistance from police officers - Warrantless search not illegal

State v. Church, 110 N.C. App. 569 (1993)

1) Searches and Seizures 21 (NCI3d) - Marijuana grown in crawl space of

house - Informant - Probable cause for search warrant

State v. Witherspoon, 110 N.C. App. 413 (1993)

2) Searches and Seizures 21 (NCI3d) - Search warrant - Marijuana plants growing under house - Plants seen within 30 days - Information not stale

State v. Witherspoon, 110 N.C. App. 413 (1993)

Information from a concerned citizen that 100 marijuana plants had been seen growing in the crawl space of defendant's house "within the last 30 days" was not stale at the time the search warrant was issued because it is unlikely that defendant would personally consume such a large quantity within 30 days;

1) Searches and Seizures 21 (NCI3d) - Informant's tip - No probable cause sufficient to issue search warrant

State v. Wallace, 111 N.C. App. 581 (1993)

An informant's tip that marijuana was being grown in the basement of a residence, standing alone, was insufficient to constitute probable cause to issue a search warrant.

2) Searches and Seizures 3 (NCI3d) - Officers' justifiable basis to approach home - Informant's tip - Officers' right to ask questions

State v. Wallace, 111 N.C. App. 581 (1993)

The trial court erred in concluding that officers did not have a justifiable basis to approach defendants' residence where an informant told them that marijuana was being grown in the basement of a residence, and the officers felt that they did not have sufficient probable cause to obtain a search warrant, so they went to defendants' residence to inquire further into the matter, since law enforcement officers have the right to approach a person's residence to inquire whether the person is willing to answer questions.

Searches and Seizures 58 (NCI4th) - Search for drugs and drug paraphernalia - Seizure of pornographic photos - No error

State v. Cummings, 113 N.C. App. 368 (1994)

Searches and Seizures 14, 106 (NCI4th) - Garbage behind defendant's house

- Expectation of privacy - Trash collector as police agent - Illegal search of garbage - Search warrant based on informant's statements search of house constitutional

State v. Hauser, 115 N.C. App. 431 (1994)

Searches and Seizures 44 (NCI4th) - Defendant avoiding driver's license check - Officer's questioning of defendant - Constitutionally permissible seizure

State v. Johnston, 115 N.C. App. 711 (1994)

1) Searches and Seizures 48 (NCI4th) - Warrantless search of crime scene - Seized evidence admissible

State v. Williams, 116 N.C. App. 225 (1994)

In a prosecution for second-degree murder and assault with a deadly weapon with intent to kill inflicting serious injury, the trial court did not err in admitting evidence seized from defendant's residence, where the crimes occurred, pursuant to an emergency warrantless search which closely followed an initial sweep by the first responding officers.

2) Searches and Seizures (NCI4th) - Search of bottle unlawful - Denial of motion to suppress error

State v. Wise, 117 N.C. App. 105 (1994)

An officer who stopped the speeding vehicle in which defendant was a passenger did not have probable cause to open an aspirin bottle which defendant handed him and look inside, and the trial court erred in denying defendant's motion to suppress rock cocaine found in the bottle, since there was no warrant to search the bottle; there was no evidence to support any finding that defendant consented to the search of the bottle; and there was no evidence to support the trial court's conclusion that the officer had probable cause to search the bottle.

Searches and Seizures 14 (NCI4th) - Officer looking through curtains on porch - Unlawful search - Consent to search tainted - Evidence properly excluded

State v. Wooding, 117 N.C. App. 109 (1994)

In entering defendant's back porch, leaning over a couch, and looking

through a crack in drawn curtains, a police officer violated defendant's right against unreasonable searches and seizures; furthermore, evidence seized from defendant's apartment must be excluded from evidence as the fruit of an illegal search, since defendant's consent to search was given after his unlawful arrest and was tainted by the officer's unlawful search. ch defendant handed him and look inside, and the trial court erred in denying defendant's motion to suppress rock cocaine found in the bottle, since there was no warrant to search the bottle; there was no evidence to support any finding that defendant consented to the search of the bottle; and there was no evidence to support the trial court's conclusion that the officer had probable cause to search the bottle

Searches and Seizures 21 (NCI4th) - Objection to search and seizure of briefcase - Failure to assert ownership in briefcase- No standing to object

State v. Cohen, 117 N.C. App. 265 (1994)

Searches and Seizures 14 (NCI4th) - Officers entering and securing defendant's residence – No illegal search and seizure

State v. Waterfield, 117 N.C. App. 295 (1994)

The actions of police officers in entering and securing defendant's residence while obtaining a search warrant based on independent information did not violate defendant's Fourth Amendment rights.

1) Searches and Seizures 65 (NCI4th) - Defendant's mental limitations - Voluntariness of consent to talk and be searched

State v. James, 118 N.C. App. 221 (1995)

Notwithstanding evidence of defendant's mental limitations and testimony regarding his tendency to cooperate unilaterally with police officers, there existed ample competent evidence to support the trial court's findings that defendant voluntarily agreed to talk to police officers who boarded a bus on which defendant was a passenger, to a search of his

2) Searches and Seizures 7 (NCI4th) - Officers boarding bus -Defendant passenger questioned - Defendant escorted from bus - No seizure of defendant

State v. James, 118 N.C. App. 221 (1995)

3) Searches and Seizures 28 (NCI4th) - Burglary, rape, murder - Warrantless

entry into defendant's home - Exigent circumstances

State v. Worsley, 336 N.C. 268 (1994)

The trial court did not err by denying defendant's motion to suppress physical evidence seized from his home and statements made following his arrest where officers arrived at the scene of the murder to find the victim's body lying in a grassy common area of the apartment complex; she had been the victim of a brutal stabbing; an eyewitness identified defendant as the killer and another witness informed officers that he had seen defendant running toward the defendant's apartment shortly after the murder; the officers went to defendant's nearby apartment and discovered fresh blood on the doorknob; they had no way of knowing whether defendant was alone or might be harming someone else; they knocked loudly and announced themselves, but received no response; and they entered the apartment and found defendant

4) Searches and Seizures 71 (NCI4th) - Burglary, rape murder - Search of defendant's apartment - Consent of wife

State v. Worsley, 336 N.C. 268 (1994)

Evidence obtained a result of the consent of defendant's wife for a search of their apartment was admissible in a prosecution for burglary, rape, and murder. Although it has been held in the past that a wife has no authority to consent to a search of the home she shares with her husband, those cases have been effectively overruled by N.C.G.S. 15A-221 and -222. Moreover, the prior cases were likely premised on the now untenable view that the husband was the master of the wife.

Searches and Seizures 80 (NCI4th) investigatory stop - Reasonable suspicion of criminal activity - Anonymous tip - Corroboration by officer

State v. Watkins, 337 N.C. 437 (1994)

1) Searches and Seizures 80 (NCI4th) detention at airport - Articulate suspicion of criminal activity - Legality of subsequent arrest and inculpatory statement

State v. Lovin, 339 N.C. 695 (1995)

2) Searches and Seizures 68 (NCI4th) search of defendant's home - Consent by stepdaughter

State v. Weathers, 339 N.C. 441 (1994)

A search of defendant's home based on the consent of defendant's stepdaughter was lawful, and the trial court properly denied defendant's motion to suppress evidence discovered during the search, where the evidence supported the trial court's determination that the stepdaughter was a resident of the premises and thus had the authority to consent to a search of the house and bedroom she shared with defendant

3) Searches and Seizures 69 (NCI4th) search of defendant's jacket residence of third party consent by third party

State v. Garner, 340 N.C. 573 (1995)

The trial court properly concluded that a search of defendant's jacket in a third party's residence was conducted with a valid consent, that defendant had no reasonable expectation of privacy, and that a pistol and car keys seized from the jacket were admissible in evidence where the third party consented to a search of her residence and signed the consent to search form; defendant's jacket was lying in a pile of clothing on the living room floor of the residence; and the officer who conducted the search did not know the jacket belonged to defendant when he discovered it there.

Evidence and Witnesses 403 (NCI4th) defendant's earlier presence at crime scene evidence admissible to show identity

State v. Serzan, 119 N.C. App. 557 (1995)

In a prosecution of defendant for robbery with a dangerous weapon where the evidence tended to show that defendant robbed a motel clerk at gunpoint, the trial court did not err in admitting testimony by another motel employee that defendant was on the motel premises less than twenty-four hours before the robbery was committed, that he asked about room rates, asked to use the phone, asked for a cup of coffee, asked for a safety pin, and walked away when she denied all his requests.

Searches and Seizures 27 (NCI4th) seizure of cocaine at train station- reasonableness of warrantless search

State v. Odum, 119 N.C. App. 676 (1995) Reversed and Remanded. 343 NC 116 (1996)

In a prosecution for trafficking in cocaine, a drug interdiction officer's warrantless seizure of defendant's gym bag at a train station until it could

be checked by a drug-sniffing dog was lawful, and the trial court properly denied defendant's motion to suppress cocaine seized from the bag pursuant to a warrant after the dog alerted to the bag, where defendant traveled to and from a source city for narcotics in a two day period; he traveled with a small gym bag instead of luggage; he paid for the \$107 ticket in cash with small bills; the woman identified by defendant as his ride did not acknowledge defendant and later left the train station without him; defendant could not readily produce identification and became visibly nervous; defendant had previously been arrested in New Jersey for attempted armed robbery; and he appeared to be concealing something from the officers while he searched his bag for identification. For the reasons stated in the dissenting opinion by Judge Greene, the decision of the Court of Appeals is reversed. The case is remanded to that court for further remand to the Superior Court, Wake County, for a trial at which the seized evidence in question is suppressed. REVERSED AND REMANDED. 343 NC 116 (1996)

Searches and Seizures 109 (NCI4th) purchase of controlled substance from confidential informant within six days sufficiency of affidavit to support issuance of search warrant

State v. Ledbetter, 120 N.C. App. 117 (1995)

Probable cause existed for issuance of a search warrant where a confidential informant made a purchase of cocaine from defendant at his residence; the officer's affidavit gave a precise and detailed recitation of his observations regarding the controlled purchase; and the statement that the one-time controlled purchase occurred within six days of the application for the search warrant was placed in the affidavit in an effort to conceal the identity of the informant and did not render the controlled purchase stale from the passage of time

Searches and Seizures 77 (NCI4th) observation of suspected drug transaction investigatory stop permissible

STATE v. CLYBURN, 120 N.C. App. 377 (1995)

Searches and Seizures 93 (NCI4th) unlawful entry by police officer taint purged by information from others search warrant valid

State v. McLean, 120 N.C. App. 838 (1995)

A search warrant was based upon information independent of and unrelated to an unlawful entry of defendant's apartment by a police officer

so as to purge the taint and validate the search warrant where the managers of the apartment complex and an exterminator who treated defendant's apartment gave sufficient information about marijuana plants and drug paraphernalia found by them in the apartment to dissipate any taint arising from the officer's unlawful entry.

Searches and Seizures 14 (NCI4th) cocaine search of garbage basis for search of home

State v. Hauser, 342 N.C. 382 (1995)

There was no error in a prosecution for trafficking in cocaine, maintaining a building for the use and sale of controlled substances, and possession of drug paraphernalia where a detective advised a supervisor at the Winston-Salem Sanitation Department that the police department wanted a sanitation worker to collect the trash at defendant's residence and turn it over to the police; the person who normally collected defendant's garbage agreed; defendant's garbage was collected from the back of his residence and taken to the truck; this collection was routine in every way except that defendant's garbage was deposited into a separate container and turned over to the police; a search of the garbage uncovered cocaine residue; the detective applied for a search warrant for defendant's residence, citing the cocaine residue and reliable information from four informants; a warrant was issued; and more than a pound of cocaine was found in defendant's home. While defendant may have retained some expectation of privacy in garbage placed in his backyard out of the public's view so as to bar search and seizure by the police entering the property, a different result is dictated when the garbage is collected in its routine manner.

1) Searches and Seizures § 25 (NCI4th) capital murder search of defendant's former living quarters ownership standing

State v. Howell, 343 N.C. 229 (1996)

The trial court did not err in a capital murder prosecution by denying defendant's motion to suppress evidence obtained during a search of a bus in which he had lived where there was substantial competent evidence to support the findings of the court that defendant had said that he was not coming back; defendant had sold the bus in payment of debts; the purchaser resold the bus; the final purchaser allowed the search; and, while there was some evidence that the bus was left as collateral,

2) Searches and Seizures § 28 (NCI4th) noncapital first-degree murder warrantless search of residence motion to suppress denied

State v. Scott, 343 N.C. 313 (1996)

The trial court did not err in a first-degree murder prosecution by denying defendant's motion to suppress evidence found in the crawl space under his home, in a subsequent search inside his home, and his statement to police where an officer was on defendant's premises investigating a missing person report; the initial responding officer knocked on the front door; after he received no response he noticed green flies and went to the rear of the house, where he again noticed green flies, this time accompanied by the smell of rotting flesh; he leaned into the crawl space under the house from which the flies and odor emanated and found the victim's body; he secured the scene and called for assistance; investigators arrived and conducted a protective sweep of the house which could have revealed additional victims or hiding suspects; and officers found defendant inside the residence, but did not conduct a more complete search until a warrant was obtained. Viewing the scene through the eyes of a reasonable and cautious police officer on the scene, guided by this officer's experience and training, the search of the crawl space was not unreasonable. Once the officer found the body under the house, he was confronted with a potential emergency and had reason to believe that an injured person might be in the house or that the perpetrator was in the house. The subsequent search of the house was reasonable and the statements of defendant were not taken as a result of any illegal search.

**1) Searches and Seizures § 82 (NCI4th) drug raid pat down for weapons
totality of circumstances unreasonable intrusion**

State v. Rhyne, 124 N.C. App. 84 (1996)

The trial court erred in a prosecution for possession with intent to sell and deliver cocaine by denying defendant's motion to suppress cocaine found on his person in a warrantless search where an officer received an anonymous telephone call from a caller who reported that several black males were selling drugs in the breezeway of a building; no further description was given of the men; officers arrived at the building within ten minutes and observed several black men in the upper part of a breezeway and defendant seated on a step in the lowest level of the breezeway; defendant was approached and produced identification showing that he was a resident of the building; the officer asked defendant if he had drugs on him and defendant answered that he did not; the officer asked if he could search defendant and defendant refused; the officer asked if he would allow a dog standing 10 to 15 feet away to check him out; defendant refused, stating that he was afraid of dogs; other officers

said that they had found a large amount of money on the other men; the officer asked defendant if he had any weapons on him and defendant said that he did not; the officer decided to return to his car to check for any outstanding warrants for defendant; he frisked defendant before doing this and felt something which he suspected to be rock cocaine; and he reached into defendant's pocket and pulled out a plastic bag containing what appeared to be crack cocaine. The anonymous tip was not specific to defendant; the area was known for drug activity but was defendant's residence; defendant was cooperative when questioned and did not flee the scene; he was wearing a jersey and shorts, neither of which could easily conceal a weapon; when asked if he had a weapon he lifted his shirt to show that he did not; he did not make any sudden or suspicious gestures which would suggest that he had a weapon; and the findings indicate that other officers were nearby whom the arresting officer could have asked to cover him while he went to his patrol car to check for outstanding warrants.

STATE v. McGIRT, 345 N.C. 624 (1997)

Appeal by defendant pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, 122 N.C. App. 237, 468 S.E.2d 833 (1996), affirming a judgment entered by Ellis (B. Craig), J., on 20 April 1995 in Superior Court, Scotland County.

2) Searches and Seizures § 8 (NCI4th) - Inculpatory statement - Defendant's presence at police station - Not an unconstitutional seizure

State v. Gaines, 345 N.C. 647 (1997)

Defendant Harris was not improperly seized in a first-degree murder case (and motions to suppress statements and physical evidence obtained as a result were not erroneously denied) where Harris was repeatedly told that he was not under arrest and that he was free to leave at any time, he signed a written statement that he was not under arrest and was giving a statement voluntarily, and he had had previous experience with the criminal justice system.

3) Searches and Seizures § 100 (NCI4th) - Search warrant - False information in affidavit - Failure to show bad faith

State v. Fernandez, 346 N.C. 1 (1997)

Defendant failed to show that a search warrant was invalid and that evidence seized thereunder was inadmissible under *Franks v. Delaware*, 438 U.S. 154 (1978) and N.C.G.S. § 15A-978 on the ground facts

necessary to establish probable cause were asserted in the affidavit either with knowledge of their falsity or with a reckless disregard for the truth where the affiant, an SBI agent, testified at the hearing on defendant's motion to suppress that the vast majority of information set forth in the affidavit was gleaned from discussions with other law officers who had talked directly with witnesses, and other evidence presented by defendant at the hearing only served to contradict assertions contained in the affidavit but failed to show bad faith by the affiant.

4) Searches and Seizures § 87 (NCI4th) - Search warrant - Blood samples from defendant – Probable cause

State v. Dickens, 346 N.C. 26 (1997)

The trial court did not err in a first-degree murder prosecution by failing to suppress blood samples drawn from defendant pursuant to a search warrant where defendant argued that there was no forecast of evidence that defendant's blood either constituted evidence of murder or would assist in identifying the perpetrator, but the affidavit signed by an agent to support the issuance of the warrant contained ample data to support the warrant and the cumulative effect of the information establishes that the blood samples seized from defendant provide evidence of the offense and the identity of the person participating in the crime.

1) Searches and Seizures § 68 (NCI4th) - Consent to search - Previous information about drugs - Previous conversation about consent

State v. Smith, 346 N.C. 794 (1997)

The fact that an officer had previously obtained information concerning the location of drugs in a home and had previously spoken with one of the residents concerning her consent to search does not invalidate a lawful consent to search.

2) Searches and Seizures § 68 (NCI4th) - Consent to search - Knock and talk procedure

State v. Smith, 346 N.C. 794 (1997)

A "knock and talk" procedure whereby officers approach a residence with the intent to obtain consent to conduct a warrantless search and seize contraband when they lack the probable cause necessary to obtain a search warrant does not taint the consent or render the procedure per se violative of the Fourth Amendment. Reverses Ct of Appeals in 123 N. C. APP. 162

(unpublished). *Wilson v. Layne*, (24 May 1999). Law enforcement officers invited news media representatives to accompany them during the execution of an arrest warrant in a home. The Court ruled that officers violate the Fourth Amendment when they bring news media or other third parties into a home during the execution of a warrant when the third parties' presence is not aiding the warrant's execution. The news media clearly were not aiding the execution of the arrest warrant in this case. The court noted that third parties may properly aid the execution of a search warrant, such as the identification of stolen property. The Court also ruled that the officers in this case were entitled to qualified immunity because the Fourth Amendment right set out in this opinion was not clearly established when the violation occurred in 1992. The Court issued a similar ruling in *Hanlon v. Berger*, (24 May 1999), which involved officers allowing the news media to come with them during the execution of a search warrant for a ranch and its outbuildings. *Florida v. White*, (17 May 1999). Officers developed probable cause to believe that the Defendant's car was subject to forfeiture under Florida's drug forfeiture law, but they did not arrest the defendant or seize his car then. Several months later, officers arrested the defendant for unrelated charges and without a search warrant seized his car from his employer's parking lot; the car was seized for its forfeiture, based on the probable cause that had existed months earlier. The court ruled, relying on *G.M. Leasing Corp. v. United States*, 429 U.S. 338, 97 S. Ct. 619, 50 L. Ed. 2d 530 (1977) and other cases, that the officers's warrantless seizure of the defendant's car in a public place did not violate the Fourth Amendment. Note that G.S. 90-112(b) provides that property subject to forfeiture may be seized by a law enforcement officer with court process, except that it may be seized without court process when 1) the seizure is incident to an arrest or search with a search warrant; or 2) the property subject to seizure has been the subject of a prior judgment in the state's favor.

3) Searches and Seizures § 117 (NCI4th) - Methamphetamine - Search of defendant's home – Secured before warrant obtained - Evidence admissible

State v. Treece, 129 N.C. App. 93 (1998)

The trial court did not err in a prosecution for trafficking in methamphetamine by not suppressing evidence seized during a search of defendant's residence where officers went to defendant's residence after receiving information from an informant that a quantity of methamphetamine was stored at defendant's residence; a woman who identified herself as the maid answered the door and told officers that neither defendant nor his wife were at home; the officers had been warned

by an informant that the controlled substances might be moved quickly and believed it necessary to secure the scene to prevent evidence being removed or destroyed; an officer testified that it was necessary to enter the residence to ensure that no one was inside; that officer made a cursory search, touching nothing but doorknobs; and an officer remained outside the residence while a search warrant was obtained. The officer did not obtain the warrant based upon information obtained during his security check of the premises and entry into defendant's residence did not contribute to the discovery of the evidence seized under the warrant.

4) Searches and Seizures § 144 (NCI4th) - Administrative inspection warrant - Adult book store - Probable cause

South Blvd. Video & News v. Charlotte Z. BD., 129 N.C. App. 282 (1998)

The affidavit of a zoning enforcement officer was sufficient to establish probable cause to believe that an adult business was in operation at a particular location and to issue an administrative inspection warrant.

5) Search and Seizure - Inevitable discovery doctrine - Improper custodial interrogation

State v. Vick, 130 N.C. App. 207 (1998)

The trial court did not err by admitting cocaine found in defendant's refrigerator where defendant's statement that the drugs were located in the refrigerator was a result of a custodial interrogation in violation of his constitutional rights, but the officers' statements revealed that it was more likely than not that they would have found the cocaine even without the initial illegal interrogation. The inevitable discovery doctrine applied to allow admission of the cocaine.

Search and Seizure - Statement in affidavit - Bad faith

State v. Severn, 130 N.C. App. 319 (1998)

The trial court erred in a marijuana prosecution by denying defendant's motion to suppress the results of a search warrant where the affidavit supporting the warrant stated that the detective had been able to recover both marijuana and cocaine from inside of defendant's residence using "investigative means" even though the detective admitted at trial that he had obtained the marijuana and cocaine from a trash can and had not been inside the residence. Although every false statement in an affidavit is not necessarily made in bad faith, a person may not knowingly make a

false statement in good faith for the purposes of an affidavit in support of a search warrant. The detective here knowingly made a false statement; indeed, he testified that he used the words "investigative means" in order to conceal from the defendant how the evidence was obtained.

Search and Seizure § 56 (NCI4th) - Items seized from murder scene - Plain view - Admissible

State v. Mickey, 347 N.C. 508 (1998)

The trial court did not err in a capital first-degree murder prosecution (life sentence) by admitting into evidence items seized at the murder scene where the lead investigator on the scene ordered the seizure of evidence in the bedroom where the body was found; officers seized a bloodstained mattress and box springs; after the mattress and box springs were removed, officers found bullets on top of several pornographic magazines addressed to someone other than defendant; and the officers seized the bullets, magazines, and a credit card issued to someone not a member of the household which was on a desk eight feet from the body. Uncontroverted evidence indicated that the officers were lawfully securing the scene of a homicide and seizing evidence directly and obviously related thereto when they inadvertently discovered additional evidence which, by its nature and under the circumstances, was likely to lead to the identity of the killer or a material witness. The seizure was lawful under the plain view exception.

1) Search and Seizure - Motion to suppress - Affidavit - Insufficient

State v. Phillips, 132 N.C. App. 765 (1999)

The trial court did not err in summarily dismissing defendant's motion to suppress evidence in a narcotics prosecution where the accompanying affidavit failed to meet the mandatory requirements of N.C.G.S. § 15A-977 in that it did not have a single fact in support of the motion to suppress and did not state how defendant's constitutional rights were violated when police searched his mailbox without a warrant.

2) Search and Seizure - Motion to suppress - Evidence hidden by third party - No expectation of privacy

State v. Phillips, 132 N.C. App. 765 (1999)

The trial court did not err by denying defendant's motion to suppress drugs seized from defendant's mailbox where a companion traveling with

defendant testified that he had thrown the drugs in her lap and pushed her out of the van, and that she had put the package in defendant's mailbox. Defendant lost any expectation of privacy he might have had in his property by throwing the drugs into her lap.

3) Search and Seizure - Bloodstained clothing - Item from victim - Seizure incident to lawful arrest

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

Bloodstained clothing and shoes taken from defendant at the sheriff's office and the murder victim's partial dental plate removed from defendant's pocket were seized incident to a lawful arrest and were admissible in defendant's murder trial.

4) Search and Seizure - Warrantless search - Curtilage - Expectation of privacy

State v. Washington, 134 N.C. App. 479 (1999)

The Fourth Amendment does not prohibit the warrantless search and seizure of garbage after it has been collected by the garbage collector and given to the police, even if defendant left it in the curtilage of his home.

5) Search and Seizure - Expectation of privacy - Garbage

State v. Washington, 134 N.C. App. 479 (1999)

The factors to be considered in determining whether there is an objectively reasonable expectation of privacy in one's garbage barring a search and seizure by the police are: 1) the location of the garbage; 2) the extent to which the garbage is exposed to the public or out of the public's view; and 3) whether the garbage was placed for pickup by a collection service and actually picked up by the collection service before being turned over to the police.

Search and Seizure - Warrantless search - Unconstitutional

State v. Graves, 135 N.C. App. 216 (1999)

Crack cocaine and a crack pipe should have been excluded from a prosecution for possession of cocaine and paraphernalia, resisting an officer, and being an habitual felon where an officer interviewed defendant in an emergency room after defendant had been shot; a nurse began to remove defendant's clothing while the officer was speaking to

defendant; wads of brown paper fell out of defendant's shoe or pant leg onto the gurney; and the officer picked up the wads of paper and unraveled them, finding the crack and the pipe. The record is bereft of any evidence that the officer recognized or even suspected that the brown paper wads contained contraband before he picked them up and unraveled them; while the wads of paper were suspicious and an officer of this experience would likely recognize such wads as containing contraband, the State cannot substitute speculation for evidence.