Search & Seizure (individual stop)

Defendant's Admission That Grocery Bag in Vehicle Contained "Cigar Guts" Did Not, Without More Information, Establish Probable Cause to Search Bag for Illegal Drugs

State v. Simmons, ___ N.C. App. ___, 688 S.E.2d 28 (5 January 2010).
An officer stopped a vehicle to issue the driver a seat belt citation. The officer noticed a white plastic grocery bag sticking out of the storage holder on the passenger side of the defendant's vehicle. He was suspicious that the bag contained illegal contraband because he had found illegal contraband in that sort of container on at least three prior occasions. The officer asked the defendant what was in the bag. The defendant responded that the bag contained "cigar guts." The officer took this response to mean that tobacco had been removed from a cigar. He had previously seized marijuana with cigars. Based on his training, he had learned that marijuana was sometimes placed in cigars to smoke them. However, the officer could not see inside the bag nor did he smell any illegal contraband. The officer searched the bag. The court ruled that the defendant's response that the grocery bag contained "cigar guts" did not, without more information, establish probable cause to search the bag. The officer's training and experience established a link between the presence of hollowed out cigars and marijuana, not a link between the presence of loose tobacco and marijuana. Furthermore, there was no evidence that the defendant was stopped in a drug area or at an unusual time of day.

Sufficient Evidence to Support Defendant's Conviction of Possession of Firearm by Felon Based on Constructive Possession

State v. Mewborn, ___ N.C. App. ___, ___ S.E.2d ___ (3 November 2009).
Officers patrolling a high crime area in a marked car saw the defendant and another person walking in the middle of the street. They pulled alongside them and asked if they would wait a minute because they needed to speak with them for a few minutes. As the officers were getting out of their car, the defendant turned and started to run away. A chase ensued, and the officers eventually took physical control of the defendant. During the chase, the defendant appeared to throw a gun from his pocket. Based on this evidence, he was convicted of possession of a firearm by a felon. The court ruled that there was sufficient evidence to support the defendant's conviction of possession of a firearm by a felon based on constructive possession of the firearm. The defendant ran through an open field in a high traffic area. He appeared to have something heavy in his back pocket and appeared to make throwing motions from that pocket. The grass in the field was wet. When officers found the weapon, it was dry, clean, and had no leaves or other debris on it.

Although School Officials Had Reasonable Suspicion to Search Middle School Student's Backpack and Outer Clothing for Prescription and Over-The-Counter Pain Relief Pills, They Did Not Have Justification Under Fourth Amendment to Require Student to Pull Out Her Bra and Underpants

Safford Unified School District v. Redding, 129 S. Ct. 2633, 174 L. Ed. 2d 354 (25 June 2009).

After learning that a middle school student may have prescription strength and over-the-counter pain relief pills, school officials searched her backpack but did not found any pills. A school nurse then had her remove her outer clothing, pull her bra and shake it, and then pull out the elastic on her underpants. The student's breasts and pelvic area were exposed to some degree by her compliance with these directives. No pills were found. The Court ruled that school officials had reasonable suspicion to search the student's backpack and outer clothing; however, because the facts did not indicate that the drugs presented a danger to students or were concealed in her bra or underpants, school officials did not have sufficient justification under the Fourth Amendment to make the student pull out her bra and underpants. The Court also ruled that school officials were protected from civil liability by qualified immunity because clearly established law when the search was conducted did not show that the search violated the Fourth Amendment.

(1) Officer Had Reasonable Suspicion to Make Investigative Stop of Defendant for Armed Robbery and To Frisk Him for Weapons

(2) Court Remands to Trial Court to Apply Correct Legal Standard in Determining Whether Officer's Seizure of Cocaine During Frisk Satisfied Plain Feel Doctrine Under Fourth Amendment

State v. Williams, ___ N.C. App. ___, 673 S.E.2d 394 (3 March 2009).

An officer heard a radio report of an armed robbery that had just occurred at an Hispanic store. Due to language barriers between the victims and law enforcement, there were two conflicting descriptions of the robber. The first described him as a white male wearing a hood and gloves and carrying a silver firearm. The second as an African-American male about six feet tall with a medium build, wearing a green hooded jacket with gloves and carrying a silver gun. Just minutes later, the officer saw the defendant—an African-American male approximately six feet tall with a medium build—a block or two from the robbery location, walking in the same direction that the robber was reportedly traveling, although he was walking down the middle of the street blocking traffic. The defendant was wearing a "blue-green" jacket made of a material that changed colors. He had his hands in his pockets, hood up, and was wearing wrap-around glasses. The officer approached the defendant and asked him to take his hands out of his pockets. The defendant stopped walking, kept his hands in his pockets, and did not say anything. After again ordering the defendant to show his hands, the defendant took them out but also started to empty his pockets. As he was doing so, the officer saw the top of a plastic baggie in one of the pockets. When the officer frisked the defendant, he patted the defendant's front pocket and felt something hard to the touch, round, and possibly a quarter of an inch thick. Based on its feel, the officer believed the object to be a "crack cookie" and removed it. (1) The court ruled, distinguishing State v. Cooper, 186 N.C. App. 100 (2007), that the officer had reasonable suspicion to make an investigative stop of the defendant

for armed robbery and to frisk him for weapons. (2) The court remanded to the trial court to apply the correct legal standard in determining whether the officer's seizure of cocaine during the frisk satisfied the plain feel doctrine under Fourth Amendment. The correct standard is whether the officer had probable cause to believe that the object felt during the frisk was an illegal substance, not reasonable suspicion—the standard applied by the trial court in this case. The court cited Minnesota v. Dickerson, 508 U.S. 366 (1993); State v. Shearin, 170 N.C. App. 222 (2005); and State v. Briggs, 140 N.C. App. 484 (2000). [Author's note: If the object had felt like a weapon, then the officer could have removed it without needing to satisfy a probable cause standard.]

(1) Insufficient Evidence to Support Conviction of Resisting, Delaying, or Obstructing Officer

(2) Officer Did Not Have Reasonable Suspicion for Investigative Stop

State v. Sinclair, ___ N.C. App. ___, 663 S.E.2d 866 (5 August 2008).

The defendant was convicted of possession of cocaine; resisting, delaying, or obstructing an officer; and being an habitual felon. A detective and other officers approached the defendant and others at a local hangout known for drug activity. The detective on prior dates had searched the defendant for drugs. The defendant asked the detective whether he wanted to search him, and the detective responded affirmatively and walked toward the defendant. The defendant quickly shoved both of his hands in his front pockets and then removed them. The defendant made his hands into fists as the detective got closer. The defendant said he had to leave and took off running across an adjacent vacant lot. The officers chased the defendant through the lot. The defendant eventually stopped and laid down. A search revealed a pack of cigarettes and $170.00 in cash. An officer getting out of a vehicle saw the chase and how the grass had been bent where the chase had taken place. This officer followed the path and found a clear, plastic bag on top of the bent grass. The bag was clean and undisturbed, and cocaine was found inside. (1) The court determined that the initial encounter between the officer and the defendant was consensual and then ruled that the defendant's flight from a consensual encounter was not evidence that the defendant was resisting, delaying, or obstructing the officer. Thus, there was insufficient evidence to support the defendant's conviction of resisting, delaying, or obstructing an officer (RDO). (2) Alternatively, the court ruled that even if the detective was attempting to effectuate an investigatory stop, there was not reasonable suspicion to support the stop. Thus, concerning the RDO charge, the officer was not discharging or attempting to discharge a lawful duty of his office.

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.

(1) Officer Had Reasonable Suspicion to Make Investigative Stop and Frisk of Defendant

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. (1) The court ruled that the officer had reasonable suspicion to make an investigative stop and frisk of the defendant, 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.

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.

Search of Defendant's Genital Area Was Not Within Scope of Defendant's Consent to Search and Thus Violated Fourth Amendment

State v. Stone, 362 N.C. 50, 653 S.E.2d 414 (7 December 2007).

The court ruled that a defendant who gave consent to a generic search for weapons or drugs during a routine traffic stop in which an officer shined a flashlight inside his underwear was not within the scope of the defendant's consent to search and thus violated the Fourth Amendment. An officer stopped a car for speeding. The officer asked the defendant, a passenger, whether he had any drugs or weapons on his person. The defendant said no, which prompted the officer to ask for consent to search. The defendant gave consent. The defendant was wearing a jacket and drawstring sweat pants. During the initial search, the officer found $552.00 in cash in the lower left pocket of the sweat pants. He again asked the defendant if he had anything on him. Once again, the defendant denied having drugs or weapons and authorized the officer to continue the search. The officer checked the rear of the sweat pants and moved his hands to the front of the defendant's waistband. The officer then pulled the defendant's sweat pants away from his body and trained his flashlight on the defendant's groin area. The defendant objected, but by that time, the officer had already seen the white cap of what appeared to be a pill bottle tucked in between the

defendant's inner thigh and testicles. The court concluded that a reasonable person would not have understood that his consent included such an examination. The scope of a general consent to search does not necessarily include consent for an officer to move clothing to directly observe the genitals of a clothed person. The court noted that its ruling is necessarily predicated on its facts and that different actions by the officer could have led to a different result. [Author's note: The only basis on which the state justified the officer's search was consent. Thus, the court did not discuss whether probable cause and exigent circumstances supported the search. See State v. Smith, 342 N.C. 407 (1995), reversing the court of appeals for reasons stated in the dissenting opinion, 118 N.C. App. 106 (1995), discussed in the court's opinion.]

Reasonable Suspicion Did Not Exist to Justify Officer's Stop and Frisk of Defendant Shortly After Commission of Armed Robbery at Nearby Convenience Store

State v. Cooper, ___ N.C. App. ___, 649 S.E.2d 664 (18 September 2007).

A law enforcement officer during the late afternoon heard a radio report that an armed robbery had been committed at a convenience store. The robber was described as a black male. The officer also heard over the radio that another officer has seen a black male walking on Lake Ridge Drive shortly after the robbery. The officer turned onto Deanna Drive to begin a sweep of the area. The robber had reportedly left the rear of the store, heading in the general direction of the area that the officer was searching. The officer knew that there was a path running approximately from the store through woods to Lake Ridge Drive. The officer approached the intersection of Deanna Drive and Lake Ridge Drive approximately five minutes after the robbery. The officer saw a black male near where the path exited onto Lake Ridge Drive. From the time the officer turned off Capital Boulevard until this point, the officer had seen no one else. He drove closer to the black male and motioned him to approach his car. In response, the defendant walked over to the car. The officer conducted a stop and frisk of the black male. The court ruled that the officer did not have reasonable suspicion to stop and frisk the defendant for the armed robbery. (See the court's discussion of the case law on this issue.)

Detective's Seizure of Cigarette Butt Thrown by Defendant on His Patio Floor During Interview With Two Detectives Violated Defendant's Fourth Amendment Rights

State v. Reed, 182 N.C. App. 109, 641 S.E.2d 320 (6 March 2007).

Two detectives investigating a burglary, sexual offense, and robbery,

arrived at the defendant’s apartment to talk with him. The defendant led the detectives to a small patio at the back of his apartment. After the defendant finished a cigarette, he flicked the butt at a pile of trash located in the corner of the concrete patio. The butt struck the pile of trash and rolled between the defendant and one of the detectives, who kicked the butt off of the patio into the grassy common area. The conversation ended and the detective, who had kept his eye on the still-burning cigarette butt, retrieved the butt after the other detective and the defendant turned to go back inside the apartment.. A DNA test of the cigarette butt resulted in evidence introduced against the defendant at trial. The court ruled, relying on State v. Rhodes, 151 N.C. App. 208, 565 S.E.2d 266 (2002) (officer’s warrantless search of trash can located immediately by steps to side-entry door of defendant’s house violated Fourth Amendment), and other cases, and distinguishing State v. Hauser, 342 N.C. 382, 464 S.E.2d 443 (1995), ruled that the seizure of the cigarette butt violated the defendant’s Fourth Amendment rights. The court rejected the state’s argument that the defendant discarded the cigarette butt and thus lost his reasonable expectation of privacy. The cigarette butt was not abandoned within the curtilage of the defendant’s home. [Author’s note: The issue whether the detective had probable cause to seize the cigarette butt was not involved in this case.]

Search and Seizure--Exceeding scope of consent--Inspecting defendant's genitals

State v Stone 179 N. C. APP. 297 (2006)

An officer's search exceeded the scope of defendant's consent, and defendant is entitled to a new trial on charges of possession with intent to sell or deliver cocaine, because: 1) the officer inspected defendant's genitals after he simply obtained general consent to search defendant's person; 2) given the scope of the officer's first search of defendant, a reasonable person would not have expected the second search to entail such an intrusive genital inspection; 3) the fact that defendant did not expressly limit the scope of the second search does not make the second search reasonable; 4) defendant's reaction demonstrated that he could not reasonably have expected the excessive scope of the officer's second search; 5) the officer's testimony demonstrated that he did not have any reason to suspect that defendant was concealing weapons or contraband near his genitals, and the officer had already conducted a full search of defendant's person which had not uncovered any weapons or contraband when he conducted an inspection of defendant's genitals; 6) the officer's discovery of cash in defendant's pocket, while suspicious, did not authorize the officer to proceed with such an intrusive search; 7) the trial court did not make any findings that the two officers attempted to shield

defendant's genitals from view; and 8) a reasonable person would not have expected police to pull his pants away from his body and expose his genitals in a parking lot of an apartment complex even if the encounter with police occurred in the early morning hours.

Search and Seizure--Warrantless search--Smell of Marij. --Motion to suppress drugs

State v Carpente,r 179 N. C. APP. 79 (2006)

The trial court did not err in a possession with intent to sell and deliver cocaine and possession with intent to sell and deliver marijuana case by denying defendant's motion to suppress the drugs found on his person after the car he was riding in as a passenger was stopped, because: 1) although defendant contends the trial court did not hold a hearing to consider his motion to suppress, the record reflects a hearing was held on 21 February 2005 and that the trial court entered a detailed order containing findings of fact and conclusions of law; 2) the officer properly stopped the motor vehicle for traveling left of the center line; 3) when an officer detects the smell of marijuana emanating from a vehicle, the officer has probable cause for a warrantless search of the vehicle for drugs; 4) where there are reasonable grounds to order an occupant out of the car, then he may be subjected to a limited search for weapons when the facts available to the officer justify the belief that such an action is appropriate; 5) the officer felt the canister containing crack cocaine in the course of patting down defendant for weapons after making a valid stop and smelling a strong odor of marijuana; and 6) based on his experience, the officer believed the rattling canister contained contraband, defendant was placed under arrest upon the discovery that the canister contained what appeared to be crack cocaine, and an officer may search the individual incident to the arrest whereupon he found a bag of marijuana in defendant's shoe.

Search and Seizure_stop of juvenile_generalized suspicion

In re J.L.B.M,. 176 N. C. APP. 613 (2006)

A stop leading to the detention of a juvenile was not justified, and the juvenile's motion to suppress evidence seized as a result of the stop should have been granted, where the officer relied on a report that there was a suspicious person at a gas station, that the juvenile matched the “Hispanic male” description of the suspicious person, that the juvenile was wearing baggy clothes, and that the juvenile chose to walk away from the patrol car. The officer had only a generalized suspicion of criminal behavior.

Search and Seizure--Motion to suppress--Probable cause--Informant's description

State v Stanley, 175 N. C. APP. 171 (2005)

The trial court did not err in a possession of cocaine with intent to sell or deliver case by denying defendant's motion to suppress evidence of cocaine found pursuant to a search of his person, because: 1) the information upon which the officers acted came from an informant with over fourteen years of personal dealings with one of the officers whose past information consistently had been corroborated by officers and had led to over 100 arrests and numerous convictions; 2) defendant did not challenge the trial court's finding of fact that defendant was the only individual at the location wearing clothing that matched the description provided by the informant, nor did defendant assign error to the trial court's conclusion that despite the lack of detail the informant's description was sufficient to allow the officers to identify defendant, confirm his presence at the location, and exclude others who were in the immediate vicinity as the subject described by the informant; and 3) although defendant contends his testimony showed that the clothing he was wearing differed from that described by the informant, it is the duty of the trial court to weigh and resolve any conflicts in the evidence.

Search and Seizure--Investigative stop--Motion to suppress evidence--Reasonable suspicion of criminal activity

State v. Campbell 359 NC 644 (2005)

The trial court did not err in a capital first-degree murder case by denying defendant's motion to suppress all evidence discovered after he was stopped by police in Aiken, South Carolina even though defendant contends he was seized within the meaning of the Fourth Amendment before his arrest for operating a motor vehicle while his license was suspended, because: 1) officers do not violate the Fourth Amendment's prohibition of unreasonable seizures merely by approaching individuals on the street or in other public places and putting questions to them if they are willing to listen, and in the instant case the officer had not told defendant that he could not leave when defendant consented to speak with the officer; and 2) at the point where the officer asked defendant to "hold up" while she transmitted information about defendant to the dispatcher, the officer had reasonable articulable suspicion that defendant was involved in criminal activity including where the officer received a complaint from a K-Mart employee about a suspicious person whose car was parked for a lengthy period of time in the parking lot; defendant acknowledged that he had been parked in the lot; defendant said he had completed a job in Columbia, South Carolina, that he was traveling home to North

Carolina, and that he had stopped in Aiken to take a nap even though Aiken is forty-five miles west of Columbia, is not on the route to North Carolina, and the K-Mart was more than ten miles from the interstate connecting Columbia and Aiken; and defendant had no driver's license with him and did not know the name of his friend to whom the car belonged.

1) Search and Seizure--Motion to suppress--Probable cause--Reasonable suspicion--Confidential informant

State v. Leach, 166 N. C. APP. 711 (2004)

The trial court did not commit plain error in a trafficking in cocaine by possession and transportation, possession of a firearm by a felon, and felony speeding to elude arrest case by denying defendant's motion to suppress evidence of cocaine that defendant abandoned while running from the police after a high speed chase, because: 1) the police were alerted to a drug sale by an informant who had previously given information that led to an arrest and the confiscation of multiple kilograms of cocaine, and the officers reasonably relied on information provided by the informant which provided probable cause to stop and search defendant; and 2) the officers did not seize defendant until they actually detained him at the conclusion of a high speed chase since no seizure occurs until defendant is physically restrained.

2) Search and Seizure--Investigatory stop--Motion to suppress evidence--Trafficking in OxyContin

State v. Sutton, 167 N. C. APP. 242 (2004)

The trial court did not err in a trafficking by sale or delivery of OxyContin case by denying defendant's motion to suppress evidence obtained during an investigatory stop of defendant's motorcycle in the parking lot of a drug store, because: 1) the stop was based on the tip of a pharmacist as well as the officer's own observations; and 2) the pharmacist's information combined with the officer's own observations provided reasonable suspicion that criminal activity was afoot justifying a Terry stop.

3) Search and Seizure--Warrantless--Defendant's pocket--Exigent circumstances

State v. Yates, 162 N. C. APP. 118 (2004)

The trial court did not err in a resisting a public officer, possession of heroin, possession of methadone, possession of cocaine, possession of less

than 1.5 ounces of marijuana, and possession of drug paraphernalia case by allowing evidence to be admitted at trial that resulted from a deputy's search of defendant's pocket after the deputy smelled a strong odor of marijuana emanating from defendant, because: 1) the odor of marijuana, as detected by a person who is qualified to recognize the odor, is sufficient to establish probable cause to search for a contraband drug; and 2) based on the fact that another officer was otherwise engaged at the time and the fact that narcotics can be easily and quickly hidden or destroyed, especially after defendant received notice of an officer's intent to discover whether defendant was in possession of marijuana, there was sufficient exigent circumstances justifying an immediate warrantless search. See Farb p.24

1) Search and Seizure--Warrantless search--Standard of review for informant information

State v. Nixon, 160 N. C. APP. 31 (2003)

The trial court did not err in a possession with intent to sell and distribute marijuana, possession of cocaine, and carrying a concealed weapon case by denying defendant's motion to suppress evidence seized under a warrantless search of defendant's person and vehicle based on an informant's tip, because: 1) the standard for determining whether probable cause existed to conduct a warrantless search of defendant's person and vehicle is basically the same for both a confidential informant and an anonymous tip, although some corroboration of the information or greater level of detail is generally necessary for an anonymous tip; and 2) the trial court made careful and thorough findings of fact, and properly scrutinized the situation under the totality of circumstances test to determine basis of knowledge and reliability or veracity of the information as a basis for probable cause.

2) Search and Seizure--Warrantless search--Informant information passed through several officers

State v. Nixon, 160 N. C. APP. 31 (2003)

The trial court did not err in a possession with intent to sell and distribute marijuana, possession of cocaine, and carrying a concealed weapon case by concluding that there was probable cause to support the warrantless search of defendant's vehicle and defendant's subsequent arrest based on information from an informant passed from a first officer through several officers, because: 1) the probable cause of the first officer was established through the testimony before the trial court of the officer who received information from the informant; and 2) once the arresting officer corroborated the description of defendant and his presence at the named

location, that officer had reasonable grounds to believe a felony was being committed in his presence which in turn created probable cause to stop and search defendant.

Search and Seizure--Articulable suspicion for stop--Classic drug transaction

State v. Carmon, 156 N. C. APP. 235 (2003)

Officers' observations were sufficient for an articulable suspicion that defendant was engaged in criminal activity, and defendant's motion to suppress cocaine seized during the subsequent stop was properly denied, where an officer saw defendant receive a softball-size package from a man in a conspicuous car at night, defendant then appeared to be nervous, and an officer with extensive narcotics training and experience in observing drug transactions testified that the incident looked like a classic drug transaction.

1) Law Enforcement Officers Did Not Seize Bus Passengers During Bus Boarding Procedure 2) Fourth Amendment Does Not Require Officers to Advise Bus Passengers of Their Right Not To Cooperate and To Refuse to Consent to Searches 3) Bus Passengers Voluntarily Consented to Search of Luggage and Their Bodies

United States v. Drayton, (17 June 2002).

Three law enforcement officers-dressed in plain clothes and carrying concealed weapons and visible badges-boarded a bus while it was stopped at a bus terminal. One officer knelt at the driver's seat (the bus driver was not in the bus) without blocking the aisle or obstructing the bus exit, while two officers went to the rear of the bus. One stayed there while the other officer worked his way toward the front, speaking to passenger as he went. To avoid blocking the aisle, the officer stood next to or just behind each passenger with whom he spoke. He explained that the officers were conducting a bus interdiction to deter drugs and illegal weapons from being transported on the bus. He did not inform passengers of their right to refuse to cooperate. Defendants Drayton and Brown were seated together. Brown consented to a search of a bag in the overhead luggage rack, which revealed no contraband. The officer noted that both defendants were wearing heavy jackets and baggy pants despite the warm weather. In the officer's experience, drug traffickers often use baggy clothing to conceal weapons or narcotics. The officer received consent from Brown to search his person after asking, "Do you mind if I check your person?," found hard objects similar to drug packages that he had detected on other occasions, and arrested him. The officer then received consent from Drayton after asking, "Mind if I check you?," discovered the same hard objects, and

arrested him. The Court ruled: 1) the officers did not seize the defendants during this bus boarding procedure-a reasonable person would feel free to terminate the encounter with the officer; 2) the Fourth Amendment does not require officers to advise bus passengers of their right not to cooperate and to refuse to consent to searches; and (3) the defendants voluntarily consented to the search of their luggage and their bodies. See generally Florida v. Bostick, 501 U.S. 429, 111 S. Ct. 2382, 115 L. Ed. 2d 389 (1991).

1) Search and Seizure--Stop and frisk--Reasonable suspicion--Anonymous tip

State v. Allison, 148 N. C. APP. 702 (2002)

A tip to an officer exhibited the "moderate indicia of reliability" needed for the reasonable suspicion necessary to justify an investigatory stop and frisk where the tip came through a face-to-face encounter with an officer rather than by an anonymous telephone call; the informant provided the officer with a reasonable explanation as to how she was aware that criminal activity might take place; and the officer independently corroborated the tip prior to his investigatory stop of defendant.

2) Search and Seizure--Stop and frisk--Scope--Suspicion for continuation

State v. Allison, 148 N. C. APP. 702 (2002)

An officer was justified in continuing his frisk of defendant after defendant said that he was not carrying weapons and the initial frisk revealed nothing where the officer had received information that defendant's group had been passing a weapon around, the officer had identified defendant as having been involved in prior gun-related incidents, and the officer had observed defendant holding his pants up as though something was dragging them down.

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--Anonymous tip--Illegal stop and frisk

State v. Brown, 142 N.C. App. 332, 2001

The trial court should have granted a motion to suppress in a narcotics prosecution where a detective received a call from the 911 center that a "concerned citizen" had called to complain that two black males were rolling marijuana cigarettes and selling crack on the porch of a vacant house under construction; the clothing of the two black males was described; officers proceeded to the area and found a vacant house under construction, but with no black males on the porch; three black males and one black female were sitting on the porch of the house next door; two of the males wore clothing fitting the description given by the caller; officers approached the group; the three men denied having drugs; officers patted them down; defendant tried to pull away and was arrested for hindering an officer; and crack was recovered from defendant's boots in a search incident to arrest. The tip in this case lacked minimal corroboration and failed to exhibit sufficient reliability to provide the detective with reasonable suspicion that defendant was engaged in criminal activity. The subsequent arrest and search resulted from an illegal stop and frisk.

1) Search and Seizure--Investigatory stop--Minimal intrusion for safety of officer

State v. Roberts, 142 N.C. App. 424, 2001

An officer's initial contact with defendant amounted to an investigatory stop rather than an arrest when the officer grabbed defendant's hands and placed them on the wall in order to conduct a pat-down search of defendant's outer clothing after defendant had just exited from a high drug area and defendant refused to stop at the officer's request, because the seizure involved a minimal intrusion for the safety of the officer, and without more, did not convert the seizure into an arrest.

2) Search and Seizure--Motion to suppress--No reasonable suspicion of criminal conduct

State v. Roberts, 142 N.C. App. 424, 2001

The trial court erred in a felony possession of cocaine case by denying defendant's motion to suppress evidence obtained in a search of defendant's person after an investigatory stop, since the evidence did not support the trial court's conclusion that an officer had reasonable suspicion to believe that defendant was involved in criminal conduct,

because: 1) evidence that officers observed the black truck in which defendant was a passenger being operating upon public streets at 9:30 p.m. and that at times it traveled slowly, stopped at a convenience store for about four minutes, and later traveled through a neighborhood with a reputation for illegal drug transactions leads to nothing more than an inchoate and unparticularized suspicion or hunch of criminal activity; and 2) evidence that defendant walked away from the officer after he asked defendant to stop is not evidence that defendant was attempting to flee and only indicates defendant's refusal to cooperate.

1) Search and Seizure--Lawfully detained vehicle--Driver ordered to exit--no unreasonable search and seizure

State v. Briggs, 140 N.C. App. 484, 2000

A defendant's Fourth Amendment rights against unreasonable searches and seizures were not violated when an officer required him to exit his lawfully detained vehicle at a driver's license checkpoint in a high crime area because this procedure reduces the likelihood of assault on the officer and is not a serious intrusion upon the sanctity of the person.

2) Search and Seizure--Protective search--Pat down for weapons--Defendant outside his automobile

State v. Briggs, 140 N.C. App. 484, 2000

An officer had reasonable suspicion to initiate a weapons pat down search of defendant at a driver's license checkpoint in a high crime area after the officer ordered defendant to exit his vehicle, because: 1) although a routine traffic stop does not justify a protective search for weapons in every instance, once defendant is outside the automobile, an officer is permitted to conduct a limited pat down search for weapons if he has a reasonable suspicion based on articulable facts under the circumstances that defendant may be armed and dangerous; and 2) the totality of circumstances was sufficient to justify a pat down search of defendant's person when defendant was stopped in a high crime area, the hour was late, the officer was aware that defendant had been charged and convicted on more than one occasion for sale and delivery of cocaine and was then on probation for his most recent conviction, and the officer was aware that drug dealers frequently carry weapons.

3) Search and Seizure--Pat down search--Plain feel doctrine--Cigar holder--totality of circumstances--Incriminating nature of object

An officer's seizure of a cigar holder from defendant's pocket while conducting a pat down search for weapons at a driver's license checkpoint

in a high crime area after the officer ordered defendant to exit his vehicle was justified by probable cause under the plain feel doctrine based on the totality of circumstances, because: 1) the hour was late and defendant was stopped in a high crime area; 2) the officer had previously arrested defendant for possession of controlled substances and knew defendant was on probation for such an arrest at the time of the stop; 3) the officer smelled burned cigar in defendant's vehicle and on defendant, and was aware that burning cigars were commonly used to mask the smell of illegal substances; 4) defendant had previously stated he did not smoke cigars; 5) defendant's eyes were red and glassy, and his behavior suggested possible usage of a controlled substance; and 6) the officer's experience made him aware that cigar holders were commonly used to store controlled substances.

Searches and Seizures 12 (NCI3d)--No detention or seizure of defendant before arrest--Probable cause for arrest--Physical evidence --Seizure incident to arrest and under warrant

State v. Farmer, 333 N.C. 172 (1993) 424 S.E.2d 120

Defendant was not "detained" or "seized" within the meaning of the Fourth Amendment to the U.S. Constitution or Art. I, 20 of the N.C. Constitution where defendant's encounter with the officers took place on a public street; the officers wore no uniforms and displayed no weapons; they did not summon the defendant into their presence but approached him and identified themselves as law officers; the officers requested, but did not demand, information concerning the defendant's identity and place of residence and asked why he was covered with what appeared to be blood; and the officers asked defendant why he had given them a false name after it became apparent that he had done so. Furthermore, officers had probable cause to arrest defendant for murder when they received information from an individual that defendant had left the individual's house headed in the direction of the victim's residence at 8:30 p.m. on the date the victim was killed, and that when defendant returned at 11:00 p.m., he had blood on his face and clothes and in his ears. Therefore, physical evidence seized at the time of defendant's arrest and during the later execution of a search warrant supported by probable cause was properly admitted in defendant's trial for first degree murder.

Searches and Seizures (NCI3d)--Warrantless arrest--Probable cause --information from informants--Cocaine on defendant's person--Motion to suppress properly denied

State v. Ttapp, 110 N.C. App. 584 (1993) 430 S.E.2d 484

Searches and Seizures 12 (NCI3d)--Lawful stop of defendant at train station

--Lawful investigatory stop of car--Unlawful search of person--Suppression of cocaine

State v. Pittman, 111 N.C. App. 808 (1993) 433 S.E.2d 822

1) Searches and Seizures 77 (NCI4th) --License check --Defendant detained and searched --Evidence seized--No unreasonable detention--Suppression of evidence not required

State v. Sanders, 112 N.C. App. 477 (1993) 435 S.E.2d 842

2) Searches and Seizures 82 (NCI4th)--Officer's suspicion that defendant armed--Determination to frisk reasonable

State v. Sanders, 112 N.C. App. 477 (1993) 435 S.E.2d 842

Searches and Seizures 58 (NCI4th)--Warrantless pat-down search--Baggie in pocket--Existence of contraband not immediately apparent--Cocaine fruit of constitutionally impermissible search

State v. Beverege, 112 N.C. App. 688 (1993) 436 S.E.2d 912

Searches and Seizures 82 (NCI4th)--Warrantless search and seizure of defendant--Reasonable suspicion by police officer--Pat-down search proper

State v. Wilson, 112 N.C. App. 777 (1993) 437 S.E.2d 387

An officer had reasonable suspicion to seize defendant and to perform a pat-down search where the officer was in the area because police had received an anonymous phone call that individuals were dealing drugs at an apartment complex; the police were familiar with the area and knew that when a squad car entered the parking lot at one end of the breezeway, the suspects would run out the other end; when the officer's squad car pulled into the parking lot, defendant and several other individuals attempted to flee the scene; and the officer testified that as a seven-year veteran of the force, it was his experience that weapons were frequently involved in drug transactions.

Searches and Seizures 80 (NCI4th)--Lawfulness of investigatory stop

State v. Taylor, 117 N.C. App. 644 (1995)

An officer had a particularized and objective basis to detain defendant pursuant to an investigatory stop where he saw defendant drop some items

on the ground as the officer approached defendant in an area known for drug use and sales; the officer knew that defendant had a reputation in the community as a drug dealer; and the officer had unsuccessfully chased defendant on an earlier occasion.

1) Searches and Seizures 26 (NCI4th)--Warrantless search of defendant--Information from confidential informant--Probable cause

State v. Smith, 118 N.C. App. 106 (1995)

Officers had probable cause to conduct a warrantless search of defendant at an intersection under the totality of the circumstances and exigent circumstances existed to make the warrantless search valid where the evidence showed that one officer received a phone call at 12:15 a.m. from an informant he had used on two prior occasions that had led to arrests; the informant told the officer what defendant would be driving and the license tag number, and that defendant would be picking up cocaine, taking it to a particular apartment, packaging it, and taking it to a particular house to sell it; the informant also stated that defendant would have the cocaine concealed in his crotch area; the officersindependently corroborated the information received from the informant except that defendant had successfully concealed the cocaine on his person; the officers apprehended defendant at 1:30 a.m.; the officer was familiar with the drug area of the city and had received on numerous occasions from numerous sources information that defendant was operating houses out of which drugs were sold, and, had the officers taken the time to obtain a search warrant, the delay might have caused defendant's escape and disappearance or destruction of the controlled substances story stop where he saw defendant drop some items on the ground as the officer approached defendant in an area known for drug use and sales; the officer knew that defendant had a reputation in the community as a drug dealer; and the officer had unsuccessfully chased defendant on an earlier occasion.

2) Searches and Seizures 2 (NCI4th) strip search at intersection - unreasonable search

State v. Smith, 118 N.C. App. 106 (1995)

Searches and Seizures 80 (NCI4th) cocaine seized from defendant no arrest without probable cause

State v. Watson, 119 N.C. App. 395 (1995)

Officers had a reasonable suspicion of criminal activity to justify an investigatory stop of defendant, and officers' actions during the stop were reasonable, since officers approached defendant at a place which

was known for drug activity; the officers had made numerous drug arrests in the same place; one of the officers had previously arrested defendant for a drug offense; defendant took evasive action by placing drugs in his mouth; officers were familiar with this practice of drug dealers to hide drugs in their mouths to elude detection; one officer told defendant to spit out the drugs or they would kill him; and an officer placed pressure on defendant's throat in order to make him spit out the drugs.

Searches and Seizures § 7 (NCI4th) defendant approached in public place--Request to search--No seizure

State v. Ceuvas, 121 N.C. App. 553 (1996) 468 S.E.2d 425

An officer's approach of defendant in a public place and request for permission to search his luggage and person did not constitute a seizure for constitutional purposes.

Searches and Seizures § 82 (NCI4th) lawfully detained vehicle driver ordered to exit no unreasonable search and seizure reasonable grounds to believe driver armed and dangerous

State v. McGirt, 122 N.C. App. 237 (1996)

The Fourth Amendment's proscription of unreasonable searches and seizures was not violated when the police ordered defendant, the driver of a lawfully detained vehicle, to exit the vehicle; furthermore, the evidence could support a conclusion that the officer had reasonable grounds to believe the defendant might be armed and dangerous so that a "pat-down" of defendant for weapons was lawful, even though he was cooperative and presented no obvious signs of carrying a weapon, since defendant was a convicted felon, a fact known to the arresting officer; defendant was under investigation by the arresting officer for drug trafficking; and it was the officer's experience that cocaine traffickers "normally carry weapons."

1) Searches and Seizures § 82 (NCI4th) search of respondent reasonable suspicion to justify search

IN RE WHITLEY, 122 N.C. App. 290 (1996) 468 S.E.2d 610

There was reasonable suspicion to justify an officer's pat-down search of respondent juvenile where officers had received a phone call indicating two black males were selling drugs on a certain street; upon arriving at the scene to investigate, the officers found two black males standing in the location where the drugs were purportedly being sold; when an officer

approached respondent, he noticed respondent's legs were very tight; and these facts gave rise to a reasonable suspicion that respondent might be armed, dangerous, and involved in criminal activity and justified the officer's search of respondent.

2) Searches and Seizures § 80 (NCI4th) item seized from respondent's person incriminating character immediately apparent

IN RE WHITLEY, 122 N.C. App. 290 (1996) 468 S.E.2d 610

There was no merit to respondent's contention that the incriminating character of the item seized from his person was not immediately apparent to the officer and the trial court erred in allowing it into evidence, since the officer asked respondent to spread his legs; when he complied an item fell onto the officer's hand through respondent's pants; and based upon his personal experience as a law enforcement officer, the officer immediately believed that it was some type of illegal substance

Searches and Seizures § 81 (NCI4th) defendant in airport game room warrantless search based on general suspicion violation of Fourth Amendment evidence not suppressed error

State v. Artis, 123 N.C. App. 114 (1996) 472 S.E.2d 169

The trial court erred in denying defendant's motion to suppress crack cocaine seized from his pocket at an airport during an investigatory stop and frisk where the officer had only a generalized suspicion of criminal activity, based upon defendant's presence in the airport game room which was a known area of drug activity, a bulge in defendant's pants pocket which the officer thought was either brass knuckles or the handle of a gun, and the fact that defendant had not yet passed through the airport's metal detectors, since there was no apparent need for quick action by the officer to insure that defendant was not armed with a weapon which would be used against him or others nearby.

Searches and Seizures § 80 (NCI4th) cocaine airport stop reasonable suspicion

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

The trial court did not err in denying defendant's motion to suppress cocaine seized from his person in an airport by concluding that SBI agents had reasonable suspicion based on articulable facts that defendant was engaged in criminal activity at the time of seizure where SBI agents identified defendant from a tip and the drug courier profile, they suspected defendant of concealing contraband in his crotch, they attempted to seize

his bag for a drug dog sniff and defendant attempted to walk away with the bag, an agent said "What's this?" and reached for defendant's crotch, defendant attempted to flee, and cocaine was removed from defendant's crotch after he was subdued. All of the facts known to the narcotics agents at the time of the seizure, taken as a whole, formed a sufficient basis for a reasonable, articulable suspicion that this particular defendant was transporting narcotics.

Searches and Seizures § 58 (NCI4th)--Motion to suppress--Traffic violation --Pat-down search--Narcotic immediately apparent--Did not exceed permissible bounds

State v. Benjamin, 124 N.C. App. 734 (1996)

The trial court did not err in denying defendant's motion to suppress evidence on the grounds that the evidence was seized from defendant in an illegal search and seizure. It became immediately apparent to the arresting police officer that the containers in defendant's pocket held crack when the officer felt them through defendant's jacket subsequent to stopping defendant for a traffic violation and during a pat-down search given the officer's experience, narcotics training, the size, shape and mass of the objects, and defendant's response to the officer's question, "What is that?" It was at that moment that the officer had probable cause to seize the objects. There is no evidence of record to indicate that the officer manipulated the objects in a manner so as to make the search unlawful under Dickerson. Furthermore, a brief verbal inquiry as to the identity of the objects does not exceed the permissible bounds of a Terry search.

Searches and Seizures § 80 (NCI4th)--Investigatory stop of defendant--Reasonable suspicion

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

Officers had reasonable suspicion to make an investigatory stop of defendant where one officer received information from two witnesses that, around the time an automobile had been broken into by breaking a window, a tall black male wearing dark pants and a white t-shirt had been acting suspiciously nearby, had picked up a cement block and walked toward the location of the automobile, and moments later had run down an alleyway; the second officer received a transmission from the first officer to be on the lookout for a tall black male wearing a white t-shirt and moving in a certain direction; and the second officer saw defendant, a person fitting this description, just moments later within two blocks of the location specified.