

“Knock and Talks”: Obtaining Consent to Search



**Prepared by:
Toni Smith, Assistant City Attorney**



Revised January 2010

“Knock and Talk” Procedures

***“Knock and talk”:* A tactic used by law enforcement which consists of knocking on a suspect’s door to engage in conversation regarding suspected criminal activity occurring in the suspect’s residence, and then seeking the resident’s consent to search.**
United States v. Miller, 933 F.Supp. 501 (1996).

I. Consent Exception to the Warrant Requirement

“It is well settled under the Fourth and Fourteenth Amendments that a search conducted without a warrant issued upon probable cause is per se unreasonable...subject only to a few specifically established and well delineated exceptions. It is equally well settled that one of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent.”

Schneckloth v. Bustamonte, 412 U.S. 218, 222 (1973). *See also* N.C.G.S. Section 15A-221(a).

II. “Knock and Talk” Procedure Generally Upheld

Defendant’s girlfriend informed police that the defendant possessed drugs at his residence. She told the police that the drugs were located in a suitcase and a trunk in a bedroom that the two shared. Officers, concluding that they lacked probable cause to obtain a search warrant, decided to try a consent search - “knock and talk.”

Two officers, dressed in plainclothes, went to the door of the defendant’s house. Three additional officers and a canine also went to the defendant’s home, but remained in a van outside. A resident (not the girlfriend or defendant) allowed the officers to enter. The resident gave the officers consent to search his bedroom and the common areas of the home. The other officers and the canine then entered to conduct the search. No drugs were found in these areas. The defendant’s girlfriend then allowed the officers to search the bedroom that she shared with the defendant. In the bedroom, the canine alerted, indicating that drugs were in a suitcase and a trunk; a bag of marijuana was also found in the closet.

The Court of Appeals had affirmed the trial court’s ruling that the search was invalid because the officers entered the house without a search warrant in an effort to circumvent the Fourth Amendment (apparently ignoring the issue of consent).

The North Carolina Supreme Court found the search not to be patently invalid but remanded the case to superior court to determine the voluntariness of the

consent given to the officers. The court also noted that the officers' subjective intent in using the "knock and talk" procedure was irrelevant. The critical issue is the validity of the consent.

State v. Smith, 346 N.C. 794 (1997) *reversing* 123 N.C. App. 162 (1996).

III. Who May Give Consent

A. General rule

Generally, officers must obtain consent to search from a person who has a reasonable expectation of privacy in the item to be searched.

B. Shared expectations of privacy

Sometimes, two or more people - for example, spouses or roommates - share a reasonable expectation of privacy in the same place. In such a situation, either may provide valid consent in the absence of the other, or when both parties are present and neither voices an objection. However, if more than one person with an expectation of privacy in the area to be searched is present and one objects, then the area cannot be searched without a search warrant or exigent circumstances.

C. Spouses

Either spouse may consent to a search of property that they share unless both spouses are present at the time of the search and one voices an objection. In any event, one spouse may not consent to the search of a place where the other spouse clearly has exclusive private interests.

D. Roommates

Same as spouses.

E. Parents and children

Generally, a parent has authority to consent to a search of a child's room (although this authority is less likely if the child is not a minor) unless the child has established exclusive use and access to his or her room that would negate a parent's authority to consent to a search there. Parents may not have the authority to consent to a search of personal possessions if the child has exclusive access and use of those items. Generally, a minor child cannot consent to a search of his or her parents' home.

F. Landlords and tenants

Only a tenant, not an owner, may consent to a search of the tenant's place until the tenant permanently leaves or otherwise loses his or her privacy interest in the premises (note that simply failing to pay rent or the expiration of a lease does not automatically mean that the tenant has lost his or her privacy interest in the premises. Generally, this would only occur after the tenant has lawfully been removed from the premises, for

example, through a summary ejectment/eviction.) Officers may enter an owner's property, despite the owner's objections, if the tenant in lawful possession consents.

G. Guests in a home

An overnight guest in another's home has a legitimate expectation of privacy despite the fact that he or she does not have the authority to determine who may or may not enter the household. The permanent resident of the premises may consent to a search anywhere within his or her own home, except for the guest's bedroom and the guest's personal belongings.

N.C.G.S. Section 15A-222. Farb, Robert. Arrest, Search and Investigation in North Carolina. Third Edition, pgs. 79-80, Institute of Government (2003). *See Georgia v. Randolph*, (2006, US) 164 L. Ed. 2d 208, 126 S. Ct. 1515.

IV. Content of a Valid Consent

A. Form of Consent

North Carolina law requires that consent be given in the form of a statement. That statement may be made in writing, orally or by other means, as long as it communicates its meaning clearly. However, while an oral statement or a gesture may be sufficient, it is preferable to obtain written consent as this helps to prove the validity of the consent if later challenged.

N.C.G.S. Section 15A-221(b). *Compare U.S. v. Miller*, 933 F.Supp. 501 (1996) and *State v. Graham*, 149 N.C. App. 215 (2002).

B. Voluntariness

A court examines all the circumstances surrounding the giving of consent to search when it decides whether the consent was in fact voluntary or was obtained by duress or coercion, express or implied. There is no single controlling criterion, rather the court will look at the totality of the circumstances including, but not limited to:

1. Time of day
2. Number of officers
3. Wearing of uniforms
4. Visibility, particularly brandishing of weapons
5. Actual or threatened use of force
6. Demeanor of officers including the use of conversational v. authoritative tone; requests v. commands
7. Repeated questioning and requests for consent
8. Prolonged nature of the encounter
9. Whether a seizure occurred

10. Whether person was advised of right to refuse consent
11. Personal characteristics of consenting party such as age, education, intelligence, prior contact with authorities, physical condition

See U.S. v. Drayton, 122 S. Ct. 2105 (2002); *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973); *United States v. Miller*, 933 F.Supp. 501 (1996). *See also* N.C.G.S. Section 15A-221(b).

V. Scope of Search

The scope of a consent search is governed by the terms of the consent given to the officers. Note that general consent to search a person does not extend to a strip search of the person because, our Court of Appeals has reasoned, a reasonable person would not expect their general consent to entail such an intrusive inspection. A strip search of a person will require consent specific enough that a reasonable person would have understood that an inspection of his or her genitals was intended, or the articulation of probable cause.

Consent may withdraw at anytime or limited in any way.

N.C.G.S. Section 15A-223(a). Farb, Robert. Arrest, Search and Investigation in North Carolina. Third Edition, pgs. 81-82, Institute of Government (2003). *See also State v. Stone*, 179 N.C. App. 297 (2006). *Compare State v. Neal*, 190 N.C. App. 453 (2008).

VI. Receipt of Items Seized

Officers must make a list of items seized pursuant to a consent search and deliver a copy of the receipt to the person who consented to the search and, if known, to the owner of the place searched.

N.C.G.S. Section 15A-223(b). *See generally* AOC Form CR-206.