



Police Law Bulletin



City Attorneys' Office

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In this issue:

Reversing COA, NC Supreme Court Holds Probable Cause Supported Issuance of Search Warrant—Pgs. 1-3

Affirming COA, NC Supreme Court Finds Probable Cause Supported Issuance of Search Warrant;

Reversing COA, NC Supreme Court Holds That Vehicle, On Premises Described in Search Warrant, Is
Within Scope of Warrant Regardless of Ownership Pgs. 3-4

COA Finds Probable Cause Supported Issuance of Search Warrant – Pgs. 4-6



NORTH CAROLINA SUPREME COURT



Reversing the North Carolina Court of Appeals, North Carolina Supreme Court Holds Probable Supported Search Warrant For Defendant's Residence

State v. Allman, ___ N.C. ___, ___ S.E.2d ___ (December 21, 2016)

Half-brothers Jeremy Lee Black and Alden Whitehead, along with Logan McDonald and Brittany Allman (Black's girlfriend), lived at 4844 Acres Drive in Wilmington. Officers obtained a search warrant for the residence.

The application was supported by the affidavit of Detective Bacon of the Vice and Narcotics Unit of the New Hanover County Sheriff's Office. After setting out his experience, the Detective made the following factual assertions:

On January 21, 2012, Agent Cherry of the Brunswick County Sheriff's Office called Detective Bacon and told him that he had conducted a vehicle stop on Highway 74/76 east just before the New Hanover County Line. Agent Cherry identified the driver as Black and the passenger as Whitehead. According to Agent Cherry, Whitehead told him that Black and he were half-brothers, that they left their residence at 30 Twin Oaks Drive in Castle Hayne, visited a friend in Brunswick County, and were on their way back to 30 Twin Oaks Drive. Agent Cherry further told Detective Bacon that, during the roadside interview, he called for a K-9 unit and the dog alerted to the presence of controlled substances. Agent Cherry said he searched the car and discovered 8.1 ounces of marijuana and over \$1,600.00 in cash. Agent Cherry reported to Detective Bacon that Whitehead told him that he kept some marijuana in his vehicle at 30 Twin Oaks Drive and that he kept it in his vehicle so that his mother would not know about it. Agent

Cherry also said that Whitehead owned two cell phones and one of those phones contained text messages related to the sale of marijuana.

Detective Bacon then described Whitehead's prior record of being charged with trafficking marijuana and sale and distribution of marijuana and of having been convicted of possession with intent to sell and deliver marijuana. The affidavit also noted that Black had been charged with cocaine distribution and possession of marijuana in Florida, and that while in North Carolina, Black had pled guilty to first degree burglary.

Detective Bacon asserted that according to DMV records, both Black and Whitehead lived at 30 Twin Oaks Drive. The car Black was driving when stopped by Agent Cherry was registered to 30 Twin Oaks Drive.

Detective Bacon obtained a search warrant for 30 Twin Oaks Drive but discovered, when executing the warrant, that Black and Whitehead did not live there. Instead, their mother and stepfather lived there. Ms. Black said that her sons lived at 4814 Acres Drive and described the residence. She also said that there should be an old red truck and an old white truck at the house. According to Ms. Black, her sons had a roommate named Logan McDonald. She said that her sons used her address as a mailing address, but had been living on Acres Drive for approximately three years. Another detective went to 4814 Acres Drive and found the property matched the description given by Ms. Black. The detective checked the registration of the old red truck and the old white truck, and one was registered to Black and the other was registered to McDonald.

Finally, Detective Bacon asserted that he "knows through training and experience, subjects who deal in illegal controlled substances often use different mailing addresses and lie to law enforcement about their home address to conceal their illegal activities."

Officers executed the warrant while Allman was present and after finding various controlled substances and paraphernalia, arrested Allman.

After being indicted for several violations of the controlled substances laws, defendant filed a motion to suppress the evidence arguing that the search warrant did not allege sufficient facts to support probable cause that evidence of drug-related crimes would be found at the residence. The trial court granted defendant's motion. The State appealed to the North Carolina Court of Appeals.

The Court of Appeals found that Detective Bacon's affidavit contained no allegations that anyone had observed activity suggestive of drug trafficking or usage at the house, and nothing connected the Acres Drive house with the cash, marijuana, and texts suggestive of drug sales uncovered during the traffic stop. The State argued that such an inference arose as a natural and reasonable inference from circumstances indicating that Black and Whitehead were engaged in drug trafficking. The court, however, noted that prior case law provides that information that a defendant is an active drug dealer is not sufficient, without more, to support a search of the dealer's residence. Finding that the affidavit did not reveal a sufficient nexus between Black and

Whitehead's drug-related activity and the Acres Drive residence, the Court of Appeals affirmed the granting of defendant's motion to suppress. The State appealed.

The North Carolina Supreme Court found that it was reasonable for the magistrate to infer that the brothers were drug dealers based on the quantity of marijuana and the amount of cash found in the car, the fact that the marijuana appeared to be packaged for sale, and Whitehead's and Black's criminal histories. Further, it was reasonable for the magistrate to infer that the two lived there based on the mother's statement that the two lived at the Acres Drive premises, the fact that her description of that home matched its actual appearance, and that one of the trucks there was registered to Black. And, based on the insight from the officer's training and experience that evidence of drug dealing was likely to be found at their home *and* that Whitehead lied about where the two lived, it was reasonable for the magistrate to infer that there could be evidence of drug dealing at the Acres Drive premises. Although nothing in the affidavit directly connected the defendant's home with evidence of drug dealing, the North Carolina Supreme Court noted that federal circuit courts have held that a suspect drug dealer's lie about his address *in combination with* other evidence of drug dealing can give rise to probable cause to search his home. Thus, under the totality of the circumstances the North Carolina Supreme Court held that there was probable cause to support the search warrant and that the trial court erred in granting defendant's motion to suppress.

**Affirming Court of Appeals, North Carolina Supreme Court Agreed Warrant Was Supported by Probable Cause;
Reversing Court of Appeals, North Carolina Supreme Court Holds That a Vehicle, On Premises Described In a Search Warrant, Is Within Scope of Warrant Regardless of Ownership**

State v. Lowe, ___ N.C. ___, ___ S.E.2d ___ (December 21, 2015).

On September 24, 2013, Detective Barber of the Raleigh Police Department filed an affidavit in support of a search warrant. The affidavit indicated that the investigator had received information that "Mike T" was selling, using and storing controlled substances at his home located at 529 Ashebrook Drive. The investigator established Terrance Michael Turner as "Mike T." The affidavit recanted a lengthy criminal history for Turner involving violations of the controlled substances laws. In addition, it indicated that the officer had examined trash from the home and found within it a small amount of marijuana residue as well as correspondence addressed to Turner. The affidavit described the residence to be searched but did not specify any vehicles. A Wake County magistrate issued the warrant to search 529 Ashebrook Drive.

When executing the warrant, officers found Turner and two overnight guests – defendant Lowe and defendant's girlfriend Margaret Doctors – in the home. Parked in the driveway was a Volkswagen rental car leased to Ms. Doctors and operated by both Lowe and Doctors. Turner had no articulable connection to the vehicle other than it being parked in his driveway. Officers searched the vehicle and found a book bag containing controlled substances and documents with Lowe's name. Consequently, Lowe was charged with violations on the controlled substances laws.

Prior to trial, Lowe moved to suppress all evidence against him on two grounds: 1) the warrant authorizing the search of Turner's residence was not supported by probable cause; and 2) even if the search warrant was valid, the search of the Volkswagen exceeded the scope of the warrant. The trial court denied the motions. Defendant pled guilty to all charges and then filed an appeal.

The Court of Appeals concluded that the tip given to the detective, corroborated by the presence of marijuana residue found in Turner's trash, was sufficient to establish probable cause to search the residence for narcotics. Thus, the search warrant was valid. However, the court went on to find that the search of defendant's vehicle exceeded the scope of the warrant. The court recognized a long-standing precedent in North Carolina and other jurisdictions that, as a general rule, if a search warrant validly describes the premises to be searched, a car on the premises may be searched even though the warrant contains no description of the car. However, the court focused on the fact that the cases which formed this precedent involved vehicles which were owned or operated by the individual associated with the premises identified in the warrant. In the case at hand, the target of the search was Turner. Officers knew that the vehicle did not belong to Turner; the vehicle had not previously been seen at Turner's; the vehicles was rented to Ms. Doctors and was operated by her and Lowe, and there was nothing indicating any dominion or control over the vehicle by Turner. Finding that the search of Lowe's vehicle exceeded the scope of the warrant, the Court of Appeals held that a warrant authorizing the search of a home does not automatically cover the search of *any* vehicle found within the curtilage. Rather, officers have to establish that the vehicle was owned or controlled by a resident of the premises in order for the vehicle to fall within the scope of the warrant.

The State appealed. The North Carolina Supreme Court first affirmed, for the reasons stated by the Court of Appeals, that the warrant was supported by probable cause. Second, reversing the Court of Appeals, the North Carolina Supreme Court held that if a search warrant validly describes the premises to be searched, a car on the premises may be searched even though the warrant contains no description of the car. In the case at hand, Lowe's vehicle was within the curtilage of the premises described in the warrant. Therefore, the search of the vehicle was within the scope of the warrant.

North Carolina



Court of Appeals

Officer Lawfully Approached Front of Defendant's Home and Obtained Information That Was Later Used to Procure a Search Warrant; Search Warrant Properly Supported by Probable Cause

State v Kirkman, No. COA16-407 (December 20, 2016)

On January 1, 2013, Officer Bradshaw of the Greensboro Police Department received information from a confidential source that defendant was growing and selling marijuana from his home. The informant indicated that defendant had a large grow operation in his home and that generators were running the lights.

Officers Bradshaw, Trimnal and Armstrong decided to perform a “knock and talk” at the residence. Officer Bradshaw noticed, in plain view to the right of the doorway, windows on the front of the home that had substantial mold and condensation. In Officer Bradshaw’s training and experience, this was consistent with the heat and humidity associated with marijuana growing operations. Officer Bradshaw also heard, from the front porch, a loud sound consistent with an electrical generator running inside the home, which was consistent with the information provided by the confidential informant. Officers Trimnal and Bradshaw smelled the odor of marijuana when they approached the left side door of the home. After no one responded to their knock, the officers decided to apply for a search warrant.

In the application for the search warrant, Officer Bradshaw noted that the confidential informant was reliable and in support set out further specific information provided by the confidential informant, stated that the confidential informant was familiar with the appearance of illegal narcotics, and that all previous information from the confidential informant had proven to be truthful and accurate to the best of the Officer’s knowledge. Officer Bradshaw also included the information obtained as a result of the knock and talk.

A search warrant was issued and as a result of the search, defendant was indicted for maintaining a dwelling for keeping or selling marijuana and two counts of trafficking in marijuana. Defendant filed a motion to suppress any and all evidence seized from his home. The trial court denied defendant’s motion. Defendant appealed the denial of his motion on two grounds: (1) the “knock and talk” was a mere “guise” which allowed officers to surround his home and far exceeded the scope of a proper “knock and talk” and (2) the search warrant was deficient because it was based on an unsubstantiated anonymous tip.

Defendant pointed out that no North Carolina appellate decision has approved officers simultaneously going to the front and side doors of a residence for a “knock and talk”. However, North Carolina courts have clearly approved approaching the front of a residence to engage in a “knock and talk.” Therefore, the Court of Appeals held that, even assuming any information gained from the approach of the side door was unlawfully obtained and therefore should be suppressed, the fact remains that Officer Bradshaw lawfully approached the front of the home where he heard the generator and noticed condensation and mold, all factors which in his experience and training were consistent with conditions of a home set up to grow marijuana. This information fully supported the informant’s claims and was properly used to apply for and obtain a search warrant.

The court then addressed defendant’s contention that the search warrant was improperly issued because the confidential informant was not sufficiently reliable to form the basis of probable cause. The defendant argued that the informant should be viewed as anonymous. However, the

court found that the warrant application supported exactly the opposite conclusion. This was not an anonymous tip from an unknown person. The search warrant stated that Officer Bradshaw had previously used information from the confidential informant and found it to be reliable. Officer Bradshaw then did additional investigation, all of which supported the informant's claims and established probable cause for issuance of the search warrant. For these reasons, the Court of Appeals found that defendant's motion to suppress was properly denied.