



Police Law Bulletin



City Attorneys' Office

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NORTH CAROLINA COURT OF APPEALS



Officers Exceeded Authority for Knock and Talk by Walking Around Defendant's Yard and Peering Through a Fan Into the Crawlspace of the Home

State v. Ellis, No. COA 19-59 (June 18, 2019).

On September 9, 2014, Cabarrus County Sheriff's Detectives Helms and Klingsmith discovered stolen Bobcat equipment at a home. A witness told the officers that the person who had stolen the equipment lived in the house across the street. Detective Helms knocked on the front door of the residence, but no one responded. He noticed there was a large spider web present in the door frame. Detective Klingsmith walked behind the residence. Detective Helms continued to knock on the front door for several minutes. No one responded, however, he saw a curtain in the front window move. Detective Helms radioed Detective Klingsmith to tell him the curtain moved. Detective Klingsmith began to knock at the rear door for several minutes but no one responded. Detective Klingsmith then walked to the left front corner of the residence. He heard a loud fan coming from a crawl space area and noticed the odor of marijuana emanating from that area. He looked through the slats in the fan into the crawlspace where he observed what he believed to be a marijuana plant in a bucket. Based solely on Helms and Klingsmith's observations, vice and narcotics officers applied for and received a warrant to search the residence. Various drugs and drug paraphernalia were seized from the premises.

Defendant was charged with multiple violations of the controlled substances laws. Prior to trial, defendant filed a motion to suppress all evidence. The trial court denied the motion. Defendant appealed.

"Knock and talk" is a procedure utilized by law enforcement officers to obtain consent to search when they lack the probable cause necessary to obtain a search warrant. A "knock and talk" typically permits a visitor to approach a home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave. In the instant case, Detective Helms knocked on the front door several times. The fact that no one answered and that he saw a curtain beside the front door move did not constitute an invitation to remain. If anything, these facts support the reasonable conclusion that the occupant saw the detectives outside and did not wish to speak with them, as is his right. Further, Detective Klingsmith walked around to the rear door and then to the left front corner of the yard. By moving away from the front door, and entering the back and sides of defendant's yard, Detective Klingsmith was moving into the curtilage of defendant's home without a warrant. Law enforcement

may not use a “knock and talk” as a pretext to search the home’s curtilage, and this doctrine does not permit law enforcement to approach any exterior door to a home. An officer may only knock at the door that a “reasonably respectful citizen” unfamiliar with the home would believe is the door at which to knock. He or she may not subjectively choose an alternate door, even if there are cobwebs on the front door. Accordingly, under the “knock and talk” exception, the detectives should have left the property after Detective Helms received no response at the front door of the residence. It was only after Detective Klinglesmith invaded the curtilage and walked around the home that he smelled and saw what appeared to be marijuana. Therefore, the plain view doctrine does not apply because Detective Klinglesmith was not in a place he was entitled to be when he discovered the marijuana.

Accordingly, the Court of Appeals held that the evidence obtained by virtue of the illegal search should have been suppressed.



NORTH CAROLINA SUPREME COURT



North Carolina Supreme Court Reverses Court of Appeals and Holds That Shotgun Was In Plain View

State v. Smith, ___ N.C. ___, ___ S.E.2d ___ (Sept. 21, 2018).

This case was decided by the North Carolina Court of Appeals in August 2017, and discussed in the March-April 2018 Police Law Bulletin. The facts and procedural history leading up to review by the North Carolina Supreme Court are reiterated in italics below:

On April 1, 2015, three officers with the Kernersville Police Department entered defendant’s residence to serve outstanding arrest warrants for absconding probation and failing to appear at a scheduled court date. The front door of defendant’s apartment led directly into the living room. The living room opened up on the back right corner, opposite the doorway, leading directly into the kitchen. A short hallway ran perpendicular in between the living room and the kitchen. The hallway was visible from the front door and more closely resembled the center of a four-way intersection, connecting every room inside the apartment: the living room and kitchen to the south, a bathroom to the east, an empty bedroom to the north, and defendant’s bedroom to the west.

While two of the officers were placing defendant in custody in his apartment living room, one of the officers conducted a protective sweep of the other rooms, only searching areas where individuals might be hiding. During the sweep, the officer saw a shotgun leaned up against a wall in the defendant’s bedroom. After completing the sweep, the officer secured the shotgun, “to have it in our control and also check to see if it was stolen.” Once he confirmed the shotgun was unloaded, he carried it into the living room, placed it on a couch, used his flashlight to examine the receiver, and then turned over the shotgun to expose its serial number, which he then called into Communications. When Communications reported the shotgun stolen, the officers seized the weapon.

Defendant was charged with possession of a stolen firearm and possession of a firearm by a convicted felon. The trial court denied defendant's motion to suppress. After the ruling, defendant pleaded guilty to possession of a firearm by a felon and, pursuant to defendant's plea arrangement, the court dismissed the charge of possession of a stolen firearm. Defendant appealed to the North Carolina Court of Appeals.

Defendant first challenged the protective sweep of his apartment. "A protective sweep is a quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers or others." Maryland v. Buie, 494 U.S. 325, 327, 110 S. Ct. 1093, 1094, 108 L. Ed. 2d 276, 281 (1990), cited in State v. Bullin, 150 N.C. App. 631, 640, 564 S.E.2d 576, 583 (2002). To be lawful, the sweep must be "narrowly confined to a cursory visual inspection of those places in which a person might be hiding." Buie, 494 U.S. at 327, 110 S. Ct. at 1094, 108 L. Ed. 2d at 281. In Buie, the U.S. Supreme Court articulated two scenarios in which police may conduct a protective sweep. First, incident to an arrest, officers may, "as a precautionary matter and without probable cause or reasonable suspicion, look in closets and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched." Id. at 334, 110 S. Ct. at 1098, 108 L. Ed. 2d at 286. Second, when an officer has "articulable facts which, taken together with rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger." Id. The trial court concluded that the protective sweep of the apartment was valid under the first prong of Buie. Defendant argued, however, that the officer was not authorized to conduct a protective sweep of the bedroom, where the shotgun was found, because the bedroom was not "immediately adjoining the place of arrest from which an attack could be immediately launched."

Our appellate courts have not specifically addressed which areas might qualify as "immediately adjoining the place of arrest," but decisions from the federal courts led the Court of Appeals to conclude that, based on the size and layout of the apartment, all of the rooms - including defendant's bedroom - were part of the space immediately adjoining the place of arrest and from which an attack could have been immediately launched.

Next, defendant argued that the seizure of the shotgun could not be justified under the plain view doctrine because its incriminating nature was not immediately apparent. The plain view doctrine allows an officer to seize evidence without a warrant if: (1) the officer views the evidence from a place where he has a legal right to be, (2) it is immediately apparent that the items observed constitute evidence of a crime, and (3) the officer has a lawful right of access to the evidence itself. The "immediately apparent" requirement is satisfied if the police have probable cause to believe that what they have come upon is evidence of criminal conduct. If the police lack probable cause to believe that an object in plain view is contraband without conducting some further search of the object, then its incriminating nature is not "immediately apparent" and the plain-view doctrine cannot justify its seizure. In the case at hand, the Court of Appeals held that, based upon the objective facts known to him at the time, the officer did not have probable cause to believe the weapon was contraband or evidence of a crime.

The Court of Appeals reasoned that the officers were executing arrest warrants issued for misdemeanor offenses and were not aware that defendant was a convicted felon. In fact, before the seizure, the officer had asked the other officers in the apartment if defendant was a convicted felon, which they could not confirm. Further, the officer did not have probable cause to believe that the shotgun was stolen until he moved the weapon into the living room, placed it on the couch, shined his flashlight on the receiver, and then turned it over to expose the serial number, which Communications was then able to confirm as stolen.

Accordingly, a divided panel of the Court of Appeals found that the trial court erred in denying defendant's motion to suppress. Based upon the dissent, the State appealed to the North Carolina Supreme Court.

There was no dissent among the Court of Appeals regarding the lawfulness of the protective sweep so the North Carolina Supreme Court did not review this issue. Rather, the North Supreme Court focused its review on whether the seizure of the shotgun could be justified under the plain view doctrine. The North Carolina Supreme Court reversed the Court of Appeals on this issue finding that, regardless of whether the officer knew that defendant was a felon or knew that the shotgun was stolen, it was immediately apparent that the shotgun was contraband because one of the regular conditions of the defendant's probation was that he not possess any firearms.