



# Police Law Bulletin



City Attorneys' Office

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## NORTH CAROLINA COURT OF APPEALS



### Knock and Talk Violated Fourth Amendment

**State v. Stanley, No. COA17-1000 (May 15, 2018).**

In December 2015, a confidential informant contacted the Durham Police Department stating that he had purchased heroin from James Meager at 1013 Simmons Street Apartment A. Subsequent investigation showed that Apartment A belonged to an individual named James Hazelton, and Meager did not actually live at the apartment. Nevertheless, an informant purchased heroin from Meager at Apartment A on three subsequent occasions. On each occasion, the drug sale was conducted from the back door of the apartment.

On March 1, 2016, several members of the Durham Police Department approached Apartment A in order to serve Meager with a warrant for his arrest. The officers did not possess a search warrant for the apartment. Upon the officers' arrival, they immediately walked down the driveway that led to the back of the apartment, and one of the investigators knocked on the back door. In response to an inquiry from inside as to who was knocking, the investigator responded, "Joey." When the Defendant, who had been staying with Hazelton as a houseguest, answered the door, the investigator immediately detected the odor of marijuana. The officers conducted a protective sweep of the premises. A crack pipe was discovered on the nightstand in one of the bedrooms, and a handgun was observed laying on a couch in the living room. A frisk of the Defendant led to the discovery of cocaine, heroin, and marijuana. A search warrant was then obtained for the apartment. A search of the apartment revealed a digital scale next to the crack pipe that was on the nightstand.

Defendant was arrested and charged with various violations of the Controlled Substances Act. Defendant filed a motion to suppress the evidence that had been seized from his pockets. The trial court denied Defendant's motion. Defendant pled guilty to all of the charges, but subsequently appealed arguing, in part, that the officers violated his Fourth Amendment rights by unlawfully conducting a knock and talk at the back door of Apartment A rather than the front door.

The Court of Appeals began its analysis by noting that law enforcement may do what occupants of a home implicitly permit anyone to do, which is approach the home by the front path, knock promptly, wait

briefly to be received, and then (absent invitation to linger longer) leave. The knock and talk doctrine does not permit law enforcement to approach *any* exterior door to a home. An officer's implied right to knock and talk extends only to the entrance of the home that a reasonably respectful citizen unfamiliar with the home would believe is the appropriate door at which to knock. This limitation is necessary to prevent the knock and talk doctrine from swallowing the core Fourth Amendment protection of a home's curtilage. Without this limitation, law enforcement freely could wander around one's home searching for exterior doors and, in the process, search any area of a home's curtilage without a warrant.

In the present case, officers knew that Meager did not live at Apartment A but believed that they could either locate him at the apartment or learn more about his whereabouts by conducting a general inquiry of the occupants. Therefore, they elected to utilize a knock and talk. However, in order to pass constitutional muster, the officers were required to conduct the knock and talk by going to the front door, which they did not do. Rather than using the paved walkway that led directly to the unobstructed front door of the apartment, the officers walked along a gravel driveway into the backyard in order to knock on the back door, which was not visible from the street. Such conduct would not have been reasonable for "solicitors, hawkers or peddlers." Thus, it was also unreasonable for law enforcement officers.

The trial court determined that the officers had an implied license to approach the back door of Apartment A because a confidential informant had been observed purchasing drugs from Meager by utilizing the back door on three separate occasions. However, the fact that the resident of a home may choose to allow certain individuals to use a back or side door does not mean that similar permission has been given generally to members of the public.

The Court of Appeals, therefore, found the knock and talk to be unconstitutional. Absent the unlawful knock and talk, the officers would not have had any contact with Defendant much less had occasion to conduct a pat-down search of his person resulting in the discovery of the drugs in his pockets. Accordingly, the Court of Appeals reversed the trial court's order denying Defendant's motion to suppress.

### **Defendant's Consent to Search Was Voluntarily Given**

#### **State v. Cobb, No. COA15-1337 (August 2, 2016).**

On May 8, 2014, based on information that there was narcotics activity occurring at the residence, Officers Resendes and Ayers with the Winston-Salem Police Department were conducting surveillance of the boarding house in which defendant resided. An unknown black male exited the residence and got into a black Cadillac that had been parked on the curb in front of the home. The officers followed the Cadillac and observed its driver fail to properly signal and illegally park in front of another residence. The officers parked their car in front of the Cadillac and exited their vehicle. As the officers began to approach the Cadillac, the driver accelerated, struck Officer Ayers in the leg, and sped away from the scene.

Officer Ayers notified his superior of the incident and returned to the residence in an effort to obtain information regarding the identity of the driver of the Cadillac. When the officers arrived at the residence, defendant and another tenant, Mr. Rice, were sitting on the front porch. Both indicated that they did not know the name of the driver of the Cadillac. Officer Ayers then asked Mr. Rice for his name. Mr. Rice stated his work identification was inside, stood up, and motioned for Officer Ayers to come inside with him. Upon following Mr. Rice into the hallway of the residence, Officer Ayers detected a strong odor of marijuana.

Officer Ayers then returned to the porch and asked defendant for consent to search his person. Defendant consented to a search of his person, but the officer did not locate anything illegal on defendant. Officer Ayers then asked defendant for consent to search his room inside the house, to which defendant again consented. Officer Resendes testified that upon entering defendant's room, he smelled the odor of burnt marijuana. Officer Resendes asked defendant for a second time for consent to search his room, and defendant "stated it was fine." As Officer Resendes began searching the room, defendant handed him remnants of marijuana cigarettes and stated, "All I got is this."

While searching defendant's room, Officer Ayers noticed a ceiling panel that was darker in color and not tightly seated against the other tiles, "like it had been removed several times." After removing this tile, Officer Ayers located a bag containing a large amount of crack cocaine. The officers then placed defendant in handcuffs. As the officers continued searching the room, they located a bag of marijuana and approximately \$2,000.00 in a coat pocket. Defendant was asked once again if he was still consenting to the search, to which defendant replied, "you already found everything you are going to find. Go ahead and do whatever."

Defendant was charged with possession of marijuana, possession of drug paraphernalia, possession with intent to sell and deliver cocaine and attaining habitual felon status based on three prior felony convictions. Prior to trial, defendant filed a motion to suppress evidence obtained as a result of the warrantless search. The trial court denied defendant's motion. A jury returned guilty verdicts on all counts. Defendant appealed.

Defendant claimed that since he had been informed that there was a narcotics investigation in progress at the time he gave consent, and because he was kept under "constant police supervision" by one or more officers at all times after being told there was a narcotics investigation, his consent was not voluntary because he was "in custody" at the time it was given. Defendant argued that a reasonable person would not have felt at liberty to ignore the police presence and go about his business. The Court of Appeals disagreed.

A court determines whether a reasonable person would feel free to decline an officer's request or otherwise terminate the encounter by examining the totality of circumstances. Relevant considerations under the totality of the circumstances test include, but are not limited to: the number of officers present, whether the officers displayed a weapon, the words and tone of voice used by the officers, any physical contact between the officer and the defendant, the location of the encounter, and whether the officer blocked the individual's path.

Considering the totality of the circumstances, the Court of Appeals concluded that a reasonable person in the place of defendant would not have felt compelled to consent to the officer's request to search. The officers did not "supervise" defendant while they were in his home. They simply followed defendant to his room after he gave them consent and defendant chose to stay in the room while the officers searched it. The officers' guns were holstered throughout the entire encounter. Until the officers found the cocaine and placed defendant under arrest, the officers did not restrain defendant in any way. There is no evidence indicating that any of the officers ever made physical contact with defendant, aside from placing him in handcuffs. There is also no showing that the officers ever made threats, used harsh language, or raised their voices at any time during the encounter. Although there were four officers present at defendant's residence, only two, Officers Ayers and Resendes, were speaking with defendant when he initially gave consent to search his room. At that time, the other two officers at the residence were in the street investigating the hit and run incident, which defendant knew to be the primary reason for the police presence at his home.

Accordingly, the Court of Appeals held that defendant's consent was given voluntarily and that the trial court did not err in denying defendant's motion



## Fourth Circuit Court of Appeals



### **Fourth Amendment's Exclusionary Rule Barred Admission of Evidence Discovered in Search of Apartment Because Officer Lied to Defendant That Officers Had Search Warrant to Search Apartment**

**United States v. Rush, \_\_\_ F.3d \_\_\_, (4th Cir. Dec. 21, 2015).**

On May 23, 2012, Ms. W. called a Charleston, West Virginia drug enforcement team to request that they remove the defendant from her apartment. She suspected that the defendant, who had been staying with her for the prior two nights, was dealing drugs from her apartment. She later gave officers the key to her apartment and signed a consent form authorizing them to search it. She told them that she was afraid of the defendant because his family had a history of violence. Officers went to the apartment, opened the door with the key, and entered with their guns drawn, yelling "police" to announce their presence. They found the defendant in a bedroom. He asked what was happening. One officer responded that the officers had a warrant to search the apartment, even though he knew that was not true. This officer testified at the suppression hearing that he lied about having a search warrant to protect Ms. W. The ensuing search discovered crack cocaine and digital scales, which defendant admitted belonged to him. Defendant was later charged with one count of knowingly and intentionally possessing with intent to distribute 28 grams or more of cocaine base in violation of federal law.

The district court held that the officer's false statement materially impaired defendant's Fourth Amendment right to object to the search, but nonetheless denied the motion to suppress. The court reasoned that the officers did not intentionally impair the defendant's rights, but instead lied about the search warrant to protect Ms. W. and, therefore, suppressing the evidence would have little deterrence on police misconduct because there was a low likelihood of future recurrences of the same behavior. The Fourth Circuit reversed the district court's ruling.

The Fourth Circuit first noted that there was no dispute that the defendant's Fourth Amendment rights were violated. The defendant had a right to object to the search as a present co-occupant of the apartment, *Georgia v. Randolph*, 547 U.S. 103 (2006), and the officers unconstitutionally denied the defendant the opportunity to object to the search by falsely stating that they had a search warrant.

The only issue therefore before the court was whether the evidence should be suppressed. The Fourth Circuit declined to apply the good faith exception because the officers did not have an objectively reasonable belief that it was lawful to conduct the search after lying about the existence of a search warrant. Courts have long taken a negative view of law enforcement misleading the public about having valid warrants. When a law enforcement officer claims authority to search a home under a warrant, he announces in effect that the occupant has no right to resist the search. As such, any "consent" given after the officer has asserted that he possess a warrant is not valid. The court rejected the government's argument that the officers acted in good

faith because they did not intend to violate the defendant's rights, as they sought only to protect Ms. W., finding that the subjective intent of the officers was irrelevant. The officers did not have an objectively reasonable belief that their conduct was lawful.