



# Police Law Bulletin



City Attorneys' Office

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## North Carolina Court of Appeals



**Defendant Had Standing to Contest Search of Building; Potential Loss of Car Keys Tied to Stolen Vehicle Was Not Exigent Circumstance Justifying Warrantless Entry and Drugs Discovered Inside Building Likewise Could Not Support Warrantless Entry; Consent Was Invalid as the Product of an Illegal Warrantless Entry; Search Warrant for Safe Based on Sight of Drugs Inside the Home Did Not Establish Probable Cause**

**State v. Jordan, \_\_\_ N.C. App. \_\_\_; 2022 NCCOA 215 (April 5, 2022).** On November 21, 2017, Charlotte-Mecklenburg police received a report of a stolen car. One of the car's co-owners told officers that he suspected his girlfriend had taken the vehicle and gave the officers the location of a house where she might be found. Around midnight, two officers went to the location in an unmarked police vehicle. The house contained a salon and a residence which were separated by sealed doors. The officers drove down a driveway on the right side of the house, passed a door, and reached a gravel parking lot in the rear. The officers saw four cars parked there, including the one which had been reported as stolen. A man, later identified as Marcel Thompson, came out of the residence and approached the car as if her were about to enter it. Thompson noticed the unmarked police car and immediately turned back towards the residence. Thompson began knocking on the door of the residence and officers heard him alerting the occupants to their presence. The officers radioed two other officers who were nearby in marked patrol vehicles. Defendant, Richard Jordan, opened the door of the residence and Thompson stepped in, but left the door open. An officer approached and asked Thompson to come out and speak with police before immediately stepping into the building through the open door. The officer noticed a safe next to the defendant and saw the defendant close the safe, lock it, and place the key in his pocket. Two more officers entered the residence. More officers arrived on scene, noticed drug paraphernalia in plain view from the doorway, and entered the residence. Officers swept the house and discovered a gun in a bedroom. At this point, officers established

that an older man inside either owned or leased the building and requested his consent to search. The man initially refused but assented when officers threatened to place everyone in handcuffs and to obtain a search warrant. The defendant informed officers that anything they found in the home was not his and that he did not live there. He denied owning the safe, but a woman who was present at the time later informed officers that the safe belonged to the defendant. Officers obtained a search warrant for the safe and discovered money, drugs, paraphernalia, and a gun inside.

The defendant was subsequently charged with trafficking, firearm by felon, habitual felon, and other offenses. He moved to suppress. The trial court denied the motion. The defendant was convicted at trial of the underlying offenses and pled guilty to having obtained habitual felon status. The trial court imposed a minimum term of 225 months in consecutive judgments. On appeal, a unanimous panel of the Court of Appeals reversed.

The defendant argued, in part, that the trial court had erred in finding that he did not have a reasonable expectation of privacy in the residence and therefore, was not entitled to challenge the search. The Court of Appeals agreed, finding that the defendant had a reasonable expectation of privacy in the building. A place need not be a person's home for one to have a legitimate expectation of privacy there. In the case at hand, defendant was one of four persons in the residence late at night. He opened the door from inside when Thompson knocked, indicating that defendant had some authority over who would be admitted into the residence. The evidence further suggests that defendant owned the safe and had permission to keep it in the residence. Although the defendant disclaimed ownership of the safe to police, which the State argued amounted to abandonment, defeating any privacy interest, the court disagreed. The defendant only disclaimed ownership after the police illegally entered the home: "When an individual discards property as the product of some illegal police activity, he will not be held to have voluntarily abandoned the property or to have necessarily lost his reasonable expectation of privacy with respect to it." Thus, the defendant had standing to challenge the police entry and search.

Second, although the officers had reasonable suspicion to speak with the man who was seen approaching the stolen car, this did not justify warrantless entry into the home. The State argued that the entry was supported by exigent circumstances, in that the keys to the stolen car and the drug paraphernalia seen inside the building could have been easily destroyed. However, there was no evidence that the first officer who approached and entered the home saw any drug paraphernalia at the time and the officer therefore could not have had a legitimate concern about its destruction. There was likewise no explanation from the State regarding the need for immediate warrantless entry to preserve the car keys evidence. Because officers had already seen the man approach the car with the keys and because possession of a stolen car may be established by constructive possession, there was no immediate need to obtain the car keys. Exigent circumstances therefore did not support the warrantless entry.

Third, the State argued that the person with a property interest in the building gave valid consent, and that this consent removed any taint of the initial illegal entry. Illegally obtained evidence may be admissible where the link between the illegal police activity and the discovery of evidence is sufficiently attenuated. Here, the taint of the illegal entry had not dissipated. Officers

obtained consent soon after entering the home, no intervening circumstances arose between the entry and the obtaining of consent, and officers purposefully and flagrantly entered the building without a warrant or probable cause. Any consent was therefore tainted by the initial police illegality and could not justify the search.

Lastly, although police did ultimately obtain a search warrant for the safe, the information contained in the search warrant application was based on information obtained by police after they were inside the building. There was no evidence that officers saw any drugs prior to entry, so any evidence obtained as a result was the fruit of the poisonous tree. Without the drug evidence, the stolen car in the parking lot, the man walking up to the stolen car, and his abrupt return from the car to the building did not supply probable cause to search the building or safe. Because the affidavit supporting the issuance of the search warrant, stripped of the facts obtained by the officers' unlawful entry into the residence, does not give rise to probable cause to search the residence for the evidence of drugs and drug paraphernalia described in the warrant, the warrant and the search conducted under it were illegal and the evidence obtained from them was fruit of the poisonous tree.

The denial of the motion to suppress was therefore reversed and the case was sent back to the trial court for further proceedings.



## Fourth Circuit Court of Appeals



### **Exigent Circumstances Supported Warrantless Acquisition of Cell Phone Location and Call Log Data**

**U.S. v. Hobbs, 24 F.4th 965 (Feb. 1, 2022).** Shortly after 7:00 p.m. on February 3, 2018, Jaquanna Foreman reported to the Baltimore County police that her former boyfriend, Erick Hobbs, had come to the back of her home, brandished a semi-automatic handgun, and used the gun to break a window in the home. He then forcibly entered the home and removed a television. Before leaving the home, he threatened to kill Foreman, her daughter, and other family members, and stated that if she contacted the police, he also would kill any responding officers.

The officers escorted Foreman and her daughter to a police station, where Foreman provided additional details about Hobbs, including a cell phone number. She also stated that Hobbs had a criminal record. Foreman informed a detective that, in addition to the handgun Hobbs displayed that night, she previously had seen him armed with assault rifles and that he was "obsessed with firearms." The detective verified that Hobbs had a violent criminal history, including convictions for robbery and attempted murder.

Based upon this information, the detective concluded that there was an extreme urgent threat to the community. Around midnight, he submitted an “exigent form” to T-Mobile, Hobbs’ cell phone provider. That request sought immediate police access without a warrant to “pings” revealing Hobbs’ cell phone location, and to call logs. As the detective prepared the form, another officer began preparing an arrest warrant. Within an hour, T-Mobile responded with the requested information. About 6 hours after the domestic incident, officers were able to locate Hobbs in his vehicle and initiated a traffic stop. Hobbs was placed under arrest. Officers recovered a loaded handgun on the ground between the driver-side door of his car and the curb. Later that night, the detective obtained a search warrant for Hobbs’ car, and 2 days later obtained a search warrant for the same cell phone information obtained earlier pursuant to the “exigent form.” The police also executed a separate search warrant for Hobbs’ residence and seized 65 pounds of ammunition.

Hobbs was charged with being a felon in possession of a firearm and ammunition. He moved to suppress evidence of the firearm. The district court denied the motion. The jury returned a guilty verdict. Hobbs appealed the district court’s denial of his suppression motion arguing that the officers’ use of the cell phone “pings” and call log records was not justified under the exigent circumstances exception to the warrant requirement. Hobbs maintained that officers lacked information that he would flee from the police and that, therefore, the exigent circumstances exception did not apply. He also argued that the officers were not facing “imminent harm,” and that Foreman and her family were no longer in danger. The Fourth Circuit Court of Appeals disagreed.

In accordance with the exigent circumstances exception, a warrantless search will be found valid under the Fourth Amendment when there is a compelling need for official action and no time to secure a warrant. Notably, however, the exigent circumstances exception is limited and narrow in application. The Supreme Court has identified only a few “emergency conditions” that may support a finding of exigent circumstances: 1. the need to pursue a fleeing suspect; 2. the need to protect individuals who are threatened with imminent harm; and 3. the need to prevent the imminent destruction of evidence. Courts ultimately evaluate the totality of the circumstances to determine whether an emergency is “enveloped by a sufficient level of urgency” to be reasonable under the Fourth Amendment.

In the present case, when Foreman recounted Hobbs’ actions to the police, she was trembling and distraught, explaining that Hobbs was armed and had threatened to kill her, her minor daughter, other family members, and any law enforcement officers who might try to apprehend him. Foreman stated that Hobbs had brandished a handgun during the incident, owned an assault rifle, and was “obsessed with firearms.” Before submitting the “exigent form” to T-Mobile, the officers confirmed that Hobbs had a violent criminal history, including convictions for robbery and attempted murder. After assessing that Foreman’s account was credible and observing the damage to her home, the officers had probable cause to conclude that Hobbs had broken into Foreman’s home and committed an assault and a theft inside. The officers were so concerned about Foreman’s safety that they escorted her to the police station, an extremely rare precaution according to the detective, and initiated constant surveillance of her residence while Hobbs was at large.

The record additionally shows the extent of the intrusion on Hobbs' privacy was reasonably confined to the exigency. The officers did not attempt to enter Hobbs' home without a warrant or to track Hobbs' movements for an extended period. And notably, Hobbs' cell phone provider was known to take several days to produce cell phone location information.

Given the facts recounted by Foreman, the Fourth Circuit Court of Appeals agreed with the district court's observation that even a brief delay in apprehending Hobbs placed many individuals at significant risk of harm. Therefore, they affirmed the denial of Hobbs' motion to suppress. In reaching this conclusion, the court emphasized that the exigent circumstances exception does not serve as a tool of convenience to be employed by law enforcement in the absence of immediate danger to persons, a fleeing suspect, or the need to prevent the imminent destruction of evidence.