Lingering and Loitering

February 8, 2019
Volume 18, Number 3

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State v. Piland

By Brian Beasley,
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Our case for today reminded me of a lyric from an older Maroon 5 song[1] titled "Back at Your Door" that goes like this: "Like the taste of the day you left, it still lingers on my breath. And the dampness of tears that left the stain where you had wept." Then the beginning of the chorus goes: "No need to cry about it, I cannot live without it, every time I wind up back at your door." In a recent N.C Court of Appeals decision, the defendant argued that officers exceeded the scope of a "knock and talk" when some of them "lingered" by the garage of the house while another officer went and knocked at the door. Also – stay tuned at the end for a bonus look at the "drug dealing within 1,000 feet of a child care center" enhancement under G.S. 90-95(e)(8).

In State v. Piland,[2] the Buncombe County[3] Anti-Crime Task Force (called "BCAT") received a tip from Buncombe County DSS that the defendant, Monroe Gordon Piland III, was growing marijuana in his home. Three BCAT officers went to Defendant's home to do a knock and talk. When they arrived, they pulled into the driveway past the defendant's car which was parked at the end closest to the street. A garage was located immediately to the left of the driveway and faced towards the driveway and perpendicular to the street. There was a path just before the garage that led to the front door. While one officer went to the door, the other two officers lingered near the garage and could smell a "very evident odor of marijuana" coming from the garage area.

The officer that went to the front door was greeted with two signs. The first sign read "inquiries" with defendant's phone number. The second sign read thusly:

> "!!! WARNING!!! IT IS MY DUTY TO INFORM YOU OF YOUR RIGHT TO WITHDRAW FROM ANY ACTION THAT WILL VIOLATE YOUR SWORN OATH TO UPHOLD THE CONSTITUTION OF THE UNITED STATES OF AMERICA AS WELL AS YOUR STATE CONSTITUTION.[4] ANYONE WHO UNDER COLOR OF LAW OR UNLAWFUL AUTHORITY DEPRIVES ANY CITIZEN OF RIGHTS PRIVILEGES OR IMMUNITIES SECURED TO THEM BY THE US CONSTITUTION IS SUBJECT TO CIVIL AND (OR) CRIMINAL PENALTIES PURSUANT TO TITLE 42 U.S.C. § 1983, § 1985, AND § 1986, AS WELL AS TITLE 18 U.S.C. § 241 AND § 242 WHICH CARRIES A FINE OF UP TO $10,000 AND/OR IMPRISONMENT FOR NOT MORE THAN TEN YEARS OR BOTH. IGNORANCE OF THE LAW IS NO EXCUSE![5] YOU HAVE BEEN OFFICIALLY NOTICED! ANY UNLAWFUL THING YOU SAY OR DO WILL BE USED AGAINST YOU!"[6]

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[1] Maroon 5 might have been on my mind after watching Adam Levine perform during halftime of last week's Super Bowl. I like Levine, but I thought this performance was very boring which was a considerable feat considering how dull the game itself was by comparison.
[2] COA 17-1337 (December 18, 2018).
[3] Here's a great story about Buncombe County: In 1820, the U.S. Congress was debating the Missouri Compromise when Congressman Felix Walker (whose district included Buncombe County, NC) rose insisting that his constituents expected him to make a speech "for Buncombe." It was later remarked that Walker's "untimely and irrelevant oration" was not just FOR Buncombe – it WAS "Buncombe." Thus, "buncombe" (later spelled "bunkum" and then shortened to "bunk") became a term for empty, nonsensical talk. This word then led to the origin of the verb "debunk."
[4] I don't have the research to back up this conclusion, but I would bet that almost all of the people who feel the need to put a warning specifically targeted to law enforcement officers on their front door are engaged in some form of criminal behavior behind that door.
[5] I find this sentence particularly ironic coming from someone who thought this cryptic warning had any legal significance.
[6] In addition to being generally unfriendly in tone, I notice that this warning doesn't particularly prevent law enforcement officers from doing anything except violating the homeowner's rights in general. Honestly, I agree – I warn you not to violate people's rights all the time. You would think that someone who went to all of this trouble would at least include "Police Keep Out" or "Do Not Knock!" or something similar.

Undaunted, the officer knocked on the door and the defendant eventually answered. When the door was opened, the officer immediately detected "the pungent odor of marijuana emanating from the interior of the residence."[7] The house was then secured while a search warrant could be obtained. A search done pursuant to that search warrant revealed various types of marijuana, drug paraphernalia, opium poppies, a pill bottle containing 170.5 hydrocodone pills, liquid morphine, and hallucinogenic mushrooms (psilocin.)

Perhaps unsurprising for a man who quotes the U.S. Code on a front porch sign, Mr. Piland chose to represent himself at trial.[8] After being convicted of various drug offenses including possession of more than 28 grams or more of opium, he was sentenced to an active prison term of 225 to 282 months. On appeal, as mentioned previously, Piland's appellate attorney[9] argued that the officers exceeded the scope of a permissible knock and talk by lingering in the area of the garage.

As you know, the United States Supreme Court has held that there exists an "implied license" for visitors to approach a residence by the front path, knock promptly, wait briefly to be received and then (absent invitation to linger longer) leave. Therefore, a police officer not armed with a warrant may approach a home and knock, precisely because that is no more than any private citizen might do.[10] Interestingly, although the Court stated in Florida v. Jardines[11] that "complying with the terms of that traditional invitation does not require fine-grained legal knowledge; it is generally managed without incident by the Nation's Girl Scouts and trick-or-treaters," we have recently had several cases where officers exceeded the permissible scope afforded by the knock and talk:

1. Florida v. Jardines: Officers may not bring drug sniffing K9 to door with them during knock and talk.
2. State v. Huddy:[12] Officer must go to the front door and not a side or back door even when it appears the front door is not used frequently and has cobwebs on it.
3. State v. Stanley:[13] Officer must go to front door even if he or she possesses specific knowledge that many visitors go to a different door. The question an officer should ask is "Which door would a respectful visitor unfamiliar with the property believe was the appropriate door to go to solicit business or greet a resident?"

Applying this doctrine to the facts of the present case, the N.C. Court of Appeals stated that the officers were lawfully present in the portion of the defendant's driveway where they parked to perform the knock and talk. Since a private citizen wishing to knock on the defendant's door would reasonably drive into the driveway, walk between the car and the path next to the garage and down the path to the front door, the officers were permitted to do the same. The fact that some officers stayed in the area of the garage without approaching the door while one officer went up and knocked did not exceed the scope of the knock and talk.

BONUS LEGAL DISCUSSION AND ADVICE!!

Fortunately for you, dear reader, the court also dealt with another issue in this case that you need to know about.[14] Sometime after bringing the initial charges but before trial, it was determined that Mr. Piland's home was 452 feet from a home in which the homeowner ran a licensed "child care FACILITY." As a result, they brought charges for manufacturing marijuana within 1,000 feet of a child care facility and possessing marijuana with the intent to sell and deliver within 1,000 feet of a child care FACILITY under G.S. 90-95(e)(8).

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[7] For non-LEOs that might read this, "detected an odor of marijuana emanating from the residence" means that the officer smelled weed inside the house.

[8] "The man who is his own lawyer has a fool for a client" is often attributed to Abraham Lincoln but was actually a proverb from before Lincoln's time.

[9] Apparently receiving a sentence of roughly 19-23 years was enough to make Piland realize he might need professional legal representation.

[10] Kentucky v. King, 563 U.S. 452 (2011).

[11] 569 U.S. 1 (2013).

[12] 799 S.E.2d 650 (N.C. Ct. App. 2017).

[13] 2018 N.C. App. LEXIS 482 (N.C. Ct. App. 2018).

[14] Try to contain your obvious excitement, but if you feel the need to rush out and buy a lottery ticket, I understand. This is clearly your lucky day!

Unfortunately, G.S. 90-95(e)(8) only applies to child care CENTERS and not all child care FACILITIES. This comes from G.S. 110-86(3) which shows us that there are at least two different types of child care "facilities:"

> ***Child care facility***. - *Includes child care centers, family child care homes, and any other child care arrangement not excluded by G.S. 110-86(2), that provides child care, regardless of the time of day, wherever operated, and whether or not operated for profit.*
>
> *a.* ***A child care center*** *is an arrangement where, at any one time, there are three or more preschool-age children or nine or more school-age children receiving child care.*
>
> *b.* *A family* ***child care home*** *is a child care arrangement located in a residence where, at any one time, more than two children, but less than nine children, receive child care.*

The child care licensing consultant for the N.C. Division of Child Development and Early Education that testified at trial said that the facility in question was a child care "facility" and specifically a child care "home" but never testified that it was a child care "center." She stated that the owner was licensed to care for up to five pre-schoolers and three school-agers" but never testified as to how many children were actually there at any one time. Because of this and the fact that this enhancement only applies to child care CENTERS, those charges should have been dismissed.

So, in cases where you want to charge the G.S. 90-95(e)(8) enhancement for child care centers, make sure that you can show there are actually three or more preschoolers or nine or more school-aged children being cared for there. This statute also applies within 1,000 feet of an elementary or secondary school or a public park, of course, but those areas don't have any tricky or complicated definitions to worry about. Finally, just so we're clear, remember that it's okay to linger near a garage but you might run into trouble if you try to linger too much around a child care facility.

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ABOUT THE AUTHOR: Brian Beasley is the Legal Advisor for the High Point Police Department. This legal update is provided free of charge to the SR Webpage in the hopes that officers across the state would be able to benefit from it. Brian is not an attorney with Smith Rodgers, PLLC but he thinks they're pretty cool guys.

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