

# One Man's Trash...

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## United States v. Lyles

By Brian Beasley,  
Legal Adviser, High Point PD



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When the calendar flips to another year and it's time to take down the Christmas decorations, I usually find myself cleaning out the garage and getting rid of a lot of items I don't need anymore.<sup>1</sup> As I fill up the appropriate trash receptacles and roll them out to the curb for pickup, a magical Fourth Amendment transformation takes place. When I begin my journey from my garage with the garbage toter, the contents of said toter are protected by the Fourth Amendment and police would ordinarily need a search warrant to look through all the treasures I am throwing away. However, when I set the toter at the curb and walk back into my house, the toter loses that protection and the police may rummage through the garbage<sup>2</sup> to their heart's content without the need to get a warrant at all.

Our case today looks at just such a search conducted by law enforcement. In United States v. Lyles,<sup>3</sup> the Fourth Circuit examined the boundaries of when evidence found in the trash may be used to justify a general search of the house from which the garbage was discarded. Defendant Lyles' phone number was found in a phone belonging to a homicide victim. Police in Maryland believed that Lyles might be relevant to the homicide investigation but didn't have any concrete evidence, so they pulled and searched four trash bags found at a curb near Lyle's home.<sup>4</sup>

Inside the trash, they found "three unknown type plant stems, three empty packs of rolling papers," and some mail addressed to the residence where Lyle lived. The plant stems were tested and came back positive for marijuana. Based on this evidence, the officers applied for and received a search warrant to search the home for "evidence of possession of controlled substances, possession with intent to distribute controlled substances, and money laundering." The application for the search warrant did not mention the homicide investigation or identify a homeowner or the defendant.

The search warrant authorized the officers to search the defendant's home and "any and all persons suspected to be involved in said illegal activities." Further, it authorized the seizure of a broad range of possible items, including cell phones, jewelry, records, diaries, and firearms. When police executed the warrant, they found four handguns, ammunition, marijuana, and drug paraphernalia inside. The defendant was charged with possessing the firearms as a convicted felon. He filed a motion to suppress the evidence obtained from the search and argued that the warrant was not supported by probable cause. The federal district court in Maryland agreed with the defendant and the government appealed to the Fourth Circuit.

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<sup>1</sup> Many of them were never needed in the first place, but that's another story. On a related note, look for my best-selling novel coming soon entitled "I Married a Hoarder."

<sup>2</sup> This is another aspect of police work that we don't put on the recruiting brochure. "Come join us and catch bad guys by going through their garbage!" Stay tuned for some random garbage facts.

<sup>3</sup> No. 17-4787 (4<sup>th</sup> Circuit, 14 December 2018).

<sup>4</sup> It takes 500 years for average sized plastic water bottles to fully decompose in a landfill and 4,000 years for a glass bottle to fully decompose.

The U.S. Supreme Court ruled long ago in *California v. Greenwood*<sup>5</sup> that people do not have a reasonable expectation of privacy in garbage that they have placed for collection at the curb in front of their house. Their reasoning was that garbage left near the street is readily accessible to scavengers and other members of the public and that people are aware when they place their trash for pickup by sanitation workers that those people (and others) might sort through the garbage.<sup>6</sup> North Carolina courts and the Fourth Circuit have followed suit and it is pretty well-established that evidence from trash pulls can be used to support a search warrant for the house the trash came from.<sup>7</sup>

However, the Fourth Circuit had two problems with the search warrant that was issued in this case. First, the court ruled that the minimal amount of evidence found in the trash pull was not sufficient to authorize a search of the house, stating “it is anything but clear that a scintilla<sup>8</sup> of marijuana residue or hint of marijuana use in a trash can should support a sweeping search of a residence.” The government argued that the three empty packs of rolling papers, three marijuana stems, and a piece of mail addressed to the home gave probable cause to believe that more drugs would be found in the home. However, the court pointed out that this was only a single trash pull<sup>9</sup> which provided no information about recurrent or ongoing drug activity. In addition, the three marijuana stems found gave no indication of how long ago marijuana may have been consumed inside the home.

Even more concerning to the court was the breadth of the search allowed by the warrant. The warrant allowed for the seizure of all of the following:

1. *Marijuana and any and all controlled dangerous substances, in whatever form, condition or however packaged, and to seize such paraphernalia that is used in the administration, preparation, and distribution or in conjunction with said illegal activities.*
2. *Any books, records, and documents relating to the acquisition, possession or distribution of said controlled dangerous substances.*
3. *Any and all safes, locked boxes and receptacles that could contain any other items described in this warrant and to seize all contents which pertain to the said illegal activities.*
4. *Any and all indicia of occupancy, residency, rental, and/or ownership of the premises described herein including, but not limited to, utility and telephone bills, canceled envelopes, rental, purchase or lease agreements, keys, photographs, clothing and personal toiletries.*
5. *To search any and all persons suspected to be involved in said illegal activities.*
6. *To view all non-commercially produced video recordings, digital video discs, and any other analog or digital media.*
7. *Any electronic equipment, such as computers, external hard drives, facsimile machines, digital pagers, cellular telephones, answering machines, surveillance equipment, and related manuals used to generate, record, and/or store the information described in this exhibit, and the contents therein.<sup>10</sup> Additionally, computer software, tapes and discs, audio and video tapes and/or discs, and the contents therein, containing the information generated by the aforementioned electronic equipment and used in the aforementioned violations relating to the transportation, distribution, ordering and purchasing of controlled dangerous substances. Due to files that are password and/or encryption protected and due to the extensive time involved in data recovery, this search and seizure warrant authorizes the removal and examination of such electronic devices in a laboratory setting by trained personnel.*

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<sup>5</sup> 486 U.S. 35 (1988).

<sup>6</sup> An officer may not, however, enter into the curtilage to take or examine garbage located at or near the home and not out for collection. *State v. Rhodes*, 121 N.C. App. 208 (2002).

<sup>7</sup> A single American consumes roughly two trees annually in paper products. On average, Americans use 650 pounds of paper each year each.

<sup>8</sup> I love this word meaning “a small or trace amount.” It’s fun to say and it comes from the Latin word for “spark” or “flash.” It’s one of those words you say to sound intelligent, as long as you don’t ruin it by explaining where it comes from.

<sup>9</sup> The majority of the 4 million tons of junk mail that Americans receive annually ends up in landfills. The energy used to create and distribute junk mail in the U.S. for one day could heat 250,000 homes.

<sup>10</sup> Welcome back to the early 1990’s with pagers and answering machines. On the other hand, I just searched Amazon and you can still buy pagers and answering machines, so somebody must still be using them.

8. *Any and all appointment books, diaries, calendars, financial records, work schedules, computer records, or other documents that detail the aforementioned violations or individuals involved in the aforementioned violations.*
9. *Any and all financial documents that are related to the placement of monies used in the aforementioned violations.*
10. *Any and all photographs, including still photos, negatives, video recordings, films, undeveloped film<sup>11</sup>, external memory sticks, cards and discs and the content therein, slides, in particular photographs of co-conspirators, of assets and/or controlled dangerous substances.*
11. *Currency, precious metals, jewelry, and financial instruments, including stocks and bonds.*
12. *Firearms, including but not limited to: handguns, pistols, revolvers, rifles, shotguns, machine guns, and any and all other weapons, as well as ammunition.*
13. *To search any and all vehicles parked on or about the property.*

The court called this an “astoundingly broad warrant” which was based on the discovery of three marijuana stems in the trash.<sup>12</sup> Because of the minimal evidence found in the trash and the overbroad search warrant, the court ruled that ultimately, such a search was not reasonable under the Fourth Amendment. Therefore, they agreed that the search warrant should not have issued and concluded that the evidence seized must be suppressed.

Here are some of my thoughts (in no particular order):

1. It seems as though the officers here rushed their investigation a little. That may have been due to the fact that they were investigating a homicide and didn't have time to wait. But it certainly would have helped their case to do more than one trash pull and maybe some surveillance to gather additional evidence to support a search of the house. If there is one main takeaway from this case, it is that evidence of a small amount of drug use and no evidence of drug dealing may not be enough to support a search warrant.
2. After Christmas is over, is there really any point to winter?
3. The officers may have also suffered from a common malady known as “cut and paste disease.” There is nothing wrong with using a “go-by” standard search warrant to help make sure that you include everything you need to in your case. However, be careful about simply cutting and pasting large portions of the application that may not apply to your situation. Read through the entire warrant when you are done and see if there is anything in there that doesn't make sense or is too broad for what you are searching for. There was really no basis for seizing jewelry in this house, for instance, and I don't think the officer was really interested in seizing a pager or an answering machine.
4. How is it possible that I have been sucked back into caring about UNC football again with Mack Brown's return? I'm Charlie Brown and UNC football is Lucy pulling away the football every time I run up to kick it. On the bright side, if UNC basketball doesn't quit turning the ball over 20 plus times a game, I will be dead from a stress-related illness long before football season gets here.
5. Officers should always have a supervisor (ideally one with investigative experience) review their search warrant before application is made. They can give an objective second opinion on whether the warrant makes sense and whether it has the proper amount of support.

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<sup>11</sup> Are people still hanging on to negatives and undeveloped film also? Most of you probably can't even remember having to take a picture with a camera and wait several weeks before seeing what the actual picture looked like. You would forget what pictures you had taken until you had the film developed and it was all a big surprise. By the way, the amount of plastic film and wrap produced annually could shrink-wrap the state of Texas.

<sup>12</sup> Each year, the United States throws out the amount of office paper it would take to build a 12-foot wall from Los Angeles to New York City. (I don't know why, but this strikes me as an extremely relevant statistic right now.)

6. When will this “Bird Box” thing on Netflix run its course and be forgotten? I’m so sick of hearing about it that I’ve contemplated not only wearing my own blindfold but also ear plugs. I’m pretty sure this will limit my ability to give quality legal advice, however.

Speaking of garbage, thank you for reading these legal updates and putting up with my sad attempts at humor. Please recycle this document appropriately.

**Brian Beasley  
Police Attorney  
High Point Police Department**

**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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