



DWI & Officers Outside Jurisdiction & violations of mutual aid agreements

by: Ike Avery, TSRP

DWI arrests by law enforcement officers may be challenged for being outside the officers territorial or subject matter jurisdiction. For example, a local officer participates in a “Booze it and Lose it” checkpoint located outside his one mile jurisdiction and the defense attorney argues there was no mutual aid agreement. The other common scenario is an officer is traveling outside his or her jurisdiction and runs up on a drunk who is endangering others. Should the DWI charge be dismissed? The answer is no.

The Fourth Amendment requires that a law enforcement officer have “probable cause” to arrest a person for any crime. The Constitution does not limit what offenses a law enforcement officer can arrest for or where an officer can arrest. The only requirement is probable cause. Under North Carolina law, an officer must have both “subject matter” and “territorial” jurisdiction to arrest a person. Subject matter is the types of crimes for which an officer can arrest. Territorial jurisdiction is where the officer can arrest. State law enforcement officers, such as trooper, SBI agents and wildlife officers have statewide territorial jurisdiction so they can arrest any where in North Carolina. GS 15A-402.

The “subject matter” jurisdiction depends upon the mission of their department. Troopers can arrest for all traffic offenses plus any crime of violence and any crime committed in their presence. GS 20-188. Local officers and deputies have general subject matter jurisdiction. GS 160A-285(city police); deputies (common law authority). Other officers have limited subject matter jurisdiction. Wildlife Officer (known as a “protector” in the law) can arrest for hunting and fishing violations plus “when the protector has probable cause to believe that person has committed a criminal offense in his presence and at the time of the violation the protector is engaged in the enforcement of laws otherwise in his jurisdiction.” GS 113-136(d1). Marine Fisheries Officers, GS 113-126(d1); Probation and Parole Officers, GS 15-205; 15A-1376(a).

Territorial jurisdiction is set forth in G.S. 15A-402 and is discussed in Bob Farb’s book “Arrest, Search and Investigation in North Carolina.” State officers have statewide territorial jurisdiction, city officers have jurisdiction within one mile of the nearest point to the city limits, county officers have jurisdiction within the county. There are other authorizations that are too numerous to mention here.

Arresting a suspect for DWI when the officer is outside his subject matter or territorial jurisdiction does not require the DWI to be dismissed. A judge is authorized to dismiss a criminal case or suppress evidence for certain mistakes by law enforcement officers. First, if the officer “flagrantly” violates a constitutional right of a defendant who is “irreparably prejudiced,” the judge can dismiss the criminal charge. GS 15A-954(a)(4). An officer needs only probable cause to arrest which complies with the Constitution. It is not a Constitutional violation to arrest for DWI outside either territorial or subject matter jurisdiction. *St v.Gwyn, 103 NC App 369, rev. den. 330 N.C. 199 (1991)* (Defendant arrested by NC officer in Virginia - motion to suppress properly denied)

In order to prevail on a motion to suppress, the Defendant must show that the constitution requires exclusion. GS 15A-974. *St v Gwyn*, holds that arresting even outside the State of North Carolina does not allow exclusion. The second basis for suppressing evidence is if the evidence was obtained as a result of a “substantial violation of Chapter 15A. GS 15A-974. Chapter 15A only requires an officer to have probable cause to arrest. There is no basis to suppress the evidence for an officer who exceeds his subject matter jurisdiction, because it would not be a violation of Chapter 15A. The issue of an arrest of an officer outside his territorial jurisdiction has been found by the NC appellate courts NOT to allow suppression of evidence or dismissal of criminal charges. Evidence is not to be suppressed when a city police officer arrests someone outside his territorial jurisdiction. *St. v. Williams, 31 NC App. 237 (1976)*, even for DWI, *St. v. Pearson, 131 N.C. App. 315 (1998)*. As long as the stop and arrest are not unconstitutional, the evidence should not be suppressed or the charges dismissed. *St. v. Harris, 43 N.C. App. 346 (1979)*. Would the judge want an officer to ignore an Amber Alert and allow a kidnapped child to be taken because he is outside his jurisdiction? Would the judge dismiss these charges? The rules for DWI are the same.

Present your Probable Cause; All of it!

by: Scott Ingram, Guilford Co. Sheriffs office

“Your Honor, I stopped him for speeding and smelled the odor of alcohol coming from him. He had red-glassy eyes and slurred speech. He performed poorly during the SFST’s that I gave him so I arrested him for DWI. He took the Intoxilyzer test but only blew a .07 BrAC.” That was the probable cause that I recently witnessed a fellow officer give to the magistrate. You should have seen the look on that officers’ face when the magistrate found “No Probable Cause (PC)” for an .07 AC DWI arrest. That officer was bold enough to question the magistrate’s decision. Unfortunately I had to agree with the magistrate on this one based on the officer’s testimony. I spoke to that officer after he left the magistrate’s office about his arrest. It seems that the officer had a lot more evidence of impairment than he shared with the magistrate including evidence of drug impairment. If he would have presented all of his PC for the arrest from the first observation of the vehicle to the moment he walked up to the magistrate’s window, there is no doubt in my mind that PC would have been found. More times than I care to mention that has been the presentation that many Law Enforcement officers have presented to the magistrate after arresting impaired drivers. And yes, I have even done the exact same thing in my career. But there is a deeper problem that law enforcement officers are seeing more and more lately: drivers impaired on more than just alcohol. So, when law enforcement arrests that impaired driver for more than just alcohol impairment, they fail to present all of the evidence that we have gathered.

To contrast the previously mention arrest, I had to present my Probable Cause right after that officer with my own arrest of a defendant who blew a .06 BAC on the Intox EC/IR II. Needless to say I was a little concerned that the magistrate may find “no P.C.” on my arrest. But, I also knew that the driver was impaired on cannabis as well as the

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most common CNS depressant, alcohol. So, I took a deep breath and started at the beginning. I started with the bad driving that I observed prior to and during my stop. I presented my evidence of the personal contact and the signs of impairment on the Standardized Field Sobriety Tests. I included the defendant’s statements and finally wrapped up my presentation with my opinion as an experienced law enforcement officer that the driver was impaired even with a .06 BAC, all in about 10 minutes. That was a huge contrast to the “Drive-Thru window” approach that many officers present at the magistrate’s office. I am fully aware that there are still some magistrates out there in your counties that would still find “no P.C.” with a wheel barrel full of evidence. But let’s not help them by not presenting our case. Remember, it is good practice for presenting your case to the judge in court.

Recently, I was fortunate enough to help teach a DWI class to a group of magistrates in Chapel Hill. I got to talk to several of those attending during the breaks and at lunch and found the same comment from most of them. “If more officers would present more probable cause, then I might find P.C. for the arrest more often.” May we all take that statement to heart as we try to make our streets safer with each impaired driver arrest.

Continuous Alcohol Monitoring (CAM) A Tool for Monitoring Alcohol-Related Offenders

by: Nash Roberts, Marketing & Operations, Rehabilitations Support Services, LLC

According to the NC Department of Corrections, only 12 percent of North Carolina’s DWI sentences mandate abstinence from alcohol consumption as a term of probation. This is likely due to the well-recognized limitations of traditional random testing for alcohol. Since the human body metabolizes consumed alcohol within hours, random testing does not consistently identify each drinking event.

CAM technology now enables our courts to reliably mandate abstinence from alcohol as a term of pretrial release or probation and to verify whether or not the offender remains compliant. The result is safer communities and improved offender rehabilitation. Recognizing the extent to which alcohol abuse is a contributing factor to crimes such as DWI, child abuse and domestic violence, the North Carolina Conference of District Attorneys (NCCDA) endorsed CAM in late 2008 for use in the adjudication of alcohol-related crimes.

The North Carolina General Statutes define CAM technology as “a device that is worn by a person that can detect, monitor, record, and report the amount of alcohol within the wearer’s system over a continuous, 24-hour, daily basis.” CAM is now available to all North Carolina courts through the DOC-approved SCRAM™ device, which is worn on the offender’s ankle 24/7 and monitors the offender’s perspiration for alcohol every 30 minutes. The DOC has also endorsed CAM use by the courts for all forms of crime where alcohol is a contributing factor.

Technologies like CAM reflect alternatives that judges and prosecutors have for imposing behavioral based sanctions, instead of traditional location based sanctions such as jail or house arrest. In a recent study conducted by the National Center for State Courts and published in Court Review, a publication of the American Judges Association, researchers Flango and Cheesman state, “The ever-increasing cost of incarceration and the lack of success of traditional sentencing sanctions have caused courts to explore other alternatives.” They further highlight the value of CAM technology, calling it “a particularly promising alternative because it not only deters recidivism while in operation but, when used in combination with treatment, also allows for the possibility of changing offender behavior.”

To date, more than 90 North Carolina judges have adjudicated alcohol-involved cases using CAM. CAM technology has been used in 30 judicial districts to monitor alcohol involved offenders. The technology has been used in a range of applications across a broad spectrum of alcohol related crimes. For DWI and other alcohol related offenses, CAM is used to grant pretrial release and as a condition of probation or work release. It has been used in domestic disputes to prove whether or not a parent or guardian with a history of alcohol abuse can remain abstinent in order to gain custody of a child or receive visitation rights. It is also used in a treatment setting as a measure for enhancing the wearer’s accountability to his own recovery. Nationwide, this technology has been used in over 85,000 cases in 1,800 jurisdictions across 46 states.

Rehabilitation Support Services (RSS) is the provider for SCRAM technology in North Carolina. Based in Brevard, RSS has local field offices serving courts throughout the state. If you have questions about CAM or ways that you can utilize this technology to make offenders more accountable and your communities safer, RSS can be reached at 866-273-4223 or by email at cbentley@rehabsupport.org.

About the Author

Nash Roberts is an alumnus of the University of North Carolina at Chapel Hill. Based in Carrboro, he provides CAM technology and services to court communities throughout Eastern and Central North Carolina.

Hall of Fame

- ADA Michael Neece of District 27A qualified Trp. Burgess of NCSHP, David Mocanu of Lincoln County PD & Sgt Keith McCabe of Gastonia City PD as experts in DWI Detection, DRE & in the administration of SFSTs.
- ADA Nickolas Yates of the 10th district qualified Senior Officer Peter G Manukas, Raleigh PD as an expert in HGN & DRE;
- ADA Aleta R. Ballard qualified Trooper Michael Dorsey, NCSHP as an expert in HGN

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