North Carolina Court of Appeals Rules That Statutory Exclusionary Rule Does Not Bar Admission of Evidence Seized Pursuant to a Search Warrant Based on Allegedly Vague and Inaccurate Inventory of Seized Items

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The Fourth Amendment's exclusionary rule generally bars the introduction of evidence seized in violation of its provisions. State constitutions, statutes, and rules also may bar the introduction of evidence even when the Fourth Amendment's exclusionary rule does not.

The preparation and service of an inventory of items taken during the execution of a search warrant is not likely a Fourth Amendment requirement, and thus the exclusionary rule would be inapplicable to inventory issues. Cf. State v. Dobbins, 306 N.C. 342 (1982) (a search warrant's return not being sworn was not a constitutional violation).

On the other hand, G.S. 15A-974 bars under some circumstances the introduction of evidence obtained in violation of Chapter 15A of the General Statutes. Evidence is to be excluded if: (1) it is obtained as a result of a "substantial" violation of Chapter 15A, and (2) the officer committing the violation did not act under an objectively reasonable good faith belief that his or her actions were lawful.

Last week, the North Carolina Court of Appeals in State v. Downey (September 6, 2016) considered a defendant's argument that G.S. 15A-974 should have barred evidence seized pursuant to a search warrant because an officer allegedly did not comply with G.S. 15A-254, which essentially requires the completion an inventory of seized items and leaving a copy in the manner set out in the statute. The *Downey* ruling is the topic of this post.

State v. Downey. Officers executed a search warrant to search the defendant's residence for drugs based on a confidential informant's controlled buy there earlier on the same day. An officer wrote on notebook paper a general description of each the 17 items seized. After the defendant was arrested and taken to the police station, he was given an inventory form (presumably AOC-CR-206) with the officer's handwritten notes attached. The defendant never signed the form's acknowledgement of receipt.

The trial court denied the defendant's motion to suppress, which was based on the argument that the officer's inventory list attached to the inventory form violated G.S. 15A-254 because it was unlawfully vague and inaccurate in describing the items seized. The defendant was convicted of various drug offenses and appealed to the court of appeals.

G.S. 15A-254 provides that when seizing items pursuant to a search warrant, an officer must write and sign a receipt itemizing the items taken and containing the name of the court that issued the warrant. It also specifies to whom or the place where the receipt must be delivered. (As the court noted in *Downey*, although AOC-CR-206 includes a block for signature of the person who receives the inventory from an officer, G.S. 15A-254 does not require a recipient's signature.)

The defendant argued on appeal that the inventory in this case did not meet the level of descriptiveness required by

the statute because it was vague and inaccurate. However, the court declined to consider the defendant's argument about how to interpret the statute, because it concluded under G.S. 15A-974 that the evidence was not obtained "as a result of" a violation of G.S. 15A-254. The court reached that conclusion after reviewing case law, which is briefly set out below.

The court, citing State v. Person, 356 N.C. 22 (2002), noted that the "as a result of" requirement for the exclusion of evidence means, at a minimum, that the evidence was obtained as a consequence of the officer's unlawful conduct and would not have been obtained but for the officer's unlawful conduct. Thus, the defendant (Downey) must show that the evidence seized during the search warrant's execution would not have been obtained *but for* the alleged violation of the inventory statute, which the defendant failed to show. Construing the inventory statute and other statutes providing individual rights incident to the search and seizure of property, the court concluded that the inventory statute, G.S. 15A-254, only applies *after* evidence has been obtained and does not implicate the right to be free from unreasonable search and seizures. In turn, because evidence cannot be obtained "as a result of" a violation of G.S. 15A-254, the statutory exclusionary rule in G.S. 15A-974 is inapplicable to alleged or actual G.S. 15A-254 violations. The court stated that it does not speculate about what recourse may be available when such a violation occurs (although it is not clear to me what exclusionary remedy exists).

Comments. Officers should remember that even when there is no exclusionary remedy for a particular statutory violation, they are nonetheless required to comply with a statute's requirements. See, for example, G.S. 14-230 (willful failure to discharge duties of office).

Related references. Jeff Welty wrote a blog post here on returns and inventories for computer search warrants. I wrote a blog post here on 2011 North Carolina legislation that amended G.S. 15A-974 to include a good faith provision. Text and case summaries on G.S. 15A-974 are available on pages 89-90, 362, and 486-89 of Arrest, Search, and Investigation in North Carolina (4th ed. 2011). A new edition of this book will be available this winter and possibly as early as December 2016.