recognizance to appear at the July 14, 1975, Session of the Superior Court of Wake County, failed to appear.
ORDER: You are commanded to arrest the person named above and bring him before this session of this court. Should you be unable to execute this process before the end of this session, you are directed to:

X secure his/her appearance at the next session by taking bail in the sum of $5,000.00, or in default thereof, by committing him/her to the county jail of this county.
commit him/her to the county jail of this county to be held without bail."

Legal Periodicals. — For article on probation and parole revocation procedures and related issues, see 13 Wake Forest L. Rev. 5 (1977).

CASE NOTES

Order of Arrest Referring to Attached Affidavit or Complaint. — When the order of arrest referred to attached affidavit or complaint, the affidavit or complaint became a part of the warrant of arrest. State v. Teasley, 9 N.C. App. 477, 176 S.E.2d 838, appeal dismissed, 277 N.C. 459, 177 S.E.2d 900 (1970), decided under prior law.

New Bond. — Additional $30,000 bond and second arrest order that were issued after defendant had been released on $1,000 bond were not improper as the additional bond was not a modification to the prior bond, but was a new bond for a new felony indictment. State v. Hunt, 123 N.C. App. 762, 475 S.E.2d 722 (1996).

Applied in State v. Koberlein, 60 N.C. App. 356, 299 S.E.2d 444 (1983); State v. Koberlein, 309 N.C. 601, 308 S.E.2d 442 (1983).

Cited in Cox v. Cox, 92 N.C. App. 702, 376 S.E.2d 13 (1989).

Article 18.

§§ 15A-306 through 15A-353: Reserved for future codification purposes.

Article 19.

§§ 15A-354 through 15A-400: Reserved for future codification purposes.

SUBCHAPTER IV. ARREST.

Article 20.

Arrest.

§ 15A-401. Arrest by law-enforcement officer.

(a) Arrest by Officer Pursuant to a Warrant. —
(1) Warrant in Possession of Officer. — An officer having a warrant for arrest in his possession may arrest the person named or described therein at any time and at any place within the officer's territorial jurisdiction.
(2) Warrant Not in Possession of Officer. — An officer who has knowledge that a warrant for arrest has been issued and

has not been executed, but who does not have the warrant in his possession, may arrest the person named therein at any time. The officer must inform the person arrested that the warrant has been issued and serve the warrant upon him as soon as possible. This subdivision applies even though the arrest process has been returned to the clerk under G.S. 15A-301.

(b) Arrest by Officer Without a Warrant. —

(1) Offense in Presence of Officer. — An officer may arrest without a warrant any person who the officer has probable cause to believe has committed a criminal offense in the officer's presence.

(2) Offense Out of Presence of Officer. — An officer may arrest without a warrant any person who the officer has probable cause to believe:

a. Has committed a felony; or

b. Has committed a misdemeanor, and:

1. Will not be apprehended unless immediately arrested, or

2. May cause physical injury to himself or others, or damage to property unless immediately arrested; or

c. Has committed a misdemeanor under G.S. 14-72.1, 14-134.3, 20-138.1, or 20-138.2; or

d. Has committed a misdemeanor under G.S. 14-33(a), 14-33(c)(1), or 14-33(c)(2) when the offense was committed by a person who is the spouse or former spouse of the alleged victim or by a person with whom the alleged victim is living or has lived as if married.

(3) Repealed by Session Laws 1991, c. 150.

(c) How Arrest Made. —

(1) An arrest is complete when:

a. The person submits to the control of the arresting officer who has indicated his intention to arrest, or

b. The arresting officer, with intent to make an arrest, takes a person into custody by the use of physical force.

(2) Upon making an arrest, a law-enforcement officer must:

a. Identify himself as a law-enforcement officer unless his identity is otherwise apparent,

b. Inform the arrested person that he is under arrest, and

c. As promptly as is reasonable under the circumstances, inform the arrested person of the cause of the arrest, unless the cause appears to be evident.

(d) Use of Force in Arrest. —

(1) Subject to the provisions of subdivision (2), a law-enforcement officer is justified in using force upon another person when and to the extent that he reasonably believes it necessary:

a. To prevent the escape from custody or to effect an arrest of a person who he reasonably believes has committed a criminal offense, unless he knows that the arrest is unauthorized; or

b. To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect an arrest or while preventing or attempting to prevent an escape.

(2) A law-enforcement officer is justified in using deadly physical force upon another person for a purpose specified in subdivision (1) of this subsection only when it is or appears to be reasonably necessary thereby:

a. To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force;

b. To effect an arrest or to prevent the escape from custody of a person who he reasonably believes is attempting to escape by means of a deadly weapon, or who by his conduct or any other means indicates that he presents an imminent threat of death or serious physical injury to others unless apprehended without delay; or

c. To prevent the escape of a person from custody imposed upon him as a result of conviction for a felony.

Nothing in this subdivision constitutes justification for willful, malicious or criminally negligent conduct by any person which injures or endangers any person or property, nor shall it be construed to excuse or justify the use of unreasonable or excessive force.

(e) Entry on Private Premises or Vehicle; Use of Force. —

(1) A law-enforcement officer may enter private premises or a vehicle to effect an arrest when:

a. The officer has in his possession a warrant or order for the arrest of a person or is authorized to arrest a person without a warrant or order having been issued,

b. The officer has reasonable cause to believe the person to be arrested is present, and

c. The officer has given, or made reasonable effort to give, notice of his authority and purpose to an occupant thereof, unless there is reasonable cause to believe that the giving of such notice would present a clear danger to human life.

(2) The law-enforcement officer may use force to enter the premises or vehicle if he reasonably believes that admittance is being denied or unreasonably delayed, or if he is authorized under subsection (e)(1)c to enter without giving notice of his authority and purpose.

(f) Use of Deadly Weapon or Deadly Force to Resist Arrest. —

(1) A person is not justified in using a deadly weapon or deadly force to resist an arrest by a law-enforcement officer using reasonable force, when the person knows or has reason to know that the officer is a law-enforcement officer and that the officer is effecting or attempting to effect an arrest.

(2) The fact that the arrest was not authorized under this section is no defense to an otherwise valid criminal charge arising out of the use of such deadly weapon or deadly force.

(3) Nothing contained in this subsection (f) shall be construed to excuse or justify the unreasonable or excessive force by an officer in effecting an arrest. Nothing contained in this subsection (f) shall be construed to bar or limit any civil action arising out of an arrest not authorized by this Article. (1868-9, c. 178, subch. 1, ss. 3, 5; Code, ss. 1126, 1128; Rev., ss. 3178, 3180; C.S., ss. 4544, 4546; 1955, c. 58; 1973, c. 1286, s. 1; 1979, c. 561, s. 3; c. 725, s. 4; 1983, c. 762, s. 1; 1985, c. 548; 1991, c. 150, s. 1; 1995, c. 506, s. 10; 1997-456, s. 3.)

OFFICIAL COMMENTARY

(a) Arrest by law-enforcement officer. As has been true, a law-enforcement officer may arrest at any place with an arrest warrant in his possession. The former rule is modified by providing that when an officer knows that there is a warrant but does not have it in his possession, the officer is permitted to arrest pursuant to the warrant and serve the warrant as soon as possible.

(b) Arrest by officer without warrant. In addition to the usual authorization to arrest without a warrant for crimes committed in his presence, the officer is given broadened authority to arrest for crimes committed out of his presence when he has probable cause to make the arrest. North Carolina law has limited arrest without a warrant for crimes not committed in the presence of the officer to felonies, when there is reasonable ground to believe that the person will evade arrest if not immediately taken into custody. Here the authority is broadened, as is the case in a number of other states, to include felonies generally and misdemeanors when there exists one of the "emergency" situations of danger of escape or danger of injury or property damage.

In connection with this expanded arrest authority, it should be noted that "peace warrant" provisions have been repealed and a new crime of "communicating threats" has been created in § 14-277.1. This combination should be more effective in dealing with situations in which peace warrants have been used.

(c) How arrest made. For convenience the existing law of North Carolina as to when an arrest is complete is codified and states more fully the requirements of notification to the person arrested (compare the former § 15-47).

(d) Use of force in arrest. This section codifies an area not heretofore mentioned in our statutes. While the officer is authorized to use force to the extent that he reasonably believes it necessary to effect an arrest, prevent an escape, or defend himself or another from imminent physical force, the authorization to utilize deadly force is substantially more limited. That force is permitted only in the defense situation or when necessary to prevent the risk of death or serious physical injury to others, made manifest by the use of a deadly weapon or other conduct or means, or to prevent the escape of a convicted felon.

It should be noted that the last paragraph makes it clear that the law-enforcement officer cannot act with indifference to the safety of others in the use of force. Shooting into a crowded street would be an obvious example of criminally negligent conduct, and this section would not justify such action.

(e) Entry on private premises or vehicle; use of force. In State v. Sparrow, 276 N.C. 499, 173 S.E.2d 897 (1970), the court said: "In North Carolina, under G.S. 15-44, even where there is reasonable ground to believe that a person guilty of a felony is concealed in a house, there exists no right, in the absence of special and emergency circumstances, to break into the house and arrest the person unless and until admittance has been demanded and denied." This statute codifies that idea and states that the emergency which will justify the omission of the demand is that which presents clear danger to human life. Subdivision (2) provides that the officer may use force concomitant with his right to enter.

Cross References. — As to arrest in civil cases, see § 1-409 et seq. As to arrest of persons violating the laws regulating intoxicating liquors, see § 18B-[illegible] et seq. As to power of bank examiner to arrest, see § 53-121. As to arrest for violation of the weights and measures laws, see § 81A-16. As to arrest by State forest rangers, see § 113-55.1. As to arrest by appointees of directors of the State facilities for the mentally ill, etc., see § 122C-183. As to arrest by the commanding officer of militia, see § 127A-148. As to arrest of parolee from the State prison whose parole has been revoked, see § 148-63.

Editor's Note. — Session Laws 1995, c. 506, which amended this section effective September 15, 1995, and applicable to offenses committed on or after that date and to limited driving privileges issued after that date, in s. 15 provided that the act shall not be construed to abate or affect any charges or violations occuring before September 15, 1995.

Effect of Amendments. — The 1997 amendment, effective August 29, 1997, substituted "G.S. 14-33(a), 14-33(c)(1), or 14-33(c)(2)" for "G.S. 14-33(a), G.S. 14-33(b)(1), or G.S. 14-33(b)(2)" in subdivision (b)(2)d.

Legal Periodicals. — For article on the law of arrest in North Carolina, see 15 N.C.L. Rev. 101 (1937).

For article on arrest without warrant in misdemeanor cases, see 33 N.C.L. Rev. 17 (1954).

For note on arrest without warrant in misdemeanor cases, see 35 N.C.L. Rev. 290 (1957).

For article surveying recent decisions by the North Carolina Supreme Court in the area of criminal procedure, see 49 N.C.L. Rev. 262 (1971).

For survey of 1979 law on criminal procedure, see 58 N.C.L. Rev. 1404 (1980).

For note on home arrest in the shelter of search and seizure law, see 59 N.C.L. Rev. 973 (1981).

For note on the Fourth Circuit requirement of search warrants for entry to arrest suspects in third-party dwellings, see 17 Wake Forest L. Rev. 120 (1981).

For note analyzing the scope of civil liability of law-enforcement officers, in the use of deadly force in North Carolina, see 4 Campbell L. Rev. 391 (1982).

For note discussing the exclusionary rule in probation revocation hearings in light of State v. Lombardo, 306 N.C. 594, 295 S.E.2d 399 (1982), see 19 Wake Forest L. Rev. 845 (1983).

For note discussing the use of deadly force to arrest as an unreasonable search and seizure, see 65 N.C.L. Rev. 155 (1986).

For article, "Litigating Police Misconduct Claims in North Carolina," see 19 N.C. Cent. L.J. 113 (1991).

CASE NOTES

I. General Consideration.
II. Warrant Not in Possession of Officer.
III. Arrest Without Warrant.
  A. In General.
  B. Illustrative Cases.
    1. Offense in Presence of Officer.
    2. Offense Out of Presence of Officer.
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V. Entry on Premises.
VI. Unlawful Arrest.

I. GENERAL CONSIDERATION.

Editor's Note. — *Many of the cases cited below were decided under former law.*

Whether an arrest warrant must be obtained is determined by State law. State v. Wooten, 34 N.C. App. 85, 237 S.E.2d 301 (1977).

Formal declaration of arrest by the officer is not a prerequisite to the making of an arrest. State v. Tippett, 270 N.C. 588, 155 S.E.2d 269 (1967).

Burden on State to Show Legality of Arrest. — It was incumbent upon the State to satisfy the jury from the evidence beyond a reasonable doubt that defendant committed a crime in the presence of the officer, or that the officer had reasonable grounds to believe the defendant had done so, in order to establish the authority and duty of the officer to make the arrest without a warrant. State v. Fenner, 263 N.C. 694, 140 S.E.2d 349 (1965).

Officer's Statement as to Whether Defendant Under Arrest. — Just as a formal declaration of arrest is not essential to the making of an arrest, an officer's statement that a defendant was or was not under arrest is not conclusive. When a law-enforcement officer, by word or actions, indicates that an individual must remain in the officer's presence or come to the police station against his will, the person is for all practical purposes under arrest if there is a substantial imposition of the officer's will over the person's liberty. State v. Sanders, 295 N.C. 361, 245 S.E.2d 674 (1978), cert. denied, 454 U.S. 973, 102 S. Ct. 523, 70 L. Ed. 2d 392 (1981).

Custody Tantamount to Arrest for Search Purposes. — A finding and conclusion that defendant was taken into custody is tantamount to finding and concluding that defendant was under arrest at the time of a search. State v. Jackson, 11 N.C. App. 682, 182 S.E.2d 271, aff'd, 280 N.C. 122, 185 S.E.2d 202 (1971).

It was not necessary to read defen-

dant the Miranda rights in order to make lawful arrest, where defendant was advised by the arresting officers that he was being arrested on a charge of rape in compliance with subdivision (c)(2)c. State v. Kinch, 314 N.C. 99, 331 S.E.2d 665 (1985).

For purposes of a false arrest tort action under State law, the existence of legal justification for a deprivation of liberty is determined in accordance with this section; thus, it is possible, in some instances, for an arrest to be constitutionally valid and yet illegal under State law. Myrick v. Cooley, 91 N.C. App. 209, 371 S.E.2d 492, petition denied as to additional issues, 323 N.C. 477, 373 S.E.2d 865 (1988).

Civil Liability of Arresting Officer for Mistaken Identity. — As to the civil liability for false imprisonment of an arresting officer, acting under a valid arrest warrant, who arrests the wrong person because of a mistake in the identity of the person arrested, see Robinson v. City of Winston-Salem, 34 N.C. App. 401, 238 S.E.2d 628 (1977).

Conviction Establishes Existence of Probable Cause. — In the absence of a showing that the district court's conviction of the defendant for disorderly conduct and resisting arrest was obtained improperly, the conviction establishes, as a matter of law, the existence of probable cause for his arrest and defeated both his federal and State claims for false arrest or imprisonment, even though on appeal to the superior court the disorderly conduct and resisting arrest charges were dismissed at the close of the State's evidence. Myrick v. Cooley, 91 N.C. App. 209, 371 S.E.2d 492, petition denied as to additional issues, 323 N.C. 477, 373 S.E.2d 865 (1988).

Search and Seizure Upheld. — Where officers were lawfully on the premises pursuant to a valid search warrant, and were authorized under § 15A-256 to initially detain defendant in house, their discovery of a packet of cocaine which fell out of defendant's clothing was the result of their lawful detention and the seizure of that packet was authorized under the "plain view" doctrine. Moreover, once this packet had been discovered, the officers had probable cause to arrest defendant without benefit of a warrant under subsection (b) of this section, and thus, second packet of cocaine found as a result of a search incident to defendant's arrest was properly seized and admissible at trial. State v. Patrick, 88 N.C. App. 582, 364 S.E.2d 450 (1988).

Applied in State v. Williams, 31 N.C. App. 237, 229 S.E.2d 63 (1976); Autry v. Mitchell, 420 F. Supp. 967 (E.D.N.C. 1976); In re Johnson, 32 N.C. App. 492, 232 S.E.2d 486 (1977); State v. Bradley, 32 N.C. App. 666, 233 S.E.2d 603 (1977); In re Jacobs, 33 N.C. App. 195, 234 S.E.2d 639 (1977); State v. Cunningham, 34 N.C. App. 72, 237 S.E.2d 334 (1977); State v. Thompson, 37 N.C. App. 628, 246 S.E.2d 827 (1978); State v. Allison, 298 N.C. 135, 257 S.E.2d 417 (1979); State v. Whitehead, 42 N.C. App. 506, 257 S.E.2d 131 (1979); State v. Collins, 44 N.C. App. 141, 260 S.E.2d 650 (1979); State v. Hunter, 299 N.C. 29, 261 S.E.2d 189 (1980); State v. Whitt, 299 N.C. 393, 261 S.E.2d 914 (1980); Hinton v. City of Raleigh, 46 N.C. App. 305, 264 S.E.2d 777 (1980); State v. Spencer, 46 N.C. App. 507, 265 S.E.2d 451 (1980); State v. Graham, 47 N.C. App. 303, 267 S.E.2d 56 (1980); State v. Duers, 49 N.C. App. 282, 271 S.E.2d 81 (1980); State v. Ladd, 308 N.C. 272, 302 S.E.2d 164 (1983); State v. Bethea, 71 N.C. App. 125, 321 S.E.2d 520 (1984); Annie Penn Mem. Hosp. v. Caswell County, 72 N.C. App. 197, 323 S.E.2d 487 (1984); State v. Grady, 73 N.C. App. 452, 326 S.E.2d 126 (1985); State v. McNeil, 99 N.C. App. 235, 393 S.E.2d 123 (1990); State v. Mills, 104 N.C. App. 724, 411 S.E.2d 193 (1991); State v. Trapp, 110 N.C. App. 584, 430 S.E.2d 484 (1993); Marlowe v. Piner, 119 N.C. App. 125, 458 S.E.2d 220 (1995).

Quoted in State v. Hagler, 32 N.C. App. 444, 232 S.E.2d 712 (1977); State v. Perry, 316 N.C. 87, 340 S.E.2d 450 (1986); State v. Swift, 105 N.C. App. 550, 414 S.E.2d 65 (1992).

Stated in State v. Hardy, 31 N.C. App. 67, 228 S.E.2d 487 (1976); State v. Odom, 35 N.C. App. 374, 241 S.E.2d 372 (1978); State v. Atkins, 304 N.C. 582, 284 S.E.2d 296 (1981); State v. McNeill, 54 N.C. App. 454, 283 S.E.2d 565 (1981); State v. Wall, 304 N.C. 609, 286 S.E.2d 68 (1982); State v. Medlin, 333 N.C. 280, 426 S.E.2d 402 (1993).

Cited in State v. Weddington, 28 N.C. App. 269, 220 S.E.2d 853 (1976); State v. Robinson, 40 N.C. App. 514, 253 S.E.2d 311 (1979); State v. Guy, 54 N.C. App. 208, 282 S.E.2d 560 (1981); State v. Cromartie, 55 N.C. App. 221, 284 S.E.2d 728 (1981); State v. Adams, 55 N.C. App. 599, 286 S.E.2d 371 (1982); State v. Primes, 314 N.C. 202, 333 S.E.2d 278 (1985); State v. Alston, 82 N.C. App. 372, 346 S.E.2d 184 (1986); State v. Leak, 90

N.C. App. 351, 368 S.E.2d 430 (1988); State v. Gaines, 332 N.C. 461, 421 S.E.2d 569 (1992); State v. Greene, 332 N.C. 565, 422 S.E.2d 730 (1992).

II. WARRANT NOT IN POSSESSION OF OFFICER.

Probable Cause Exists When Officer Has Personal Knowledge of Warrant. — Probable cause to believe that the person has committed a felony exists without question where the officer has personal knowledge that a warrant has been issued for the arrest of such person, which warrant charges a felony. State v. Denton, 17 N.C. App. 684, 195 S.E.2d 334, cert. denied, 283 N.C. 586, 196 S.E.2d 810 (1973).

Service of Warrants After Request for Attorney. — When a defendant is arrested pursuant to an arrest warrant, subdivision (a)(2) of this section requires the arrest warrant to be served upon the defendant as soon as possible. The fact that delivery and reading of warrants was made after defendant's request for an attorney did not alter the routineness of such delivery, nor did it constitute the initiation of questioning. State v. Underwood, 84 N.C. App. 408, 352 S.E.2d 898 (1987), overruled on other grounds, State v. Thompson, 328 N.C. 477, 402 S.E.2d 386 (1991).

Defendant was not guilty of resisting arrest by closing his door to officers who were arresting him on a civil warrant which was not in their possession, and they entered his home illegally to arrest him. State v. Hewson, 88 N.C. App. 128, 362 S.E.2d 574 (1987).

III. ARREST WITHOUT WARRANT.

A. In General.

Constitution does not dictate circumstances under which arrest warrants are required. Whether an arrest warrant must be obtained is determined by State law alone. Likewise, State law alone determines the sanction to be applied for failure to obtain an arrest warrant where one is required. State v. Eubanks, 283 N.C. 556, 196 S.E.2d 706 (1973).

Power of arrest without warrant is defined and limited entirely by legislative enactments in this State. And the rule is that where the right and power of arrest without warrant is regulated by statute, an arrest without warrant except as authorized by statute is illegal. State v. Mobley, 240 N.C. 476, 83 S.E.2d 100 (1954).

Subsection (b) broadened the authority of a law-enforcement officer to make a warrantless arrest for crimes not committed in his presence. In re Gardner, 39 N.C. App. 567, 251 S.E.2d 723 (1979).

Former Law Compared. — Prior to this section North Carolina law limited arrest without a warrant for crimes not committed in the presence of the officer to felonies, when there was reasonable ground to believe that the person will evade arrest if not immediately taken into custody. This section broadens the authority to arrest for crimes committed out of an officer's presence to include felonies generally and misdemeanors when the officer has probable cause to believe the person (1) has committed a misdemeanor and (2) will not be apprehended unless immediately arrested, or may cause physical injury to himself or others, or damage to property unless immediately arrested. In re Pinyatello, 36 N.C. App. 542, 245 S.E.2d 185 (1978).

Statute Applies Only to State Officers. — The statute governing arrests without warrant applies only to peace officers of the State and in the enforcement of the State law, and does not affect the conduct or powers of federal officers unless the principles therein are extended to such officers by a federal statute, when in the enforcement of a valid federal law. State v. Burnett, 183 N.C. 703, 110 S.E. 588 (1922).

Superintendent of a convict gang was not such an officer as was contemplated by the statute, relating to arrest without warrant. State v. Stancill, 128 N.C. 606, 38 S.E. 926 (1901).

Arrest without warrant except as authorized by statute is illegal. State v. Moore, 275 N.C. 141, 166 S.E.2d 53 (1969); State v. Jacobs, 277 N.C. 151, 176 S.E.2d 744 (1970); State v. Harris, 9 N.C. App. 649, 177 S.E.2d 445 (1970), aff'd, 279 N.C. 307, 182 S.E.2d 364 (1971); State v. Cooper, 17 N.C. App. 184, 193 S.E.2d 352 (1972); State v. Denton, 17 N.C. App. 684, 195 S.E.2d 334, cert. denied, 283 N.C. 586, 196 S.E.2d 810 (1973); State v. Little, 27 N.C. App. 54, 218 S.E.2d 184, cert. denied, 288 N.C. 512, 219 S.E.2d 347 (1975); State v. Small, 293 N.C. 646, 239 S.E.2d 429 (1977).

Where the right and power of arrest without warrant is regulated by statute, an arrest without warrant except as authorized by statute is illegal. State v.

Hill, 277 N.C. 547, 178 S.E.2d 462 (1971).

Statute Not Intended to Legalize Warrantless Entry. — The statute was never intended to legalize a warrantless entry upon premises which could not otherwise be lawfully entered except under authority of a valid warrant. State v. Miller, 16 N.C. App. 1, 190 S.E.2d 888 (1972), modified, 282 N.C. 633, 194 S.E.2d 353 (1973).

Information Must Be Sufficient to Have Required Issuance of Warrant. — One does not have probable cause unless he has information of facts which, if submitted to a magistrate, would require the issuance of an arrest warrant. State v. Harris, 279 N.C. 307, 182 S.E.2d 364 (1971); State v. Alexander, 279 N.C. 527, 184 S.E.2d 274 (1971); State v. Cooper, 17 N.C. App. 184, 193 S.E.2d 352 (1972); State v. Phillips, 300 N.C. 678, 268 S.E.2d 452 (1980).

"Probable Cause" Defined. — Probable cause exists if the facts and circumstances known to the officer warrant a prudent man in believing that the offense has been committed. State v. Harris, 9 N.C. App. 649, 177 S.E.2d 445 (1970), aff'd, 279 N.C. 307, 182 S.E.2d 364 (1971); State v. Streeter, 283 N.C. 203, 195 S.E.2d 502 (1973).

Probable cause for an arrest has been defined to be a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in believing the accused to be guilty. State v. Harris, 279 N.C. 307, 182 S.E.2d 364 (1971); State v. Alexander, 279 N.C. 527, 184 S.E.2d 274 (1971); State v. Cooper, 17 N.C. App. 184, 193 S.E.2d 352 (1972); State v. Shore, 285 N.C. 328, 204 S.E.2d 682 (1974); State v. Phifer, 290 N.C. 203, 225 S.E.2d 786 (1976), cert. denied, 429 U.S. 1050, 97 S. Ct. 761, 50 L. Ed. 2d 766, 429 U.S. 1123, 97 S. Ct. 1160, 51 L. Ed. 2d 573 (1977); State v. Phillips, 300 N.C. 678, 268 S.E.2d 452 (1980); State v. Thompson, 313 N.C. 157, 326 S.E.2d 19 (1985); State v. Adkerson, 90 N.C. App. 333, 368 S.E.2d 434 (1988); State v. Narcisse, 90 N.C. App. 414, 368 S.E.2d 654, cert. denied, 323 N.C. 368, 373 S.E.2d 553 (1988).

An arrest without a warrant is based upon probable cause if the facts and circumstances known to the arresting officer warrant a prudent man in believing that a felony has been committed and the person to be arrested is the felon. State v. Alexander, 279 N.C. 527, 184 S.E.2d 274 (1971); State v. Shore, 285 N.C. 328, 204 S.E.2d 682 (1974); State v. Campbell, 30 N.C. App. 652, 228 S.E.2d 52, appeal dismissed, 291 N.C. 324, 230 S.E.2d 677 (1976); State v. Rudolph, 39 N.C. App. 293, 250 S.E.2d 318, cert. denied and appeal dismissed, 297 N.C. 179, 254 S.E.2d 40 (1979); State v. Patrick, 88 N.C. App. 582, 364 S.E.2d 450 (1988).

A warrantless arrest is based on probable cause if the facts and circumstances known to the arresting officer warrant a prudent man in believing that a felony has been committed and the person to be arrested is the felon. The standard is the same as that required by the United States Constitution. State v. Mathis, 295 N.C. 623, 247 S.E.2d 919 (1978).

Whether probable cause exists depends upon whether at that moment the facts and circumstances within the officer's knowledge and of which he has reasonably trustworthy information are sufficient to warrant a prudent man in believing that the suspect has committed or is committing an offense. State v. Matthews, 40 N.C. App. 41, 251 S.E.2d 897 (1979).

Existence of probable cause depends upon whether at the time of the arrest there were facts and circumstances within the knowledge of the arresting officer which would justify a prudent man's belief that a suspect had committed an offense. State v. Rinck, 303 N.C. 551, 280 S.E.2d 912 (1981).

One does not have probable cause unless he has information of facts which, if submitted to a magistrate, would require the issuance of an arrest warrant. State v. Thompson, 313 N.C. 157, 326 S.E.2d 19 (1985).

"Probable cause" and "reasonable ground to believe" are substantially equivalent terms. State v. Harris, 279 N.C. 307, 182 S.E.2d 364 (1971); State v. Cooper, 17 N.C. App. 184, 193 S.E.2d 352 (1972); State v. Hardy, 31 N.C. App. 67, 228 S.E.2d 487 (1976), appeal dismissed, 291 N.C. 713, 232 S.E.2d 202 (1977); State v. Small, 293 N.C. 646, 239 S.E.2d 429 (1977); In re Gardner, 39 N.C. App. 567, 251 S.E.2d 723 (1979); State v. Matthews, 40 N.C. App. 41, 251 S.E.2d 897 (1979).

"Reasonable ground" and "probable cause" are basically equivalent terms with similar meanings. State v. Young, 27 N.C. App. 308, 219 S.E.2d 261 (1975), cert. denied, 289 N.C. 455, 223 S.E.2d 164 (1976).

Existence of probable cause is a pragmatic question to be determined in each case in the light of the particular circumstances and the particular offense involved. State v. Harris, 279 N.C. 307, 182 S.E.2d 364 (1971); State v. Cooper, 17 N.C. App. 184, 193 S.E.2d 352 (1972); State v. Young, 27 N.C. App. 308, 219 S.E.2d 261 (1975), cert. denied, 289 N.C. 455, 223 S.E.2d 164 (1976); State v. Phillips, 300 N.C. 678, 268 S.E.2d 452 (1980); State v. Thompson, 313 N.C. 157, 326 S.E.2d 19 (1985); State v. Patrick, 88 N.C. App. 582, 364 S.E.2d 450 (1988); State v. Adkerson, 90 N.C. App. 333, 368 S.E.2d 434 (1988).

And Is Determined by Factual and Practical Considerations. — The existence of probable cause justifying an arrest without a warrant is determined by factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. State v. Harris, 279 N.C. 307, 182 S.E.2d 364 (1971); State v. Gibson, 15 N.C. App. 445, 190 S.E.2d 315 (1972); State v. Cooper, 17 N.C. App. 184, 193 S.E.2d 352 (1972); State v. Young, 27 N.C. App. 308, 219 S.E.2d 261 (1975), cert. denied, 289 N.C. 455, 223 S.E.2d 164 (1976); State v. Small, 293 N.C. 646, 239 S.E.2d 429 (1977); In re Gardner, 39 N.C. App. 567, 251 S.E.2d 723 (1979); State v. Thompson, 313 N.C. 157, 326 S.E.2d 19 (1985).

To establish probable cause, the evidence need not amount to proof of guilt, or even to prima facie evidence of guilt, but it must be such as would actuate a reasonable man acting in good faith. State v. Harris, 279 N.C. 307, 182 S.E.2d 364 (1971); State v. Alexander, 279 N.C. 527, 184 S.E.2d 274 (1971); State v. Cooper, 17 N.C. App. 184, 193 S.E.2d 352 (1972); State v. Shore, 285 N.C. 328, 204 S.E.2d 682 (1974); State v. Young, 27 N.C. App. 308, 219 S.E.2d 261 (1975), cert. denied, 289 N.C. 455, 223 S.E.2d 164 (1976); State v. Phifer, 290 N.C. 203, 225 S.E.2d 786 (1976), cert. denied, 429 U.S. 1050, 97 S. Ct. 761, 50 L. Ed. 2d 766, 429 U.S. 1123, 97 S. Ct. 1160, 51 L. Ed. 2d 573 (1977); State v. Small, 293 N.C. 646, 239 S.E.2d 429 (1977); State v. Phillips, 300 N.C. 678, 268 S.E.2d 452 (1980); State v. Hart, 64 N.C. App. 699, 308 S.E.2d 474 (1983); State v. Thompson, 313 N.C. 157, 326 S.E.2d 19 (1985).

Proof of Actual Commission of Crime Not Necessary. — A peace officer may justify an arrest without a warrant when he shows satisfactory reasons for his belief of the fact and the guilt of the suspected party, and that delay in procuring a warrant might enable the party to escape. In such case, proof of actual commission of the crime is not necessary. Neal v. Joyner, 89 N.C. 287 (1883).

Same — Verdict of Not Guilty Not Tantamount to Finding of No Reasonable Grounds. — Verdict of not guilty of the misdemeanor for which defendant was arrested was not tantamount to a finding that the arresting officer did not have reasonable grounds to believe that defendant had committed such offense in his presence and that defendant therefore could lawfully resist the arrest. State v. Jefferies, 17 N.C. App. 195, 193 S.E.2d 388 (1972), cert. denied, 282 N.C. 673, 194 S.E.2d 153 (1973).

The failure of the State to satisfy the jury beyond a reasonable doubt of defendant's guilt of the offense charged is a far cry from a failure to satisfy the jury beyond a reasonable doubt that the arresting officer had reasonable ground to believe defendant had committed the offense in the officer's presence. In order to justify an officer in making an arrest without a warrant, it is not essential that the offense be shown to have been actually committed. It is only necessary that the officer have reasonable ground to believe such offense has been committed. State v. Jefferies, 17 N.C. App. 195, 193 S.E.2d 388 (1972), cert. denied, 282 N.C. 673, 194 S.E.2d 153 (1973).

Same — Question for Jury. — The reasonableness of the officer's grounds to believe the defendant had committed a misdemeanor in the officer's presence, when properly raised, is a factual question to be decided by the jury. State v. Jefferies, 17 N.C. App. 195, 193 S.E.2d 388 (1972), cert. denied, 282 N.C. 673, 194 S.E.2d 153 (1973).

Only Reasonable Ground for Belief Need Be Shown. — In order to justify an arrest without warrant, it is not required that a felony be shown actually to have been committed; it is only necessary that the officer have reasonable ground to believe that such an offense has been committed. State v. Alexander, 279 N.C. 527, 184 S.E.2d 274 (1971); State v. Shore, 285 N.C. 328, 204 S.E.2d 682 (1974); State v. Phifer, 290 N.C. 203, 225 S.E.2d 786 (1976), cert. denied, 429 U.S. 1050, 97 S. Ct. 761, 50 L. Ed. 2d 766, 429 U.S. 1123, 97 S. Ct. 1160, 51 L. Ed. 2d 573 (1977).

An officer need not show that a felony has actually been committed. It is only necessary for the officer to have reasonable ground to believe that such an of-

fense has been committed. State v. Campbell, 30 N.C. App. 652, 228 S.E.2d 52, appeal dismissed, 291 N.C. 324, 230 S.E.2d 677 (1976).

Totality of Circumstances Considered. — The basis of reasonable ground for belief that felony has been committed is drawn from the totality of facts and circumstances surrounding the arrest, known to the officers. State v. Little, 27 N.C. App. 54, 218 S.E.2d 184, cert. denied, 288 N.C. 512, 219 S.E.2d 347 (1975).

Description as Furnishing Reasonable Ground for Belief. — A description of either a person or an automobile furnishes reasonable ground for arresting and detaining a criminal suspect. State v. Jacobs, 277 N.C. 151, 176 S.E.2d 744 (1970).

A description of an assailant's physical characteristics and his clothing may supply reasonable grounds for believing that he had committed a felony. State v. Dickens, 278 N.C. 537, 180 S.E.2d 844 (1971).

Evidence That Person May Injure Self or Others. — The same evidence that provides probable cause for a belief that a misdemeanor had been committed is sufficient to provide probable cause to believe that defendant might injure himself or others if allowed to leave the police station at that time. State v. Matthews, 40 N.C. App. 41, 251 S.E.2d 897 (1979).

When Flight May Be Considered in Assessing Probable Cause. — Flight is a strong indicia of mens rea, and when coupled with other relevant facts or the specific knowledge on the part of the arresting officer relating the subject to the evidence of the crime, it may properly be considered in assessing probable cause. State v. Williams, 32 N.C. App. 204, 231 S.E.2d 282, appeal dismissed, 292 N.C. 470, 233 S.E.2d 924 (1977).

Flight from unlawful arrest cannot be added to other relevant facts to give the officer probable cause for making a warrantless arrest. State v. Williams, 32 N.C. App. 204, 231 S.E.2d 282, appeal dismissed, 292 N.C. 470, 233 S.E.2d 924 (1977).

Likelihood of Escape. — The likelihood of evasion of arrest, frequently referred to as the likelihood of escape, by the person to be arrested is not a factor to be considered in determining the right of a police officer to arrest without a warrant when the offense, felony or misdemeanor, has been committed in the presence of the officer, or when the officer has reasonable ground to believe that the offense has been committed in his presence by the person to be arrested. State v. Roberts, 276 N.C. 98, 171 S.E.2d 440 (1970).

Same — Factors Considered. — In determining whether officers had reasonable grounds to believe that the defendant would evade arrest if not taken into immediate custody, the nature of the felony, the hour of the day or night, the character and reputation of the neighborhood where the arrest was made, the number of suspects, and of the officers available for assistance, and the likely consequences of the officers' failure to act promptly must necessarily be taken into consideration. State v. Roberts, 6 N.C. App. 312, 170 S.E.2d 193 (1969), aff'd, 276 N.C. 98, 171 S.E.2d 440 (1970); State v. Kennon, 20 N.C. App. 195, 201 S.E.2d 80 (1973).

Factual Findings on Issue of Probable Cause. — In determining whether probable cause exists in any particular case, it is the function of the trial court, if there be conflicting evidence, to find the relevant facts. Such factual findings, if supported by competent evidence, are binding on appeal. However, whether the facts so found by the trial court or shown by uncontradicted evidence are such as to establish probable cause in a particular case, is a question of law as to which the trial court's ruling may be reviewed on appeal. In re Gardner, 39 N.C. App. 567, 251 S.E.2d 723 (1979).

Arresting Officer May Act on Information Supplied by Others. — It is elemental that an arresting officer may act on information supplied by others relating that a felony has been committed and describing the suspected felon. Although the arresting officers may not have had personal knowledge of all the facts justifying arrest, probable cause can be imputed from one officer to others acting at his request. State v. Hart, 64 N.C. App. 699, 308 S.E.2d 474 (1983).

Information from Reliable Informant. — Where an informant is reliable, probable cause may be based upon information given to police by such informant. State v. Andrews, 52 N.C. App. 26, 277 S.E.2d 857 (1981), rev'd on other grounds, 306 N.C. 144, 291 S.E.2d 581, cert. denied, 459 U.S. 946, 103 S. Ct. 263, 74 L. Ed. 2d 205 (1982).

Information Given Officer by Another. — Reasonable ground for belief which is an element of the officer's right to arrest without a warrant, may be based upon information given to the officer by another, the source of such information being reasonably reliable. Upon this question it is immaterial that such information, being hearsay, is not, itself, competent in evidence at the trial of the person arrested. State v. Roberts, 276 N.C. 98, 171 S.E.2d 440 (1970); State v. McMillan, 19 N.C. App. 721, 200 S.E.2d 339 (1973); State v. Shore, 285 N.C. 328, 204 S.E.2d 682 (1974); State v. Hardy, 31 N.C. App. 67, 228 S.E.2d 487 (1976), appeal dismissed, 291 N.C. 713, 232 S.E.2d 202 (1977).

Information given by one officer to another officer is reasonably reliable information to provide probable cause. State v. Matthews, 40 N.C. App. 41, 251 S.E.2d 897 (1979).

Reasonable grounds for belief can be based upon information given to an officer by another, the source of such information being reasonably reliable. State v. Hoffman, 281 N.C. 727, 190 S.E.2d 842 (1972).

Probable cause may be based upon information given to the officer by another, the source of such information being reasonably reliable. State v. Phifer, 290 N.C. 203, 225 S.E.2d 786 (1976), cert. denied, 429 U.S. 1050, 97 S. Ct. 761, 50 L. Ed. 2d 766, 429 U.S. 1123, 97 S. Ct. 1160, 51 L. Ed. 2d 573 (1977); In re Gardner, 39 N.C. App. 567, 251 S.E.2d 723 (1979).

Knowledge of police officers that an informant had told one of them that he had heard defendant discuss a robbery gave them probable cause to believe defendant had committed a felony, and they could therefore arrest him without a warrant. State v. White, 68 N.C. App. 671, 316 S.E.2d 112 (1984).

Probable cause for arrest can be imputed from one officer to others acting at his request. The officers receiving the request are entitled to assume that the officer requesting aid had probable cause to believe that a crime had been committed. If the transmitting officer did not have probable cause, the arrest would be illegal. State v. Tilley, 44 N.C. App. 313, 260 S.E.2d 794 (1979).

Authority to Briefly Detain Citizens. — It is permissible for police officers to make, in the course of a routine investigation, a brief detention of citizens upon a reasonable suspicion that criminal activity has taken place. State v. Rudolph, 39 N.C. App. 293, 250 S.E.2d 318, cert. denied and appeal dismissed, 297 N.C. 179, 254 S.E.2d 40 (1979).

A law officer may lawfully detain a person where there is a need for immediate action, if, upon personal observation or reliable information, he has an honest and reasonable suspicion that the suspect either has committed or is preparing to commit a crime. In re Horne, 50 N.C. App. 97, 272 S.E.2d 905 (1980).

Temporary Detention to Determine If Criminal Activity Is Afoot. — If, from the totality of circumstances, a law enforcement officer has reasonable grounds to believe that criminal activity may be afoot, he may temporarily detain an individual, and if upon detaining the individual, the officer's personal observations confirm that criminal activity may be afoot and suggest that the person detained may be armed, the officer may frisk him as a matter of self-protection. State v. Rinck, 303 N.C. 551, 280 S.E.2d 912 (1981).

When incriminating evidence comes to the officer's attention during detention, such evidence may establish a reasonable basis for finding the probable cause necessary for effecting a warrantless arrest. State v. Rudolph, 39 N.C. App. 293, 250 S.E.2d 318, cert. denied and appeal dismissed, 297 N.C. 179, 254 S.E.2d 40 (1979).

Mistaken Arrest Excused If Officer Had Reasonable Belief. — In making an arrest upon personal observation and without a warrant an officer will be excused, though no offense was perpetrated, if the circumstances are such as to reasonably warrant the belief that it had been. State v. McNinch, 90 N.C. 695 (1884); State v. Campbell, 182 N.C. 911, 110 S.E. 86 (1921), aff'd, 262 U.S. 728, 43 S. Ct. 519, 67 L. Ed. 1203 (1923).

B. Illustrative Cases.

1. Offense in Presence of Officer.

Misdemeanor. — In contrast to the rule for searches, police generally need not obtain a warrant before arresting a person in a public place; an officer may make a warrantless arrest for a misdemeanor committed in his or her presence. State v. Brooks, 337 N.C. 132, 446 S.E.2d 579 (1994).

Violation of Motor Vehicle Act. — An officer has a right to make an arrest without a warrant if a violation of the Motor Vehicle Act is actually committed in his presence. State v. McCaskill, 270 N.C. 788, 154 S.E.2d 907 (1967).

If the officer saw the commission of a violation of the Motor Vehicle Act, a misdemeanor, he would have the right to enter the premises where the defendant lived in order to make an arrest without

a warrant. State v. McCaskill, 270 N.C. 788, 154 S.E.2d 907 (1967).

Driving Motor Vehicle While Under Influence of Intoxicants. — A highway patrolman apprehending a person driving a motor vehicle on the public highway while under the influence of intoxicating liquor is authorized to arrest such person without a warrant, and such arrest is legal. State v. Broome, 269 N.C. 661, 153 S.E.2d 384 (1967).

The petitioner's driving privilege was properly revoked because of his unwillingness to take the breathalyzer test, whether or not his warrantless arrest was legal under this section, where the arrest was constitutionally valid by virtue of the fact that the arresting officer had ample information to provide him with probable cause to arrest the petitioner for operating a motor vehicle upon a public highway while under the influence of intoxicants. In re Gardner, 39 N.C. App. 567, 251 S.E.2d 723 (1979).

Before making the stop of a vehicle the arresting officer noticed defendant weaving back and forth and once running off the highway. After he made the stop, the officer noticed that defendant's eyes were extremely red and glassy and that he appeared to be in a daze. He stated that defendant moved sort of slowly and appeared to be nervous and in the officer's opinion he was not normal. Finally, the officer testified that he detected a moderate odor of alcohol about his breath. As a result probable cause existed for placing defendant under arrest for driving while impaired. State v. Adkerson, 90 N.C. App. 333, 368 S.E.2d 434 (1988).

Threats and Profane Language in Presence of Officer. — The evidence was sufficient to sustain the legality of defendant's arrest without a warrant for disorderly conduct, where, although the arresting officer did not quote the defendant's precise language to the jury, he did testify that the defendant was cursing and threatening a cab driver and that the threats and profane language were continued in the presence of the officer. State v. Raynor, 33 N.C. App. 698, 236 S.E.2d 307 (1977).

Trespass. — Sheriff may arrest anyone committing crime of trespass in his presence. State v. Brown, 264 N.C. 191, 141 S.E.2d 311 (1965).

As to window breaking, see State v. Gibson, 15 N.C. App. 445, 190 S.E.2d 315 (1972).

Carrying Concealed Weapon. — Where police officers stopped defendant's car to make a routine driver's license check and defendant removed revolver from a bag in the back seat, the police properly arrested him without a warrant inasmuch as they had reasonable ground to believe defendant was committing a misdemeanor, namely, carrying a concealed weapon in violation of § 14-269, in their presence. State v. White, 18 N.C. App. 31, 195 S.E.2d 576, appeal dismissed, 283 N.C. 587, 196 S.E.2d 811 (1973).

Where a fully justified frisk by a police officer revealed that defendant was carrying a revolver, and the officer had probable cause to arrest him for carrying a concealed weapon in violation of § 14-269, at that point, the officer had absolute knowledge that defendant was violating the statute and that he was committing a misdemeanor in his presence. Thus, defendant's arrest for carrying a concealed weapon was not in violation of his constitutional rights, and the police officer did not exceed his authority under State law to arrest without a warrant. State v. McZorn, 288 N.C. 417, 219 S.E.2d 201 (1975), death sentence vacated, 428 U.S. 904, 96 S. Ct. 3210, 49 L. Ed. 2d 1210 (1976).

Possession of Heroin. — Once the arresting agent corroborated the description of the defendant provided by an informant by observing the defendant at the named location, the agent had reasonable grounds to believe the defendant was in possession of heroin, a felony, thereby committing an offense in the agent's presence, and creating probable cause to arrest. State v. Wooten, 34 N.C. App. 85, 237 S.E.2d 301 (1977).

Manufacture of Whiskey. — An alcoholic beverage control officer who saw defendant at a still unlawfully engaged in the manufacture of whiskey had a lawful right to arrest defendant there without a warrant. State v. Taft, 256 N.C. 441, 124 S.E.2d 169 (1962).

As to arrest of participants in indecent show, see Brewer v. Wynne, 163 N.C. 319, 79 S.E. 629 (1913).

Violation of Curfew. — The presence of the defendant and his driver upon the streets while curfew was in effect was a violation of an ordinance, and declared thereby to be a misdemeanor, unless they were traveling for an excepted purpose. The arresting officer having, at least, reasonable ground to believe that the defendant had committed a misdemeanor in his presence, the arrest without a warrant was lawful. State v. Dobbins, 277 N.C. 484, 178 S.E.2d 449 (1971).

Use of Body-Bug Transmitter. — Knowledge of an offense acquired through officer's sense of hearing as he monitored conversations and a drug transaction through body-bug transmitter worn by informant held to have occurred in presence of the officer. State v. Narcisse, 90 N.C. App. 414, 368 S.E.2d 654, cert. denied, 323 N.C. 368, 373 S.E.2d 553 (1988).

Where detective had given informant money to make drug purchase from defendant, he listened to the drug purchase transaction take place through the use of a body-bug transmitter worn by informant, and immediately following the transaction, informant delivered the drugs to the officer and gave him a detailed account of the transaction, the officer had probable cause to believe that defendant had committed a felony. State v. Narcisse, 90 N.C. App. 414, 368 S.E.2d 654, cert. denied, 323 N.C. 368, 373 S.E.2d 553 (1988).

2. Offense Out of Presence of Officer.

Investigatory Stop Justified. — Circumstances known to police officers when they stopped defendant's car created a reasonable suspicion of criminal activity, thus justifying a brief investigatory stop. State v. Williams, 87 N.C. App. 261, 360 S.E.2d 500 (1987).

Drunken Driving. — Where, based upon his own observation, officer had probable cause to believe that defendant was intoxicated, and based upon statement of security guard, officer also had probable cause to believe that defendant had driven in that intoxicated state, and further, as defendant's car was nearby, knowing that defendant had come and gone once already, the officer had probable cause to believe that defendant would get back in his car and drive in an intoxicated condition, defendant's arrest was entirely proper and legal. State v. White, 84 N.C. App. 111, 351 S.E.2d 828, cert. denied, 319 N.C. 227, 353 S.E.2d 404, appeal dismissed, 319 N.C. 409, 354 S.E.2d 887 (1987).

Manslaughter. — Probable cause to believe defendant had committed the felony of manslaughter was present where, through his investigation, the officer had reasonable cause to believe the defendant had driven his vehicle while under the influence of intoxicating liquor and that he had driven his vehicle across the median of the highway, struck one vehicle and crashed into a second vehicle, killing the two occupants. State v. Stewardson, 32 N.C. App. 344, 232 S.E.2d 308, cert. denied, 292 N.C. 643, 235 S.E.2d 64 (1977).

Robbery. — Where arresting officer knew that a robbery had been committed by one who had fled and had a general description of the felon, and his clothing and injury, and defendant was found at the location described in the officer's information and had property on his person similar to that taken in the robbery, such information in possession of the officers was amply sufficient to authorize the arrest without a warrant. State v. Grier, 268 N.C. 296, 150 S.E.2d 443 (1966); State v. Dickens, 278 N.C. 537, 180 S.E.2d 844 (1971).

Where the police officer first saw defendant on a bank near a wooded area, defendant matched the general description the officer had received of a robbery suspect, defendant's appearance gave rise to a reasonable inference that he had been through a wooded area, and the officer was aware that suspects in the robbery had escaped into woods less than one mile from the spot the officer was patrolling, the officer had probable cause to believe that a felony had been committed and that defendant had committed it. Defendant's arrest was therefore legal under subsection (b)(2) of this section. State v. Mathis, 295 N.C. 623, 247 S.E.2d 919 (1978).

When police officers stopped an automobile fitting the description of one used in conjunction with a robbery and observed a pistol on the seat of the automobile, they had reasonable ground to believe that defendant had committed a felony and would evade arrest if not taken into custody. State v. Bell, 270 N.C. 25, 153 S.E.2d 741 (1967); State v. Dickens, 278 N.C. 537, 180 S.E.2d 844 (1971).

Where the police had a description of defendants, including their height, weight, estimated age, clothing, color and complexion, one defendant had been identified from photographs by two eyewitnesses and one informer, a second informer whose information had led to the conviction of seven persons within the past two years, had told police that defendants were the individuals involved in this robbery, had told police how he came into possession of this information and how it was revealed to him, the totality of these facts and circumstances would warrant a prudent man in believing that the felony of armed robbery had been committed and that

these defendants participated in commission of the crime, the Supreme Court held that the officers acted on reasonable grounds and with probable cause. State v. Alexander, 279 N.C. 527, 184 S.E.2d 274 (1971).

Where although the officer had not personally participated in investigation of the robbery for which defendant was arrested, but the record showed that at the time he made the arrest he knew that defendant had been identified from a photograph by one of the eyewitnesses as the man who was involved in the robbery, the arresting officer had probable cause to believe defendant had committed a felony. State v. McDonald, 32 N.C. App. 457, 232 S.E.2d 467, cert. denied, 292 N.C. 469, 233 S.E.2d 925 (1977).

When the victim in an assault and robbery charge pointed out the defendant to an officer as being one of his assailants, the officer not only had the right but the duty to arrest the defendant. State v. Grant, 248 N.C. 341, 103 S.E.2d 339 (1958).

Where the victim of a robbery gave officers a description of the men who robbed him and the vehicle in which they were riding, and where on the same night men fitting the description given the officers and riding in a vehicle similar to the one described to the officers were apprehended and arrested by the officers, the Supreme Court held that the officers had ample evidence of probable cause to authorize the making of the arrest. State v. Jacobs, 277 N.C. 151, 176 S.E.2d 744 (1970).

Discovery by police of a bag of money, together with previous observations of the defendants and a defendant's resulting flight gave officers sufficient probable cause to believe that a felony had been committed and subsequently to place all three defendants under arrest without a warrant. State v. Allen, 15 N.C. App. 670, 190 S.E.2d 714 (1972), rev'd on other grounds, 282 N.C. 503, 194 S.E.2d 9 (1973).

Deputy had authority to arrest defendant without a warrant where the deputy was alone at the scene, and there was no evidence that the intoxicated driver's car was inoperable, giving the deputy probable cause to believe the driver may cause injury to himself or others. State v. Crawford, 125 N.C. App. 279, 480 S.E.2d 422 (1997).

Where defendant was in an automobile traveling away from the scene of the crime, the arresting officers were warranted in the belief that the defendant would not be apprehended unless immediately arrested. Thus, in arresting the defendant without a warrant for a misdemeanor offense not committed in their presence, the arresting officers complied with subsection (b) of this section, and the arrest was both constitutionally valid and legal. State v. Tilley, 44 N.C. App. 313, 260 S.E.2d 794 (1979).

Breaking and Entering. — Where a felonious breaking and entering and a felonious larceny had occurred, and footprints led from the scene of the felonies to a wooded area, and the stolen items were found in that wooded area, and later the police saw a person enter that area and look around, then the police had reasonable ground upon which to believe that person had committed the two felonies; that he would evade arrest if not immediately taken into custody; and thus the search of his person (which produced positive evidence of his guilt) was legal. State v. Harris, 279 N.C. 307, 182 S.E.2d 364 (1971).

An arrest without warrant was upheld when the evidence disclosed that the officer had information that the felony of breaking and entering had been committed, and the defendants fitted the description of the perpetrators of the crimes. State v. Roberts, 6 N.C. App. 312, 170 S.E.2d 193 (1969), aff'd, 276 N.C. 98, 171 S.E.2d 440 (1970).

Possession of Illegal Drugs. — The warrantless arrest of a defendant for the felonious possession of LSD and the subsequent warrantless searches of his person were held lawful, where (1) the arresting officer received information from a reliable informant that two unknown persons, accompanied by the defendant, were on a certain street and that the two unknown persons had narcotic drugs in their possession; (2) the officer briefly observed the three suspects walking on the sidewalk; (3) the officer arrested the defendant on the street for the possession of narcotic drugs, but the search of defendant's person at that time uncovered no drugs; and (4) a subsequent "strip search" at the police station resulted in the finding of LSD tablets in defendant's clothing. State v. Parker, 11 N.C. App. 648, 182 S.E.2d 264, cert. denied, 279 N.C. 396, 183 S.E.2d 247 (1971).

Sale of Illegal Drugs. — Where the officer received information from an informant of known reliability that a described person was at that time at a particular location engaged in selling

LSD, went to the scene accompanied by another officer and found the defendant, dressed in the manner described by the second informant, observed the defendant for several minutes, during which time his actions were consistent with the activity of selling LSD, and where, when the officers approached, defendant started walking rapidly away, the officer's own observations and defendant's activities in the officer's presence served to verify the information furnished by the reliable informant, and thus, it was lawful for the officer to effect a warrantless arrest. State v. Hardy, 31 N.C. App. 67, 228 S.E.2d 487 (1976), appeal dismissed, 291 N.C. 713, 232 S.E.2d 202 (1977).

Possession of Heroin for Purpose of Sale. — A police officer had reasonable grounds to arrest defendant without a warrant for the felony of possessing heroin for purpose of sale, where a person suffering from a narcotics overdose told the officer that the defendant had administered hypodermically narcotic drugs to him and that the defendant had narcotic drugs on his person. State v. Jackson, 11 N.C. App. 682, 182 S.E.2d 271, aff'd, 280 N.C. 122, 185 S.E.2d 202 (1971).

Rearrest of Escaped Convict. — An escaped convict may be rearrested in any county of the State without new process, by the officer in charge of him, to compel him to complete the service of the sentence imposed by the court. State v. Finch, 177 N.C. 599, 99 S.E. 409 (1919).

An escapee from the State's prison system may be lawfully seized and held in custody by the police, with or without probable cause. State v. White, 21 N.C. App. 173, 203 S.E.2d 644, appeal dismissed, 285 N.C. 595, 205 S.E.2d 726 (1974).

As to escapees who lacked standing to challenge probable cause for arrest, see State v. White, 21 N.C. App. 173, 203 S.E.2d 644, appeal dismissed, 285 N.C. 595, 205 S.E.2d 726 (1974).

Driver's willful refusal to submit to a chemical analysis could be used to revoke his drivers license even though the arrest was not in compliance with subdivision (b)(2). Quick v. North Carolina DMV, 125 N.C. App. 123, 479 S.E.2d 226 (1997).

IV. USE OF FORCE IN ARREST.

Purpose of Deadly Force Provision. — Subdivision (d)(2) was designed solely to codify and clarify those situations in which a police officer may use deadly force without fear of incurring criminal or civil liability. State v. Irick, 291 N.C. 480, 231 S.E.2d 833 (1977).

Discretion of Officer in Use of Force. — Within reasonable limits, the officer is properly left with the discretion to determine the amount of force required under the circumstances as they appeared to him at the time of the arrest. State v. Anderson, 40 N.C. App. 318, 253 S.E.2d 48 (1979).

Assault on Law Officer. — In all cases where the charge is assault on a law officer in violation of former § 14-33(b)(4), or assault of a law officer with a firearm (§ 14-34.2), the use of excessive force by the law officer in making an arrest or preventing escape from custody does not take the officer outside the performance of his duties, nor does it make the arrest unlawful. State v. Mensch, 34 N.C. App. 572, 239 S.E.2d 297 (1977), cert. denied, 294 N.C. 443, 241 S.E.2d 845 (1978).

In a prosecution for assault on a police officer it is not incumbent upon the State to prove that the law officer did not use excessive force in making an arrest, but where there is evidence tending to show the use of such excessive force by the law officer, the trial court should instruct the jury that the assault by the defendant upon the law officer was justified or excused if the assault was limited to the use of reasonable force by the defendant in defending himself from that excessive force. State v. Mensch, 34 N.C. App. 572, 239 S.E.2d 297 (1977), cert. denied, 294 N.C. 443, 241 S.E.2d 845 (1978).

Officer Cannot Shoot at Fleeing Misdemeanant. — Where a person charged with a misdemeanor is fleeing from arrest, and is out of the control of the officer, such officer is guilty of an assault if he shoots at said person. And indeed the use of a pistol in attempting to arrest for a misdemeanor is excessive force. Sossamon v. Cruse, 133 N.C. 470, 45 S.E. 757 (1903).

One resisting an illegal arrest is not resisting an officer within the discharge of his official duties. State v. Anderson, 40 N.C. App. 318, 253 S.E.2d 48 (1979).

Right to Defend Against Excessive Force and to Resist Unlawful Arrest. — The right to defend oneself from the excessive use of force by a police officer must be carefully distinguished from the well-guarded right to resist an arrest which is unlawful. The right to use force to defend oneself against the excessive

use of force during an arrest may arise despite the lawfulness of the arrest, and the use of excessive force does not render the arrest illegal. State v. Anderson, 40 N.C. App. 318, 253 S.E.2d 48 (1979).

Bystander Defending Arrestee from Excessive Force. — The bystander coming to the aid of an arrestee is entitled to use only such force as is reasonably necessary to defend the arrestee from the excessive use of force. State v. Anderson, 40 N.C. App. 318, 253 S.E.2d 48 (1979).

The privilege to intervene in the context of a supposed felonious assault upon an arrestee by a person known or reasonably believed to be a police officer must be more limited than the traditionally recognized right to come to the defense of a third party. State v. Anderson, 40 N.C. App. 318, 253 S.E.2d 48 (1979).

One who comes to the aid of an arrestee must do so at his own peril and should be excused only when the individual would himself be justified in defending himself from the conduct of the arresting officers. State v. Anderson, 40 N.C. App. 318, 253 S.E.2d 48 (1979).

Reasonableness of Grounds for Using Force a Jury Question. — In an action for wrongful death growing out of the mortal wounding of intestate in a scuffle while a police officer was attempting to arrest him, the court should have instructed the jury that the jury and not the officer must be the judge of the reasonableness of the grounds on which the officer acted. Perry v. Gibson, 247 N.C. 212, 100 S.E.2d 341 (1957), aff'd, 249 N.C. 134, 105 S.E.2d 277 (1958).

Instruction on Use of Force to Resist Excessive Force. — When there is evidence tending to show the excessive use of force by a law enforcement officer in making an arrest, the trial court is required to instruct the jury that the force used against the law enforcement officer was justified or excused if the assault was limited to the use of reasonable force by defendant in defending himself from excessive force. State v. Anderson, 40 N.C. App. 318, 253 S.E.2d 48 (1979).

When a person has been placed under arrest by an officer, the person does not have the right to kill the officer. State v. Cunningham, 344 N.C. 341, 474 S.E.2d 772 (1996).

Interlocutory appeal of denial of police officer's motion for summary judgment on the issue of whether he was entitled to public officer immunity under subsection (d) in wrongful death action against him was permissible. Thompson v. Farmer, 945 F. Supp. 109 (W.D.N.C. 1996).

V. ENTRY ON PREMISES.

Purpose of Demand and Denial Requirement. — The requirement that a police officer, armed with an arrest warrant or search warrant, must demand and be denied admittance before making forcible entry, serves to identify his official status and to protect both the officer and the occupant. State v. Shue, 16 N.C. App. 696, 193 S.E.2d 481 (1972); State v. Gagne, 22 N.C. App. 615, 207 S.E.2d 384, cert. denied, 285 N.C. 761, 209 S.E.2d 285 (1974).

Demand and Denial Where Officers Have Warrant. — The requirement that admittance be demanded and denied would seem to apply even though the officers have a search warrant or warrant of arrest. State v. Covington, 273 N.C. 690, 161 S.E.2d 140 (1968); State v. Harvey, 281 N.C. 1, 187 S.E.2d 706 (1972); State v. Rudisill, 20 N.C. App. 313, 201 S.E.2d 368 (1973).

Forcible Entry Where Admittance Demanded and Denied. — Compliance with the requirement of the statute that admittance be "demanded and denied" serves to identify the official status of those seeking admittance. The requirement is for the protection of the officers as well as for the protection of the occupant and the recognition of his constitutional rights. State v. Covington, 273 N.C. 690, 161 S.E.2d 140 (1968); State v. Harvey, 281 N.C. 1, 187 S.E.2d 706 (1972).

Where an officer comes armed with process founded on a breach of the peace, he may, after demand of admittance for the purpose of making the arrest, and refusal of the occupant to open the doors of a house, lawfully break them in order to effect an entrance and if he acts in good faith in doing so, both he and his posse comitatus will be protected. See State v. Mooring, 115 N.C. 709, 20 S.E. 182 (1894), commented on in 15 N.C.L. Rev. 125.

Length of Time Prior to Forcible Entry Must Be Reasonable. — The length of time an officer must wait before breaking in to serve a valid warrant must be reasonable under the circumstances as they appear to him. State v. Watson, 19 N.C. App. 160, 198 S.E.2d 185, cert. denied and appeal dismissed, 284 N.C. 124, 199 S.E.2d 662 (1973).

Failure to Receive Reply Before Entering Residence. — There was sufficient compliance with the requirement that entrance be demanded and denied before a police officer can forcibly enter a dwelling for the purpose of making an arrest, where defendant had observed the officer's uniform and was aware of his official status, the officer had seen defendant looking out a door and knew that defendant had observed him, and the officer twice called out defendant's name and received no reply before he opened the door to defendant's residence. State v. Harvey, 281 N.C. 1, 187 S.E.2d 706 (1972).

The fact that silence greeted the officers' demands for entrance and that defendant was not found in the house did not make their entry illegal. State v. Hoffman, 281 N.C. 727, 190 S.E.2d 842 (1972).

Open door obviates the demand for admittance by first knocking. State v. Rudisill, 20 N.C. App. 313, 201 S.E.2d 368 (1973).

Entry Without Notice May Be Proper Under Special and Emergency Conditions. — While under ordinary circumstances the officers must announce their purpose and demand admittance before making a forcible entry to conduct a search pursuant to a valid search warrant, such an entry may be proper under special and emergency conditions when it reasonably appears that such an announcement and demand by the officer and the delay consequent thereto would provoke the escape of the suspect, place the officer in peril, or cause the destruction or disposition of critical evidence. State v. Watson, 19 N.C. App. 160, 198 S.E.2d 185, cert. denied and appeal dismissed, 284 N.C. 124, 199 S.E.2d 662 (1973).

Question of whether there was an actual breaking of the door is not determinative of the issue of whether or not the statute is applicable. State v. Turnbull, 16 N.C. App. 542, 192 S.E.2d 689 (1972).

Officers Admitted by Owner of House. — The arrest without warrant of the defendant for armed robbery, the defendant having been discovered hiding in the attic of a house, is lawful where the discovery and arrest of the defendant occurred after the owner of the house had admitted the officers by the front door. State v. Basden, 8 N.C. App. 401, 174 S.E.2d 613 (1970).

Entry of Other Officers to Assist Officers Voluntarily Admitted. — Where a law officer makes a lawful entry of a home with consent of the owner to apprehend and arrest a suspect, then other officers may enter the home to assist those officers who have been voluntarily admitted. State v. Rhodes, 54 N.C. App. 193, 282 S.E.2d 809 (1981), aff'd, 305 N.C. 294, 287 S.E.2d 898 (1982).

Demand and Denial Where Person Reasonably Believed to Be on Premises. — Even where there is reasonable ground to believe that a person guilty of a felony is concealed in a house, there exists no right, in the absence of special and emergency circumstance, to break into the house and arrest the person unless and until admittance has been demanded and denied. State v. Sparrow, 276 N.C. 499, 173 S.E.2d 897 (1970), cert. denied, 403 U.S. 940, 91 S. Ct. 2258, 29 L. Ed. 2d 719 (1971).

Entry Held Lawful. — The entry of police officers into the house in which the defendant and his companions were hiding, and the arrest without warrant of the occupants therein for the offense of armed robbery, was proper and lawful where (1) the felony of armed robbery had been committed at an ABC store, (2) within a few minutes after the robbery the officers discovered in the driveway of the house the automobile which they reasonably believed had been used in the robbery, (3) all curtains on the windows of the house were drawn, and (4) the occupants of the house failed to respond to the officers' knock at the front door. State v. Basden, 8 N.C. App. 401, 174 S.E.2d 613 (1970).

The fact that officers were standing under a light on a porch of a house from which a short time previously two shots had been fired, killing one person and seriously wounding another, was such an exigent circumstance that the officers were justified in entering the home and searching it to make sure no one else, including the officers, would be shot; and since the officers saw a shotgun in the house in plain view, evidence in regard to the gun was admissible. State v. Mackins, 47 N.C. App. 168, 266 S.E.2d 694, cert. denied, 301 N.C. 102 (1980).

Where there was evidence that after a police officer made a lawful entry into defendant's home and read an order for his arrest, but defendant did not submit peacefully, and that the officer called for assistance and another officer came to defendant's home to assist the first officer, the evidence failed to indicate an illegal entry into defendant's home. State v. Rhodes, 54 N.C. App. 193, 282

S.E.2d 809 (1981), aff'd, 305 N.C. 294, 287 S.E.2d 898 (1982).

Subdivision (e)(1) of this section outlines the situations when a law-enforcement officer may enter on private premises to arrest someone. Three requirements must be met. The officer must possess a warrant for the arrest of a person, he must have reasonable cause to believe that the person to be arrested is present, and he has given, or made a reasonable effort to give, notice of his authority and purpose to an occupant of the premises. Kuykendall v. Turner, 61 N.C. App. 638, 301 S.E.2d 715 (1983).

There was sufficient compliance with the requirements that entrance be demanded and denied before a police officer can forcibly enter a dwelling for the purpose of making an arrest, where the officer knocked, identified himself twice, heard a lot of scrambling and running noises coming from within the dwelling, and received no reply before he forcibly opened the door. State v. Narcisse, 90 N.C. App. 414, 368 S.E.2d 654, cert. denied, 323 N.C. 368, 373 S.E.2d 553 (1988).

Evidence in Plain View Admissible. — In a prosecution for first degree rape and first degree kidnapping, evidence was properly admitted, where officers possessing valid arrest warrants were permitted to enter trailer by defendant's brother, the officers had reason to suspect that defendant was present in the trailer, the officers informed defendant's brother of their purpose, and the items seized and admitted into evidence were seen in plain view. State v. Hill, 116 N.C. App. 573, 449 S.E.2d 573, cert. denied, 338 N.C. 670, 453 S.E.2d 183 (1994).

Entry into trailer was lawful and bloody T-shirt and cowboy boots were properly admitted where they were in plain view and were later seized pursuant to a search warrant. State v. Workman, 344 N.C. 482, 476 S.E.2d 301 (1996).

Knock and Announce Requirement. — The requirements of subsection (e) were satisfied where plaintiff was well aware of police officer's identities and their reason for being at her house; defendants were uniformed Highway Patrolmen who had arrived on the scene in patrol cars and who had been involved in an altercation with plaintiff minutes before the alleged unlawful entry; and, moreover, defendants were about to apprehend plaintiff as she entered the kitchen and attempted to close the door; in such a case, compliance with the knock and announce requirement was not required. Lee v. Greene, 114 N.C. App. 580, 442 S.E.2d 547 (1994).

Notice Held Proper. — Where the searching officer made the announcement to the person at the door and repeated it to the other occupants as soon as he came upon them, the requirement that such notice be given as will identify the officer and protect the occupants and the officer is satisfied. State v. Rudisill, 20 N.C. App. 313, 201 S.E.2d 368 (1973).

VI. UNLAWFUL ARREST.

Person has the right to resist an unlawful arrest. State v. Williams, 32 N.C. App. 204, 231 S.E.2d 282, appeal dismissed, 292 N.C. 470, 233 S.E.2d 924 (1977); State v. Raynor, 33 N.C. App. 698, 236 S.E.2d 307 (1977).

And may flee from an unlawful arrest. State v. Williams, 32 N.C. App. 204, 231 S.E.2d 282, appeal dismissed, 292 N.C. 470, 233 S.E.2d 924 (1977).

Arrest Not Complete Where Defendant Fled from Unlawful Attempt to Arrest. — Where the defendant fled from the unlawful attempt to arrest him, the arrest was not complete under subdivision (c)(1) because the defendant did not "submit to the control" of the officer, nor had the officer taken him "into custody by the use of physical force." State v. Williams, 32 N.C. App. 204, 231 S.E.2d 282, appeal dismissed, 292 N.C. 470, 233 S.E.2d 924 (1977).

Illegal arrest, unaccompanied by violent or oppressive circumstances, would not be more coercive than a legal arrest. State v. Faulkner, 5 N.C. App. 113, 168 S.E.2d 9 (1969).

Unlawful Arrest Does Not Discharge Defendant from Liability. — The law does not discharge a defendant from criminal liability merely because his arrest is not lawful, unless the offense charged stems from such arrest. State v. Jones, 17 N.C. App. 54, 193 S.E.2d 314 (1972).

Arrest May Be Constitutionally Valid But Illegal Under State Law. — The words "illegal" and "unconstitutionally" are not synonymous. An arrest is constitutionally valid when the officers have probable cause to make it. Thus an arrest may be constitutionally valid and yet "illegal" under State law. State v. Eubanks, 283 N.C. 556, 196 S.E.2d 706 (1973).

And Evidence Not Excluded When Arrest Only Constitutionally Valid. — When an arrest is constitutionally valid but illegal under the law of North Carolina, the facts discovered or the evidence obtained as a result of the arrest need not be excluded as evidence in the trial of the action. State v. Eubanks, 283 N.C. 556, 196 S.E.2d 706 (1973).

Mere failure to comply with the letter of this section in making an arrest does not require that evidence discovered as a result of the arrest be excluded. State v. Sutton, 34 N.C. App. 371, 238 S.E.2d 305 (1977), cert. denied and appeal dismissed, 294 N.C. 186, 241 S.E.2d 521 (1978).

Identification Evidence Subsequently Obtained Not Excluded. — Nothing in the law of this State requires that identification evidence, obta[...] subsequent to an illegal arrest, be [...]cluded. State v. Finch, 293 N.C. 132, [...] S.E.2d 819 (1977).

Evidence in Action for Unlaw[...] Arrest. — In an action against an off[...] for malicious and unlawful arrest, [...]dence that a robbery had been com[...]ted is held competent upon the issue, [...] defendant's evidence tending to s[...] good faith and that he was acting wi[...] the provisions of the statute in arres[...] plaintiffs, was properly submitted to [...] jury. Hicks v. Nivens, 210 N.C. 44, [...] S.E. 469 (1936).

§ 15A-402. Territorial jurisdiction of officers [...] make arrests.

(a) Territorial Jurisdiction of State Officers. — Law-enforcem[...] officers of the State of North Carolina may arrest persons at [...] place within the State.

(b) Territorial Jurisdiction of County and City Officers. — L[...] enforcement officers of cities and counties may arrest persons wit[...] their particular cities or counties and on any property and rig[...] of-way owned by the city or county outside its limits.

(c) City Officers, Outside Territory. — Law-enforcement officer[...] cities may arrest persons at any point which is one mile or less f[...] the nearest point in the boundary of such city. Law enforcem[...] officers of cities may transport a person in custody to or from [...] place within the State for the purpose of that person attend[...] criminal court proceedings. While engaged in the transportatio[...] persons for the purpose of attending criminal court proceedings, [...] enforcement officers of cities may arrest persons at any place wit[...] the State for offenses occurring in connection with and inciden[...] the transportation of persons in custody.

(d) County and City Officers, Immediate and Continuous Fli[...] — Law-enforcement officers of cities and counties may ar[...] persons outside the territory described in subsections (b) and [...] when the person arrested has committed a criminal offense wit[...] that territory, for which the officer could have arrested the per[...] within that territory, and the arrest is made during such pers[...] immediate and continuous flight from that territory.

(e) County Officers, Outside Territory, for Felonies. — L[...] enforcement officers of counties may arrest persons at any plac[...] the State of North Carolina when the arrest is based upon a fel[...] committed within the territory described in subsection (b).

(f) Campus Police Officers, Immediate and Continuous Flight[...] A campus police officer: (i) appointed by a campus law-enforcem[...] agency established pursuant to G.S. 116-40.5(a); or (ii) comm[...]sioned by the Attorney General pursuant to Chapter 74E [...] employed by a college or university which is licensed, or exem[...] from licensure, by G.S. 116-15 may arrest a person outside [...] territorial jurisdiction when the person arrested has committ[...] criminal offense within the territorial jurisdiction, for which [...] officer could have arrested the person within that territory, and

ils appointed to serve in an
it as to those so appointed.
e continuation of the emer-
re again dispense with the
d make the act applicable
rsons acting pursuant to
Of course, that subsection
equested help in effecting
preventing escapes, thus
enting an emergency situ-

f comparison, note that
akes the benefits of the
a Workmen's Compensa-
able to auxiliary police.)

The last sentence of subsection (b) makes the Contingency and Emergency Fund available, if necessary, to assist in payments under subdivisions (1) and (3) — unnecessary as to subdivision (2) for those benefits are paid from the Contingency and Emergency Fund. While it should not ordinarily be necessary, it was thought advisable to grant this authority in order to prevent loss to the citizen in the event of the failure of other funding. Compare the provisions for the State Volunteer Fire Department in §§ 69-24 and 69-25.

6. Assistance by federal officers.

urposes of this section, "federal law enforcement officer"
of the following persons who are employed as full-time
ment officers by the federal government and who are
to carry firearms in the performance of their duties:
ited States Secret Service special agents;
leral Bureau of Investigation special agents;
eau of Alcohol, Tobacco and Firearms special agents;
ited States Naval Investigative Service special agents;
ig Enforcement Administration special agents;
ted States Customs Service officers;
ted States Postal Service inspectors;
rnal Revenue Service special agents;
ted States Marshals Service marshals and deputies;
ited States Forest Service officers;
tional Park Service officers;
ited States Fish and Wildlife Service officers; and
migration and Naturalization Service officers.
ral law enforcement officer is authorized under the
cumstances to enforce criminal laws anywhere within

e federal law enforcement officer is asked by the head of
ate or local law enforcement agency, or his designee, to
vide temporary assistance and the request is within the
e of the state or local law enforcement agency's subject
ter and territorial jurisdiction; or
e federal law enforcement officer is asked by a state or
l law enforcement officer to provide temporary assis-
e when at the time of the request the state or local law
rcement officer is acting within the scope of his subject
ter and territorial jurisdiction.
ral law enforcement officer shall have the same powers
sted by statute or common law in a North Carolina law
officer, and shall have the same legal immunity from
il liability as a North Carolina law enforcement officer,
pursuant to this section.
ral law enforcement officer who acts pursuant to this
not be considered an officer, employee, or agent of any
l law enforcement agency.
rposes of the Federal Tort Claims Act, a federal law
officer acts within the scope of his office or employment
pursuant to this section.

(f) Nothing in this section shall be construed to expand the authority of federal officers to initiate or conduct an independent investigation into violation of North Carolina law. (1991, c. 262, s. 1; 1991 (Reg. Sess., 1992), c. 1030, s. 8; 1993 (Reg. Sess., 1994), c. 571, s. 1.)

§§ 15A-407 through 15A-409: Reserved for future codification purposes.

ARTICLE 21.

§§ 15A-410 through 15A-453: Reserved for future codification purposes.

ARTICLE 22.

§§ 15A-454 through 15A-500: Reserved for future codification purposes.

SUBCHAPTER V. CUSTODY.

ARTICLE 23.

Police Processing and Duties upon Arrest.

Editor's Note. — The "Official Commentary" under this Article appears as originally drafted by the Criminal Code Commission and does not reflect amendments or changes in the law since the enactment of Session Laws 1973, c. 1286.

§ 15A-501. Police processing and duties upon arrest generally.

Upon the arrest of a person, with or without a warrant, but not necessarily in the order hereinafter listed, a law-enforcement officer:

(1) Must inform the person arrested of the charge against him or the cause for his arrest.
(2) Must, with respect to any person arrested without a warrant and, for purpose of setting bail, with respect to any person arrested upon a warrant or order for arrest, take the person arrested before a judicial official without unnecessary delay.
(3) May, prior to taking the person before a judicial official, take the person arrested to some other place if the person so requests.
(4) May, prior to taking the person before a judicial official, take the person arrested to some other place if such action is reasonably necessary for the purpose of having that person identified.
(5) Must without unnecessary delay advise the person arrested of his right to communicate with counsel and friends and must allow him reasonable time and reasonable opportu-

nity to do so. (1868-9, c. 178, subch. 1, s. 7; Code, s. 1130; Rev., s. 3182; C.S., s. 4548; 1937, c. 257, ss. 1, 2; 1955, c. 889; 1969, c. 296; 1973, c. 1286, s. 1; 1975, c. 166, ss. 7, 8.)

OFFICIAL COMMENTARY

This section is similar to former § 15-47. Some of the provisions of that statute are separately covered, and it has been possible to simplify the format of this section.

Subdivisions (3) and (4) are based upon the American Law Institute's Model Code of Pre-Arraignment Procedure, Tentative Draft No. 1, Section 3.09 (1) (Alternate Provision) and Stovall v. Denno, 388 U.S. 293, 87 S. Ct. 1967, 18 L. Ed. 2d 1199 (1967). North Carolina statutes formerly did not provide such a section. See § 15-24 (Arrest with a warrant) and § 15-46 (Arrest without a warrant).

Legal Periodicals. — For note on right to counsel in pretrial situations, see 38 N.C.L. Rev. 630 (1960).

For article, "The Applicability of Miranda to the Police Booking Process," see 1976 Duke L.J. 574.

For survey of 1977 law on criminal procedure, see 56 N.C.L. Rev. 983 (1978).

For survey of 1978 law on criminal procedure, see 57 N.C.L. Rev. 1007 (1979).

For survey of 1979 law on criminal procedure, see 58 N.C.L. Rev. 1404 (1980).

CASE NOTES

I. General Consideration.
II. Taking Person Before Judiciary Official.
III. Identification of Person.
IV. Right of Communication.

I. GENERAL CONSIDERATION.

Editor's Note. — *Many of the cases cited below were decided under former law.*

Statute Implements Constitutional Rights. — The General Assembly enacted the statute to implement the constitutional rights under N.C. Const., Art. I, § 23. State v. Hill, 277 N.C. 547, 178 S.E.2d 462 (1971).

Statute does not prescribe mandatory procedures affecting validity of trial. State v. Hargett, 255 N.C. 412, 121 S.E.2d 589 (1961); Carroll v. Turner, 262 F. Supp. 486 (E.D.N.C. 1966), cert. denied, 390 U.S. 969, 88 S. Ct. 1085, 19 L. Ed. 2d 1176 (1968); State v. McCloud, 276 N.C. 518, 173 S.E.2d 753 (1970); State v. Able, 13 N.C. App. 365, 185 S.E.2d 422 (1971), cert. denied, 281 N.C. 514, 189 S.E.2d 36 (1972).

The failure of law-enforcement personnel in complying with the provisions of this section and § 15A-511 can result in the violation of a person's constitutional rights. However, these statutes do not prescribe mandatory procedures affecting the validity of a trial. State v. Reynolds, 298 N.C. 380, 259 S.E.2d 843 (1979), cert. denied, 446 U.S. 941, 100 S. Ct. 2164, 64 L. Ed. 2d 795 (1980).

Object of a preliminary hearing is to effect a release for one who is held in violation of his rights. State v. Chamberlain, 263 N.C. 406, 139 S.E.2d 620 (1965).

Rights of Intoxicated Persons. — One who is detained by police officers under a charge of driving while under the influence of an intoxicant has the same constitutional and statutory rights, including the rights given under N.C. Const., Art. I, § 23, as any other accused. State v. Hill, 277 N.C. 547, 178 S.E.2d 462 (1971).

Effect of Violation of Section on Voluntary Confession. — The violation of the statute, in regard to bail and the manner of detention of defendant under arrest, would not render defendant's voluntary confession incompetent. State v. Exum, 213 N.C. 16, 195 S.E. 7 (1938).

Where any delay in arrest was at the request of defendant's counsel and was unquestionably not caused by anything the deputies did, and after the arrest warrant was served, there was no delay in presenting defendant before the magistrate, there was no "unnecessary delay" and therefore no breach of duty by the arresting officer. Clark v. Link, 855 F.2d 156 (4th Cir. 1988).

Delay Not Error Since Confession Not Result of Violation. — Where there was nothing in the record that showed that the defendant's confession resulted from any delay in taking him before a magistrate, any unnecessary delay, if any occurred, in violation of this section would not result in error, since a confession must be suppressed only if the confession was obtained as a result of a violation. State v. Allen, 323 N.C. 208, 372 S.E.2d 855 (1988), vacated and remanded for further consideration at 494 U.S. 1021, 110 S. Ct. 1463, 108 L. Ed. 2d 601 (1990), in light of McKoy v. North Carolina, 494 U.S. 433, 110 S. Ct. 1227, 108 L. Ed. 2d 369 (1990), rehearing denied, 507 U.S. 1046, 113 S. Ct. 1885, 123 L. Ed. 2d 503 (1993).

Confession Held Involuntary. — Defendant's youth, his low mentality, and limited education, his incommunicado detention and interrogation for 19 hours by a number of different police officers who allowed him only scant time to rest, the inadequate explanation of his constitutional rights and the suggestions that it would be better for him to confess, the failure of the police to notify his parents or to afford him the opportunity to consult with a lawyer, and the delay in producing him before a magistrate — all of these elements combined to establish that defendant's confession could not be deemed a voluntary act and that its admission into evidence denied him due process of law. Thomas v. North Carolina, 447 F.2d 1320 (4th Cir. 1971).

Applied in State v. Richardson, 295 N.C. 309, 245 S.E.2d 754 (1978); State v. Jordan, 49 N.C. App. 561, 272 S.E.2d 405 (1980); State v. Beaty, 306 N.C. 491, 293 S.E.2d 760 (1982).

Quoted in State v. Sanders, 303 N.C. 608, 281 S.E.2d 7 (1981).

Cited in State v. Watson, 294 N.C. 159, 240 S.E.2d 440 (1978); State v. Jolly, 297 N.C. 121, 254 S.E.2d 1 (1979); State v. McCoy, 303 N.C. 1, 277 S.E.2d 515 (1981); State v. Hunter, 305 N.C. 106, 286 S.E.2d 535 (1982); State v. Webb, 309 N.C. 549, 308 S.E.2d 252 (1983); State v. Gilbert, 85 N.C. App. 594, 355 S.E.2d 261 (1987); State v. Simpson, 320 N.C. 313, 357 S.E.2d 332 (1987); State v. Jones, 112 N.C. App. 337, 435 S.E.2d 574 (1993); State v. Daniels, 337 N.C. 243, 446 S.E.2d 298 (1994).

II. TAKING PERSON BEFORE JUDICIARY OFFICIAL.

"Unnecessary Delay" Under Subdivision (2). — Subdivision (2) of this section and § 15A-511(a)(1) only require that an arrested person be taken before a magistrate "without unnecessary delay," and a delay of only one hour after the defendant had been taken into custody and advised of his rights could not be considered undue delay. State v. Wheeler, 34 N.C. 243, 237 S.E.2d 874 (1977), cert. denied and appeal dismissed, 294 N.C. 187, 241 S.E.2d 522 (1978).

Homicide defendant's clothes were not taken as a result of an unnecessarily long delay in his appearance before a magistrate where he was taken before a magistrate within 90 minutes of his arrest and his clothing was taken within a few hours thereafter. State v. Payne, 328 N.C. 377, 402 S.E.2d 582 (1991).

Duty of Officer Making Arrest Without Warrant. — A police officer within the limits of his city may summarily and without warrant arrest a person for a misdemeanor committed in his presence. But in such case it is the duty of the officer to inform the person arrested of the charge against him and immediately take him before someone authorized to issue criminal warrants and have warrant issued, giving him opportunity to provide bail and communicate with counsel and friends. Perry v. Hurdle, 229 N.C. 216, 49 S.E.2d 400 (1948).

Liability for Delay in Procuring Warrant. — A warrant must be procured as soon after the arrest as possible and, where it appears that this was not done, the officer responsible for the arrest is personally answerable in damages. Hobbs v. City of Washington, 168 N.C. 293, 84 S.E. 391 (1915).

When required bail bond is given and approved, accused is to be released. State v. Hill, 9 N.C. App. 279, 176 S.E.2d 41 (1970), rev'd on other grounds, 277 N.C. 547, 178 S.E.2d 462 (1971).

Delay Held Necessary and Reasonable. — The delay between the arrest of the defendant and his appearance before a magistrate was necessary and reasonable where the interim period was spent by the arresting officers in recovering the stolen goods and attempting to locate a

person arrested with a defendant who had escaped. State v. Sings, 35 N.C. App. 1, 240 S.E.2d 471 (1978).

Delay Was Not Unnecessary Where Defendant Advised of His Rights. — Thirteen-hour delay between the time defendant was taken into custody and the time he was taken before a magistrate was not an unnecessary delay where police officers interrogated the defendant for ten hours before he confessed; the officers fully advised him of his constitutional rights before the interrogation began and if he had been taken before a magistrate, he would have been advised of those same rights. The court could not hold that the defendant would have exercised his right to remain silent if he had been warned of this right by a magistrate rather than the officer. State v. Littlejohn, 340 N.C. 750, 459 S.E.2d 629 (1995).

Delay Not Unnecessary. — Where the defendant was arrested at 9:30 a.m., and was not taken before the magistrate until 8 p.m., his right to be taken before a magistrate without unnecessary delay was not violated as a large part of that time was spent in interrogating the defendant about several crimes. State v. Chapman, 343 N.C. 495, 471 S.E.2d 354 (1996).

III. IDENTIFICATION OF PERSON.

Meaning of "Reasonably Necessary" in Subdivision (4). — Based on the official commentary provided by the legislature, the words "reasonably necessary" in subdivision (4) have a stricter meaning than would ordinarily apply. Only exigent circumstances, such as were present in Stovall v. Denno, 388 U.S. 293, 87 S. Ct. 1967, 18 L. Ed. 2d 1199 (1967), where the only eyewitness was critically injured, will suffice as "reasonably necessary." State v. Sanders, 33 N.C. App. 284, 235 S.E.2d 94, cert. denied, 293 N.C. 257, 237 S.E.2d 539 (1977).

Subdivision (4) Held Violated. — Police officers violated subdivision (4) of this section by taking defendant to the town in which the crime was committed for a show-up after they had first prepared to take him before a magistrate in the town in which he was arrested. State v. Sanders, 33 N.C. App. 284, 235 S.E.2d 94, cert. denied, 293 N.C. 257, 237 S.E.2d 539 (1977).

IV. RIGHT OF COMMUNICATION.

Rights of communication go with a man into jail, and reasonable opportunity to exercise them must be afforded by the restraining authorities. The denial of the opportunity to exercise that right is a denial of the right. State v. Wheeler, 249 N.C. 187, 105 S.E.2d 615 (1958); State v. Hill, 277 N.C. 547, 178 S.E.2d 462 (1971).

Right to Communication Includes Right of Access. — A defendant is entitled to consult with friends and relatives and to have them make observations of his person. The right to communicate with counsel and friends necessarily includes the right of access to them. State v. Hill, 277 N.C. 547, 178 S.E.2d 462 (1971).

Communication Not Limited to Professional Advice. — Under N.C. Const., Art. I, § 23 and the statute, a defendant's communication and contacts with the outside world are not limited to receiving professional advice from his attorney. State v. Hill, 277 N.C. 547, 178 S.E.2d 462 (1971).

Fact that a person is defendant's lawyer as well as his friend does not impair his right to see the defendant at a critical time of the proceedings. State v. Hill, 277 N.C. 547, 178 S.E.2d 462 (1971).

Defendant is entitled to counsel at every critical stage of the proceedings against him. State v. Hill, 277 N.C. 547, 178 S.E.2d 462 (1971).

When Critical Stage Reached in Prosecution for Driving While Intoxicated. — A critical stage has been reached in a defendant's case when, immediately after officers have interrogated the defendant and conducted their test for sobriety, they charge him with the offense of driving while intoxicated, and the denial of counsel at this point makes it impossible for a defendant to have disinterested witnesses observe his condition and to obtain a blood test by a doctor, the only means by which defendant might prove his innocence. State v. Hill, 277 N.C. 547, 178 S.E.2d 462 (1971).

Right to Communication When Intoxication Is Essential Element of Offense. — When one is taken into police custody for an offense of which intoxication is an essential element, time is of the essence. Intoxication does not last. Ordinarily a drunken man will "sleep it off" in a few hours. Thus, if one accused of driving while intoxicated is to have witnesses for his defense, he must have access to his counsel, friends, relatives, or some disinterested person within a relatively short time after his arrest. He

is entitled to communicate with them immediately, and this is true whether he is arrested at 2:00 in the morning or 2:00 in the afternoon. State v. Hill, 277 N.C. 547, 178 S.E.2d 462 (1971).

The denial of request for permission to contact counsel as soon as a person is charged with a crime involving the element of intoxication is a denial of a constitutional right resulting in irreparable prejudice to his defense. State v. Hill, 277 N.C. 547, 178 S.E.2d 462 (1971).

A defendant's guilt or innocence under § 20-138 (see now § 20-138.1) depends upon whether he is intoxicated (now under the influence) at the time of his arrest. His condition then is the crucial and decisive fact to be proven. Permission to communicate with counsel and friends is of no avail if those who come to the jail in response to a prisoner's call are not permitted to see for themselves whether he is intoxicated. In this situation, the right of a defendant to communicate with counsel and friends implies, at the very least, the right to have them see him, observe and examine him, with reference to his alleged intoxication. State v. Hill, 277 N.C. 547, 178 S.E.2d 462 (1971).

Subdivision (5) Not Applicable to Breathalyzer Tests. — The legislature did not intend for the "reasonable time" contemplated by subdivision (5) of this section to apply to the specialized situation contemplated by § 20-16.2, a civil matter involving the administrative removal of driving privileges as a result of refusing to submit to a breathalyzer test. Seders v. Powell, 298 N.C. 453, 259 S.E.2d 544 (1979).

Denial of Communication Rights Held Not Prejudicial. — Where the defendant was informed of his Miranda rights, waived those rights, and voluntarily submitted his statement admitting guilt to police, the defendant could not have suffered prejudice had he been denied his statutory right to communicate with friends. State v. Curmon, 295 N.C. 453, 245 S.E.2d 503 (1978).

Defendant was not prejudiced by the failure of the police to advise him of his right to communicate with his friends where he waived his Miranda rights and voluntarily submitted his statement to the police. State v. Chapman, 343 N.C. 495, 471 S.E.2d 354 (1996).

OPINIONS OF ATTORNEY GENERAL

Duty of Jailer to Receive Prisoner Before Warrant Issued. — See opinion of Attorney General to Mr. Lee J. Greer, Prosecutor, Thirteenth Judicial District, 40 N.C.A.G. 351 (1969), rendered under former law.

§ 15A-502. Photographs and fingerprints.

(a) A person charged with the commission of a felony or a misdemeanor may be photographed and his fingerprints may be taken for law-enforcement records only when he has been:

(1) Arrested or committed to a detention facility, or

(2) Committed to imprisonment upon conviction of a crime, or

(3) Convicted of a felony.

It shall be the duty of the arresting law-enforcement agency to cause a person charged with the commission of a felony to be fingerprinted and to forward those fingerprints to the State Bureau of Investigation.

(b) This section does not authorize the taking of photographs or fingerprints when the offense charged is a Class 2 or 3 misdemeanor under Chapter 20 of the General Statutes, "Motor Vehicles."

(c) This section does not authorize the taking of photographs or fingerprints of a juvenile alleged to be delinquent except under G.S. 7A-596 through 7A-601 and 7A-603.

(d) This section does not prevent the taking of photographs, moving pictures, video or sound recordings, fingerprints, or the like to show a condition of intoxication or for other evidentiary use.