

SUBCHAPTER II. LAW ENFORCEMENT AND CRIMINAL INVESTIGATION

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I. INTRODUCTION

The Warren Court's constitutionalization of state criminal procedure was necessitated in part by the abdication of legislatures. The "law" of criminal investigation had largely been made by individual police officers whose decisions were reviewed—if reviewed at all—by state court judges. The North Carolina General Assembly, like the legislatures of most other states—has largely failed to provide any guidance either to law enforcement officers or courts in resolving the difficult questions that arise when the need for effective criminal investigation comes into potential conflict with individual liberties.

The Criminal Code Commission attempted to remedy this gap by proposing detailed legislative regulation of criminal investigation.¹ It was the Commission's view that a carefully drafted legislative code would provide more thoughtful answers—and more likely be sustained on review—than ad hoc determinations by individual law enforcement officials.

The General Assembly declined to enact a significant portion of the Committee's proposal in the area of criminal investigation. Articles providing for inquest concerning suspicious death,² providing for (and limiting) stop-and-frisk authority,³ creating carefully limited electronic surveillance power,⁴ and regulating procedures for questioning of suspects⁵ were not enacted.

The General Assembly did enact major Articles dealing with

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1. NORTH CAROLINA CRIMINAL CODE COMMISSION, LEGISLATIVE PROGRAM AND REPORT, at 7-45, 193-201 (1973).

2. *Id.* at 7-10.

3. *Id.* at 10-13.

4. *Id.* at 29-45. The Commission proposal provided that applications for electronic surveillance orders could be made only by the Attorney General, or by district solicitors with the personal written approval of the Attorney General and that such applications could be made only to resident or presiding superior court judges. The proposal included criminal and civil remedies for any unauthorized possession or use of electronic surveillance equipment. Lawful possession was limited to those officials who had written authorization of the Attorney General. A substantial minority of the Commission was opposed to any wiretapping.

5. *Id.* at 23-24.

search and seizure⁶ and with non-testimonial identification procedures.⁷ This article will assess those provisions of the new Code and will analyze legislative changes where necessary to an understanding of the provisions as finally enacted. Constitutional requirements which provide a framework in which legislation in this area must operate will also be discussed.

II. CONSENT SEARCHES

The safeguards of the fourth amendment and the legislative controls on the issuance and execution of search warrants are inapplicable when a citizen "consents" to a warrantless search and is thereby deemed to have waived his fourth amendment rights.⁸ Where there is consent to the search, there is no contemporaneous record of the information upon which the law enforcement officers determined to undertake the search, no showing of probable cause before a neutral, detached magistrate, and no warrant particularly describing the things to be searched. The Criminal Code Commission, therefore, decided to propose legislative safeguards for consent searches. As adopted by the General Assembly,⁹ the Commission proposal authorizes searches and seizures pursuant to consent, and defines consent as "a statement to the officer, made voluntarily . . . giving the officer permission to make a search."¹⁰ Two important provisions of the proposal which served to restrict consent searches and to amplify the term "voluntarily" were deleted by the General Assembly. The first deleted provisions required that before undertaking a search pursuant to consent, a law enforcement officer "must inform the individual whose consent is sought that he is under no obligation to give such consent and that anything found may be taken and used in evidence."¹¹ The nature of informal conversation is such that it is difficult to reconstruct after the fact whether a person from whom consent to search is sought fully understood at the time of the search that he was free to withhold consent. What may have been construed by the law enforcement officer as a request may well have been viewed by the citizen as an implicit demand backed by lawful authority.

6. N.C. GEN. STAT. §§ 15A-221 to -259.

7. *Id.* §§ 15A-271 to -282.

8. *Zap v. United States*, 328 U.S. 624 (1946), *rev'd per curiam*, 330 U.S. 800 (1947).

9. N.C. GEN. STAT. §§ 15A-221 to -223.

10. *Id.* § 15A-221.

11. NORTH CAROLINA CRIMINAL CODE COMMISSION, LEGISLATIVE PROGRAM AND REPORT, at 14.

Had the General Assembly approved the Commission's proposal for a specific warning requirement, much of this ambiguity could have been avoided. To the extent that the proposed warning might have reduced the frequency of consent searches, an alternative method of gaining authorization to search would still have been available—the warrant process.

The fact that the General Assembly *deleted* the warning requirement does not mean that a law enforcement officer never needs to inform a person to be searched of his right to decline to consent. Under the provision retained by the General Assembly¹² and under the United States Supreme Court decisions construing the fourth amendment, the consent given to a search must be voluntary.¹³ In *Schneckloth v. Bustamonte*,¹⁴ the Supreme Court, while declining to impose a flat rule requiring an officer to inform a citizen of his right to withhold consent, did state the California rule to be that a defendant's knowledge of a right to refuse is a factor to be taken into account in determining whether, in view of the totality of the circumstances, the consent was voluntarily given.¹⁵ Thus, if a law enforcement officer does inform a person to be searched of his right to refuse consent, the task of the prosecution in establishing at trial that the consent was not a product of duress or coercion will be eased.

The General Assembly did retain one significant limitation on consent searches proposed by the Commission: a search conducted on the basis of consent "may not exceed, in duration or physical scope, the limits of the consent given."¹⁶ It is not clear, however, how meaningful the "scope and duration" limitation will be in light of the deletion of the warning requirement. If the person to be searched is not aware that he has a right to refuse the officer's request to search, he is unlikely to state any limitations on time and scope. The provision does insure that an affirmative answer to the question, "May we search the trunk of your car?" does not without more give authority to search the glove compartment.

The General Assembly also declined to enact a recommended section providing that any consent which is given may be withdrawn

12. N.C. GEN. STAT. § 15A-221.

13. *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973); *Bumper v. North Carolina*, 391 U.S. 543 (1968).

14. 412 U.S. 218 (1973).

15. *Id.* at 223.

16. N.C. GEN. STAT. § 15A-223(a).

or limited at any time prior to the completion of the search.¹⁷ Again, the effect of this deletion is to make the consent process more ambiguous and uncertain. The changes made by the General Assembly may well be in keeping with the present views of the United States Supreme Court regarding consent searches expressed in *Bustamonte*. For the Court seems there to have turned away from the thrust of *Bumper v. North Carolina*¹⁸ that a consent search is constitutionally valid only where there has been a free and voluntary waiver of constitutional rights¹⁹ and to have adopted instead a position designed only to eliminate those "consent" searches predicated upon police coercion.²⁰ Under *Bustamonte* a consent search may be constitutionally valid where the police fail to inform the citizen to be searched of his right to refuse; moreover, the search may also be valid even if the accused proves that he was *in fact unaware* that he had any lawful right to decline the officer's request.²¹ Only if the defendant establishes that his consent was the product of actual "coercion" may he resist the introduction of its fruits under *Bustamonte*. It is possible, in fact, that the new North Carolina provisions, even as softened by the legislature, may be more restrictive of consent searches than the applicable decisions of the United States Supreme Court. The provision enacted by the General Assembly defining consent as "a *statement* to the officer, made voluntarily . . . giving the officer permission to make a search"²² may be judicially construed by the North Carolina courts as requiring more than passive acquiescence by the person to be searched pursuant to a request by the officer. So construed, the North Carolina provision would be a step toward eliminating the "blindman's bluff" quality that now infects consent searches.

III. SEARCH WARRANTS

Prior North Carolina legislation regulating the issuance and execution of search warrants was scanty.²³ The law in this area has been left largely to administrative and judicial development. Article II, as adopted by the General Assembly,²⁴ provides detailed legisla-

17. NORTH CAROLINA CRIMINAL CODE COMMISSION, LEGISLATIVE PROGRAM AND REPORT, at 16.

18. 391 U.S. 543 (1968).

19. *Id.* at 548.

20. *Schneckloth v. Bustamonte*, 412 U.S. 218, 227 (1973).

21. *Id.* at 289, n.13 (dissenting opinion of Marshall, J.).

22. N.C. GEN. STAT. § 15A-221(b).

23. *Id.* §§ 15-25 to -27.2 (1965 and Cum. Supp. 1974).

24. *Id.* §§ 15A-241 to -259.

tive regulation of this area and attempts to insure that the search warrant will be an efficient and effective device for criminal investigation.

A. Items Subject to Seizure

In setting forth the nature of the items that will be subject to seizure, G.S. 15A-242 expands upon and replaces the antiquated list provided by prior legislation. Previously, warrants could be issued only to search for "any contraband, evidence or instrumentality of crime. . . ." ²⁵ In order to avoid the possibility of limitations on seizability that might arise from a narrow, technical reading of the word "contraband," the new provision allows seizure of any item which is "contraband or otherwise unlawfully possessed . . ." ²⁶ and of any item which is "stolen or embezzled." ²⁷ And to avoid any narrow reading of what is an "instrumentality" of crime, the new law provides for the seizure of any item which "[h]as been used or is possessed for the purpose of being used to commit or conceal the commission of a crime . . ." ²⁸ The new section also provides that an item may be seized if it "constitutes evidence either of an offense or the identity of a person participating in an offense." ²⁹

The Commission proposed, and the General Assembly rejected, a limitation which would forbid the seizure of "personal diaries, letters, or other private writings or recordings" not used to further a criminal enterprise. ³⁰ Under the 1921 Supreme Court decision in *Gouled v. United States*, ³¹ "mere evidence" could not be seized. While this doctrine was reversed in 1967 in *Warden v. Hayden*, ³² the question remains open whether the fourth and fifth amendments permit seizure of purely private communications (other than those, like extortion notes, which are themselves used to further a criminal enterprise.)

The Commission's draft reflected a determination that admission at trial of "purely" private writings such as diaries or intra-family letters would be constitutionally doubtful under the self-

25. *Id.* § 15-25(a) (Cum. Supp. 1974).

26. *Id.* § 15A-242(2).

27. *Id.* § 15A-242(1).

28. *Id.* § 15A-242(3).

29. *Id.* § 15A-242(4).

30. NORTH CAROLINA CRIMINAL CODE COMMISSION, LEGISLATIVE PROGRAM AND REPORT, at 16.

31. 255 U.S. 298 (1921).

32. 387 U.S. 294 (1967).

incrimination clause of the fifth amendment, as applied to the states by the fourteenth amendment, and that such material should, therefore, be immune from initial seizure.³³ The General Assembly's failure to include this provision leaves the issue to future judicial determination.

B. Regulation of the Search Warrant Process

A number of provisions of the new Pretrial Criminal Procedure Act attempt to provide careful procedures for the warrant application and execution process. The new statute requires a detailed list of the contents of a search warrant application³⁴ and of the warrant itself.³⁵ It defines who may issue warrants³⁶ and which law enforcement officers may execute them.³⁷ It requires that a copy of the warrant application and affidavit be given to the person to be searched³⁸ (or left on the premises if no one is present) and a receipt must be given for all items taken from the person who was searched.³⁹ The new Code also provides for return of the warrant and a written inventory of any items seized to the clerk of the issuing court.⁴⁰

One important safeguard included in the Code, and new to North Carolina law, is a provision requiring that all search warrants must be executed within forty-eight hours of the time of issuance.⁴¹ There was no previous time limit on the execution of search warrants in North Carolina, nor any requirement that unexecuted warrants be returned to the clerk of the issuing court. The Commission thought it likely that the circumstances indicating probable cause to believe that items subject to seizure were in a certain place would in many instances no longer obtain after the passage of time. As a result, at least some searches were being conducted under prior law on the basis of "stale" warrants.⁴²

33. NORTH CAROLINA CRIMINAL CODE COMMISSION, LEGISLATIVE PROGRAM AND REPORT, at 16.

34. N.C. GEN. STAT. § 15A-244.

35. *Id.* § 15A-246.

36. *Id.* § 15A-243.

37. *Id.* § 15A-247.

38. *Id.* § 15A-252.

39. *Id.* § 15A-254.

40. *Id.* § 15A-257.

41. *Id.* § 15A-248.

42. A related issue—passage of time between receipt of information by the law enforcement officer and application for the warrant—is not addressed by the new Code. For a warrant to be valid, there must be probable cause to believe that the items subject to seizure are in the designated place *at the time the warrant was issued* and not simply at some earlier

The Commission considered a time limit of ten days, but ultimately recommended, and the legislature adopted, the requirement that search warrants be executed within forty-eight hours. Although this is perhaps the shortest time limit of any American jurisdiction,⁴³ the Commission felt that the requirement would not unduly hamper law enforcement. If a search warrant remains unexecuted after forty-eight hours, it becomes invalid and must be returned. But the search can still be undertaken so long as a new search warrant, based upon a fresh showing of probable cause, is obtained.

Perhaps the most important change relating to the issuance of search warrants affected by the Code limits the authority of the magistrate to consider information outside the warrant.⁴⁴ Under prior North Carolina law, the following sequence was permitted to occur. A law enforcement officer presents to a magistrate an application for a search warrant supported by an affidavit. The affidavit fails to establish probable cause perhaps because it fails to assert any basis for determining that the informant was reliable.⁴⁵ The warrant is issued nonetheless, and a search based upon the warrant occurs. Upon a motion to suppress the resulting evidence at trial, the magistrate is permitted to testify that other information, not contained in either the warrant application or the affidavit, was orally presented by the officer seeking the search warrant. This additional information is accepted as a basis for sustaining the issuance of the search warrant, notwithstanding the failure of the written affidavit to establish probable cause.⁴⁶

The Commission proposed, and the legislature adopted, a section providing that information not contained in the affidavit may

time. See, e.g., *Rugendorf v. United States*, 376 U.S. 528 (1964). My colleague, Anthony Bocchino, could find only two cases which invalidated warrants where less than six days delay occurred between the obtaining of information and the application for the search warrant. Both were from Michigan and both involved illegal (and readily consumable) whiskey. Stolen property, on the other hand, may likely remain on the premises for a longer period between its sighting and application for the search warrant. *Rugendorf v. United States*, 376 U.S. 528 (1964).

43. The American Law Institute's proposal requires that a search warrant be executed within five days. The MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE, (Official Draft No. 1, 1972), § 220. 2(3), at 39. Illinois allows ninety-six hours, ILL. CODE CRIM. PRO. ch. 38, § 108-6 (1970). New York allows ten days, N.Y. CODE CRIM. PRO. § 690.30 (1971). A number of states follow the prior North Carolina law of having no express time limits.

44. N.C. GEN. STAT. § 15A-245(a).

45. Compare *Aguilar v. Texas*, 378 U.S. 108 (1964) and *Spinelli v. United States*, 393 U.S. 410 (1969) with *United States v. Harris*, 403 U.S. 573 (1971).

46. See, e.g., *State v. Milton*, 7 N.C. App. 425, 431, 173 S.E.2d 60, 64 (1970) (Graham, J., concurring).

not be considered by the issuing official in determining whether probable cause exists "unless the information is either recorded or contemporaneously summarized in the record or on the face of the warrant by the issuing official."⁴⁷ The Commission was cognizant of the argument asserted that some issuing officials may find the task of summarizing oral information not contained in the affidavit to be a difficult one. The requirement as proposed and adopted is essential, however, if the search warrant process is to fulfill one of its central functions: the preservation of a factual record of the basis for a search made *before* the search occurs. To permit unrecorded, unnoted information as the basis for sustaining a search runs too great a risk of post hoc justifications for searches for which probable cause was lacking at the time the warrant was issued.

C. Notice of Identity and Purpose in the Execution of Search Warrants: "I Hear You Knockin' But You Can't Come In"

In the swirl of controversy surrounding the "no-knock" question, two propositions were undisputed:

(1) A law enforcement officer should generally be required to give notice of his identity and purpose before entering a dwelling to execute a search warrant;

(2) An officer should have the authority to enter without notice whenever he ". . . has probable cause to believe that the giving of notice would endanger the life or safety of any person."⁴⁸ These two propositions are included in both the Commission proposal and by implication in the provisions enacted by the General Assembly.⁴⁹

The seriously disputed issue was whether entry without notice should also be permitted for the purpose of preventing the destruction of evidence. After lengthy and careful consideration of the question, the Commission proposed granting narrowly circumscribed and limited power to make no-knock entries to prevent destruction of evidence.⁵⁰ The General Assembly deleted this provision, in response to publicly expressed concern that the no-knock proposal was an innovation insensitive to civil libertarian concern with privacy values. Ironically, the provision deleted by the General Assembly would have placed *greater restrictions* on the use of no-knock

47. N.C. GEN. STAT. § 15A-245(a) (emphasis added).

48. *Id.* § 15A-251(2).

49. See text at note 62 *infra*.

50. NORTH CAROLINA CRIMINAL CODE COMMISSION, LEGISLATIVE PROGRAM AND REPORT, at 19-20.

51. See *State v. Watson*, 19 N.C. App. 160, 198 S.E.2d 185 (1973).

entries than existing North Carolina⁵¹ and federal case law.⁵²

In the Commission's discussion of the issue it was argued that to give blanket permission for no-knock entries could lead to unnecessarily harsh intrusion and possible physical violence. On the other hand, to require flatly in every case that the officer identify himself before entering could in certain circumstances endanger the life or safety of the officer or others. Such a requirement could also make the search warrant virtually unusable in the investigation of certain possessory crimes where the evidence could be quickly destroyed. After extended discussion, the Commission developed a compromise set forth in three sections of the proposed Code. The first established the basic rule as adopted by the General Assembly: an officer executing a search warrant must, before entering the premises, give notice of his identity and purpose.⁵³

Proposed G.S. 15A-250, deleted by the legislature, provided that an officer could enter without notice for his own safety or that of others, either upon his own determination at the scene,⁵⁴ or by obtaining advance judicial authorization.⁵⁵ It further provided that entry without notice would be allowed for the purpose of preventing the destruction or disposal of evidence as long as certain procedures designed to prevent abuse were followed.⁵⁶

The Commission proposed that authorization to enter without notice to prevent the destruction of items subject to seizure could be obtained only from a judge, not from a magistrate or clerk.⁵⁷ This provision was designed to prevent such requests from becoming part of a standard warrant application. The Commission's proposal would have required a finding by the judge of probable cause to believe that notice would likely cause the destruction or disposal of the items sought. Most significantly, the Commission proposed that the fact that the items subject to seizure "are easily destructible or disposable *does not in itself* constitute an independently sufficient basis for concluding that there is probable cause to believe that the giving of notice will result in destruction or disposal."⁵⁸

Thus, the fact that the item sought was a small amount of

52. Ker v. California, 374 U.S. 23 (1963).

53. N.C. GEN. STAT. § 15A-249.

54. NORTH CAROLINA CRIMINAL CODE COMMISSION, LEGISLATIVE PROGRAM AND REPORT, at 19-20.

55. *Id.* at 20.

56. *Id.*

57. *Id.*

58. *Id.*

narcotics would be relevant to the question of whether a judicial "no-knock" order would be granted; but it would not alone be sufficient.⁵⁹ In order for the judge to find likelihood of destruction, additional findings—for example, a determination that specific plans for quick destruction have been made—would be necessary.

Under the Commission proposal, "no-knock" entries to prevent the destruction of evidence would likely have been rare and would have occurred only where prior judicial authorization had been obtained. The General Assembly's action in deleting this provision has the effect of overruling the North Carolina Court of Appeal's decision in *State v. Watson*⁶⁰ which held that notice of identity and purpose are not required when it "reasonably appears" that notice would "cause the destruction or disposition of critical evidence."⁶¹

One technical problem was caused by the manner in which the General Assembly accomplished its deletion of "no-knock" from the Commission proposal. The General Assembly deleted from the act *all* of G.S. 15A-250, including the provision which allowed for such entry where the officer "has probable cause to believe that the giving of notice would endanger the life or safety of any person."⁶² Since the basic provision (G.S. 15A-249) requires notice in all cases, the statute reads as if it precludes any "no-knock" entry. But the retention of G.S. 15A-251(2) (Entry by force) appears to reflect a legislative determination to continue to allow "no-knock" entries where necessary to protect life or safety. Section 15A-251(2) allows on officer to break or enter premises where necessary if "[t]he officer has probable cause to believe *that the giving of notice* would endanger the life or safety of any person." (Emphasis added). This provision clearly contemplates that there will be occasions when the giving of notice may be omitted to protect life or safety and allows forceful entry in such cases. It becomes meaningless unless the General Assembly's deletion of authority to dispense with notice in cases in which life or safety is threatened is disregarded and considered a legislative lapse.

Finally, although the Code as enacted by the General Assembly eliminates "no-knock" entries for the purpose of preventing destruction of evidence, it still permits a very quick "knock-knock" entry

59. For a somewhat similar approach, see *People v. DeSantiago*, 71 Cal. 2d 18, 453 P.2d 353, 76 Cal. Rptr. 809 (1969).

60. 19 N.C. App. 160, 198 S.E.2d 185 (1973).

61. *Id.* at 165, 198 S.E.2d at 188.

62. NORTH CAROLINA CRIMINAL CODE COMMISSION, LEGISLATIVE PROGRAM AND REPORT, at 19-20.

in many circumstances. Section 15A-251(1) allows entry by force when an officer "has previously announced his identity and purpose as required by G.S. 15A-249 and reasonably believes either that admittance is being denied or unreasonably delayed" Under this provision, an officer, although required to knock and yell "Police, search warrant," may enter almost immediately if he hears footsteps running *away* from the door. This is true, at least, if the North Carolina Supreme Court determines that a delay for the purpose of destroying evidence is "unreasonable" no matter how brief; and that an officer—who by definition has probable cause to believe that items subject to seizure are on the premises—can conclude from retreating footsteps that destruction is in fact contemplated.

D. Seizure of Items Not Named in the Warrant

In *Marron v. United States*,⁶³ the Supreme Court indicated that only items named in the warrant could be seized. The fourth amendment requirement that the things to be seized be "particularly described" in the warrant was intended to preclude resort to the "general warrant" utilized for abusive fishing expeditions in England. But even if only those items named in the warrant may be seized *under the authority of the warrant*, other fourth amendment doctrines may permit seizure of additional items. If officers are lawfully present in a place and are conducting a valid search for items named in a warrant, they need not overlook other items that appear in plain view. The new Code permits officers conducting a search to seize items other than those named in the warrant, but contains two limitations designed to protect fourth amendment interests. First, the discovery of the unnamed item must be "inadvertent."⁶⁴ If the officers knew of the existence of the item before discovery, then they should have obtained authority for its seizure through the warrant process.⁶⁵ Secondly, the Code requires that the scope of any search under a warrant must be limited to that necessary to discover the items specified in the warrant.⁶⁶ An officer acting under a warrant describing a stolen refrigerator as the item to be seized would be acting outside his lawful scope in searching drawers and small boxes, and contraband found therein would be unlawfully obtained.

63. 275 U.S. 192 (1927).

64. N.C. GEN. STAT. § 15A-253.

65. See *Coolidge v. New Hampshire*, 403 U.S. 443 (1971).

66. N.C. GEN. STAT. § 15A-253.

E. Search of Persons Present in a Place to be Searched

In executing a search warrant for items small enough to be hidden upon a person, law enforcement officials often find persons not named in the warrant in the place to be searched. Should they be allowed to search such people? This question produced protracted discussion within the Commission and a compromise proposal resulted. The Commission first determined that an officer should always have appropriate power to protect his safety. Thus, it provided for authority to frisk for dangerous weapons by externally patting the clothing of any person present in a place designated in a warrant if the officer "reasonably believes that his safety or the safety of others then present so requires . . ."⁶⁷ But should persons not named in the warrant be subject to a full personal search if they happen to be present in a place that is the object of a search warrant? To forbid such searches would allow a search to be frustrated by the quick transfer of small objects to persons present. To allow such searches, however, is arguably an undue infringement on the privacy of a person who happens to be in the particular place. The Commission sought to resolve these conflicting concerns by allowing searches of persons not named in the warrant only when two conditions are satisfied. First, the officers must have unsuccessfully searched the premises and persons designated in the warrant before searching those present who were not named in the warrant.⁶⁸ Secondly, the authority to detain and search persons present who were not named in the warrant applies only to those present in *private premises* or vehicles.⁶⁹ This second limitation is based upon the Commission's conclusion that it would be unreasonable to subject all those present in a public department store or on a common carrier to detention and search. This concern is not sufficient, however, to immunize those who are present in a non-public place, such as a friend's residence, where there is probable cause to believe that items subject to seizure are located.

In the Commission's view these limitations were sufficient to protect the interest of those present in a place to be searched. The General Assembly supplied an additional safeguard by providing that when unnamed persons are searched, ". . . no property of a different type from that particularly described in the warrant may

67. *Id.* § 15A-255.

68. *Id.* § 15A-256.

69. *Id.*

be seized or may be the basis for prosecution of any person so searched."⁷⁰ This extraordinary provision will require the exclusion of evidence discovered by an officer pursuant to a valid search warrant. Under the Assembly's modification, an officer executing a search warrant for an amount of heroin will be required not to seize a stolen Hope diamond.⁷¹ As the Supreme Court said fifteen years ago, "When an article subject to lawful seizure properly comes into an officer's possession in the course of a lawful search it would be entirely without reason to say that he must return it because it was not one of the things it was his business to look for."⁷² The General Assembly has said just that.

70. *Id.*

71. The officer could, however, seize marijuana under a warrant describing heroin as the object to be seized, since, for the purposes of this section, the General Assembly provided that ". . . all controlled substances are the same type of property." N.C. GEN. STAT. § 15A-256.

72. *Abel v. United States*, 362 U.S. 217, 238 (1960).

