N.C. Court of Appeals Affirms Order Sealing Search

Digital Media and Data Privacy Law Blog

on 10.06.2009
Posted in Access to Search Warrants

In a decision released today, the North Carolina Court of Appeals affirmed a trial court order sealing three search warrants and related materials in a high-profile murder case in Cary, North Carolina. The decision, In re Cooper, represents the first instance in which a North Carolina appellate court has squarely addressed the standards applicable to orders sealing search warrant materials, and it resulted in a set back for press interests in North Carolina.

The case arose out of the investigation into the death of Nancy Cooper. In July 2008, the Cary Police Department and the State of North Carolina submitted three applications for search warrants in connection with the investigation into Nancy Cooper's murder. With respect to each of the three search warrants, the trial court entered orders sealing the applications, the search warrants themselves, and the returns for a period of 30 days. Each of the search warrants related to Nancy Cooper's husband, who was ultimately arrested in October 2008 and charged with her murder. He has maintained his innocence, and the charges remain pending.

In sealing the search warrant materials, the trial court found that the materials fell within the scope of N.C. Gen. Stat. s. 132-1.4(c), which outlines certain information that is a matter of public record, as well as N.C. Gen. Stat. s. 132-1.4(k), which specifically provides that;

The following court records are public records and may be withheld only when sealed by court order: arrest and search warrants that have been returned by law enforcement agencies, indictments, criminal summons, and nontestimonial identification orders.

However, the trial court concluded that N.C. Gen. Stat. s. 132-1.4(e) authorized sealing the material because release would jeopardize the right of the State to prosecute a defendant or the right of a defendant to a fair trial or would undermine an on-going investigation. The trial court also referenced an administrative order in place in Wake County, North Carolina since May 2008 relating to the sealing of search warrant materials, which allowed motions to seal to be made *ex parte*.

Upon learning of the sealing orders, WRAL-TV and The News and Observer moved to unseal all the materials covered by the three sealing orders. The trial court denied the media's motion to unseal. In August 2008, the trial court extended the period in which the search warrants and related

materials would remained sealed. An appeal then ensued.

Even though the search warrant materials were eventually released during the pendency of the appeal, the Court of Appeals addressed the merits of the media's appeal under the familiar exception to the mootness doctrine for cases "capable of repetition, yet evading review." Challenges to sealing orders, like challenges to gag orders, public records and open meetings disputes, and other access issues, often run their course on a time frame too short to permit full litigation and appeal.

The Court of Appeals analyzed the case under the federal appellate decision of Baltimore Sun Co. v. Goetz. The court agreed with the media that the search warrant materials "are ordinarily considered public records and are open for the public's review." The court also rejected the trial court's conclusion that N.C. Gen. Stat. s. 132-1.4(e) supported sealing the materials. As the court pointed out, that provision refers only to public records listed in N.C. Gen. Stat. s. 132-1.4(c)(1) through (c)(5), which do not expressly refer to search warrants.

However, the court also concluded that the sealing of the search warrant materials was not an abuse of discretion because a trial court "may, in the proper circumstances, shield portions of court proceedings and records from the public." The court found the considerations cited by the trial court -- the right to prosecute a defendant, fair trial, and preserving the integrity of an on-going investigation -- were sufficient to support the sealing orders under N.C. Gen. Stat. s. 132-1.4(k).

The Court of Appeals also rejected the media's argument that the public enjoyed a common-law right of access to the search warrant materials under Goetz. It gave little consideration to this argument, concluding that the passage of legislation concerning access to search warrants (i.e., N. C. Gen. Stat. s. 132-1.4(k)) supplanted any common-law right of access. The court did not address the fact that the statute provides no standards by which orders sealing search warrants are to be measured.

Finally, the Court of Appeals rejected the media's constitutional arguments as well. In Goetz, the Fourth Circuit held that the test for determining whether there exists a First Amendment right of access to judicial records such as search warrant materials is as follows:

The test for determining whether a first amendment right of access is available is: 1) "whether the place and process have historically been open to the press and general public," and 2) "whether public access plays a significant positive role in the functioning of the particular process in question."

If these two prongs are met, then a qualified right of access exists, which may be overcome only through proof that a sealing order is narrowly tailored to serve a compelling government interest.

The Court of Appeals concluded that search warrants fail the first prong of the Goetz test, citing Goetz. Although Goetz indeed found no First Amendment right of access to search warrant affidavits, that case did not address access to search warrants themselves or to their returns. In fact, in Goetz, the magistrate did not seal the warrant, the return, or the inventory, which the Goetz court noted in describing the procedural requirement that trial courts consider alternatives to sealing documents.

The Court of Appeals in Cooper went on to find that the procedural requirements set out in Goetz had been satisfied. According to the Fourth Circuit in Goetz, any order "closing trial proceedings must 'be articulated along with findings specific enough that a reviewing court can determine whether the closure order was properly entered.'" In addition, the court must consider alternatives. The Fourth Circuit in Goetz vacated the order sealing the search warrant affidavit for failure to abide by these procedural requirements. In Cooper, however, the Court of Appeals found these procedures met through the trial court's finding that the considerations outlined in N.C. Gen. Stat. s. 132-1.4(e) would be implicated by release of the search warrant materials.

As to the fact that the trial court, unlike in Goetz, sealed all the search warrant materials and not just the affidavits, the court explained that revealing portions of these materials would have been impractical and would have frustrated the purpose of sealing the affidavits, given that all of the materials related to Nancy Cooper's husband and to their marital relationship. The court also noted that the sealing order was of limited duration, which it found indicated the trial court considered the least restrictive means of keeping the information secret.

Finally, the Court of Appeals rejected the media's argument that the "open courts" provision of the North Carolina Constitution, Article I, Section 18, required access to the search warrant materials. It found that while the open courts provision creates a qualified right of access to criminal records and documents, that qualified right was overcome in this case by the considerations recited in the trial court's sealing order.