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Appellate Practice

Alert

North Carolina Court of Appeals Rules that Constitution Prevents Davidson Campus Police from Arresting DWI Suspect

BY JOSEPH R. POPE

The North Carolina Court of Appeals recently overturned a DWI conviction in State v. Yencer, 696 S.E.2d 875 (N.C. Ct. App. 2010), on Establishment Clause grounds because the police officer who arrested the Defendant was a Davidson College campus police officer. According to the court, Davidson is a “religious institution” and the delegation and subsequent exercise of state police power by an officer employed by such an institution violates the strictures of the Establishment Clause of the U.S. Constitution. The decision relied on prior North Carolina cases, State v. Pendleton, 451 S.E.2d 274 (1994) and State v. Jordan, 574 S.E.2d 166 (N.C. Ct. App. 2002), which held that the state could not delegate discretionary government authority, including the authority to make arrests or investigate crimes, to the campus police departments of Campbell and Pfeiffer Universities because they were “religious institutions.” Pendleton, 451 S.E.2d at 278.



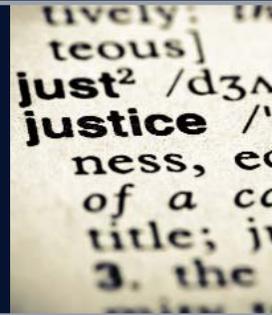
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The court in Yencer, as in Pendleton and Jordan, relied on the test created by the United States Supreme Court in Lemon v. Kurtzman, 403 U.S. 602 (1970). Under Lemon, courts look to whether the state statute or governmental action (1) has a secular

purpose, (2) has a primary effect of advancing or inhibiting religion, or (3) creates an excessive entanglement between government and religion. 403 U.S. at 612–13. In finding that the delegation of police power to Davidson campus police created an excessive entanglement between government and religion, the Yencer court noted that the Presbyterian Church founded Davidson College, and that Davidson and the Church maintained a close relationship. This relationship was memorialized in a Statement of Purpose declaring that the College was committed to the vital relationship between Christian Faith and “The Reformed Tradition.” Moreover, the court found evidence of excessive entanglement in the fact that Davidson requires its students to take at least one religiously based course and requires its president and a percentage of the College’s trustees to be loyal and active members of the Presbyterian Church.

This case is of special interest to colleges and universities with religious affiliations as it calls into question the constitutionality of law enforcement actions conducted by campus police at such institutions and raises issues regarding the propriety of otherwise religiously neutral relationships between government and religious entities.

For more information about this topic, please contact the author or any member of the Williams Mullen Appellate Practice Team.



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