

## Arrest, Search and Investigation

[State v. Williford](#), \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (Jan. 6, 2015). The trial court did not err by denying the defendant's motion to suppress DNA evidence obtained from his discarded cigarette butt. When the defendant refused to supply a DNA sample in connection with a rape and murder investigation, officers sought to obtain his DNA by other means. After the defendant discarded a cigarette butt in a parking lot, officers retrieved the butt. The parking lot was located directly in front of the defendant's four-unit apartment building, was uncovered, and included 5-7 unassigned parking spaces used by the residents. The area between the road and the parking lot was heavily wooded, but no gate restricted access to the lot and no signs suggested either that access to the parking lot was restricted or that the lot was private. After DNA on the cigarette butt matched DNA found on the victim, the defendant was charged with the crimes. At trial the defendant unsuccessfully moved to suppress the DNA evidence. On appeal, the court rejected the defendant's argument that the seizure of the cigarette butt violated his constitutional rights because it occurred within the curtilage of his apartment:

[W]e conclude that the parking lot was not located in the curtilage of defendant's building. While the parking lot was in close proximity to the building, it was not enclosed, was used for parking by both the buildings' residents and the general public, and was only protected in a limited way. Consequently, the parking lot was not a location where defendant possessed "a reasonable and legitimate expectation of privacy that society is prepared to accept."

Next, the court rejected the defendant's argument that even if the parking lot was not considered curtilage, he still maintained a possessory interest in the cigarette butt since he did not put it in a trash can or otherwise convey it to a third party. The court reasoned that the cigarette butt was abandoned property. Finally, the court rejected the defendant's argument that even if officers lawfully obtained the cigarette butt, they still were required to obtain a warrant before testing it for his DNA because he had a legitimate expectation of privacy in his DNA. The court reasoned that the extraction of DNA from an abandoned item does not implicate the Fourth Amendment.