



# Police Law Bulletin



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## **North Carolina** **Court of Appeals**



### **Confidential Informant's Tip Provided Officer With Probable Cause to Arrest Defendant**

**State v. Stanley, \_\_\_ N.C. App. \_\_\_, 622 S.E.2d 680 (20 December 2005).**

A Sergeant with the Charlotte-Mecklenburg Police Department received a call from a confidential informant who told him that a black male wearing a blue ski hat, dark jacket and blue jeans, standing beside the Citgo gas station on Sugar Creek Road, had cocaine in his possession and was selling it. The Sergeant testified that he had worked with the informant for fourteen years and that the information provided by the informant in the past had proven reliable, leading to at least 100 arrests and convictions. Approximately a half hour after receiving the telephone call from the informant, the Sergeant and another officer met the informant a short distance from the gas station. The informant told the two officers that the suspect, whom he did not know, was still at the gas station. The officers went to the Citgo station and observed an individual in the parking lot matching the informant's description. The Sergeant approached the suspect and told him that they had received a complaint that he was selling drugs from that location. The suspect denied the allegation, but consented to a search of his person. In response to the Sergeant's request, the suspect placed his hands on top of his head. When the Sergeant began to search the area around the suspect's pants pocket, the suspect dropped his hands. The Sergeant instructed the suspect to put his hands back on top of his head and the suspect complied, but then dropped his hands again when the search approached his pants pocket. The Sergeant then attempted to handcuff the suspect and the suspect pulled away. The Sergeant eventually got defendant on the ground and handcuffed him. The Sergeant continued his search of the suspect and located a plastic baggie in his pants pocket which contained what appeared to be crack cocaine.

Defendant was arrested and charged with possession of cocaine with intent to sell or deliver. Defendant filed a motion to suppress the evidence discovered on his person. Defendant's motion was denied. Defendant entered a plea of guilty but appealed the denial of his motion to suppress.

The trial court concluded that given the informant's extensive history of reliability, once the officers' matched the informant's description to the defendant and corroborated his presence at a specified location, they had probable cause to arrest the defendant and search him incident to the arrest.

**\*\*Note** that this case is significantly different from *Fla. v. J.L.* in which the United States Supreme Court held that the stop and frisk of a defendant was unlawful when police, acting upon an anonymous tip, corroborated only that a suspect identified as a “black male wearing a plaid shirt” was at a particular location. In the case at hand, the information came from a known informant with an extensive history of reliability. Also, contrast this case with *In re J.L.B.M.* which is summarized below.

**Reasonable Suspicion Did Not Exist to Make Investigative Stop;  
Nonetheless, Juvenile Giving False Name to Officer During Investigative Stop Constituted  
Sufficient Evidence of G.S. 14-223 (Resist, Delay or Obstruct Public Officer)**

**In re J.B.L.M., \_\_\_ N.C.App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (21 March 2006).**

While on patrol, at approximately 6:00 p.m., an officer responded to a police dispatch of a “suspicious person” at an Exxon gas station. The only description given of the person was “Hispanic male.” The officer saw a male Hispanic juvenile in the gas station parking lot wearing baggy clothing. When the juvenile saw the officer, he walked over to a vehicle in the parking lot, spoke to someone, and then began walking away. The officer stopped the juvenile. After the officer began speaking with the juvenile, he noticed a bulge in the juvenile’s pocket. The officer frisked the juvenile and found a blue half-empty can of spray paint and a box cutter with an open blade. When the officer asked the juvenile his name, the boy responded “Oscar Lopez.” The officer transported the juvenile to a nearby shopping center where blue graffiti had recently been sprayed. The officer testified that the juvenile later identified himself as “Mr. Puppet,” which was the signature used in the graffiti. The officer drove the juvenile to the police station where he was placed in an interview room and questioned about his name. The juvenile continued to give the name “Oscar Lopez,” until another officer entered the room and, recognizing the juvenile, called him by his real name, J.B.L.M. The juvenile replied, “My name is J.L. mother f--- M. You found me out.” When the juvenile was eventually left alone in the interview room, he set off some fireworks that he had in his pocket, leaving soot on the floor and wall.

Juvenile petitions were filed alleging that J.B.L.M. was delinquent in that he set fire to, burned or caused to be burned a government building; damaged real property; resisted, delayed and obstructed an officer; and carried a concealed weapon. At the close of the hearing, the juvenile made a motion to dismiss which was denied by the trial court. After being adjudicated delinquent, committed to the Department of Juvenile Justice and Delinquency Prevention for an indefinite period of time, and denied release from custody pending appeal, J.B.L.M. appealed on a variety of grounds.

J.B.L.M. first argued that the trial court erred in denying his motion to suppress because there were insufficient grounds for having stopped him, therefore, any evidence obtained as a result of the stop was inadmissible and should have been suppressed. In response to this argument, the North Carolina Court of Appeals noted that an investigatory stop must be justified by reasonable suspicion, based on objective facts, that the individual is involved in criminal activity. In this case, the dispatch specified only that there was a suspicious person described as a Hispanic male. There were no specific characteristics of the individual provided. Moreover, the dispatch did not allege that the “suspicious person” was engaged in any criminal activity. Nor did the officer articulate any facts suggesting that the juvenile was involved in such activity. The officer did not observe the juvenile committing any criminal acts, nor had there been any reports of criminal activity in that area that day. The officer only observed the juvenile walk away from the direction of the patrol car. In addition, the stop occurred at approximately 6:00 p.m. in front of an open business. The Court concluded that even through the eyes of a reasonable, cautious officer, the facts relied upon by the officer were inadequate to show more than a hunch that the juvenile was

involved in criminal activity. Thus, the Court held that the stop violated the Fourth Amendment and that the trial court erred in denying the juvenile's motion to suppress evidence obtained by virtue of the stop.

J.B.L.M. next argued that the State presented insufficient evidence of the allegation of carrying a concealed weapon because the State's sole evidence was the fruit of an illegal stop. Having already concluded that the stop of J.B.L.M. was unlawful, the Court of Appeals agreed that the juvenile's motion to dismiss this matter should have been granted.

Third, J.B.L.M. challenged the sufficiency of the State's evidence of the allegation of injury to real property. At trial, the State introduced the can of spray paint that the officer found in the juvenile's pocket. Having held that the stop of the juvenile was unreasonable, the Court noted that the can of paint should have been suppressed by the trial court. The State also introduced the juvenile's statement identifying himself as "Mr. Puppet," which was the name found in the graffiti. J.B.L.M. argued that this statement was obtained in violation of his *Miranda* rights. Since the trial court made no findings of fact as to whether the statement was the product of custodial interrogation, the Court sent the issue back to the trial court for further consideration.

Among several other arguments, J.B.L.M. also contended that the trial court erred in denying his motion to dismiss the allegation of resisting an officer in violation of G.S. 14-223. J.B.L.M. argued that since the stop was invalid, he was within his right to give a false name. The Court of Appeals disagreed and held that while the stop may have been invalid, it did not give the juvenile license to lie about his identity.

**Defendant Was Not Seized When Officer Approached and Conversated With Him;  
Assuming Arguendo That Defendant Was Seized When Officer Asked Him to "Hold Up,"  
Seizure Was Supported by Reasonable Suspicion**

**State v. Campbell, No. 366A02 (19 August 2005).**

The defendant was sitting in a car in a K-Mart parking lot in Aiken, South Carolina. A K-Mart employee called the police. An officer arrived as the defendant was leaving. The officer followed defendant to a nearby convenience store. Defendant had gotten out of his car and was walking toward the convenience store. The officer asked if she could speak with him, he walked toward her and a conversation ensued. Defendant told the officer he had been taking a nap in the K-Mart parking lot. He told the officer that he was on his way back to North Carolina from a construction job in Columbia, South Carolina and that he had stopped in Aiken to rest. The officer asked defendant for his driver's license which he could not produce. When the officer asked for registration and insurance information on the car, the defendant indicated that the car was not his; that it belonged to a friend, but he could not remember the friend's name. The officer asked defendant to "hold up and she would be back with him". The officer called dispatch to check the status of defendant's driver's license. While attempting to run a driver's license check on defendant, officers asked to search his car and defendant consented. They found two wallets (neither of which belonged to defendant), a .22 caliber rifle, an axe and some clothes. The officers asked defendant if the rifle belonged to him. He stated that he did not know it was in the car, but when one of the officers picked it up, defendant said "watch it, it's loaded." Dispatch then notified the officers that defendant's license had been suspended in North Carolina. The officers arrested defendant for driving without a South Carolina driver's license. The wallets contained the identification of two men residing in Pender County, North Carolina. A registration card was also found in the vehicle indicating that the car belonged to one of the two men. The Aiken Department of Public Safety contacted authorities in Pender County who conducted well-being checks on the men. One of the men was found murdered in his home. DNA taken from cigarette butts found around the victim's body was consistent with the defendant's.

Blood found on defendant's jeans matched the victim's. During their investigation of the murder, two video surveillance tapes were found showing the victim and defendant together at different stores the night of the murder.

Defendant was indicted for first degree murder and attempted robbery. Defendant waived extradition and was transferred to Pender County, North Carolina where he stood trial. He was convicted of first degree murder and sentenced to death.

Defendant assigned error to the trial court's denial of his motion to suppress all evidence discovered after he was stopped by the police in Aiken. Defendant contended that he was illegally seized when he was approached by the officer in the convenience store parking lot and that no reasonable suspicion supported the seizure. The North Carolina Supreme Court affirmed the trial court's denial of defendant's motion to suppress. The Court ruled that defendant was not seized when the officer approached defendant and conversed with him in the convenience store parking lot. The Court noted that defendant had pulled into the parking lot and stopped his vehicle there on his own; that the officer pulled into the convenience store behind the defendant without activating her lights and siren; the officer asked defendant to speak with her; the defendant walked towards the officer; the officer asked defendant if he had been in the K-Mart parking lot and defendant answered in the affirmative and then continued to explain that he had stopped there to rest on his way from Columbia, South Carolina to North Carolina; when asked for his license and registration, defendant said that he did not have any identification and that the vehicle belonged to a friend whose name he could not recall. At this point, the officer had not told defendant he was not free to leave and defendant had consented to speak with her. The encounter was consensual and no reasonable suspicion was required.

Assuming arguendo that the officer's statement to defendant to "hold up" while she had a license check performed was a seizure, the Court concluded that it was supported by reasonable suspicion. The officer had received a complaint from a K-Mart employee about a suspicious person who had been sitting in their parking lot in a parked car for a lengthy period of time; defendant said he had stopped in Aiken to rest on his way home to North Carolina after finishing a job in Columbia, South Carolina although Aiken is not en route to North Carolina; the K-Mart was more than 10 miles from the interstate connecting Columbia and Aiken; defendant had no driver's license; and defendant could not recall the name of his friend to whom he alleged the car belonged. These facts were sufficient to give rise to a reasonable suspicion in the mind of a trained officer.