



# Police Law Bulletin



City Attorneys' Office

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**In this issue:**

Officer Had Reasonable Suspicion to Stop Vehicle Based on Corroboration and Caller Placing Anonymity at Risk – Pgs. 1- 2

Officer Had Reasonable Suspicion to Detain Suspects After Traffic Stop Due to Corroboration and Inconsistent Statement – Pgs. 2-3

Officer Did Not Have Reasonable Suspicion to Stop Vehicle Based on Uncorroborated Tip and Single Observation of Weaving Within Lane– Pgs. 3-4

Officer Had Reasonable Suspicion to Detain Suspects Based on Extensive Corroboration of Tips– Pg. 5



## North Carolina Court of Appeals



### **Officer Had Reasonable Suspicion of Criminal Activity to Stop Vehicle**

***State v. Hudgins, No. COA08-441 (17 February 2009).***

On September 10, 2006, at approximately 2:55 a.m., a Greensboro police officer received a call from dispatch informing him that a caller was claiming to be followed by a man with a gun while driving his car in the vicinity of Westover Terrace and Green Valley Drive. The caller remained on the line with dispatch, describing the vehicles by make, model and color, and providing various updates on his location. This information was relayed to the officer who advised the dispatcher to direct the caller to drive to Market Street so that he could intercept them. The officer proceeded to Market Street where he observed vehicles that matched the description given by the caller. The officer activated his lights and siren behind the car. The vehicle, as well as the one it was allegedly following, both stopped. The caller exited his vehicle and identified the driver of the other vehicle as the man who had been following him. The officer directed the driver to show his hands and exit his car. During this time, the caller re-entered his vehicle and drove away. The caller had never identified himself to the dispatcher or officer. After frisking the driver, the officer determined that there was probable cause to arrest him for driving while impaired. There was no weapon found in a search of the car incident to arrest.

Defendant filed a motion to suppress all evidence obtained as a result of the stop. The defendant argued that there was no reasonable suspicion to stop his vehicle because there was no indicia of reliability as to the caller. The motion was denied and defendant was found guilty. Defendant then appealed the denial of his motion.

The Court of Appeals noted that an informant's tip may provide the reasonable suspicion necessary for an investigative stop but that tip must possess sufficient indicia of reliability. Where the informant is known or where the informant relays information to an officer face-to-face, an officer can judge the credibility of the tipster firsthand and thus confirm whether the tip is sufficiently reliable. Where a tip is anonymous, it must be accompanied by some corroborative elements that establish its reliability. Considering the totality of the circumstances, the court found that in the instant case there were sufficient indicia of reliability: 1. the caller telephoned police and remained on the phone for approximately 8 minutes; 2. the caller provided specific information about the vehicle that was following him and their

location; 3. the caller carefully followed the instructions of the dispatcher which allowed the officers to intercept the vehicles; 4. the defendant followed the caller over a peculiar and circuitous route that doubled back on itself, going in and out of residential areas, between 2 a.m. and 3 a.m.; 5. The final route leading to the interception of the vehicles was dictated by the officer, and when he arrived on Market Street, the vehicles were as described with defendant's vehicle behind that of the caller; 6. by calling on a cell phone and remaining at the scene, the caller placed his anonymity at risk.

Therefore, the court affirmed the trial court's denial of defendant's motion to suppress.

**Officer Had Reasonable Suspicion of Criminal Activity to Detain Defendant After Traffic Stop Had Concluded;**

**Length of Detention Was Reasonable**

*State v. Hodges, No. COA08-474 (17 February 2009).*

On November 22, 2006, a detective with the Greensboro Police Department's narcotics division was conducting surveillance at a residence on Shallowford Drive, as well as on a suspected high-level narcotics distributor by the name of Valderramas. Burlington police had contacted Greensboro vice and informed them that a confidential informant had told them that Valderramas would be delivering cash or drugs to various locations on that date.

Previously, in December 2005, and early November 2006, Greensboro vice officers had received direct tips from two confidential informants detailing how one of the residents of the home on Shallowford Drive acted as a middleman between a high-level narcotics distributor and various buyers. In addition, on November 3, 2006, Greensboro vice conducted an undercover purchase of a half kilogram of cocaine at the residence. The sale followed the pattern described by the informants. During the sale, Valderramas was seen in the yard of the home. He left in his truck shortly after completion of the sale. From the date of the sale, Greensboro vice officers began conducting surveillance on Valderammas and, on numerous occasions, observed him proceed to a house in Gibsonville, open the hood of his truck, put a package under the hood, and leave for various suspected narcotics locations in the Burlington and High Point area.

On November 22, officers observed Valderramas' truck and a white Ford Focus at the Shallowford Road residence. A detective saw Valderramas walk from the back of the house to his truck, open the hood, "mess there" for a short time, close the hood and return to the backyard. About five minutes afterwards, Valderramas returned to the front of the house with the suspected "middleman" and another man later identified as Muir. Valderramas got into his truck, the suspected "middleman" went inside the house, and Muir got into the passenger side of the Ford Focus. At no time did the detective actually observe any exchange, or packages that possibly contained narcotics. Based upon their training and experience, the surveillance of the residence and Valderramas, and the undercover buy, the officers believed the Ford Focus contained a buyer of narcotics. Consequently, they began to follow the vehicle after it left the residence.

One of the vice detectives radioed a Greensboro police officer who was on routine patrol and informed him that they were performing narcotics surveillance on the vehicle and noticed that it may have been speeding. The detective asked the officer to make his own observations as to the vehicle's speed or another traffic violation and, if observed, to conduct a traffic stop.

The officer observed the Ford Focus speeding and constantly changing lanes. When the officer activated his lights, the detective noticed that Muir looked back and appeared to conceal something beneath the passenger's seat. The detective radioed the officer and told him to be careful because he believed the passenger was hiding either drugs or a weapon under the seat. The officer approached the vehicle and requested the driver's license and registration. The driver produced a license, and car rental agreement which was in Muir's name. Muir also produced his license. The officer asked the driver to step out of the car, and informed him that he had been stopped for speeding. When he asked the driver the name of the passenger, the driver said "Bobby," but indicated he did not know his last name.

A second officer arrived to assist. The officer who initiated the stop returned to his vehicle to run license and warrant checks on the driver and passenger. After determining that the licenses were valid and that there were no outstanding warrants, the officer returned the license and rental contract to the driver and issued a verbal warning for speeding.

The officer again asked the driver the name of his passenger. The driver identified him as "Bobby," which was not consistent with Muir's license. The officer left the driver standing behind his vehicle, had a brief conversation with Muir and then returned to the driver. The officer asked the driver if there was anything illegal in the car, to which he replied "not that I know of." He then asked permission to search the car and the driver told him he would need to ask Muir. Muir consented. Prior to searching the car, the officer asked Muir if he had any large amount of cash and Muir produced \$4,000.00, which was wrapped in masking tape, from his jacket. Muir then consented to being searched and the officer found an additional \$3,000.00 in his pocket. A package containing what appeared to be cocaine was found under the passenger's seat. The driver and Muir were then arrested.

The defendant driver filed a motion to suppress the cocaine. (Prior to the hearing on defendant's motion, Muir died, the apparent victim of a homicide.) The trial court denied his motion and the defendant appealed.

Defendant argued that the officer lacked reasonable suspicion to detain him once he returned his driver's license and the rental contract, and issued him a verbal warning for speeding. The court noted that the record was clear, and the trial court found, that the officer proceeded to detain defendant and Muir and to investigate them subsequent to returning the documents and issuing the verbal warning. In fact, the officer admitted to doing so. However, the court found that the officer possessed reasonable suspicion that additional criminal activity was afoot to justify any continued detention. In addition to defendant's misidentification of Muir, defendant exhibited nervousness, and the officer had just been informed by the head of the Greensboro vice unit that: vice had been conducting narcotics surveillance on the vehicle; he had observed the passenger place something under his seat which he believed to be drugs or a weapon; and warned the officer to be careful. Furthermore, the court found that the detention was not excessive and therefore, reasonable. Approximately 15 minutes passed from the time the officer activated his blue lights and found the cocaine; less than 5 minutes passed between when the officer returned the documentation to the defendant and when he located the cocaine.

The court of appeals therefore affirmed the trial court's denial of defendant's motion to suppress.

**Officer Did Not Have Reasonable Suspicion to Stop Vehicle for Reckless or Impaired Driving Based on Content of Uncorroborated Anonymous Telephone Call to Dispatcher and Officer's Observation of Weaving Within Lane**

*State v. Peele, No. COA08-713 (5 May 2009).*

At approximately 7:50 p.m. on April 7, 2007, a sergeant with the Williamston Police Department responded to a dispatch that an unidentified caller had advised of “a possible careless and reckless, D.W.I., headed towards the Holiday Inn intersection.” The vehicle was described as a burgundy Chevrolet pickup truck. The sergeant arrived at the intersection “within a second” and observed a burgundy Chevrolet pickup truck. After following the truck for about 1/10 of a mile, the sergeant saw the truck weave within its lane once. The sergeant then stopped defendant’s vehicle and subsequently charged him with driving while impaired.

Defendant filed a pretrial motion to suppress. The trial court denied the motion. Defendant was convicted, and then appealed arguing that the officer lacked reasonable suspicion to stop his vehicle.

The court first noted that an officer’s observation of a single instance of weaving is not sufficient to establish reasonable suspicion.

The sergeant, however, had also received an anonymous tip. The court, therefore, considered whether the tip was sufficient to establish reasonable suspicion for the stop. An anonymous tip must have sufficient indicia of reliability. If it does not, then there must be sufficient police corroboration of the tip before a stop may be made.

In this case, the State contended that the tip was sufficiently reliable either standing alone or based on police corroboration because all information provided by the caller was correct in every detail and the sergeant verified details provided by the informant through independent observations. The court noted though that reasonable suspicion does not arise merely from the fact that the individual met the description given to the officers. The United States Supreme Court has explained:

“An accurate description of a subject’s readily observable location and appearance is of course reliable in this limited sense: It will help the police correctly identify the person whom the tipster means to accuse. Such a tip, however, does not show that the tipster has knowledge of concealed criminal activity. The reasonable suspicion here at issue requires that a tip be reliable in its assertion of illegality, not just its tendency to identify a determinate person.”

In this case, the anonymous caller only described the car’s physical characteristics and location. There was no information about who the caller was, no details about what the caller had seen, no information as to where the caller was located or other information related to the caller’s basis of knowledge, and no prediction of defendant’s future actions other than driving from one stoplight to the next. Moreover, the court felt that the officer did not corroborate the caller’s assertion of illegality. He followed the defendant for no more than 1/10 of a mile and, during that distance, saw the defendant’s vehicle weave within its lane once. Consequently, the court held that the anonymous tip, standing alone, lacked sufficient indicia of reliability to provide reasonable suspicion for the stop.

The court then considered whether the single instance of weaving *combined with* the uncorroborated anonymous tip was enough to give rise to reasonable suspicion. The court found that it did not reasoning that “all we have is a tip with no indicia of reliability, no corroboration, and conduct falling within the broad range of what can be described as normal driving behavior.” The court noted that if it were “to uphold the trial court’s decision, it would be extending the grounds for reasonable suspicion farther than our Courts ever have.” The Court of Appeals declined to do so and reversed the trial court’s order denying defendant’s motion to suppress.

**Officers Had Reasonable Suspicion of Defendant's Selling Marijuana to Make Investigative Stop**

*State v. Garcia, No. COA08-1312 (16 June 2009).*

In May 2007, a detective of the Winston-Salem Police Department received an anonymous tip alleging that marijuana was being stored in a shed and sold from 338 Barnes Road. The informant identified defendant as the person selling the marijuana. Upon searching defendant's name on a law enforcement database, the detective found information that he lived at 338 Barnes Road and had a lengthy history of police contact, including felony arrests for narcotics and firearms offenses. The detective received a second tip from the same informant on July 7, 2007. The informant generally gave the same information that was provided in the first tip.

As a result of the tips, the detective performed surveillance on the residence three times that month. On July 26, the detective was performing surveillance while three other officers remained nearby to provide any necessary assistance. She saw two Hispanic males, one of whom she believed to be the defendant, leave and return to the residence in a black BMW several times throughout the day. At some point during the surveillance, she also observed the Hispanic males coming from the area of a storage shed located on the property. One was carrying a large black bag with handles which he placed behind the driver's seat of the BMW. The men then got into the car and began to leave the residence.

The detective radioed her observations to the officers who were standing by and asked that they continue surveillance on the BMW. They followed the car to Ferrell Court, a known drug location. The officers, who were in plain clothes and unmarked vehicles, called for marked patrol cars and uniformed officers to come to the scene. One of the officers who had followed the men to Ferrell Court approached the Hispanic males as they talked to two African American men. The two African-American men immediately fled when the sergeant identified himself as a police officer. One of the other plain clothes officers then informed the men that they were under investigative detention. The officer approached the BMW which was parked about ten feet away. The officer testified that he could smell green marijuana. Therefore, the officer searched the BMW and found 890 grams of marijuana in the black bag behind the driver's seat. Defendant was arrested. His arrest was communicated to the detective who was still performing surveillance at the Barnes Road residence. Other residents provided consent to search the home. Officers discovered more marijuana, large plastic bags, scales, a large amount of currency, and a .22 caliber rifle. After a drug dog alerted to the storage shed, a search warrant was obtained for it. 11.5 pounds of marijuana was discovered inside.

Defendant made a pretrial motion to suppress. He argued that officers lacked reasonable suspicion to have stopped him at Ferrell Court and therefore, all statements and evidence seized after that point are subject to the exclusionary rule.

An anonymous informant's tip may form the basis of reasonable suspicion if it exhibits sufficient indicia of reliability. If a tip is somewhat lacking in reliability, it may still provide a basis for reasonable suspicion if it is buttressed by sufficient police corroboration. In this case, the tip provided specific information of illegal activity and a specific location including reference to a shed. The tips were then buttressed by substantial subsequent surveillance. The detective had become aware of defendant's extensive history of police contacts for narcotics and firearms violations; the detective witnessed defendant coming and going from the residence numerous times throughout the day; the detective observed the defendant emerging from the storage shed referred to be the informant carrying a bag which he placed into a car; the defendant then immediately left the residence and drove the car to an area known

for drug activity; and the persons to whom the defendant was speaking immediately fled upon recognizing the police.

Because police sufficiently corroborated the anonymous informant's tip, the court affirmed the denial of defendant's motion to suppress.