



# Police Law Bulletin



City Attorneys' Office

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## NORTH CAROLINA SUPREME COURT



### **Brief Detention of Defendant Supported by Reasonable Suspicion**

***State v. Nicholson, No. 319A17 (June 8, 2018).***

Around 4:00 a.m. on December 23, 2015, Lt. Marotz of the Kernersville Police Department noticed a car parked on the street in a turn lane next to a gas station. The car had its headlights on but no turn signal blinking. As Lt. Marotz pulled his marked patrol vehicle up next to the car, he saw two men inside, one in the driver's seat and the other—later identified as defendant—in the seat directly behind the driver. The windows were down despite misting rain and a temperature in the 40s. As Lt. Marotz pulled alongside, he saw defendant pulling down a toboggan-style mask with holes in the eyes. Defendant pulled it down to the bridge of his nose but then pushed it back up when he saw the officer.

Lt. Marotz asked the two men whether everything was okay, and they responded that it was. The driver, Quentin Chavis, explained that the man in the back seat was his brother and they had been in an argument, but it was over now and everything was okay; defendant agreed. Sensing that something was not quite right, however, Lt.

Marotz again asked the pair whether they were okay, and they nodded to indicate that they were. Still feeling that something was amiss, Lt. Marotz drove into the gas station parking lot to observe the situation. After watching as Chavis's car remained immobile in the turn lane for another half a minute, Lt. Marotz got out of his patrol vehicle and started on foot toward the stopped car. Defendant then stepped out, and Chavis began to edge the car forward about two feet. Lt. Marotz asked Chavis, "Where are you going? Are you going to leave your brother just out here?" Chavis responded, "No. I'm just late for work. I've got to get to work." Lt. Marotz again asked whether everything was okay. Although Chavis said "yes," he shook his head "no." This gesture prompted Lt. Marotz to say to defendant, "Well, your brother here in the driver's seat is shaking his head. He's telling me everything's not fine. Is everything fine or not?" Chavis quickly interjected, "No, Officer, everything's fine. I've just got to get to work." Lt. Marotz told him, "Okay. Go to work."

After Chavis drove away, defendant stated to Lt. Marotz, “The store’s right here. Can I just walk to the store?” Lt. Marotz responded, “Hang tight for me just a second. You don’t have any weapons on you do you?” Defendant said that he had a knife with him that he carried for self-defense, but a frisk of his person by a backup officer who had just arrived did not reveal a weapon. After additional questioning, the officers learned defendant’s identity from his ID card and told him he was “free to go.”

Later that day, Chavis reported to police that defendant, who was not actually his brother, had been in the process of robbing him when Lt. Marotz pulled up. Chavis testified at trial that defendant had flagged him down while he was on his way to his shift at FedEx and had requested a ride to the gas station. Once in the car, defendant held a knife to Chavis’s throat and demanded money. Chavis handed over his debit card just before Lt. Marotz pulled up. Police later found a steak knife in the back seat of Chavis’s vehicle. During a search of defendant’s residence, police discovered a knife block containing steak knives that looked identical to the one found in Chavis’s car, one of which was missing.

A grand jury indicted defendant for robbery with a dangerous weapon. Defendant moved to suppress evidence obtained as a result of his seizure by Lt. Marotz. The trial court denied the motion. Defendant appealed, and a divided Court of Appeals ordered a new trial after concluding that Lt. Marotz lacked reasonable suspicion to detain defendant for questioning. The State then appealed to the North Carolina Supreme Court.

The United States Supreme Court has long held that the Fourth Amendment permits a police officer to conduct a brief investigatory stop of an individual based on reasonable suspicion that the individual is engaged in criminal activity. This standard takes into account the totality of the circumstances. The parties here did not dispute that defendant was seized when Lt. Marotz told defendant, “Hang tight for me just a second. You don’t have any weapons on you do you?” The court concluded, however, that at that point the following facts would lead a reasonable officer to suspect that a crime had just been committed or was in progress: (1) it was 4:00 a.m.; (2) the vehicle was stopped in the road with no turn signal on; (3) there were only two people sitting in the car, one in the driver’s seat and the other directly behind him in the back seat; (4) defendant appeared to be pulling some sort of toboggan or ski mask down over his face until he saw Lt. Marotz and pushed it back up; (5) after Lt. Marotz drove into the store parking lot and waited for an additional thirty seconds, the vehicle still did not move or display a turn signal; (6) after defendant got out of the car, Chavis was edging forward and about to leave defendant, who he had just said was his brother, on the side of the road on a cold, wet night; (7) when Lt. Marotz again asked whether everything was okay, Chavis shook his head “no” while defendant said everything was fine; and (8) after Lt. Marotz confronted defendant with the fact that Chavis shook his head “no,” Chavis quickly stated that everything was okay. When viewing all the facts together, innocent explanations for the events seem much less likely. If these were two brothers, why would they be seated one in front of the other like a taxi or rideshare driver and customer might sit, and why would one brother leave the other on the side of the road in the middle of a cold, wet night after an argument had ended? And if everything had been resolved, why would Chavis silently shake his head “no” when asked whether everything was fine? Add to these questions defendant’s suspicious behavior involving the toboggan or ski mask and it is clear that reasonable suspicion existed to briefly detain defendant for questioning.

For the foregoing reasons, the North Carolina Supreme Court reversed the decision of the Court of Appeals and reinstated the judgment entered by the trial court.



## NORTH CAROLINA COURT OF APPEALS



### **Anonymous Tip, Though Not Enough On Its Own, Was Buttressed by Evasive Behavior of the Defendant and the Fact That He Failed to Inform Officers He Was Armed, Thereby Establishing Reasonable Suspicion**

*State v. Malachi*, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (Mar. 5, 2019).

Shortly after midnight on August 14, 2014, the Charlotte-Mecklenburg Police Department received a 911 call from an anonymous caller. The caller told the dispatcher that in the rear parking lot of a gas station located at 3416 Freedom Drive, an African American male wearing a red shirt and black pants had just placed a handgun in the waistband of his pants.

Officer Clark, in uniform and a marked car, first responded to the call. Clark's arrival was followed almost immediately by Officer Van Aken. Officer Clark saw about six to eight people standing in the parking lot, including a person who matched the description provided to the dispatcher and who was later identified as Defendant. When Officer Clark got out of his car, Defendant looked directly at him, "bladed, turned his body away, and started to walk away." Officer Clark immediately approached Defendant and grabbed his arm. Officer Van Aken held Defendant's other arm and the two officers walked Defendant away from the crowd. Defendant was squirming. Officer Clark placed Defendant in handcuffs and told him that he was not under arrest. Officer Van Aken then frisked Defendant and pulled a revolver from his right hip waistband. The officers then told Defendant he was under arrest and placed him in the back of the patrol vehicle.

Defendant was tried before a jury on charges of carrying a concealed weapon and possession of a firearm by a felon. Defendant filed a motion to suppress all evidence of the revolver arguing that a police officer may not legally stop and frisk anyone based solely on an anonymous tip that simply describes the person's location and description but that did not report any illegal conduct by the person. The trial court denied the motion. The jury returned a verdict of not guilty on the charge of carrying a concealed weapon and guilty of possession of a firearm by a felon. Defendant then pleaded guilty to attaining habitual felon status. The trial court sentenced Defendant to 100 to 132 months of imprisonment.

A stop-and-frisk of an individual passes constitutional muster if: (1) the stop, at its initiation, was premised on a reasonable suspicion that crime may have been afoot; and (2) the officer possessed a reasonable suspicion that the individual involved was armed and dangerous.

In the case at hand, the anonymous tip was insufficient, by itself, to supply Officer Clark with reasonable suspicion to stop Defendant. Although he was able to identify Defendant based on the tip, it did not indicate any illegal activity sufficient to give rise to reasonable suspicion standing alone. However, the officers' suspicion was based on more than an anonymous tip. Officer Clark arrived on the scene in full uniform and a marked police car before making eye contact with Defendant. As Officer Clark was exiting his car, the Defendant turned his body in such a way as to prevent the officer from observing a weapon. Officer Clark testified that he was trained on some of the characteristics of armed suspects, and that this kind of turn, known as "blading," is when an individual turns to have his body between the firearm he is carrying and another person. Defendant next began to move away. Given Defendant's "blading" after making eye contact with Officer Clark in his marked car and uniform, Defendant's movements away from Officer Clark as he was being approached, and Officer Clark's training in identifying armed suspects, the Court held that the officers had reasonable suspicion to conduct an investigatory stop of Defendant for unlawful possession of a firearm.

The officers' reasonable suspicion of unlawful possession, coupled with Defendant's struggling during the stop and his continued failure to inform the officers that he was armed as required by Section 14-415.11(a), convinced the Court that the officers also possessed reasonable suspicion to frisk Defendant as a potentially armed and dangerous individual.

For the above reasons, the Court of Appeals held that the trial court did not err in denying Defendant's motion to suppress.