



# Police Law Bulletin



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## North Carolina Supreme Court



### **Officers Had Reasonable Suspicion to Make Investigatory Stop of Vehicle – Ruling of Court of Appeals Reversed**

**State v. Maready, No. 32A08, reversing, \_\_\_ N.C. App. \_\_\_, 654 S.E.2d 769 (15 January 2008).**

On February 12, 2005, two Durham County deputies were on patrol and saw an apparently intoxicated man walking along Sherron Road. The man was staggering on the roadway, so the deputies began driving towards him. As they did so, the deputies saw, in the opposite lane, a minivan being driven at a slow pace with its hazard lights activated. Behind the minivan was a silver Honda Civic. The intoxicated man ran across the roadway and got into the Honda. After passing the minivan, which had come to a stop, the Honda continued down Sherron Road. The deputies turned around, and as they pulled alongside the minivan, its driver signaled to them to get their attention. The minivan driver appeared distraught and told the deputies they needed to check on the driver of the silver Honda because he had been driving erratically, running stop signs and stop lights. The deputies continued along Sherron Road and found the Honda stopped at a stop light. They activated their blue lights and conducted an investigatory stop. One of the deputies testified that when he approached the Honda, he detected a strong odor of alcohol and noticed that defendant’s motor skills appeared to be impaired. When asked if he had been drinking, defendant admitted that he had. The deputies ordered defendant out of the vehicle to perform some field sobriety tests, but the defendant refused. When the deputies tried to remove defendant from the vehicle by force, he said “he was not going back to the penitentiary” and then put the vehicle into gear and sped off. The deputies pursued defendant, and despite traveling 65-70 miles per hour, they were unable to gain on the Honda. They soon rounded a curve and saw the Honda “flipping continuously,” as well as a red pick-up truck flipping at the same time. The driver of the truck was thrown from her vehicle, resulting in fatal injuries. The defendant’s blood, drawn approximately six hours after the wreck occurred, showed an alcohol concentration of 0.14.

A Durham County grand jury indicted defendant for second-degree murder; felonious larceny and felonious possession of stolen goods (stolen car); assault with a deadly weapon inflicting serious injury; two counts of assault with a deadly weapon; driving while impaired; driving while license revoked; careless and reckless driving; felony speeding to elude arrest; and habitual felon status. At his trial,

defendant moved to suppress all testimony related to the traffic stop that gave rise to the charges, arguing that the officers who detained him lacked reasonable suspicion. The trial court denied the motion. The jury convicted defendant of second-degree murder; misdemeanor larceny and misdemeanor possession of stolen goods; assault with a deadly weapon inflicting serious injury; two counts of assault with a deadly weapon; driving while impaired; driving while license revoked; careless and reckless driving; and felony eluding arrest. The jury also found the presence of an aggravating factor and that defendant had obtained habitual felon status. The Court of Appeals reversed, holding the officers did not have reasonable suspicion to stop defendant. The State appealed.

When police act on the basis of an informant's tip, the indicia of the tip's reliability are among the circumstances that must be considered in determining whether reasonable suspicion exists. The potential indicia of reliability include all the facts known to the officers from personal observation, including those that do not necessarily corroborate or refute the informant's statements. One such fact in the case at hand was that the minivan was traveling immediately in front of the Honda as the officers approached, and the driver apparently would have been in a position to view the alleged traffic violations she reported. Also, the minivan driver's especially cautious driving and her apparent distress were consistent with what one would expect of a driver who had witnessed a nearby motorist driving erratically. The Court of Appeals also gave significant weight to the fact that the minivan driver approached the deputies in person and gave them information at a time and place near to the scene of the alleged traffic violations. She would have had little time to fabricate her allegations against defendant. Moreover, in providing the tip through a face-to-face encounter with sheriff's deputies, the minivan driver was not a completely anonymous informant. Not knowing whether the officers had already noted her tag number or if they would detain her for further questioning, and aware they could quickly assess the truth of her statements by stopping the Honda, the minivan driver willingly placed her anonymity at risk. The Court of Appeals held that these indicia of reliability, together with the rest of the attendant circumstances, satisfied the reasonable suspicion standard. Therefore, they held the traffic stop was constitutional and that the trial court properly denied defendant's motion to suppress.



## North Carolina Court of Appeals



### **Officer Had Reasonable Suspicion to Make Investigative Stop and Frisk of Defendant;**

### **Officer's Discovery of Crack Cocaine in Film Canister During Frisk of Defendant Did Not Violate Fourth Amendment**

**State v. Robinson, No. COA07-1180 (1 April 2008).**

An officer on bike patrol in a community known for drug activity saw a vehicle speeding down the street. The driver crossed over onto the left side of the road, jumped the curb, drove onto the grass, and then drove the vehicle behind a building out of the officer's view. The officer was informed by radio that the defendant owned the vehicle. The officer recalled that a Crimestoppers tip had been received which specifically named the building behind which defendant drove as being a drug location, and which named the defendant as selling a large amount of cocaine from the building. The officer dismounted his bike and walked to the corner of the building. He saw defendant talking to someone inside the apartment. When the officer made eye contact with the defendant, the defendant stopped talking, straightened up very abruptly, and had a surprised or frightened look on his face. When the officer asked him what he was doing, the defendant started backing away. The officer testified that he "turned his right side away" and

“reached into his right pocket.” The officer told defendant to keep his hands out of his pockets. The officer then frisked the defendant. When he touched the pocket into which the defendant had reached, he felt a cylindrical object which made a rattling sound when it moved. The officer testified that it felt like a film canister. When the officer asked, “Is that crack in your pocket?” the defendant replied, “no,” lowering his head and slumping his shoulders. The officer then reached in the pocket, pulled out the canister, popped the lid off, and saw that it was full of rocks that looked like crack cocaine. The officer then placed defendant under arrest. Thereafter, the officer searched the car defendant was driving and found several razor blades with white powdery residue on them and a set of electronic scales.

Defendant filed a motion to suppress evidence found on him and in his vehicle arguing that the contraband was seized in violation of the 4<sup>th</sup> Amendment. The trial court denied defendant’s motion. Defendant entered a guilty plea to the charges of maintaining a vehicle to keep or sell controlled substances, of possession with intent to sell and deliver cocaine, and of attaining the status of a habitual felon. Defendant was sentenced to 70-93 months in prison. Defendant appealed the denial of his motion to suppress.

Defendant argued that the trial court erred in concluding that the officer had reasonable suspicion to stop and frisk under *Terry*. The court stated that the evidence in this case tended to show that the officer saw the defendant’s vehicle speeding, crossing over onto the left side of the road, jumping a curb and driving onto the grass. When the officer proceeded to investigate further, he found the defendant talking to someone inside an apartment. The officer was aware of a tip alleging that this defendant sold cocaine from this particular building. When the officer made eye contact with the defendant, the defendant stopped talking. He straightened up abruptly and had a surprised or frightened look on his face. He then started to back away, turning his right side from the officer, and reached into his right pocket. Considering the totality of the circumstances, the court concluded that the foregoing evidence was sufficient to support the trial court’s conclusion that the officer possessed reasonable suspicion to make an investigatory stop.

Defendant also argued that the trial court erred in concluding that the officer had probable cause to search defendant’s pocket, seizing the film canister and its contents, because this exceeded the scope of a *Terry* frisk. Under the “plain feel” doctrine, if a police officer lawfully pats down a suspect’s outer clothing and feels an object whose contour or mass makes its identity immediately apparent, there has been no invasion of the suspect’s privacy beyond that already authorized by the officer’s search for weapons. The court must consider the totality of the circumstances in determining whether the incriminating nature of the object was immediately apparent and thus, whether probable cause existed to seize it. The court concluded that, in this case, there was substantial evidence that the film canister seized was immediately identifiable by the officer as crack cocaine. When asked at the suppression hearing whether “it [was]... immediately apparent to you that this was crack cocaine packaged in the film canister,” the officer stated, “Yes, it was.” The officer testified that “as soon as I touched it, I heard it rattle,” and then he immediately asked the defendant, “Is that crack in our pocket?” The officer also said that he had arrested at least three others who had exactly the same type of canister with narcotics stored in it. The area that the officer was patrolling had a reputation for being a drug location and the officer was aware of reports that defendant sold drugs from the building behind which he drove. Further, when the officer made eye contact with defendant, defendant stopped talking, straightened up abruptly, and looked surprised or frightened. Defendant started backing away, turned his right side away, and reached into his right pocket. Under the totality of the circumstances, the court concluded that the incriminating nature of the film canister was immediately apparent and therefore, the officer had probable cause to seize it from defendant’s pocket.

**Reasonable Suspicion Existed to Support Stop of Vehicle for Failing to Display Proper Registration Tag;**

**Odor of Marijuana Emanating from Vehicle Provided Probable Cause to Make Warrantless Search of Vehicle;**

**Sufficient Evidence of Defendant's Constructive Possession of Firearm in Vehicle to Support Conviction of Firearm by Felon**

**State v. Smith, No. COA08-21 (16 September 2008).**

On January 13, 2007, at approximately 1:50 a.m., an officer with the Asheville Police Department observed that the registration plate on a blue Ford F-150 pick-up truck "wasn't to the standards of North Carolina." The officer stopped the vehicle, approached the driver's side window, received defendant's license and registration, and returned to his cruiser to verify the information. After reviewing defendant's documentation, the officer returned to defendant's vehicle and issued him a warning ticket for failing to display a proper registration tag. Two additional officers arrived on the scene. The officer who initially stopped the defendant, informed the defendant that he had smelled an odor of marijuana coming from the vehicle. The officer requested, and defendant denied, consent to search the vehicle. The officer informed defendant that probable cause existed to search the vehicle without consent. The other two officers then conducted a search and recovered a handgun from the bed of the truck. No marijuana was located. Defendant, who had prior felony convictions, was arrested for possession of a firearm by a convicted felon.

At a suppression hearing, defendant argued that the initial stop of his vehicle was improper and all evidence obtained as a result of that stop should be suppressed. The trial court denied the motion. The jury found defendant guilty of possession of a firearm by a convicted felon, and defendant pled guilty to having attained the status of a habitual felon. Defendant then appealed arguing that the trial court erred in denying his motion to suppress.

A traffic stop is permitted if an officer has reasonable, articulable suspicion of criminal activity. In this case: 1. It was 1:50 a.m.; 2. Defendant's registration tag was just a piece of paper with February '07 written on it; and 3. The tag was not a piece of cardboard that North Carolina automobile dealers normally issue when a vehicle is purchased. Based upon these facts, the Court of Appeals concluded that the officer had reasonable suspicion to believe that defendant was operating his vehicle without a proper registration tag.

Having determined that the stop was justified, the Court then addressed whether the warrantless search of defendant's vehicle was supported by probable cause. The officer testified that when he initially approached the vehicle, he detected an odor of marijuana coming from its interior. The Court of Appeals noted that the North Carolina Supreme Court has previously held that the odor of marijuana emanating from a vehicle gives probable cause to search the vehicle.

Finally, in response to defendant's argument that the State failed to present sufficient evidence of his constructive possession of the handgun, the Court disagreed. When a defendant, while not having actual possession, has the intent and capability to maintain control and dominion over property, he has constructive possession of it. Whether the defendant has the intent and capability to exercise dominion and control over property is determined by the totality of the circumstances. In this case, the State presented evidence which tended to show: 1. Defendant was the owner and driver of the vehicle; 2. Defendant had exclusive control of the vehicle; 3. The cargo area of the vehicle contained other objects

owned by the defendant; 4. Defendant stated everything in the cargo area belonged to him; and 5. The handgun was found in the cargo area wrapped in a man's jacket.

Therefore, for the above reasons, the Court concluded that the trial court properly denied defendant's motion to suppress.