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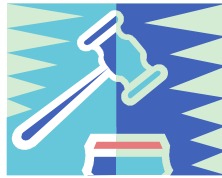
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## NORTH CAROLINA COURT OF APPEALS



### Officer Had Reasonable Suspicion to Stop Vehicle

***State v. McRae*, No. COA09-114 (6 April 2010).**

On December 5, 2005, a Lieutenant with the Robeson County Sheriff's Office received a tip from a reliable, confidential source that an older black male named Richard McRae would that day be driving a green Grand Am with over 60 grams of cocaine within the city limits of Pembroke. The Lieutenant sent out a dispatch advising all officers to be on the lookout for a black male driving a green Grand Am within the Pembroke city limits. At approximately 6:30 that evening, an officer, who had heard the dispatch, was stopped at an intersection in Pembroke when a green Grand Am driven by a black male passed by him. The officer began to follow the vehicle. The driver of the Grand Am turned right into a convenience store parking lot without using his turn signal. The driver of the Grand Am pulled up to a gas pump and exited the vehicle. The officer pulled in behind the Grand Am, got out of his car, and asked the defendant driver to have a seat in his patrol car. The officer told defendant that he had failed to signal while turning. As defendant opened the door of the patrol car, he saw two other officers arriving and took off running. One of the officers chased the defendant. As defendant was running, he took off his jacket and threw it on the ground. About 5-10 minutes later, the officer caught the defendant and placed him under arrest. When defendant's jacket was recovered, officers found 56.1 grams of cocaine in it. Defendant was charged with resisting a public officer and seven violations of the controlled substances laws.

Defendant moved to suppress all evidence discovered in the search arguing that the officer did not have reasonable suspicion to have stopped him. The trial court denied the motion. Defendant pled guilty reserving his right to appeal.

Under the Fourth Amendment, police are permitted to conduct a brief investigatory stop of a vehicle if an officer has reasonable and articulable suspicion of criminal activity. A court, in determining whether an officer had reasonable suspicion, looks at the totality of the circumstances known to the officer prior to the time of the stop.

First, defendant contended that the trial court erred in concluding that his failure to use his turn signal in violation of NCGS 20-154(a) justified the stop. In arguing no violation occurred, defendant relied upon a previous North Carolina Supreme Court case which held that the duty to use a turn signal under N.C.G.S. 20-154(a) does not arise unless another vehicle may be affected by the turn. The Court of Appeals noted that, in this case, defendant was traveling in a through lane with medium traffic and was a short distance in front of the police officer. Therefore, the Court of Appeals found that the trial court did not err in concluding that a reasonable officer would have believed, under these circumstances, that the failure to use a turn signal could have affected another vehicle. Accordingly, the officer had reasonable suspicion to stop defendant.

Additionally, the Court of Appeals held that the tip from the confidential informant was sufficient to provide reasonable suspicion justifying the stop. The tip came from a confidential informant who, on several past occasions, had provided information which led to felony drug arrests. The informant identified defendant by name, a name the officer receiving the tip recognized as being associated with the drug trade. The informant also described a specific car, rather than providing a general type of car, and advised that the defendant would be driving within the city limits of Pembroke with 60 grams of cocaine in his possession.

Therefore, the Court of Appeals held that the officer had two basis of reasonable suspicion, either one of which would have supported the stop, and thus, the trial court did not err in denying defendant's motion to suppress.

### **Reasonable Suspicion Supported Detention of Vehicle**

#### ***State v. Hernandez, No. COA 10-178 (21 December 2010).***

Rosa Dominguez and her husband, Santiago Mungary, owned and operated a store in Reidsville, North Carolina. On the evening of December 28, 2006, four Hispanic men robbed the store, assaulted Mrs. Dominguez and shot Mr. Mungary. At approximately 8:00 p.m. on January 3, 2007, a New Jersey State Trooper, Devveron Ramcheran, stopped a 1978 pickup truck on I-295 South after observing that it had followed another vehicle too closely and had been making erratic lane changes. Four Hispanic men occupied the truck: the driver, Jose Ocampo, Josue Rodriguez and defendant seated in the front, and a man named Israel Manuel concealed under a blanket in the truck's bed. As the trooper spoke with the four men, he noted that: 1) none of them had a driver's license or other identification; 2) they gave inconsistent descriptions of their itinerary; 3) some of the men stated that the group was driving into various boroughs of New York despite the fact that they were more than an hour's drive from New York and heading south when stopped; 4) the driver had tattoos on his hands that the trooper associated with gang membership; 5) despite the fact that one or more of the men claimed to be traveling from North Carolina to New York, none of them appeared to have sufficient luggage for such a long trip; and

6) the driver exhibited a nervous and evasive demeanor. After speaking with the occupants for about fifteen minutes, the trooper's supervisor authorized him to seek consent to search the vehicle on the condition that he utilize a Spanish consent form. Since the trooper did not have a Spanish consent form in his vehicle, he radioed another officer and requested that one be brought to him. About an hour later, another officer arrived with the form, and the trooper sought and obtained consent to search the truck. In the course of the search, the trooper found a loaded .380 caliber firearm in the bed of the truck, two other firearms (including one that was later associated with the Reidsville robbery), and an assortment of jewelry with the price tags still affixed. A subsequent search of defendant's person revealed a woman's wallet and jewelry. The occupants of the truck were arrested for unlawful possession of firearms. On January 10, 2007, two Special Agents with the North Carolina SBI traveled to New Jersey and interviewed defendant. During the course of the interview, defendant made an incriminating statement admitting his participation in the Reidsville robbery. On February 5, 2007, defendant was indicted by a Rockingham County Grand Jury and charged with assault with a deadly weapon with intent to kill inflicting serious injury, robbery with a dangerous weapon, and attempted first degree murder. On December 11, 2007, defendant waived extradition to North Carolina.

On March 6, 2009, defendant filed several motions to suppress. The trial court denied defendant's motions. A jury convicted defendant on all counts. Defendant was sentenced to a minimum of 251 months imprisonment. Defendant appealed arguing that while the trooper had a valid basis for initially stopping the truck, the resulting investigative procedures were unconstitutionally prolonged.

Reasonable suspicion is the necessary standard for the initial stop of a motor vehicle. In the case at hand, defendant does not dispute that the officer had reasonable suspicion to stop the vehicle in which he was a passenger. Once the initial purpose of a stop is addressed, there must be additional reasonable suspicion in order to justify any further detention. In the cases cited by the defendant, vehicle occupants were detained after the original purpose of the stop had been addressed; officers attempted to justify continued detentions of the vehicles solely on the basis of the driver's nervousness or uncertainty about travel details, basis our courts have held do not provide reasonable suspicion. However, in the case at hand, none of the occupants had a driver's license or other identification so that the officer could issue a citation and resolve the purpose of the initial stop. Because the trooper had yet to resolve the initial stop, despite reasonable efforts to do so, there was no additional period of detention that had to be justified by additional reasonable suspicion. Nonetheless, the court held that even if there was a prolonged period of detention, the facts enumerated above provided such justification. The Court of Appeals therefore concluded that the trial court did not err in denying defendant's motion to suppress.

### **Reasonable Suspicion Did Not Support Stop of Defendant's Vehicle**

#### ***State v. Chlopek, No. COA10-766 (18 January 2011)***

On April 25, 2008 at approximately 12:05 a.m., two deputies with the Wake County Sheriff's Office were conducting a traffic stop just inside the entrance to the Olde Waverly Place subdivision, a partially developed subdivision in eastern Wake County. While the officers were

conducting the stop, one of the deputies noticed another vehicle approach the entrance to the subdivision. The deputy described the vehicle as a white Chevrolet 1500 single cab, like a construction-style truck. The deputy did not notice anything abnormal about the vehicle testifying that “the vehicle entered the subdivision just like any other vehicles would in that situation...the vehicle proceeded in a normal manner...what drew my attention was that he had a dog in the vehicle.” Defendant proceeded past the officers toward the undeveloped portion of the subdivision. The deputy testified that officers had been put on notice that there had been a large number of copper thefts from subdivisions under construction in the south side of Wake County. However, no such thefts had been reported in the Olde Waverly Place subdivision, nor had any other crimes been reported in that subdivision. When defendant exited the subdivision 20-30 minutes later, the deputy initiated a traffic stop of defendant’s vehicle. Defendant ended up being arrested for driving while impaired.

Defendant made a motion to suppress evidence obtained as a result of the stop of his vehicle. The trial court denied defendant’s motion. Defendant appealed arguing that the officers did not have reasonable suspicion to stop his vehicle.

An investigatory stop must be justified by reasonable suspicion, based on objective facts, that the individual is involved in criminal activity. A court must consider the totality of the circumstances – the whole picture in determining whether a reasonable suspicion to make an investigatory stop exists. The stop must be based on specific and articulable facts as well as rational inferences from those facts. In this case, the Court of Appeals found that the deputy did not articulate any specific facts about the vehicle itself which would justify the stop. The deputy testified that defendant’s “construction-style truck” was the type of vehicle you would normally see in a construction area; that it entered the subdivision just like any other vehicle would in that situation; and that it proceeded in a normal manner. In fact, what drew the deputy’s attention was that “defendant had a dog in the vehicle.” The facts relied upon by the trial court in concluding that reasonable suspicion existed were general to the area, namely, “defendant’s presence at that time of night in a partially developed subdivision during a time where numerous copper thefts had been reported in Wake County.” Such general findings do not support the trial court’s conclusions of law that the deputy had reasonable suspicion to believe that criminal activity was afoot. Accordingly, the Court of Appeals held that the stop of defendant’s vehicle was based only upon his “unparticularized suspicion or hunch.” Therefore, the trial court’s denial of defendant’s motion to suppress was reversed.

### **Officer Had Reasonable Suspicion to Stop Defendant’s Vehicle**

***State v. Ellison*, No. COA10-386 (19 July 2011).**

In late July 2008, a confidential informant spoke with Detective Grady of the Ashe County Sheriff’s Office and informed him of an ongoing arrangement between John Shaw and defendants, Lee Ellison and James Treadway, involving trading in prescription medications. According to the informant, Shaw, who possessed a valid prescription for hydrocodone, routinely sold that drug to Treadway, who, in turn, transferred it to Ellison. The informant stated that typically, Shaw would fill his prescription, drive to Treadway’s

residence, deliver the hydrocodone to Treadway, and either remain at the residence or leave for a short period of time while Treadway drove to Ellison's place of business and effectuated the final transfer of the drug to Ellison. After delivery to Ellison, Treadway would return to his residence and pay Shaw. The informant told the detective that this sequence of events represented a change from the parties' prior method of exchange, in which Ellison would join Shaw and Treadway at Treadway's residence for the purpose of conducting these transactions.

Based upon this information, the detective obtained a drug profile from CVS pharmacy. He learned that Shaw had been prescribed a substantial amount of hydrocodone and Xanax each month. A CVS employee notified the detective the next time Shaw called in to have these prescriptions filled and provided him with an approximate pickup time.

On August 5, 2008, the detective, along with two other law enforcement officers, placed the CVS store under surveillance. They observed Shaw pull into the parking lot, obtain his prescriptions at the pharmacy's drive-through window, and drive directly to Treadway's residence. The officers watched Shaw enter and then depart from Treadway's home. Shortly thereafter, Ellison arrived at and then departed from the same location. After Ellison left Treadway's residence, the detective stopped his truck and obtained Ellison's consent to search his vehicle. Officers found two prescription pill bottles from which the labels had been removed. The pills from the bottles were seized and sent to the SBI for testing. The pills contained hydrocodone (generic Lorcet) and alprazolam (generic Xanax).

Warrants for arrest were issued that day charging Ellison with trafficking in 28 grams or more of opium by possession, trafficking in 28 grams or more of opium by transportation, conspiring with Treadway and Shaw to traffic in 28 grams or more of opium by possession, and possession of Xanax with the intent to sell or deliver. The following day, Ellison was indicted on the same charges.

Prior to trial, Ellison filed various motions to suppress which were denied by the trial court. On October 9, 2009, a jury found Ellison guilty of all charges. Ellison appealed arguing, among other things, that the trial court erred in denying his motion to suppress evidence seized from his vehicle because the stop of his vehicle was not supported by reasonable suspicion.

Information supplied by informants may help support a determination that an officer had the reasonable suspicion necessary to justify an investigatory stop. In the case at hand, the detective stopped defendant's vehicle only after having conducted his own independent investigation and corroborating the information supplied by the informant. In addition, while the detective had not had any contact with this informant prior to this incident, one of his co-workers had previously worked with the informant and found him to be reliable. Therefore, the Court of Appeals concluded that the trial court did not err by denying Ellison's motion to suppress the evidence seized as a result of the stop of his vehicle.