



Police Law Bulletin



City Attorneys' Office

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NORTH CAROLINA COURT OF APPEALS



Officer Lacked Reasonable Suspicion to Stop Defendant's Vehicle

State v. Cabbagestalk, No. COA18-1267 (18 June 2019).

On January 20, 2018, at approximately 9:00 p.m., Officer Thompson was on routine patrol with the Rowland Police Department when he observed Tanya Cabbagestalk sitting on the porch of a local residence drinking a beer. He had known Cabbagestalk for approximately two years, because he had previously stopped her for driving while her license was revoked, and for an open container violation. About 1 ½ hours later, he saw Cabbagestalk at a gas station in Rowland buying more beer. When Cabbagestalk got back into her truck and left the gas station, Officer Thompson followed her. Although he did not observe any traffic offenses, after following her for two to three blocks, Officer Thompson activated his blue lights. Defendant pulled to the side of the road without incident. During the stop, Officer Thompson noticed a strong odor of alcohol on Defendant's breath, which he continued to smell once Defendant was in the patrol car. Defendant admitted she had been drinking. Officer Thompson performed two roadside breath tests, transported Defendant to jail, and then performed another breath test with two separate "blows," the lowest reading of which was a 0.16. He then charged Defendant with driving while impaired.

After a bench trial in district court, Defendant was found guilty. Defendant appealed to superior court. Prior to trial, she filed a motion to suppress which was denied. A jury found Defendant guilty. Defendant appealed arguing that the trial court erred in denying her motion to suppress because the police officer did not have reasonable suspicion to stop her car.

In North Carolina, reasonable suspicion is the necessary standard for traffic stops. Reasonable suspicion requires that the stop be based on specific and articulable facts, as well as rational inferences from those facts. When a defendant does in fact commit a traffic violation, it is constitutional for the police to pull the defendant over. While an actual violation is sufficient to establish reasonable suspicion, it is not necessary. However, when the basis for an officer's

suspicion connects only tenuously with the criminal behavior suspected, if at all, courts have not found the requisite reasonable suspicion.

In the case at hand, the evidentiary basis for the stop was extremely limited. Officer Thompson had seen defendant drinking a beer approximately 1 ½ hours earlier, and then go to a store and purchase more beer. He did not see Defendant stumble or otherwise appear impaired at the gas station. There was no evidence that Defendant drank from the beer she purchased. Defendant did not violate any traffic laws prior to the stop. And, according to Officer Thompson's own testimony, Defendant's "driving appeared normal" that evening.

For these reasons, the Court of Appeals reversed the trial court's order denying Defendant's motion to suppress and vacated the jury's guilty verdict.

Stop of Defendant's Vehicle Not Supported by Reasonable Suspicion or Community Caretaking Function

State v. Brown, No. COA18-1107 (April 16, 2019).

On August 5, 2017, around 2:20 a.m., Deputy Hoyle, an officer with 8 ½ years of experience with the Alexander County Sheriff's Office, was standing outside of his patrol car in the parking lot of a closed gas station. The Deputy saw a vehicle come down the road and heard yelling, and someone shouting "mother f***," from inside the vehicle. Concerned that someone might be involved in a domestic situation, the Deputy caught up with the vehicle. Although he did not observe any traffic violations, the Deputy initiated a stop to make sure everyone was okay. Subsequently, the driver of the vehicle, Cypress Brown, was charged with DWI.

Brown was convicted of DWI in district court and then appealed to superior court. Before her trial in superior court, Brown filed a motion to suppress all evidence on the basis that the initial stop of her vehicle was unlawful. The court denied defendant's motion finding that the stop was justified under the community caretaking doctrine. Defendant pled guilty but reserved her right to appeal. On appeal, the defendant argued that the trial court erred in denying her motion to suppress because the stop of her vehicles was not supported by reasonable suspicion or a community caretaking function.

Looking first at the issue of reasonable suspicion, the Court of Appeals found that there was no basis for a traffic stop or a reasonable articulable suspicion of any criminal activity.

Second, looking at the totality of the circumstances, the Court did not find an objectively reasonable basis for a community caretaking function. The sole basis for the stop of defendant's vehicle was that the Deputy heard someone yell, "mother f***" as it passed by. The Deputy did not know if the driver or passenger yelled the words, did not know if there were passengers in the vehicle, did not know if the windows on the vehicle were up or down, and did not know who the words were directed towards. The community caretaking function is only applied narrowly and carefully to mitigate the risk of abuse.

Thus, the Court of Appeals held that the trial court erred in denying defendant's motion to suppress and reversed the judgment entered on defendant's plea.

Officer Lacked Reasonable Suspicion for Investigative Stop

State v. Horton, ___N.C. App. ___, ___S.E.2d___ (April 2, 2019).

Sometime after 8:40 pm on November 25, 2016, Officer Judge of the Graham Police Department received a dispatch call relaying an anonymous report concerning a "suspicious white male," with a "gold or silver vehicle" in the parking lot, walking around a closed business, Graham Feed & Seed. Officer Judge knew that another business across the street experienced a break-in in the past and that there were previous residential break-ins and vandalism in the area.

When Officer Judge arrived at the store, he discovered a silver Nissan Altima in the parking lot in front of the business. He saw no one walking in the parking lot. Officer Judge stepped out of his patrol vehicle and walked toward the silver car as it was approaching the exit. He shined his flashlight toward the closed window of the driver's side of the vehicle and saw Defendant, a black male, in the driver's seat. Defendant did not lower his window. When the Officer asked Defendant, "What's up boss man?" Defendant made no acknowledgement, and continued to exit the parking lot.

Officer Judge considered Defendant's behavior to be a "little odd," and decided to follow him. After catching up to Defendant's vehicle on the main road, without observing any traffic violations, the Officer initiated a traffic stop.

After Defendant stopped his vehicle and lowered the driver's side window, Officer Judge approached and immediately smelled a strong odor of marijuana and air fresheners. A subsequent search of the vehicle revealed marijuana, several plastic baggies containing a white powdery substance, large amounts of cash, the top of a scale with white powder residue, and a stolen 9 mm firearm.

Defendant was arrested and later indicted for various drug and firearm offenses. Defendant filed a motion to suppress evidence seized as a result of the stop. The trial court denied the motion. Defendant pled guilty and timely filed an appeal arguing that the trial court erred in denying his motion to suppress because the officer lacked reasonable suspicion for the stop.

Where the justification for a stop is information provided by an anonymous tip, a reviewing court must assess whether the tip possessed sufficient indicia of reliability. Reliability can come in two forms: (1) the tip itself provides enough detail and information to establish reasonable suspicion, or (2) though the tip lacks independent reliability, it is buttressed by sufficient police corroboration.

In the case at hand, Officer Judge arrived at the parking lot because of a vague tip about an undescribed white male engaged in undescribed suspicious activity in a generalized area known for "residential break-ins" and "vandalism."

Further, the tip was not sufficiently corroborated for it to be deemed reliable. First, the tip reported no crime and was only partially correct. Although there was in fact a silver car in the business' parking lot around 8:40 pm, the tip also said it could have been gold and there was no white male in the parking lot or in the vehicle. Second, an accurate description of a subject's readily observable location and appearance is reliable only in a limited sense: It will help the police correctly identify the person whom the tipster means to accuse. Such limited corroboration though is insufficient. Reasonable suspicion requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a particular person. Where the detail contained in the tip merely concerns identifying characteristics, an officer's confirmation of these details alone will not legitimize the tip.

Accordingly, the Court held that Officer Judge's justification for conducting the traffic stop was nothing more than an "inchoate and unparticularized suspicion or hunch." The Court of Appeals reversed the trial court's order denying the motion to suppress and vacated Defendant's convictions.



NORTH CAROLINA SUPREME COURT



Reversing the North Carolina Court of Appeals, North Carolina Supreme Court Finds Stop of Defendant's Vehicle Supported by Reasonable Suspicion

State v. Goins, No. COA15-1183 (July 5, 2016)

Officers Branson and Cole with the Greensboro Police Department were patrolling in the vicinity of Spring Manor Apartments late on July 13, 2014 and into July 14th. At some time prior, Officer Branson had been told by the apartment manager that "the complex is getting bad again," and that she had been told by some of the residents that the occupants of Apartment 408 were involved in both the sale and use of illegal narcotics. Apartment 408 was actually a building comprised of multiple apartments. The apartment complex was situated in a high-crime drug area, and at trial, Officer Cole referred to the complex as "basically an open-air drug market."

Just after midnight on July 14, the officers who were driving a marked police car decided to drive through the parking lot of Spring Valley Shopping Center, which was directly across the street from the apartment complex. Officer Branson turned the police car so that its headlights were focused in the direction of the apartment complex. Shortly thereafter, they noticed a white Hyundai Elantra pull into the apartment complex and proceed very slowly through. There was a man standing outside building 408. As the Elantra drove closer to the man, they noticed the man turn and look towards the police car. The man then looked back at the Elantra, looked at the police again, and then shouted something toward the Elantra. At that point the man began to back away and head back into the apartment. The Elantra sped up and pulled out of the parking lot.

Believing that the occupants of the Elantra and the man were about to conduct an illegal drug transaction, the officers stopped the Elantra. As a result of the stop, the officers discovered that Defendant was in possession of a firearm, marijuana, and drug paraphernalia.

The Defendant driver, Jamison Goins, was indicted for possession of a firearm by a felon, possession with intent to sell or deliver marijuana, felony possession of marijuana, and possession of drug paraphernalia. Defendant moved to suppress all evidence obtained as a result of the stop based upon his argument that there was not reasonable suspicion sufficient to justify the stop of his vehicle. The trial court denied the motion. Defendant pled guilty to the charges of possession of a firearm by a felon, possession with intent to sell or distribute marijuana, and possession of drug paraphernalia. Having preserved his right to appeal, Defendant then appealed the denial of his motion to the North Carolina Court of Appeals. The Court of Appeals reversed the trial court, finding that there was not reasonable suspicion for the stop. The State appealed to the North Carolina Supreme Court.

A traffic stop is constitutional if the officer has a reasonable, articulable suspicion that criminal activity is afoot. The reasonable suspicion must be based on specific and articulable facts, as well as rational inferences from those facts, as viewed through the eyes of a reasonable, cautious officer, guided by his experience and training. A court must consider the totality of the circumstances-the whole picture-in determining whether reasonable suspicion exists.

In the case at hand, shortly after midnight, two experienced officers, in a highly visible marked patrol car, observed a vehicle enter the Spring Manor apartment complex and proceed through its parking lot very slowly, never stopping, though, at any particular building. No individuals were in the parking lot or immediate area, except the man outside of building 408 who appeared to be waiting on the Elantra. As the man noticed the police vehicle, he yelled something towards the Elantra, which caused its driver to speed up and leave the complex, and the man to then go back into the apartment. Both officers had prior knowledge of illegal activities taking place in the Spring Manor apartment complex, prior to the date in question. And, Officer Branson testified that the apartment complex manager recently reported other residents had specifically mentioned individuals in building 408 were involved in the use and sale of illegal narcotics.

The North Carolina Supreme Court held that based on the totality of the circumstances, the officers had reasonable and articulable suspicion to conduct a lawful investigatory stop of Defendant's vehicle, and that the trial court did not err by denying Defendant's motion to suppress evidence recovered as a result of the stop.