

ROLL CALL TRAINING
FROM NORTH CAROLINA'S 24/7 POLICE
ATTORNEY LAW FIRM

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TOPIC:

Reasonable Suspicion for the Detention of a Motor Vehicle and Its Occupants
***After* Issuance of a Traffic Citation**

THE CASE:

***State v. Bell*, North Carolina Court of Appeals, COA02-425, March 4, 2003**
Ralph B. Strickland, Jr.

FACTS:

At 0545 hours, 4 April 98, Trooper Jim Knotts nailed a Pontiac Grand Am for traveling 73 MPH in a clearly posted 55 MPH work zone on I-95 in Robeson County. The driver had a New York learner's permit and the vehicle was leased. The defendant was seated in the front passenger seat. Personal belongings "filled the back seat of the vehicle."

NOTE ON OFFICER SURVIVAL:

As the case is reported, Trooper Robert Reeves "drove by" and Knotts asked him for assistance. But we all know that this was not just "happenstance." Reeves was checking up on his pal Knotts and we applaud him for providing cover for him. It's dangerous out there. Generally speaking, it is not mere coincidence when two North Carolina Highway Patrolmen meet on an interstate around 6AM on any given day. Somebody is backing somebody else up – a lesson for us all in officer survival tactics.

OK:

Trooper Knotts had the driver come to the patrol vehicle. He questioned him about his destination and his brother, and then issued him a speeding ticket. Meanwhile, Trooper Reeves was occupying his time questioning the brother, soon to be our arrestee. When the two troopers compared notes, they discovered the driver and the brother gave different stories about their itinerary. Reeves relayed how the defendant's eyes wandered when he was talking to him.

Both troopers were suspicious of the pair, believing they were couriering* controlled substances from New York to Florida. Reeves asked the defendant for consent to search the vehicle. The trial court found that the defendant gave a voluntary, knowing and intelligent consent.

When Trooper Reeves searched the trunk, he found a wooden box resembling the speaker to a stereo unit, but which had no wires attached. He noticed that the screws on the back appeared to have been recently turned. He unscrewed them, took off the back panel and found 742.8 grams of cocaine wrapped in a blue towel. The defendant said that the cocaine belonged to him. The troopers then bestowed upon him the titles of official arrestee and criminal defendant.

WHAT THE COURT OF APPEALS HAD TO SAY:

Well, the defendant argued on appeal that even if his consent was voluntary, it was given after the reason for the traffic stop had ended (citation issued for speeding). Therefore, Mr. Bell said he was seized without reasonable suspicion and so his consent was the product of an unconstitutional seizure, rendering the results of the search inadmissible.

Not so, said the Court of Appeals. The Court agreed with the trial court and said the consent was properly given. However, even if he were seized at the time, such seizure would have been the result of the valid reasonable suspicion the troopers had about him said the Court.

Now, Mr. Knotts and Mr. Reeves believed that neither man was involuntarily detained after the driver received the citation, but were complying with the troopers' request. And so they were. But – what if the Court of Appeals had ruled that the detention was involuntary? Well, the officers would have needed reasonable suspicion – and the Court ruled they had it!

So the troopers had reasonable suspicion that these fellows were in the possession of controlled substances. What were the objective and articulable factors establishing reasonable suspicion of drug possession? The Court listed the following factors:

1. The troopers had specific training and experience about drug trafficking in their respective five and seven year careers as members of the Patrol.
2. The brothers' stories were inconsistent.
3. The back seat was full of personal belongings thereby indicating that the trunk might be full.
4. Nervousness on the part of the defendant in that his eye contact was indirect; he could not look the trooper in the eye.

The Court quoted *State v. Munoz* (North Carolina Court of Appeals – 2001) and said that to determine reasonable articulable suspicion, courts must “view the facts through the eyes of a reasonable, cautious officer, guided by his experience and training at the time he determined to detain the defendant.” Thus, the standard is one of a reasonable officer making a decision based on the evidence before him, the totality of the circumstances he faces, as viewed in the light of his training and experience.

On very similar facts, the North Carolina Supreme Court found reasonable suspicion to detain in *State v. McClendon* (1989). There, the Supreme Court found that the following factors established reasonable suspicion of drug possession to detain McClendon after issuance of a warning ticket in a traffic stop for speeding and following too closely: the defendant could not produce the registration for the vehicle, he provided inconsistent information as to whose vehicle he was driving and where he lived, gave vague travel and itinerary information, and acted nervous.

YOU MAY WELL QUERY, “NERVOUSNESS IS A FACTOR?” AND WE MIGHT WELL ANSWER, “WELL, MAYBE SO, MAYBE NOT.”

Nervousness was a factor in this case and *McClendon*; that is true. But there the Supreme Court said that nervousness must be taken in the light of the totality of the circumstances. It is an appropriate factor to determine reasonable suspicion, but in *McClendon* the defendant exhibited more than ordinary nervousness. And the Supreme Court held:

Nervousness, like all other facts, must be taken in light of the totality of the circumstances. It is true that many people do become nervous when stopped by an officer of the law. Nevertheless, nervousness is an appropriate factor to consider when determining whether a basis for a reasonable suspicion exists. In the case before us ... defendant exhibited more than ordinary nervousness; defendant was fidgety and breathing rapidly, sweat had formed on his forehead, he would sigh deeply, and he would not make eye contact with the officer. This, taken in the context of the totality of the circumstances found to exist by the trial court, gave rise to a reasonable suspicion that criminal activity was afoot.

WHAT FIRST LINE SUPERVISORS NEED TO KNOW:

Once a valid traffic stop has been concluded by arrest, citation, warning ticket or a verbal warning, the operator and passengers are free to leave. If an officer wishes to search either the vehicle or persons of the occupants, he should ask for consent first. If that consent is denied, the officer must allow them to leave without further restraint. The officer could detain the vehicle and occupants **only upon reasonable suspicion of criminal activity**, and hold them **only for a reasonable time**. Remember, there is no such thing as a reasonable suspicion-founded search. So, if drugs are suspected, and the suspects will not give consent, and there is no K9 drug dog available, there would be no reason to detain them.

This commentary discusses some factors which, taken in light of a particular officers' training and experience, establish that necessary reasonable suspicion. It is impossible to list all the factors an officer might consider, but an excellent beginning and guideline is found in Bob Farb's book, *Arrest, Search and Investigation in North Carolina*, Second Edition, 1992, Institute of Government, UNC, Chapel Hill. Please read pages 24 through 29, especially page 24. Bob lists ten factors on page 24 that should be memorized for use in the field. You should also read page 7 in the 1997 Supplement to that book for further information.

And let me say this about Bob Farb, a graduate the Harvard School of Law: “The porch light is on and *somebody* is really at home.” “That boy is dealing with a full deck.” “His circus is full of clowns.” “He is the sharpest knife in the drawer.” “His cookie is short no chocolate chips.” Well, I guess I sit back now and wait for Bob's lawyer to call me.

Nah. I called Bob and read him the above paragraph. Although he was greatly flattered by my approbations*, he thought that the phrases more accurately described Reece Trimmer, another graduate of Harvard Law School. Those Crimson alumni stick together, don't they? Boolah, boolah, whatnot, and all that.

!Couriering, more specifically “were couriering”: This is the past tense, third person plural of the verb “to courier.” Actually, courier is a noun, not a verb. I just made it a verb, especially for you. Cool, huh? Actually, courier as a noun means a spy sent in haste with a secret message. So I also changed the definition of that noun to include “those secreting controlled substances surreptitiously on their persons and in their vehicles for the purpose of transporting said substances to another location.” Neat. You were there.

!Approbation: official approval, sanction or commendation. I officially approve of Bob Farb, I sanction his work, and I find him commendable. Same for Reece. Boolah, boolah.

ONE FINAL THOUGHT:

Although the Bells were allegedly transporting the cocaine to Georgia from New York, most folks caught by the patrol are couriering from New

York, a state known as a source for illegal drugs, to Florida, also a state known as a source for illegal drugs. To be a state known as a source for drugs, there must be drugs already within the state. Cocaine is an illegal drug produced primarily in Columbia and, I guess, a couple of other places in South America as well. But not New York or Florida. Thus, since the cocaine must originally be brought into each state from Columbia, why don't the drug dealers sell within that state the drugs that come directly into it? Why courier it up and down the Eastern seaboard on I-95 from New York to Florida, doubling the chance of discovery and arrest? Where's the logic in that? And what is the average annual rainfall in the Amazon Basin?

AND AN ADVERTISEMENT:

Reece Trimmer is joining SR&S May 2nd to present a seminar entitled "Developing and Revising Department Policies and Procedures." The seminar will be presented at the Sampson Community College in Clinton. Topics to be addressed include Emergency Vehicle Operation, Domestic Violence and Chapter 50B, Sexual Harassment, Use of Force, Racial Profiling, Internal Affairs and Handling Citizen Complaints, and matters concerning general policy administration. For more information, please contact Mr. J.W. Simmons at the Sampson Community College in Clinton (910/592-8081 ext. 4008).