

**“I’m With Stupid”:
The Reliability of Accomplice Statements
Legal Question of the Week
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Brian Beasley
Singing Like A Canary
and Legal Adviser, HPPD

In the interest of originality, let’s start this week’s update with...

A HYPOTHETICAL SITUATION:

It is a dark and stormy night. You are on patrol when you receive a call of a breaking and entering in progress at a nearby business. When you arrive on the scene you see a suspect climb out of one of the windows and run off into the nearby woods. As you get closer, you see another suspect start to climb out the window and decide to take this suspect into custody.¹ You successfully arrest suspect #2 and put him in the back of your patrol car, where you Mirandize him and ask him who the other guy was that climbed out of the window first.² He confesses to the break-in and tells you that he knows the other guy as “Tattoo Sam” and that “Tattoo Sam” lives at a house close to where the breaking and entering occurred.

You leave your arrestee in the custody of one of your fellow officers and decide to go over to the house where “Tattoo Sam” is supposed to live. When you get to the house, you see a man in the front yard wearing a work shirt with the name “Sam” stitched on the pocket and you notice that the guy is covered in tattoos. You wonder to yourself if this might be “Tattoo Sam.” He acknowledges that most people call him that.

Do you have probable cause to arrest Tattoo Sam?

Surprisingly, the answer may be “yes.”³ I started researching this issue this week in connection with a situation I was asked about, and I have to admit that I answered this

¹ Your choice was to chase after the first suspect or grab the one that hasn’t had a chance to run yet. It doesn’t take you long to make that decision.

² You are required to Mirandize this suspect because (1) he is in custody (his movement is restrained to a degree associated with a formal arrest) and (2) the question (“who committed this crime with you”) is interrogation because it is reasonably likely to elicit an incriminating response.

³ This should be “yes” with several asterisks next to it. Please read the update for some warnings about taking this answer too definitively.

question with a confident “no.”⁴ Let’s look at some of the case law that changed my opinion.

The first case is a N.C. Supreme Court case from way back in 1893⁵ named State v. Barber.⁶ Barber was convicted of receiving stolen tobacco on the testimony of a codefendant. The Court held that “[t]he unsupported testimony of an accomplice, if it produces entire belief of the prisoner's guilt, is sufficient to warrant a conviction.” The Court noted that a cautionary instruction was given to the jury that they could convict on it “but that it would be dangerous and unsafe to do so.” A less foreboding instruction is given to jurors in cases involving accomplice testimony today but still warns that they should give close scrutiny to such testimony.

Jumping ahead roughly 85 years, we find a similar N.C. Supreme Court case, State v. Keller.⁷ In Keller, an accomplice testified that both he and Keller shot the victim and then Keller slit the victim’s throat. Not only was Keller convicted on this uncorroborated accomplice testimony, but it was brought out at trial that the “star” witness/accomplice had perjured himself at a prior trial when he denied any knowledge of or participation in the murder. The accomplice admitted this on the witness stand.⁸

Although Keller’s conviction was overturned and a new trial ordered because of a different issue, the Court ruled that this testimony would have supported a conviction. Holding that “[i]t is well-established that the uncorroborated testimony of an accomplice will sustain a conviction so long as the testimony tends to establish every element of the offense charged,” the Court stated that the previous perjury bore only on the believability of the witness (a matter for the jury to decide) rather than whether the testimony was sufficient to support a conviction.

Finally, in a case arising out of a bank robbery in Summerfield, North Carolina, the Fourth Circuit applied this issue to a situation involving the probable cause standard.⁹ On November 8, 1996, the Summerfield branch of the Central Carolina bank was robbed by two masked men. Police caught Tedrick Greene, who confessed to the robbery and told police that Michael Patterson was his accomplice. Greene told police where

⁴ As I have said before (all too often), I’m sure I wasn’t wrong, it’s just that my opinion has now changed 180 degrees.

⁵ 1893 saw the election of Grover Cleveland as President of the United States (for the second time) and a landmark U.S. Supreme Court ruling which held that tomatoes were vegetables. I am not making this up. The case is Nix v. Hedden, 149 U.S. 304 (1893).

⁶ 113 N.C. 711 (1893). Whenever a lawyer cites a case this old in court, you’ll hear two arguments. If the case hurts your side, you call it “old and outdated law.” If the case helps your side, you call it “well-established legal precedent.” They teach this stuff in law school.

⁷ 297 N.C. 674 (1979). As you will see, this was a homicide case. If I had been Keller’s prosecutor, I feel a little guilty saying that I would have practiced for weeks to try and say “Keller” so that it sounded like “killer” but still kept enough of “keller” to keep me out of trouble with the judge. Then I would have used this version of the defendant’s name as often as possible during the trial. The practice of law is full of little subtleties like this.

⁸ Jurors were apparently a lot easier to convince back then, considering Keller was still convicted.

⁹ U.S. v. Patterson, 150 F.3d 382 (1998).

Patterson lived and that he drove a navy blue Honda with 30 day plates which had been used in the robbery.

Police went to the address and found a blue Honda parked on the street in front of the house. They had the car towed to their impound lot¹⁰ and searched it the next day, finding some incriminating evidence. Patterson argued at his trial that the uncorroborated statement of Greene did not give rise to probable cause for the search and seizure of the vehicle.

Looking at an 11th Circuit case,¹¹ the Court adopted the holding that “when a codefendant has admitted guilt to the core crime, there is enough indication of ‘reasonably trustworthy’ information to meet the requirement of probable cause . . . even where the confessing co-defendant suggests that the other codefendant committed a more serious or blameworthy act than the confessing co-defendant.” The Court pointed out that it would not make sense for them to rule that an accomplice’s statement is insufficient to establish probable cause after it has held for years that uncorroborated accomplice testimony is sufficient to prove guilt beyond a reasonable doubt.

The Fourth Circuit went on to say that the “co-participant would, of course, have to be able to give accurate information about what happened during the crime and leading up to it. Beyond that, however, unless it is incredible or contradicts known facts to such an extent [that] no reasonable officer would believe it, a co-defendant’s confession that he and the suspect committed the crime . . . supplies probable cause for arrest and seizure.” Although this case dealt with federal constitutional law, this appears to be the rule under North Carolina case law as well.¹²

So, applying this precedent to our hypothetical, it appears that the officer may arrest Tattoo Sam based on the statement of his alleged accomplice. However, before we ride off into the sunset and live happily ever after, let me give you...

TWO IMPORTANT WARNINGS!

1. Use this information with extreme caution. As any good superhero knows, with great power comes great responsibility. The ability to arrest based on the uncorroborated statement of an accomplice is great power, but you need to understand that it will be met with a very high level of skepticism from judges, lawyers, and even clerks, court reporters, and casual courthouse observers. Even your own legal adviser, full of an immense amount of knowledge and armed with over a decade of criminal law experience,¹³ was surprised by this result. Even if you show them the case law to support

¹⁰ The issue of whether they needed a warrant to seize and search the car was discussed, but the Court okayed the search and seizure because the Honda was parked on a public street when police had it towed.

¹¹ Craig v. Singletary, 127 F.3d 1030 (11th Cir. 1997).

¹² Since states can give MORE constitutional protection under State Constitutions (but not less) than the U.S. Constitution allows, in some states it has been held that uncorroborated accomplice testimony is insufficient for guilt beyond a reasonable doubt or probable cause.

¹³ Why are you rolling your eyes? Stop it!

it, many judges and prosecutors will still not believe it. Which leads us to our second important warning...

2. Never be satisfied with the minimum. Minimums are for credit card payments and blackjack bets.¹⁴ Minimums are for daily vitamin requirements and wages. Minimum probable cause and minimum evidence don't get you too far in a criminal courtroom. Your goal is not probable cause, your goal is ultimately proof beyond a reasonable doubt.

Using our hypothetical as an example, you could arrest Tattoo Sam and complete your report using just the information that we've included. But maybe Tattoo Sam is sweating profusely and it's 30 degrees outside. Maybe he's out of breath from running. Maybe he's got glass shards from a broken window sticking out of his arms. If so, you should note these and include them in your report.¹⁵ Based on the circumstances, maybe you would be better served to hold off on making an arrest until you've done some further investigation and gathered more information and evidence.

But if all else fails and due to the circumstances you need to arrest Tattoo Sam on the spot and let the chips fall where they may, then your tactical legal advisor has given you some law to back you up.

Brian T. Beasley

Police Attorney

High Point Police Department

¹⁴ Wow – I just made that up. Now to get some bumper stickers made and retire comfortably on the profits.

¹⁵ Remember, if it ain't in the report, it didn't happen. I didn't make that one up, but it's just as true.