

Be Reasonable!:
A Reasonable Suspicion Pop Quiz
Legal Question of the Week
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Alright, kiddies! Get out your looseleaf notebook paper and your #2 pencils, because it's time for a little pop quiz! Our subject today is inspired by a recent series of debates that have occurred in the legal office regarding whether reasonable suspicion existed in a particular case or not.¹ Based on some research I've done on the topic, I've decided to allow you to test your knowledge on this very fundamental doctrine of Fourth Amendment jurisprudence. Since I'm springing this pop quiz on you without warning,² why don't we do a brief review of the basics to try and help you improve your grade?³

As you know, the Fourth Amendment requires that an officer have probable cause (a fair probability that a crime was committed and the suspect committed it) to make an arrest, but our courts have held that for a brief investigative stop, reasonable suspicion is sufficient. If an officer has a reasonable and articulable suspicion that the person has committed, is committing, or is about to commit a crime, he or she can stop the person to confirm or dispel their suspicion quickly.

Whether or not a reasonable suspicion exists is based on the facts of each particular case and courts consider many different factors when evaluating if an officer had reasonable suspicion or not. Bob Farb lists several of these factors in his Arrest, Search, and Investigation book:

- *The officer's observation of conduct that, in light of the officer's training and experience, appears to be criminal.*
- *Information the officer receives from other officers, citizens, or informants.*
- *The time of day or night.*
- *Whether the area is a high-crime area.*⁴

¹ Unlike most of the debates that occur in the legal office, I was not all alone at the time this one happened. There were actually other people present, which was pretty exciting.

² Putting the "pop" in "pop quiz."

³ Prior to taking the bar exam after graduating from law school, most bar applicants take an eight week review course to learn the material they need to know to successfully pass the test. I was no exception. Which of course begs the question – if they can teach us everything we need to know to pass the bar exam in eight weeks, why did I have to spend three years in law school? Yet another of life's little mysteries.

⁴ It bears repeating here that rather than simply stating in your report (and later from the witness stand) the conclusion that it was a high-crime area, you should include details about how you know that. For

- *The suspect's proximity to a location where a crime was recently committed or to a home, car, or business where criminal activity may be taking place.*
- *Whether the suspect is a stranger to the area.*
- *The suspect's reaction to the officer's presence, including flight after seeing the officer.*
- *The officer's knowledge of the suspect's prior criminal record and activities, if they are relevant to the crime the suspect may be committing.*
- *The suspect's flight from the scene of a crime.⁵*

This is not an all-inclusive list of things the court might find relevant, and the determination whether reasonable suspicion exists will take into account the totality of the circumstances in each particular case. One of the best ways of learning when this reasonable suspicion threshold is met is to look at other court decisions that have addressed this question with similar fact patterns.

To that end, you should know that each one of the questions on this pop quiz⁶ comes directly from a North Carolina Supreme Court or North Carolina Court of Appeals case. The answer will be the answer reached by the court in that particular case and I've included the case citation in case you don't believe me.⁷ Now let's get to it!

Question One: Officers receive an anonymous tip at 12:14 pm. The anonymous tipster reports that a black male wearing a white T-shirt and blue shorts is selling drugs and guns at a particular corner in the Happy Hill Garden housing community.⁸ The caller says that the sales are occurring out of a blue Mitsubishi, with a license plate of WT 3456. The tipster refuses to provide a name, and the police have no way of tracking him or her down or determining how he or she knows this information.

As officers respond to the location but before their arrival, the tipster calls back and states that the suspect has just left the area, but will return shortly. Officers watch the entrance to the community and shortly thereafter observe a blue Mitsubishi with license tag WTH-3453 enter. They see that the driver is a black male wearing a white T-shirt and they initiate a traffic stop of the vehicle approximately 100 yards from the original corner mentioned in the tip. (State v. Johnson, COA 09-908 (June 1, 2010)).

Was there reasonable suspicion to justify the traffic stop?

example, how many arrests have you made in that area over a period of time? How many other arrests do you know about, etc.?

⁵ Arrest, Search, and Investigation in North Carolina, Robert Farb, Third Edition 2003, pg. 20.

⁶ You thought I forgot, didn't you? No such luck.

⁷ I've found that officers can be very distrustful of lawyers from time to time. Don't feel bad – a lot of lawyers are very distrustful of lawyers from time to time.

⁸ I was all set to make a joke about the name of the "Happy Hill Garden" community, but then I remembered that my first house was in a subdivision called "Holiday Hills." It even had a large sign to that effect at the entrance to the community. I wasn't sure if it had been built as a hippie commune, a retirement village, or a marijuana growing farm. I didn't live there for very long, because I couldn't keep the weeds from growing in the yard, and I don't know what they were, but they sure had a distinct odor...

Question Two: An officer receives a phone call from a confidential source that a black male would arrive at a particular carwash just a few minutes after the phone call, that the man would be driving a black Lexus SUV, and that the man would be in possession of cocaine. The caller tells the officer that he has seen the cocaine.

The officer has known the informant for thirteen years, since the informant was a child, and he also knew his mother and other family members. Additionally, a month before the events at hand, the informant had provided information to this same officer about illegal drug activity that had proven reliable and resulted in an arrest.

Upon receiving the call, several officers set up surveillance at the carwash⁹ and waited for the black SUV to arrive. Fifteen minutes after the phone call, a black Lexus SUV pulled into the carwash and parked. The informant was also at the carwash and he called the officer to confirm that this was the vehicle and the defendant was the driver. After being parked for two minutes with no one exiting the vehicle, the SUV pulled out of the carwash and was stopped by police. (State v. Crowell, COA 09-635 (June 1, 2010)).

Was there reasonable suspicion to justify the traffic stop?

Question Three: Officer Robinson sees defendant standing in front of Josh's Convenience Store, an area where he has made nearly fifty arrests. As an unmarked police car pulls up, Officer Robinson sees the defendant put something in his mouth that he believes to be crack cocaine. Officer Robinson knows defendant has previously been arrested on drug charges. When he approaches the defendant, the defendant tries to go into the store. Officer Robinson grabs him by the back of his jacket. (State v. Watson, 119 N.C. App. 395 (1995)).

Was there reasonable suspicion to justify the investigative stop?

Question Four: At approximately 12:10 am, Officer Williams sees two black males standing in an open area between two apartment buildings in the Ray Warren housing community. Officer Williams is an officer with seventeen years experience and knows this community to be an area where numerous arrests for drug violations have been made and where crack cocaine and other contraband is sold on a daily basis.

The two males stand there watching the officers (including Officer Williams) for a few minutes and then turn and start walking away from the police. Officer Williams has never seen either of them in this neighborhood before. He says, "Hold it for a

⁹ For those who still can't get "The Sound of Silence" out of their head from my last legal update, you might replace it with the huge hit "Carwash" from the band Rose Royce (clever name!) *Woo - You might not ever get rich, But let me tell ya it's better than diggin' a ditch. There ain't no tellin' who ya might meet. A movie star or may be even an Indian Chief. (Workin' at the) car wash. Workin' at the car wash yeah.* Of course, I'm too young to really remember the 70's, but it must have been an . . . umm. . . interesting time.

minute. Come here.” Both of the young men comply and approach the officer. (State v. Fleming, 106 N.C. App. 165 (1992)).

Was there reasonable suspicion to justify the investigative stop?

Question Five: Officers see the defendant, who they have not seen before, standing with a group of people on a street corner¹⁰ known as a “drug hole,” an area frequented by drug dealers and users. One of the officers has had this area under daily surveillance for several months. In the past six months, he has made four to six arrests at the corner and knew that other arrests had also occurred there.

As the officers approach the group, the defendant and the officers make eye contact, at which point the defendant immediately turns and walks away. One officer asks him for identification and frisks the defendant. (State v. Butler, 331 N.C. 227 (1992)).

Was there reasonable suspicion to justify the investigative stop?

Okay, time’s up. Put your pencils down and pass your papers to the front. Let’s see how you did.

Question One answer: **No Reasonable Suspicion exists.**

Question Two answer: **Yes. Reasonable Suspicion does exist.**

Questions one and two both deal with informants, so let’s look at those together. In question one, we have an anonymous informant. None of the officers know who the caller is or how to get back in touch with him or her. In question two, we have a confidential informant, but the informant is anything but anonymous. The officer knows exactly who the informant is and knows the informant has provided reliable information in the past.

An anonymous tip by itself does not give rise to reasonable suspicion.¹¹ An anonymous tip plus one of the following most likely will get you there:

1. something that would enable you to determine who the anonymous source is or otherwise puts the anonymity of the source at risk, or
2. an imminent threat to public safety, such as a tip that a person has a gun and is threatening to use it, or
3. successful and corroborated prediction by the anonymous source of the FUTURE actions of the suspect.

¹⁰ Okay – here’s another hit from the 70’s (well, actually late 1969): “Down on the Corner” by Creedence Clearwater Revival. Contrary to what the song lyrics suggest, I’ve worked around courthouses all my career and never saw a band like Billy and the Poorboys playing for nickels. Gotta appreciate that bass line though.

¹¹ A much lengthier explanation of this is given in my previous article, “Anonymous Tips,” 2 L.Q.O.W. 15 (July 2, 2009). Go read it now. We’ll wait.

The fact that the tipster has given lots of detail concerning identifying characteristics of the person they wish to accuse (type and color of car, license plate number, description of person and clothing, for example) does not strengthen the tip. The corroboration courts look for is of those details which show the tipster's knowledge of concealed criminal activity. For example, the tipster correctly predicts when the suspect will leave or arrive at a particular location, who he will meet, or where he will go.

Keep in mind, however, that an anonymous tip is different from a tip from an anonymous source who has provided reliable information in the past. By way of example, suppose a person calls Crimestoppers for the first time to give information. They are assigned an identification number and told to use that number in any further communication with the police department. The information from this first time caller will be treated as an anonymous tip.

But further suppose that the information turns out to be reliable once it is investigated further. Then, the next week, the same caller calls in using their personal identification number and gives a new tip. They are now an informant who has provided reliable information in the past and their current tip probably will support reasonable suspicion.¹² This assumes that the officer is aware of the prior information and the fact that it turned out to be reliable. The fact that the officer doesn't know the informant's name or identity (other than assigned number) doesn't make it a purely anonymous tip.¹³

Question Three Answer: Yes. Reasonable Suspicion does exist.

Question Four Answer: No Reasonable Suspicion exists.

These two were fairly easy. In question three, the officer is able to articulate that (1) this particular store is a high drug area, (2) he saw the defendant put something in his mouth that looked like crack cocaine (and also that based on training and experience, this is a common practice when drug dealers/users want to try and hide contraband from police), and (3) the defendant tried to evade contact with the police by entering the store. The court held that this met the reasonable suspicion standard.

In contrast, the facts in question four show a high drug area late at night with two people the officer has never seen in that area before. This is not enough for a reasonable suspicion that the suspects have committed, are committing, or are about to commit a crime. Therefore the officer's stop is unconstitutional. The fact that the two young men walked away was not very strong evidence of "evasion" since they didn't walk away immediately upon seeing the police.

¹² This hypothetical would be "bare minimum" reasonable suspicion (since we only have one previous bit of reliable information from this source) so it would still be a good idea to investigate further if possible before resting the admissibility of any evidence you find solely on this basis. Obviously, the more history is built up with this particular source, the more reliable their future tips will be.

¹³ In the interest of full disclosure, the Court of Appeals found another valid reason for the vehicle stop in the State v. Johnson case since the registered owner of the vehicle had a revoked license.

Question Five Answer: Yes. Reasonable Suspicion does exist.

The facts of question five seem to fall somewhere in the middle of the previous two situations. Here, the officer really only articulates two facts: (1) this particular corner was a “drug hole” (as evidenced by the arrests that had occurred there and his surveillance) and (2) upon making eye contact with the officers, the defendant immediately turned and walked away. In the North Carolina Supreme Court case that these facts are taken from (State v. Butler), the court held that those facts were sufficient for reasonable suspicion.¹⁴

Butler is a very good case for law enforcement, but keep in mind that it probably represents the minimum requirements for reasonable suspicion for these types of stops. If these two factors are all that you have to work with, you should take great care to document previous arrests at the specific location and the specific evidence of evasive action taken by the suspects to strengthen your case as much as possible. Defense attorneys will try hard to convince a judge that your situation is different from the Butler scenario.

I hope you did well on this pop quiz. Whether you got them all right or not, the important thing is that you come away with a more precise knowledge of what is required for a court to determine that you had a reasonable suspicion for a brief investigative stop.

Before we go, another reminder that the smart ones are harder to catch. Police were dispatched to a breaking and entering in progress when the following occurred...



Police checked the area and found an open door in the back of the building. An officer went inside and called out, “Marco.”

The man’s name was not Marco, detective Tim Dohr said. Instead, “the officer was trying to inject some humor into the situation.”

Police found the suspect after he responded, “Polo.”

The restaurant manager

¹⁴ Later cases have stated that Butler held that “the presence of an individual on a corner specifically known for drug activity and the scene of multiple recent arrests for drugs, coupled with evasive actions by defendant are sufficient to form reasonable suspicion to stop an individual.” See, e.g., State v. Watson, 119 N.C. App. 395 at 398 (1995).

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