

Crack House Customer Stops: Legal Question of the Week Vol. 1, Number 8 August 15, 2008

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Before I get into this week's topic, I feel I must address a situation that arose in our department this week. Last week, the Legal Update team praised Officer Petula Sellars in these very pages, but new information has recently come to light. Apparently enraged about losing the close vote for Officer of the Year to Detective Kevin Ray, Officer Sellars convinced Captain Williams to set up an exercise where she would be armed with a box cutter and "pretending" to stab our newly crowned Officer of the Year.

Witnesses on the scene heard Sellars exclaim "I'm really going to cut you this time," and saw her slice through Ray's arm with the deadly weapon. Ray shook the injury off as merely a flesh wound. The whole incident was reportedly caught on videotape.

Being the proactive police attorney, I attempted to contact the District Attorney's Office today about pressing charges, but as you know, finding an Assistant DA in the office on a Friday is harder than beating Michael Phelps in the 200-meter butterfly.¹

Alright, now that the unpleasantness is out of the way, let's get to our topic. This legal update comes in response to some issues that have come up in court recently. In fact, at least one District Court Judge sent word through our police liaison officer that this particular topic was causing some cases to get lost that would otherwise result in convictions. The issue is vehicle or pedestrian stops of people leaving a known drug house.

HYPOTHETICAL SITUATION

Suppose you are surveilling (officers never simply watch, they surveil) a known drug house. You see a vehicle pull into the driveway and a passenger get out of the car. The passenger walks up to the house, knocks on the door, and goes inside. Thirty seconds later, the passenger comes back out, gets in the car and the vehicle drives away. You follow the vehicle a short distance, activate your blue lights and perform a traffic stop. The vehicle pulls over. Is the stop valid?

¹ In actuality, Petula felt very, very bad about accidentally cutting Ray, and has taken quite a bit of ribbing from all corners in the last couple of days. But never let the truth get in the way of a good story, unless you are testifying in court or talking to a superior officer or all those other times when the truth is absolutely necessary.

If the facts above are all that you testify to in court, the answer is **NO**. Any evidence you get as a result of the stop will be suppressed and generally the case will then have to be dismissed.

Some of you have argued this point with me in the past. Unfortunately for you, the courts agree with me. Here is a quote from the North Carolina Court of Appeals in State v. Willis, 125 N.C. App. 537 (1997): “Defendant argues he was stopped only because he exited a suspected drug house. Were this actually the case, we might agree there was an insufficient basis to justify the investigatory stop.”

As you know, an officer may undertake an investigatory stop of a person, so long as that officer has a reasonable and articulable suspicion, based on objective facts, that the person is engaged in criminal activity. Courts must consider "the totality of the circumstances -- the whole picture" in making the determination as to whether a reasonable suspicion to make an investigatory stop existed at the time the stop was made. The totality of the circumstances test must be viewed through the prism of a reasonable police officer standard; that is, the reviewing court must take into account an officer's training and experience. Thus, a police officer must have developed more than an "unparticularized suspicion or hunch" before an investigatory stop may occur.

Now that you know what you can't do, let's discuss what you CAN do to solve this problem and make a great case. Since the Olympics are currently going on, let's go for the "GOLD."

Going For The GOLD

1. Get and Give more information.
2. Observe an unrelated violation.
3. Look for evasive actions.
4. Don't detain if unnecessary.

#1: Get and Give More Information

In justifying your stop, you not only have to have reasonable suspicion, you have to be able to articulate that reasonable suspicion in court. You know that a certain address is a "known drug house." But how do you know? You know because of the traffic coming and going, because of the drug arrests that have been made there, the search warrants that have been executed there, and complaints from honest citizens about the property. Are you prepared to testify to those things? And testify not just in general, but about specific occurrences that have taken place there.

If you are going to take the time to surveil a drug house, go the extra step and get some background information to support your claim that it is a "known drug house." Some of this information might be objected to in court as hearsay, but it is not hearsay because it is not being offered for the truth of the matter asserted but as a reliable basis for your reasonable suspicion.

In addition to this, you may also be well served to do a little extra surveillance of the house instead of stopping the first “customer” you see leaving. Being able to tell the court, for example, that you saw eight vehicles and three pedestrians come and go quickly from the house in a period of 30 minutes greatly increases your chances of surviving a motion to suppress.

#2: Observe A Traffic Violation

You have seen a customer leave the drug house and now you have pulled your unmarked police car behind their vehicle. I would imagine that chances are pretty high that if you follow the car for a little while, you will observe some sort of traffic violation.

Why do I feel so confident? Put yourself in the suspect’s shoes. He has just purchased a quantity of illegal drugs. In many cases, he is aware that the police are following him. This makes him more concerned about what is getting ready to happen to him rather than on his driving. In addition, most of his money goes to buying more drugs, meaning he has little money left over to keep his tags and license current or to keep his “hooptie”² in tip-top condition.

Under Whren v. U.S., 517 U.S. 806 (1996), pretextual stops are Constitutionally permissible, meaning that your actual motivations for stopping the vehicle (drugs) are not important so long as you have a legitimate reason for stopping the car (license plate light not operating). So look for an expired tag, a light not working properly, or run the tag and see if the owner is revoked (see State v. Hess, (2007) which can be found at <http://www.aoc.state.nc.us/www/public/coa/opinions/2007/061413-1.htm>)

#3: Look For Evasive Actions

In the Willis case I quoted from above, the stop of a pedestrian coming from a drug house was supported by the fact that he exhibited signs of nervousness and took evasive action by cutting through a hospital parking lot once he realized he was being followed by police.

Efforts to evade either on foot or by vehicle can be important factors in your reasonable and articulable suspicion of criminal activity. While they don’t justify a stop usually by themselves, they are certainly considered as part of the “totality of circumstances.”

#4: Don’t Detain If Unnecessary

This would apply mostly to pedestrians leaving a drug house. You are always free to walk up to whomever you choose and ask them some questions. This does not require reasonable suspicion.

If you approach the suspect and ask if you can talk to him and he agrees, you have no problems. See if the suspect will give consent to be frisked and/or searched. Many

² Hooptie: (hoop’-tee) (n) A large older automobile, often in poor condition; jalopy.

times you will observe something about the suspect that will create a legitimate reasonable suspicion and allows you to take further investigatory action.

Now from the “pat myself on the back” archives, how about a real life example of a stellar drug house investigation and conviction? Back in 2003, right before I left the Durham DA’s Office to come to High Point, I convicted a lady by the name of Gloria Wilkerson for selling crack cocaine. I was able to convince a jury (a Durham jury, even) that Ms. Wilkerson was guilty even though we had not caught her with any cocaine in her possession. This conviction was obtained less by my advocacy skills than by the stellar work of one of Durham’s vice detectives.

Officer Jerry Husketh with the Durham Police Department was surveilling Ms. Wilkerson’s house after observing a possible drug transaction take place there. He stood 150 feet away from the house and watched through binoculars. Four minutes after beginning surveillance, he saw a black Honda driven by Gregory Holloway pull up to the house. Mr. Holloway went up to the doorway and Officer Husketh saw him give Ms. Wilkerson what appeared to be money and Ms. Wilkerson place a small package in Holloway’s hand.

Officer Husketh continued his surveillance while other officers stopped Holloway a short distance away. They found two crack rocks on the passenger side floorboard. The next day, Officer Husketh obtained and executed a search warrant at Ms. Wilkerson’s crack shack. Officers found baggies with missing corners, separated baggie corners, a knot from a drug baggie, a razor blade, \$3,750.00 in cash, a marijuana cigar, and a spoon with cocaine residue. What officers didn’t find were any rocks of crack cocaine.

What allowed us to convict Ms. Wilkerson of the sale of cocaine to Mr. Holloway (who unsurprisingly was not available as a witness come trial time) was the testimony of Officer Husketh that in the 30 minutes that he surveilled the house that evening, he saw eight cars and three pedestrians approach defendant's house and stay for a very short time. Upon arrest, Ms. Wilkerson stated “I told you that I ain't sold no drugs today. I'm going to call my lawyer . . . and I'll be out doing my thing again. You ain't caught me with s*** or nothing. You ain't catch me with no drugs.” She looked less than pleased as she was being led away for 14-17 months in the pokey that a good investigation and thorough testimony had made a liar out of her.

You can find the case here:

<http://www.aoc.state.nc.us/www/public/coa/opinions/2004/unpub/031665-1.htm>

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