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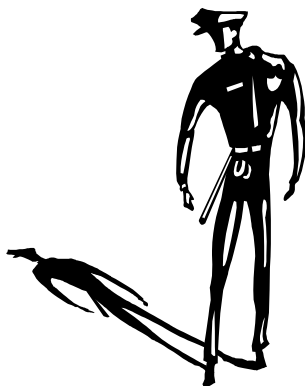
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Forward: In this issue, we review the Fourth Circuit Court of Appeals case of *U.S. v. Jones*, in which the court held that a 911 tip and the fact that the occupants of a car matched the race given by the caller did not provide reasonable suspicion for a traffic stop. We also review two cases from the North Carolina Court of Appeals. In *State v. Briggs*, the court held that the totality of the circumstances should be considered in determining if probable cause exists to seize an item under the "plain feel" doctrine. In *State v. Brown*, the court found an anonymous 911 tip did not establish reasonable suspicion that the defendant was engaged in criminal activity.

HIGHLIGHTS:

FOURTH CIRCUIT COURT OF APPEALS:

Fourth Amendment/ Seizure/Anonymous Tip/Traffic Stop:

In *U.S. v. Jones*, ___ F3d. ___ (1 March 2001), the Fourth Circuit Court of Appeals held that an uncorroborated anonymous tip from a 911 caller and an officer's observation of four men in a car who matched the race provided by the caller did not establish reasonable suspicion for a traffic stop that led to a seizure of drugs.

NORTH CAROLINA COURT OF APPEALS:

Fourth Amendment/ Search/"Plain Feel" Doctrine:

In *State v. Briggs*, 140 N.C. App. ___ (2000), the North

Carolina Court of Appeals held that, in applying the "plain feel" doctrine, a court should consider the totality of the circumstances in determining whether the incriminating nature of the object was "immediately apparent" and, therefore, probable cause existed to seize it.

Fourth Amendment/ Seizure/Anonymous Tip/Stop and Frisk:

In *State v. Brown*, ___ N.C. App. ___ (20 February 2001), the North Carolina Court of Appeals held that an anonymous tip from a 911 caller did not provide reasonable suspicion that the defendant was involved in criminal activity and, therefore, an officer's stop and frisk of the defendant that led to a seizure of drugs was not lawful.

BRIEFS

Fourth Amendment/Seizure/ Anonymous Tip/Traffic Stop:

U.S. v. Jones, ___ F3d. ___
(1 March 2001).

FACTS: On March 17, 1998, shortly after 1:00 a.m., the police dispatcher in Union, South Carolina, received an anonymous 911 call. The caller stated that “several black males” were drinking beer and causing a disturbance in the roadway at the intersection of Lybrand and Pond Streets. Apart from mentioning their race, the caller did not provide any physical description of the men and did not say whether they were in or near a vehicle. Union is a city of approximately 10,000 people, forty percent of whom are African American.

The dispatcher did not ask for the caller’s name nor request information on any other details regarding the incident. At 1:13 a.m., Officer Mallet was dispatched to investigate the reported disturbance. Officer Hart was near the intersection and also responded.

When the officers arrived at the scene, they did not find anyone or see any signs of a disturbance. They circulated the area near the intersection and confirmed that it was clear. The officers then left, and after Officer Hart had traveled about two-tenths of a mile, he met a white Chevrolet coming into the area. The driver of the car was not committing any traffic violations, and there were no

signs of any other violations associated with the vehicle. However, Officer Hart observed that there were four African American men in the car. Solely on the basis of the information received from the dispatcher regarding several black males, Officer Hart made a U-turn, activated his blue lights, and stopped the car. Officer Mallet arrived shortly thereafter to assist.

Officer Hart approached the car and asked the driver for his license, registration, and insurance information. The officer noticed an open bottle of beer at the feet of the front seat passenger, the defendant Jones. After the driver produced his documents, Officer Hart asked him to step out of the car and he complied. Hart mentioned the bottle of beer and obtained consent to search the car. Hart then ordered the passengers, including Jones, out of the vehicle.

Hart searched the front passenger area and found two open beer bottles. He placed Jones under arrest for violating South Carolina’s open container law. While Officer Mallet was patting Jones down, he discovered a plastic bag in Jones’s jacket pocket that contained over 23 grams of crack. Jones was charged with the federal offense of possession with intent to distribute cocaine base.

Jones’s first trial ended with a hung jury. At his second trial, he moved to suppress the cocaine on the ground that it was the fruit of an unlawful stop. The motion was denied and the jury found Jones guilty.

ISSUE: Did the anonymous tip to 911 together with the officer’s observations of the car provide reasonable suspicion to justify the investigative stop?

RULE: No. The uncorroborated anonymous tip and the officer’s observation of four African American men in the car did not establish reasonable suspicion for the traffic stop.

DISCUSSION: The court discussed the recent United States Supreme Court case of *Florida v. J. L.*, 120 S. Ct. 1375 (2000), which dealt with the issue of when an anonymous tip may provide reasonable suspicion for an investigative stop. In that case, the Court suppressed a handgun seized by the police from an African American juvenile who was stopped and frisked based on an anonymous tip. The police had received an anonymous telephone tip that a young African American male wearing a plaid shirt was at a certain bus stop and was carrying a gun. The officer went to the bus stop and saw three African American males, one of whom was wearing a plaid shirt. Apart from the tip, the police did not have any reason to suspect the individuals of engaging in unlawful activity. The officers did not see a firearm, and the men did

not make any moves that were threatening or unusual. One of the officers approached the individual in the plaid shirt (J. L.), frisked him, and recovered a gun from his pocket.

The Court held that the anonymous tip was not sufficiently reliable to provide reasonable suspicion to support the investigative stop. The tip did not contain any predictive information about J. L.'s future activity and, therefore, the police had no way in which to test the informant's credibility or knowledge. The informant neither explained how he knew about the gun nor supplied any basis for believing he had inside information about J. L. The Court stated that reasonable suspicion requires that a tip be reliable in regard to the illegal activity involved, not just in its tendency to identify an individual.

The Fourth Circuit Court of Appeals held that the tip in this case was even less reliable than the tip in *Florida v. J. L.* In this case, the caller told the police dispatcher only that several black males were drinking and causing a disturbance at a specific intersection. The caller did not identify himself, did not give his location, and did not explain how he knew about the disturbance. In addition, he did not state exactly how many men were involved and, other than mentioning their race, gave no information about their appearance. The caller did not mention whether the individuals were residents or outsiders. Finally, he did not

state whether the men were in or near an automobile.

When the police arrived at the intersection, they did not observe anyone. They then checked the immediate area and still found no one and saw no signs of a disturbance. At that point, the anonymous tip was totally uncorroborated and, therefore, essentially useless. If the police wished to investigate any further, they were relegated to looking for several African American men, who had not been described or otherwise identified. In fact, Officer Hart admitted that, when he saw the Chevrolet, he "saw four black guys . . . and stopped them for that." He did not observe any traffic or equipment violations, or any other suspicious activity. His sole basis for stopping the car was that the earlier uncorroborated tip mentioned several black men.

Because Officer Hart was unable to confirm the informant's knowledge or credibility, the tip was not a reliable accusation against the men in the Chevrolet. In short, the uncorroborated tip and the officer's observation of four African American men in a car were not sufficient to establish reasonable suspicion for the stop. Therefore, the stop was illegal and the crack cocaine discovered during the search of the defendant Jones should have been excluded at trial.

**Fourth Amendment/
Search/"Plain Feel"**

Doctrine: *State v. Briggs*, 140 N.C. App. ___ (2000).

Facts: Shortly after midnight, on February 25, 1998, Officers Carlton and Stikeleather of the Concord Police Department were conducting a driver's license check in a "high crime" area. Officer Carlton stopped the defendant Briggs and asked him to produce his license and registration. As Officer Carlton was returning the defendant's license to him, Officer Stikeleather approached and recognized the defendant as someone he had previously arrested for possession with intent to sell and sale and delivery of cocaine. He also knew that the defendant was currently on probation and was aware that he had prior convictions for possessing and selling controlled substances.

The defendant denied that he had been drinking or using drugs; however, he was chewing gum "real hard" and his eyes were glassy and bloodshot. Officer Stikeleather also smelled the odor of burned cigar tobacco inside the vehicle coming from the defendant's person. The defendant stated that he did not smoke cigars, but a female who was in the vehicle earlier was smoking a cigar. Based on his experience, Officer Stikeleather knew that drug users often smoked cigars to mask the smell of illegal drugs.

Officer Stikeleather asked the defendant for consent to search the vehicle, but he refused. The officer then told the defendant to exit the vehicle and conducted a patdown search for weapons. Officer Stikeleather testified that while he was conducting the patdown, "I felt a hard, cylindrical shape in [defendant's] pocket and it felt

like a cigar holder; and I'm familiar with these because folks carry these frequently to keep their controlled substances in. It's like a little plastic test tube with a little cap on it; and there's really nothing else that's shaped exactly like that."

The officer asked the defendant what the object was, and defendant stated, "A cigar holder." The officer said, "I thought you didn't smoke cigars," but the defendant did not respond. Officer Stikeleather then removed the cigar holder from defendant's pocket and when he shook it, the cigar holder "rattled like it had a number of small hard objects in it." The officer opened the cigar holder and found ten rocks of crack cocaine inside. The defendant was charged with possession with intent to sell and deliver cocaine. After his motion to suppress the evidence was denied, the defendant pled guilty and appealed.

ISSUE 1: Were the defendant's Fourth Amendment rights violated when the officer required him to exit his vehicle?

RULE: No. The officer was justified in removing the defendant from his vehicle.

DISCUSSION: In the previous case of *State v. McGirt*, 122 N.C. App. 237 (1996), *aff'd per curiam*, 345 N.C. 624 (1997), the court held that the Fourth Amendment's prohibition against unreasonable searches is not violated when an officer requires the driver of a lawfully detained vehicle to exit the vehicle. This procedure reduces the

likelihood of assault on the officer and is not a serious intrusion upon the driver.

ISSUE 2: Did the officer have reasonable suspicion to conduct a patdown search for weapons?

RULE: Yes. The officer had reasonable suspicion to initiate a weapons patdown search as allowed under *Terry v. Ohio*.

DISCUSSION: Although a routine traffic stop does not automatically justify a protective search for weapons, an officer may conduct a patdown search of an individual for weapons if the officer has a reasonable suspicion based on articulable facts that the person may be armed and dangerous. If an officer observes unusual conduct which leads him/her to reasonably conclude that criminal activity is afoot and that the person with whom he/she is dealing may be armed and dangerous, the officer is entitled to conduct a carefully limited search of the outer clothing of the person for weapons which might be used to assault the officer.

In this case, the defendant was stopped in a "high crime" area, it was late at night, and the officer was aware that the defendant had prior convictions for drug-related offenses and was on probation for his most recent conviction. Based on his experience, the officer was aware that drug dealers often carry weapons. The totality of the circumstances was sufficient to justify a patdown search of the defendant.

ISSUE 3: Was the officer's seizure of the cigar holder justified under the "plain feel" doctrine from the United States Supreme Court case of *Minnesota v. Dickerson*?

RULE: Yes. The officer's seizure of the cigar holder was justified under the "plain feel" doctrine.

DISCUSSION: In *Minnesota v. Dickerson*, the Supreme Court held that if an officer lawfully pats down a suspect's outer clothing and feels an object whose contour or mass makes its identity as contraband "immediately apparent," the officer is justified in making a warrantless seizure of the object, just as if it was in "plain view." In *Dickerson*, however, the officer determined that the object was contraband only after squeezing, sliding and otherwise manipulating the contents of the defendant's pocket, which the officer already knew did not contain a weapon. Therefore, if after feeling the object, the officer lacks probable cause to believe the object is contraband without conducting a further search, the "immediately apparent" requirement has not been met and the plain feel doctrine cannot justify the seizure of that object.

In this case, the court noted that there is a split of authority among courts as to whether the "plain feel" doctrine applies if the contraband is found on the defendant's person in a container whose shape itself does not reveal its

identity as contraband. Some courts look to factors other than merely the officer's tactile perception to determine if the incriminating nature of the object was "immediately apparent," while other courts find that containers themselves cannot be "immediately apparent" as contraband and, therefore, no probable cause exists to seize them.

The court concluded that the better view in applying the "plain feel" doctrine is to consider the totality of the circumstances in determining whether the incriminating nature of the object was "immediately apparent" and, therefore, probable cause existed to seize it. Furthermore, probable cause exists when the facts and circumstances within the officer's knowledge are sufficient to warrant a person of reasonable caution in the belief that the item may be contraband. The probable cause determination does not require hard and fast certainty by an officer, but involves more of a common-sense determination. The court must consider the evidence as understood by those versed in the field of law enforcement under the circumstances then existing.

The court then examined the facts and circumstances surrounding the officer's seizure of the cigar holder to determine whether or not the seizure was lawful. The defendant was stopped late at night in a "high crime" area. The officer had previously arrested the defendant for possession of controlled substances and knew that he was currently

on probation for such an offense. The officer smelled burned cigar tobacco in the vehicle and on the defendant, and was aware that burning cigars were often used to mask the smell of illegal drugs. The defendant had previously stated he did not smoke cigars. His eyes were glassy and bloodshot, and his behavior suggested possible usage of a controlled substance. In addition, the officer's experience made him aware that cigar holders were commonly used to store controlled substances.

Based on all of the above facts and circumstances, the court held that Officer Stikeleather had sufficient information to warrant a person of reasonable caution in the belief that the item he detected contained contraband. Furthermore, there was no evidence that the officer impermissibly manipulated the object. Therefore, the seizure of the cigar holder was lawful.

**Fourth Amendment/
Seizure/ Anonymous Tip/
Stop and Frisk:**

State v. Brown, ___ N.C. App. ___ (20 February 2001).

FACTS: On January 27, 1999, Detective Brown of the City-County Vice and Narcotics Unit in Wilmington received a call from the 911 Center stating that a "concerned citizen" had called in and complained that two black males were rolling marijuana cigarettes and selling crack cocaine on the porch of a vacant house under construction at the corner of Eighth and Ann

Streets. The caller described one of the individuals as wearing a gray tee shirt and jeans and the other as wearing a black tee shirt and jeans. The police had received prior complaints of drug activity on Ann Street. Detective Brown, along with Detectives Oaks and Blackmon, went to the area and observed a vacant house under construction, but no black males on the porch. However, the officers did observe three black males and a black female sitting on the porch of a house next door. Two of the males wore clothing that fit the description given by the caller. The third male, the defendant Brown, was wearing a black pullover shirt and camouflage pants.

The officers approached the group and told them about the complaint. The three males denied having any drugs and the officers patted each of them down for weapons. While Detective Oaks was checking the defendant for weapons, the defendant asked why he was being searched and attempted to pull away. The defendant was then arrested for resisting, delaying, or obstructing an officer. A search incident to arrest revealed crack cocaine in the defendant's boots.

The trial court found that Detective Oaks had reasonable suspicion that criminal activity was involved and that the defendant might be armed and dangerous, thus permitting a patdown search. The detective also had probable cause to arrest the defendant for resisting, delaying, or obstructing and to conduct a search incident to arrest. Therefore, the court denied the defendant's motion

to suppress. The defendant pled guilty to felony possession of cocaine and appealed.

ISSUE: Did the anonymous tip received from the caller provide reasonable suspicion that the defendant was involved in criminal activity?

RULE: No. The anonymous tip did not exhibit sufficient reliability to provide the detective with reasonable suspicion that the defendant was engaged in criminal activity.

DISCUSSION: The court compared this case to the case of *Florida v. J. L.*, 120 S. Ct. 1375 (2000). In *J. L.*, two officers responded to an anonymous tip that a young black male wearing a plaid shirt and standing at a specific bus stop was carrying a gun. Upon arrival at the bus stop, the officers observed three black males, one of whom (J. L.) was wearing a plaid shirt. One of the officers conducted a stop and frisk of J. L. and located a concealed handgun.

The Supreme Court held that the anonymous tip lacked sufficient indicia of reliability to justify the stop and frisk. The accurate description of

J. L.'s appearance and location did not indicate that the tipster had reliable knowledge of the illegal activity, i.e., J. L.'s possession of the weapon. The Court stated that all the police had to go on was the bare report of an unknown, unaccountable informant who neither explained how he knew about the gun nor supplied any basis for believing he had inside information about J. L.

In this case, the court of appeals stated that all the police had to go on was a report from an anonymous citizen who gave no information as to how he/she came upon the information nor any other basis for the report. In fact, the defendant did not meet the description given by the caller and the police did not locate two black males on the porch of the house identified by the caller. Therefore, the tip lacked the minimal corroboration present in *Florida v. J. L.* and was insufficient to provide Detective Oaks with reasonable suspicion that the defendant was engaged in criminal activity. As a result, the arrest and search of the defendant was based on an illegal stop and frisk and the evidence should have been suppressed.

NEW MIRANDA CARDS AVAILABLE IN PROPERTY CONTROL

The Charlotte-Mecklenburg Police Department recently received new Miranda Waiver of Rights cards from the North Carolina Justice Academy. The cards, which are orange in color, are available in Property Control and there is a large enough stock for each officer to have one.

The new cards differ slightly from the old, specifically in the "Juvenile Rights Warning" section, number "4." The previous cards contained the following language, "If you cannot afford to hire a lawyer, one will be appointed to represent you at no cost before any questioning if you wish." The cards now state, "If you are not represented by a lawyer, one will be appointed to represent you before any questioning if you wish."

Officers should obtain the new cards and use them when advising juveniles and adults of their Miranda rights. Detectives may continue to use the Department's printed "Juvenile Waiver of Rights" form.

