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State v. Brown

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What'd You Call Me?

By Brian Beasley,
Legal Adviser, High Point PD

I think that most sensible people would agree that name-calling is very prevalent in our society today.[1] One need only visit a middle school locker room or perhaps follow the President's Twitter account to find substantial evidence of this. In addition, words that are considered profane are generally more accepted in today's world and on our public airways. Today's case combines both of these uncouth behaviors as it deals with a citizen who called a police officer a profane name. Or at least that might be what happened.

In State v. Brown,[2] the N.C. Court of Appeals considered a case with the following facts. On August 5, 2017, several deputies were parked in the parking lot of a closed gas station on a rural road at approximately 2:30 in the morning. A deputy was outside his vehicle and was aware that there were no businesses open for several miles in either direction. The deputy saw a vehicle come down the road and heard yelling inside the vehicle along with the word "Mother-Fu****."[3]

According to the deputy's testimony, he did not know if the driver of the car or a passenger yelled the offensive words (word?) or whether there were even passengers in the car. He did not know if the windows of the car were up or down or who the words were directed at. He stated that, "it could be directed toward [the deputies.] It could be a sign of people inside the vehicle fighting. It could have been somebody on the telephone." But the deputy was concerned that someone might be involved in a domestic situation or an argument of some kind, so he got in his car and caught up the vehicle.

The deputy did not observe the car speeding, but saw it slow down to well under the speed limit as he approached. The vehicle did not commit any traffic violations before the deputy performed a traffic stop. After stopping the vehicle, the deputy discovered that the driver, Cypress Monique Brown,[4] was impaired and eventually arrested her for that offense. In court, Ms. Brown argued that there was no reasonable suspicion justifying the stop.

On appeal, the state did not argue that reasonable suspicion existed but instead argued that the "community caretaking doctrine" justified the stop. It seems pretty clear that reasonable suspicion was not present in this case, even if the deputy could have testified that the driver specifically called him the profane name. Merely speaking profanity to a law enforcement officer is almost always constitutionally protected speech and does not give rise to a criminal charge. Until 2015, North Carolina had a statute that prohibited "using profane or indecent language on public highways," but that law has now been repealed.[5] There was a case in the late 70's that

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[1] And if they don't agree, they are stupid morons.
[2] COA 18-1107 (April 16, 2019).
[3] This word (censored above because this is a family publication) is part of a category of speech known as "profanity." This comes from the Latin "*profanus*" which literally means "before (outside) the temple." There's a little tidbit to throw around at your Memorial Day cookout.
[4] "Cypress" is an unusual name and means either "from the island of Cyprus" or "strong, muscular, and adaptable" which are characteristics of the cypress tree.
[5] This particular statute (G.S. 14-197) was ruled unconstitutional under the First Amendment by the courts prior to its repeal by the General Assembly. My favorite part of this statute was that Pitt and Swain counties were expressly exempt from the law. I have always been extremely curious about why those two counties allowed profanity on the public highways.

upheld a disorderly conduct conviction when a motorist who was being given a traffic ticket told the officer to "get his g**d*** a$$ out of the way" or the defendant "would run over him,"[6] but that seems to be much more serious than simply tossing a random "MF" in the general direction of an officer.[7]

So the court considered instead whether the deputy's stop was legitimate under the community caretaking doctrine. The community caretaking doctrine states that an officer may conduct a warrantless search or seizure (including a traffic stop) without reasonable suspicion or probable cause when performing a community caretaking function where the public interest outweighs the invasion of the individual's privacy. In North Carolina, this doctrine was first applied in 2014 in a case where a deputy stopped a Corvette on a dark rural road after observing it strike some kind of animal and keep driving.[8] The court found that the need to make sure the driver and vehicle were okay justified the stop.

Since that case, one other North Carolina case has upheld a stop based on this doctrine. In State v. Sawyers,[9] a Highway Patrol Sergeant was stopped at a stoplight in downtown Charlotte at about 2:30 in the morning when he saw a strange sight. He observed the defendant walking down the sidewalk with a slight limp. Directly behind the defendant was a man that appeared to be homeless who was dragging a female who appeared to either be very intoxicated or drugged. He watched as the defendant stopped at a parked car, opened the back door behind the driver's seat, and with the help of the "homeless" male, put the female in the back seat. The two men then got into the car also and the defendant drove off. The trooper wasn't sure if the female was in danger or was being kidnapped so he stopped the vehicle to investigate. The court found the stop constitutional based on a community caretaking purpose.[10]

These cases have established a three-pronged test for applying the community caretaking exception. According to this test, the state has the burden of showing that

(1) A Fourth Amendment search or seizure occurred;

(2) Under the totality of the circumstances an objectively reasonable basis for a community caretaking function existed; and

(3) The public need or interest outweighed the intrusion upon the privacy of the individual.

Under this third prong, there are several factors that the court would consider to balance the need versus the intrusion, such as the degree of the public interest and the exigency of the situation, the circumstances surrounding the seizure including the degree of authority or force displayed, whether an automobile is involved (because cars have a lower privacy expectation,) and the availability, feasibility, and effectiveness of alternatives to the actual intrusion.

In Brown, there was clearly a Fourth Amendment seizure when the stop was conducted. The court concluded, however, that the sole fact that the deputy heard someone in the vehicle yell a profanity[11] as the car drove by did not establish an objectively reasonable basis for a community caretaking function. In other words, this was not enough of an indication that someone might be in danger or that there was a threat to the general public that needed to be addressed. As a result, the second part of the community caretaking test was not met and the stop was held unconstitutional without the court needing to do the balancing required in the third part of the test.

Remember that the community caretaking doctrine is only intended to cover those unusual cases where a public safety issue arises and the officer must act to meet that issue without reasonable suspicion or probable

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[6] State v. Cunningham, 34 N.C. App. 72 (1977).

[7] Studies of recorded conversations (I'm not sure where these recordings came from?) reveal that roughly 80-90 words that a person speaks a day are swear words. This is roughly 0.5% to 0.7% of all words spoken. Some people swear up to 3.4% of their daily words (you know who you are.) By way of comparison, the first-person plural pronouns (we, us, our) make up 1% of our spoken words.

[8] State v. Smathers, 232 N.C. App. 120 (2014).

[9] 786 S.E.2d 753 (N.C. Court of Appeals, 2016).

[10] The court also found that reasonable suspicion existed for this stop based on the totality of the odd circumstances.

[11] Keele University researchers Stephens, Atkins, and Kingston found that swearing relieves the effects of physical pain. (I would love to know how that study was conducted.) One researcher concluded, "I would advise people, if they hurt themselves, to swear." Unfortunately, the research showed that overuse of swear words tends to diminish this effect.

cause. It is not a replacement for the requirement of reasonable suspicion. Whether you agree with it or not, having a potty mouth is not a public safety issue and being a jerk is not against the law. It's enough to make you want to curse.[12]

Brian Beasley
Police Attorney
High Point Police Department

ABOUT THE AUTHOR: Brian Beasley is the Legal Advisor for the High Point Police Department. This legal update is provided free of charge to the SR Webpage in the hopes that officers across the state would be able to benefit from it. Brian is not an attorney with Smith Rodgers, PLLC but he thinks they're pretty cool guys.

[12] I don't curse much, but I do use "minced oaths." These are expressions that substitute for profanity such as "dadgummit" or "good gosh a' moses!" For whatever reason, these are usually perfectly acceptable, although a judge in 1941 did threaten to hold a lawyer in contempt for using the word "darn."