



SMITH RODGERS
ATTORNEYS AT LAW, PLLC
LEGAL CONSULTANTS TO LAW ENFORCEMENT

State v. Wilson

February 14, 2020
Volume 19, Number 2

Ducking & Hiding on Valentine's Day

*By Brian Beasley,
Legal Adviser, High Point PD*

ROLL CALL TRAINING

*From North Carolina's 24/7 Police
Attorney Law Firm*

PO Box 4803
Greensboro, NC 27404-4803
Telephone (336) 691-7058
fax (336) 969-1879
www.policehelp.net

Happy Valentine's Day!¹ I hope all of you readers who are in a committed relationship are not surprised that February 14th is upon us. If you are, you might wind up unentangled from that commitment pretty quickly because statistics show that more breakups occur in the two weeks following Valentine's Day than any other part of the year except the two weeks leading up to Christmas.² I've recently learned that many of you were under the false impression that Valentine's Day is my least favorite holiday.³ That is incorrect,⁴ but the important question is not whether YOU like Valentine's Day but whether your significant other likes Valentine's Day. If they do, you'd best go buy a card or box of chocolates before getting home tonight.⁵

Many of you may wish to run and duck and hide when Valentine's Day rolls around and for you we have a special court decision to discuss today where the defendant did just that. In State v. Wilson,⁶ an officer was patrolling in Black Mountain, North Carolina, when he saw the defendant Reginald Wilson driving in the opposite direction. The officer knew Mr. Wilson's driver's license was revoked and so he turned around to conduct a vehicle stop. When he activated his emergency equipment, the defendant accelerated away and turned off the road onto another street.

Defendant then pulled into an apartment complex parking lot and parked next to an unoccupied car. As defendant was exiting his vehicle, the officer parked behind him, got out, and ordered him to return to the car. The defendant refused and moved around to the front of the other unoccupied parked vehicle. The officer and defendant argued back and forth about the defendant returning to his car and the defendant began ducking down in front of the other vehicle.

At one point, the defendant stood up and put both hands into his waistband. The officer unholstered his sidearm and ordered him to show his hands. Instead, the defendant ducked down to where the officer could not see him or his hands at the front of the other parked vehicle. Eventually he stood up and continued to argue but

¹ Although it probably has no basis in fact, the legend grew of a priest named Valentine who was jailed and ordered executed for performing marriages after they were outlawed by Roman Emperor Claudius II. The emperor did not want young men getting married because he believed that single men made better soldiers (and you thought politics today were out of control.) Part of the legend is that Valentine fell in love with his jailor's daughter and sent her a love note from prison which he signed, "From your Valentine." Starting with that hastily scrawled handwritten note from jail, there are now 145 million Valentine's Day cards exchanged annually.

² I saw this on Facebook, so it's guaranteed to be accurate. The stuff in footnote 1 is probably fake news because it was just written down in a book somewhere.

³ If true, this would make me an "antivalentinist" (which is apparently a real thing.) Antivalentinists shun the commercialism of Valentine's Day to "celebrate" Singles Awareness Day (or SAD) on February 14th. Coincidentally, these antivalentinists seem to be people who have trouble getting dates. Another anti-Valentine's Day group, who apparently did not want to celebrate a day called "SAD", holds "Anti-Valentine's Day" events instead which they refer to as "anti-V.D. Day." Either someone didn't really think about that abbreviation or someone did. (I am not making any of this up.) For those that didn't get that joke, consider what else VD might be an abbreviation for.

⁴ It's Halloween, of course. Have you never read any of my legal updates?

⁵ But choose wisely, because according to reputable source "WalletHub," roughly 31% of people expect their Valentine to spend at least \$50 on a gift.

⁶ COA 19-184 (4 February 2020).

began to walk back to the driver door of his own vehicle. When the officer went to handcuff him, a scuffle ensued but a backup officer arrived and helped to detain the defendant.

The officer observed a “corner bag” with what was later determined to be .34 grams of crack cocaine on the driver’s seat. In addition, after the owner of the other unoccupied car left to go to work, a large bag containing 11.19 grams of cocaine was discovered underneath where that car had been parked, toward the front where the defendant had been ducking down. The defendant was charged with various offenses and, after representing himself at trial,⁷ was convicted of Possession of Cocaine with Intent to Sell and Deliver, Possession of Cocaine, and being a Habitual Felon. He was sentenced to 135 months to 187 months in prison.⁸

The sole issue disputed on appeal was whether there was sufficient evidence of the intent to sell or deliver cocaine to support the conviction on that charge. This is not an unusual question and arises in most narcotics cases. Officers should be familiar with what types of information the courts look for in these cases, so that they can be sure and articulate the facts present in their particular case that indicates the intent to sell or deliver.

The framework for analyzing this question comes from an earlier case named State v. Nettles.⁹ In that case, the Court of Appeals stated that based on North Carolina case law, the intent to sell or distribute may be inferred from four things:

1. The packaging, labeling, and storage of the controlled substance,
2. The defendant’s activities,
3. The quantity of drugs found, and
4. The presence of cash or drug paraphernalia.

Let’s look at each of these in connection with the Wilson case.

The packaging, labeling, and storage of the controlled substance

The court noted that the packaging of these drugs supported an inference of intent to sell or deliver. They were divided into a larger package containing most of the cocaine and a smaller corner bag most likely packaged for personal use. While this would not be enough by itself to prove intent to sell or deliver, it was certainly a step in that direction.

The defendant’s activities

In previous cases, the courts had considered some specific actions of defendants which were observed by police and were consistent with drug dealing. If an officer saw the defendant engaging in conduct that resembled a drug transaction, for example, that would certainly help support a conclusion that his intent was to sell or deliver the drugs. The Wilson decision took this a step further. The court noted the defendant’s transportation of the large amount of cocaine, the failure to stop his vehicle immediately when the officer activated his lights, the refusal to comply with the officer’s instructions, and the ducking down behind the other car and considered how those activities might illuminate his intent. The court concluded that these actions were an attempt to hide the larger amount of cocaine while leaving the smaller bag associated with personal use in plain view. As a result, the evasive activity of the defendant was an indicator of the intent to sell or deliver.

The quantity of drugs found

When looking at the quantity of drugs in these type of cases, the court generally compares the amount found with the amount needed for a trafficking charge. For the quantity alone to support a charge of Possession with Intent to Sell or Deliver, it has to be a very substantial amount. Here, the court pointed out that the roughly

⁷ While usually attributed to Abraham Lincoln, the adage that “the man who is his own lawyer has a fool for his client” originated much earlier, possibly even as far back as the 17th century. This nugget should be a helpful conversation starter at any Valentine’s Day party you attend.

⁸ What’s the difference between a calendar and Mr. Wilson? A calendar has a date for Valentine’s Day.

⁹ 170 N.C. App. 100 (2005).

11.5 grams in the possession of the defendant was less than half of the weight needed for a trafficking offense (28 grams.) The court noted that 11.5 grams was less than the amounts that had been previously recognized as clearly beyond what a person might possess for personal use but was much more than many cases where a Possession with Intent to Sell or Deliver conviction was upheld. As a result, while the weight wasn't enough by itself to find the intent, it was a significant amount and factor.

The presence of cash or drug paraphernalia

In some cases, officers will find large amounts of cash or paraphernalia such as digital scales or additional baggies that might tend to show an intent to sell or deliver. However, there was no cash or paraphernalia found in this case¹⁰ so that was not a factor in proving intent. Nevertheless, because of the amount of cocaine, the packaging, and the defendant's evasive behavior and attempt to hide the larger bag, the court found that this was "at a minimum, a borderline case" to support the intent to sell or deliver.

Because these cases are so fact-driven, I've prepared an appendix on the next page that lists several cases where the intent to sell or deliver was supported (including today's case) and several others where it was not. You may consider this my Valentine's Day present to you.¹¹ If you have PWISD cases set for trial that could go either way, I would encourage you to share the appendix with the prosecuting attorney. They will likely appreciate the time you will have saved them in doing research.

APPENDIX ON NEXT PAGE

**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.



Smith Rodgers, PLLC
provides 24-hour real-time legal support for client law enforcement agencies.

“The materials on this website are instructional only, and do not constitute legal advice or create an attorney-client relationship. Readers should consult in-house counsel or city/county attorneys for advice and guidance on specific legal issues and applications. Clients of Smith Rodgers may of course contact the firm’s 24-hour switchboard for immediate legal consultation in real-time.”

¹⁰ Speaking of cash, it is projected that total Valentine's Day spending in 2020 will be about 27.4 billion dollars.

¹¹ I was going to get you some of those little chalk-powder hearts with the words on them (like “Be Mine” or “I Heart You” or “LOL”) but tragically, there will be NO LITTLE HEARTS this Valentine's Day. Necco, the company that made these hearts, had been struggling for years with declining profits (which is shocking considering the quality of their product) and was purchased at a bankruptcy auction in May of 2018. The buyers then turned around and sold them again in July to the company that makes “Dum Dum lollipops.” Because the factory was shuttered during this time, there was apparently no time to produce the 8 billion hearts needed for Valentine's Day this year. This will mark the first year since 1901 that the candies will not be available (although there are several knock off brands still out there.) They are supposed to return for 2020.

APPENDIX: PWISD REFERENCE LIST

Cases Where Sufficient Evidence of Intent to Sell and Deliver was Found:

1. 84.8 grams of marijuana packaged in two sandwich bags, four dime bags, and five other types of bags along with a box of sandwich bags, a digital scale, and a “large amount of cash” in small denominations. State v. Blakney, 367 N.C. App. 522 (2014)
2. 27.6 grams of marijuana packaged in seventeen separate, small brown envelopes known as “nickel or dime bags.” State v. Williams, 71 N.C. App. 136 (1984)
3. 5.5 grams of cocaine separated into 22 individually wrapped pieces. State v. McNeil, 165 N.C. App. 777 (2004)
4. 10.88 grams of marijuana packaged in three separate baggies (one “dime bag” and two larger bags) along with \$1,504 in cash and a stolen handgun. State v. Yisrael, 804 S.E.2d 742 (2017)
5. 219 grams of marijuana packaged in 16 small envelopes along with 28 other empty envelopes, scotch tape, and cigarette paper. State v. Baxter, 285 N.C. 735 (1974)
6. Pill bottle containing one large cocaine rock and eight smaller rocks, defendant seen having discussions through a car window with known drug users and gave officer a fictitious name. State v. Carr, 122 N.C. App. 369 (1996)
7. Sandwich bag containing 8.6 grams of marijuana, a digital scale, another sandwich bag containing 2.9 grams of marijuana, two partially smoked marijuana cigars, thirteen cigar wrappers, an unopened package of cigars, an open box of sandwich bags with 23 loose bags, and \$800 in cash. State v. Coley, COA 17-470 (6 February 2018)
8. 11.5 grams of cocaine with small part divided into a corner baggie while most of it was in large bag, defendant tried to evade police and hide the larger bag. State v. Wilson, COA 19-184 (4 February 2020)

Cases Where Evidence of Intent to Sell and Deliver was Insufficient:

1. Small plastic bag containing three smaller bags, each of which is tied off at the top containing a total of 1.89 grams of marijuana along with \$1,264 in cash. State v. Wilkins, 208 N.C. App. 729 (2010)
2. Four or five crack cocaine rocks weighing 1.2 grams, a safety pin with cocaine residue, and \$411 in cash. State v. Nettles, 170 N.C. App. 100 (2005)
3. 215.5 grams of marijuana. State v. Wiggins, 33 N.C. App. 291 (1971)