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State v. Neal

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One Night in Sleepy Hollow

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Happy day after Halloween! This is one of my favorite days of the year because it is the furthest away that I get from having to deal with the silly stupid holiday that is Halloween.¹ However, before you remove the fake cobwebs and blood from your front porch and stuff your face with snack sized versions of your favorite candy that you sent your kid to collect like a beggar for your amusement, our case today has an odd Halloween connection. You Halloween lovers out there² are no doubt familiar with The Legend of Sleepy Hollow, a short story about a headless horseman written by Washington Irving. But did you know that North Carolina has it's own little "Sleepy Hollow?" I was not aware of this until I read the facts of State v. Neal.³

In Neal, the Buncombe County Sheriff's Department was dispatched in response to a call from an anonymous individual who had observed a small green vehicle with tag number 042-RCW on Interstate 40 that had almost run a few vehicles off the road. The caller reported that the driver had hit a car in the Sleepy Hollow area⁴ and was now attempting to leave the scene. Upon arriving in the area, a deputy observed the car matching the description and tag number and stopped the vehicle. He testified that he performed the traffic stop based solely on the anonymous report and did not observe any traffic violations prior to the stop.

After the stop, the deputy and another officer quickly concluded that the driver, Ms. Tammy Neal, was impaired since she could barely stand up.⁵ The initial deputy placed her in his patrol car for her safety and began looking for the vehicle that she had allegedly hit. When he found it, the owner of that vehicle, who was a friend of the Ms. Neal's, was standing outside and informed the deputy that she did not wish to pursue charges.⁶ A State Trooper then arrived on scene and took over the investigation by attempting three standardized field sobriety tests, each of which had to be stopped before completion for the safety of the defendant. Ms. Neal helpfully admitted that she was prescribed and had taken several medications, including Ambien,⁷ Oxycodone,⁸ Restrio,⁹ an

¹ Today is also All Saints' Day (or All Hallows' Day) which is a Christian festival celebrated in honor of all the saints. That seems much more reasonable to me and less difficult on ones' teeth. I realize that because of inclement weather last night, many neighborhoods postponed Halloween until tonight. If you can change the date of the "holiday" at the last minute, it's not a real holiday.

² Who are also lovers of classic literature.

³ COA 18-1113 (17 September 2019).

⁴ I believe that the Sleepy Hollow area refers to the area around the "Sleepy Hollow Inn and Event Center" right off of I-40 in Swannanoa, NC less than ten miles from Asheville. Honestly, I would be a little hesitant to stay at a place called the "Sleepy Hollow Inn." It's got to be at least a little haunted, right?

⁵ Here's my favorite quote from The Legend of Sleepy Hollow: "...and he would have passed a pleasant life of it, in despite of the Devil and all his works, if his path had not been crossed by a being that causes more perplexity to mortal man than ghosts, goblins, and the whole race of witches put together, and that was - a woman."

⁶ This was some friend and possibly someone worthy of celebrating on the aforementioned All Saints' Day! How did this conversation go? "Yes, she hit my car, but it's okay - she's my friend and she's just high as a kite."

⁷ Ambien is the brand name for Zolpidem, a sedative used to treat insomnia.

⁸ Oxycodone, as you no doubt know, is a narcotic used to treat moderate to severe pain.

⁹ I was unable to find "Restrio" but I believe this was meant as Restoril, which is the brand name for Temazepam, another drug to help insomnia.

unnamed restless leg syndrome medication,¹⁰ and Clonazepam.¹¹ Finally, when asked if she had smoked marijuana recently, she replied, “Yes.” A later blood test confirmed the presence of these drugs in her system.

After conviction in District and Superior Court, Ms. Neal appealed to the N.C. Court of Appeals with the argument that the anonymous tip was not enough to give the initial deputy reasonable suspicion to stop her vehicle. For many years, an anonymous tip like the one here would not by itself have given a basis for reasonable suspicion. However, in 2014, the U.S. Supreme Court decided in Navarette v. California¹² that certain anonymous tips could rise to the level of reasonable suspicion if the circumstances and content of the call make it reliable enough. Here is a list of “anonymous tip rules” that I have used in the past and modified post-Navarette:

Rule #1:

An anonymous tip is not enough by itself to give you reasonable suspicion of criminal activity.

This is based on cases like the 2000 U.S. Supreme Court case of Florida v. J.L.,¹³ where there was an anonymous tip that a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a concealed gun. The Court held that because nothing was known about the caller or the circumstances behind the caller’s knowledge of the crime, this tip was insufficient to allow the officer to stop and frisk a person matching that description at that location.

Rule #2:

An anonymous tip PLUS one of the following probably IS enough for reasonable suspicion:

- (A) something that would enable you to determine who the anonymous source is or otherwise puts the anonymity of the source at risk such as a face to face contact,¹⁴ or a caller that gives information that would identify himself or herself.
- (B) an imminent threat to public safety, such as a tip that a person had a gun AND was getting ready to shoot someone with it.¹⁵
- (C) an anonymous tip that contains future information (things the suspect is going to do) which is then corroborated by the officer prior to the stop.¹⁶

Rule #3: (The Navarette rule)

An anonymous tip will give reasonable suspicion if made under circumstances that indicate its reliability.

These might include more than one of the following:

- (A) The call/tip was made during or shortly after the criminal activity occurred.
- (B) The caller/tipster witnessed the criminal activity firsthand.
- (C) The caller/tipster explained how they came to know about the criminal activity.
- (D) The call was made through the 911 system which enables the gathering of information about the caller.
- (E) There was a high amount of detail given in the tip/call.

State v. Neal was the first time the N.C. Court of Appeals had considered this issue since the Navarette decision. They acknowledged that there was “tension” between some of their prior decisions and the Supreme

¹⁰ Restless Legs Syndrome is a condition that causes an uncontrollable urge to move your legs because of an uncomfortable sensation. Like when I’m staying in a haunted inn and see a ghost and my legs start running away.

¹¹ Clonazepam is an anti-anxiety and anti-seizure medicine. This was quite the trick-or-treat basket full of medicinal candies.

¹² 572 U.S. 393 (2014).

¹³ 429 U.S. 266 (2000).

¹⁴ For example, State v. Maready, 362 N.C. 614 (2008). In this case, a citizen flagged down police to tell them a van was driving recklessly. This gave reasonable suspicion to stop even though the officers didn’t get her name because it was a face-to-face encounter.

¹⁵ Mora v. Gaithersburg, MD, 519 F.3d 216 (4th Circuit 2008). The balance of reasonableness can shift in the face of imminent serious threats.

¹⁶ Alabama v. White, 496 U.S. 325 (1990).

Court's ruling (meaning that some of their prior decisions would likely have been different if decided after the ruling in Navarette) and examined the Neal facts in light of that. The court first analyzed the Navarette facts to see how they compared to the present case.

In Navarette, an anonymous female caller reported that a truck had just run her off the road due to its reckless driving. She gave a description of the truck, the license plate number, and the direction of travel. The police were dispatched and saw the truck about fifteen minutes later in a location that roughly matched with the caller's report. They followed the truck for about five minutes without observing any bad driving and then pulled it over. As two officers approached the truck, they smelled marijuana. A search revealed 30 pounds of marijuana in the truck bed.

The Supreme Court concluded that the anonymous tip was reliable based on three reasons. First, the caller claimed to have witnessed firsthand the behavior she was calling about since it was her vehicle that was run off the road. Second, the circumstances revealed that the caller had reported the incident very soon after it had happened, which gave additional credibility to the report. And third, the caller used the 911 system which according to the court prevented the likelihood of someone making false reports since the call can be traced and the caller subject to prosecution.¹⁷

The N.C. Court of Appeals considered the facts in Neal to be even stronger in favor of reasonable suspicion. The caller in Navarette only claimed a single instance of being run off the road while the caller in Neal gave several instances of erratic driving and also reported a collision with another vehicle and the attempt to leave the scene, all of which were much more indicative of an impaired driver. In addition, when deputies responded to the area of the accident, they found the suspect vehicle, showing that the caller reported the accident soon after it had occurred. Because of this, the Court of Appeals held that the stop of Ms. Neal's vehicle was justified by reasonable suspicion and upheld her conviction for DWI.

There is one quick side note I want to mention about the Neal case. During the trial in Superior Court, the State called an officer who was a Drug Recognition Expert (DRE) to the stand to testify. This DRE had never seen the defendant and had no involvement in the case the night it occurred. Instead, she testified that based on her review of the Blood Report and the trooper's Driving While Impaired Report (DWIR) and her training and experience, the defendant "was impaired on a central nervous system depressant and also on a narcotic analgesic." The Court of Appeals held that it was not improper for this expert to be allowed to testify in this manner.

So if you need DRE evidence at trial but didn't have one at the scene, you don't have to lose your head.¹⁸ Just remember Ms. Neal, who apparently had trouble sleeping even in a place called Sleepy Hollow. That's not only ironic, it's downright scary.

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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.

¹⁷ The Court found this to be true even without proof that this specific caller knew that their information would be received by the 911 center.

¹⁸ See what I did there?



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