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State v. Horton

April 18, 2019
Volume 18, Number 8

Not Quite Reasonable

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It should surprise no one who reads these legal updates that I am a big Dr. Seuss (Theodor Geisel) fan. Anyone who can make a living by writing books containing lots of imaginary gibberish words is right up my alley. One of my favorite Dr. Seuss characters is an elephant named Horton.¹ Horton is a really loyal guy (for an elephant) with a lot of integrity. His most famous appearance is in the book, "Horton Hears a Who," in which he is the only one who hears a tiny voice coming from a small speck of dust and comes to realize that there is actually a tiny planet full of microscopic creatures named "Whos" that live there.² Horton takes it on himself to save the Whos' world from destruction by some mean old monkeys until he is finally able to convince the other jungle animals that the Whos actually exist.³

But Horton actually made his debut in the book, "Horton Hatches the Egg," in which a stupid lazy bird named Mayzie⁴ takes advantage of Horton's kind spirit and gets him to sit on her egg while she leaves permanently for Palm Beach. So the elephant sits in a tree in all kinds of nasty weather, is laughed at by his supposed friends, captured by hunters, and finally is placed in a traveling circus. But he doesn't give up and the egg finally hatches into an elephant-bird and Horton and the baby are returned to the jungle to live happily ever after (at least until the Who fiasco we talked about earlier.)

So clearly Horton is a heroic character worthy of our admiration, but what really sets him apart for me is his love for a catchphrase or motto that he constantly repeats to himself to get through the various difficulties he faces. When trying to save the Whos, he keeps telling himself and anyone else who will listen that "a person's a person, no matter how small." As he sits on the egg through all kinds of troubles, he reassures himself by saying, "I meant what I said, and I said what I meant. An elephant's faithful, one hundred per cent!" And who can argue with that, based on the example of Horton?

I thought about my hero Horton as I studied this week's case, which features a defendant named Xavier Lamar Horton.⁵ In State v. Horton,⁶ the North Carolina Court of Appeals considered whether reasonable suspicion existed to stop a vehicle leaving the parking lot of a closed business at around 8:45 p.m. one evening. The officer involved in the case was dispatched after an anonymous call concerning a "suspicious white male" with a "gold or

¹ Although Horton might be my favorite character, my favorite Dr. Seuss book is "And to Think That I Saw It on Mulberry Street." This was Dr. Seuss' first children's book and features a boy walking home from school who makes up this elaborate tale about a parade that he saw on the way only to get home and admit that all he really saw was a simple horse and wagon. I always dreamed of reading this book to a jury in a closing argument where the defendant had testified to some outrageous story but I never had the guts to actually do it.

² The Whos, of course, turn up again in the famous book, "How the Grinch Stole Christmas," which means, perhaps, that this book takes place in a microscopic world. Dr. Seuss' step-daughter would later state that she saw Seuss as the Grinch on his bad days and the Cat in the Hat on his best days.

³ My least favorite Dr. Seuss book has to be "The Foot Book." There is no plot and it is entirely too long. Here's a pro parenting tip: learn the skill of turning multiple pages at one time when reading to your child. Since there isn't a plot, they won't notice that you've skipped ahead in the book and you'll save a tremendous amount of time on the bedtime story.

⁴ My family once owned a dog named Maisy. I wasn't real fond of her, either.

⁵ I love this name and I think having the initials "XLH" would be really cool. However, this does not constitute an endorsement of some of Xavier's apparently bad life choices.

⁶ COA 18-997 (April 2, 2019).

silver vehicle” walking around in the parking lot of the Graham Feed & Seed which was closed at the time. The officer would later testify that he knew another business across the street had experienced a break-in in the past and was aware of previous residential break-ins and vandalism in the area although no specific cases or timeframes were mentioned.

When the officer arrived on the scene, he observed a silver Nissan Altima in the parking lot in front of the business. He did not observe anyone walking in the parking lot but he parked his patrol car, got out and approached the Nissan as that vehicle was approaching the exit.⁷ When the officer was within arm’s length of the vehicle, he shined his flashlight⁸ toward the closed driver’s side window and saw defendant, who is a black male, in the driver’s seat. The officer asked, “What’s up boss man?” but the defendant merely displayed a “blank expression on his face” and continued to exit the parking lot.

The officer testified that he wasn’t sure what he had but found the defendant’s behavior to be a little odd, so he decided to follow him. After catching up to the vehicle, he activated his blue lights and siren to conduct a traffic stop. He had not observed any bad driving or traffic violations.

Once the officer approached the vehicle, he immediately smelled a strong odor of marijuana and air fresheners which led to a search of the car. The search revealed marijuana in the console, several plastic baggies containing cocaine, \$1,292 in cash, a digital scale and a stolen black Sig Sauer 9 mm firearm. Horton (the man, not the elephant) was charged with possession of a stolen firearm, possession of a firearm by a convicted felon, possession with intent to sell and deliver cocaine and being a habitual felon. After his motion to suppress was denied by the trial court, he appealed to the court of appeals and argued that the officer did not have reasonable suspicion when he stopped Horton’s vehicle.

The court first looked at the anonymous call that had brought the officer to the parking lot in the first place. They noted that anonymous tips, without more, are generally not enough to give rise to a reasonable suspicion. In addition, they pointed out that this particular tip did not report any criminal activity and did not match the details the officer observed when he got to the scene. The officer did not find a white male walking around the business, but instead found a black male in a vehicle. The silver vehicle did generally match the caller’s report of a silver or gold car, but that was about it. Although the business was closed, this was not an unusually late time of night. There were no “No Trespassing” signs posted at the parking lot either.

Unfortunately, the officer’s testimony did not add a whole lot.⁹ He testified that there had been some other crimes in the vicinity, but without specifics (especially as to when those occurred), that information carried little weight. He acknowledged that the defendant was not required to stop when the officer first approached the vehicle¹⁰ and admitted that he did not know if the vehicle was simply using the parking lot to turn around. The trial court did not determine that the defendant was acting overly nervous or was trying to flee from the officer. Based on all of these things, the court agreed with the defendant that the officer did not have a reasonable suspicion when he made the traffic stop and as a result, they vacated the defendant’s convictions.

The main takeaway in this case is that a person’s presence in the parking lot of a closed business does not automatically give rise to a reasonable suspicion to make an investigative stop. It is important for an officer to consider and articulate other facts and circumstances, such as time of night, specific suspicious actions observed, and/or specific details of recent criminal activity in that area. To give you a better sense of where the reasonable

⁷ It was unclear to the court from the testimony whether the car was in motion before the officer got out of his patrol car although I’m not sure why the officer would have parked his car if the other vehicle was in motion.

⁸ This was late November so it was plenty dark outside at 8:45pm.

⁹ This is not meant to be a criticism of the officer. He testified very similarly to how most officers in his position would have and didn’t have the greatest facts to work with.

¹⁰ Legally, it doesn’t matter whether the officer subjectively believed he had reasonable suspicion to stop the vehicle at that point because a court looks at whether the objective facts supported the stop regardless of what the officer believed. But that admission was mentioned by the court here in support of their decision.

suspicion line is in similar cases, here are some examples on both sides. Many of these were mentioned by the court in Horton.

Cases Where Reasonable Suspicion Existed

1. State v. Watkins:¹¹ Although officer testified it was normal to see a few cars on the property day and night, responded to suspicious vehicle call at closed business at 3:00 a.m. in rural area and observed car turn headlights on and pull out of parking lot when officer arrived.
2. State v. Fox:¹² Officer knew of several break-ins in area and had taken a break-in report that night. Saw vehicle travelling down dead-end street where several padlocked businesses were located. Vehicle stopped and turned around and defendant “cocked his head away” when passing officer’s patrol car.
3. State v. Blackstock:¹³ Officers patrolling an area where statistical data showed problem with robberies and break-ins. Saw two men walking along the front of closed businesses in strip mall looking in windows. When marked car arrived, men immediately turned around, began to walk hurriedly backward and entered a vehicle concealed from public view. The vehicle drove through gas station and fast-food parking lot without stopping.

Cases Where Reasonable Suspicion Did Not Exist

1. State v. Murray:¹⁴ At 3:40 a.m., officer performing property check of industrial park following reports of break-ins of vehicles and businesses sees defendant’s car leave an area the officer had already checked.
2. State v. Chlopek:¹⁵ At 12:05 a.m., officers noticed defendant’s vehicle heading in the direction of some undeveloped lots and driver seemed a little nervous. Officers knew about a large number of copper thefts from other subdivisions, but no reports for this particular subdivision.

So with that, let me send you on your way with this final thought from the good Doctor: “The more that you read, the more things you will know. The more that you learn, the more places you’ll go....¹⁶ You’re off to great places! Today is your day! Your mountain is waiting, so...get on your way!”¹⁷

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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.



Smith Rodgers, PLLC

¹¹ 337 N.C. 437 (1994).

¹² 58 N.C. App. 692 (1982). While attending Dartmouth College, Theodor Geisel was caught drinking gin with friends in his room during Prohibition. As a result, the Dean insisted he resign from all extra-curricular activities, including writing and editing for the Dartmouth Jack-O-Lantern. In order to get around that discipline, he began signing his work with the pen name “Seuss.”

¹³ 165 N.C. App. 50 (2004).

¹⁴ 192 N.C. App. 684 (2008).

¹⁵ 209 N.C. App. 358 (2011). “Chlopek” is also a cool name but I’m not sure how to pronounce it.

¹⁶ Dr. Seuss, “I Can Read With My Eyes Shut!” originally published November 12, 1978. The book was dedicated to Dr. Seuss’ ophthalmologist. I didn’t make that up.

¹⁷ Dr. Seuss, “Oh, The Places You’ll Go!” originally published January 22, 1990. This was his last book to be published during his lifetime.

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