



Roll Call Reporter

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LEGAL UPDATE FOR MARYLAND LAW ENFORCEMENT OFFICERS

Traffic Stops and Other Investigative Detentions Based on Unverified Information from a Known Informant

QUESTION: Can officers make a traffic stop or other investigative detention based on information supplied by a known, reliable informant?

ANSWER: Yes. Depending on the officer's knowledge of the informant and the informant's track record of reliability, traffic stops and other investigative detentions can be made on the information given. It is best, however, to corroborate as many of the facts given by the known informant prior to any detention.

CASE: *United States v. Ezekiel Donja Gardner*, U.S. Court of Appeals for the Fourth Circuit Decided May 18, 2016

The Informant's Tip, the Traffic Stop, and the Recovery of the Gun

On January 13, 2011, Detective Kenneth Adams of the police department in Farmville, North Carolina, received a telephone call from a reliable, confidential informant. The woman

stated that Ezekiel Gardner was a convicted felon who possessed a firearm, that he was driving a white Lincoln Town Car, and that he was presently located at a particular house on Thorne Street in Farmville. Detective Adams already had a working relationship with this informant, who had completed at least five controlled drug purchases for a regional drug enforcement task force, and consistently had provided accurate information.

Based on the informant's telephone call, Detective Adams, Lieutenant Paul McLawhorn, and Chief Donnie Greene proceeded in a squad car to the identified house on Thorne Street and saw a white Lincoln Town Car parked near the house. The officers drove around the block, taking time to confirm that Gardner was the registered owner of the vehicle. When the officers approached the house again, they saw that Gardner had entered the Lincoln and was driving toward a nearby intersection. The officers observed Gardner make a three-point turn in the intersection and begin driving in the opposite direction. The officers turned to follow Gardner's vehicle and initiated a traffic stop.

As soon as the officers activated their car's blue lights, Gardner dipped down in the car and lowered his right shoulder, as if he was reaching

for something or putting something under the seat. As soon as Gardner stopped, Detective Adams and Lieutenant McLawhorn approached the car. Detective Adams held his gun at his side as he walked toward the driver's side door. Detective Adams confirmed Gardner's identity and asked him to step out of the vehicle. Gardner appeared very nervous and kept looking in the direction of the vehicle's floor. When Detective Adams asked Gardner if he had weapons on his person, Gardner said that he did not. Gardner was asked to exit the car, and he was then patted down for weapons. No weapons were found. Detective Adams ordered Gardner to walk to the rear of the car, but did not place him in handcuffs.

Detective Adams told Gardner why he had been stopped and asked him if he had anything "illegal" in his car. Gardner didn't respond verbally, but hung his head. After a few moments, Gardner admitted that he had a gun in the car. The detective asked Gardner if he was allowed to possess a firearm, and Gardner said "No," because he was a convicted felon.

The car was then searched and the handgun was found under the driver's seat. Gardner was then handcuffed and taken to the police station. He was questioned at the station after being given his *Miranda* rights, and said that he had purchased the gun from an acquaintance.

The Charges and Conviction

Gardner was charged with and found guilty of possession of a firearm by a felon, in violation of 18 U.S.C. §§ 922(g)(1), 924. His motion to suppress the evidence was denied. He was sentenced to a long term of imprisonment. Gardner appealed.

The Appeal and the Outcome

On appeal, Gardner contested the search of his vehicle, contending that the officers lacked reasonable suspicion to initiate the traffic stop. He argued that the confidential informant was not a reliable source of information and that she didn't provide sufficient detail about Gardner such as predictive information regarding his criminal behavior. Gardner also argued that the stop became a *de facto* (in fact) arrest and that he should have been given his *Miranda* rights before any questioning occurred at the scene of the stop. The court disagreed with Gardner.

The court said that when an investigative stop is based on unverified information provided by a known informant, a tip of this nature may alone justify a reasonable suspicion of criminal activity. And when police obtain information corroborating such a tip, this circumstance adds significant support for a finding of reasonable suspicion.

In this case, that is exactly what happened. The tip identified Gardner, the convicted felon, the car he was in, and its location. The officers corroborated the presence of the car at the described location and that Gardner was the owner of the car. Thus, the stop was valid. After the stop, Gardner's furtive movements combined with his acknowledgment of the gun provided the probable cause to search the car.

NOTE: That the officers did not corroborate that Gardner was a convicted felon before the stop did not harm the case. The court said that every detail provided by a known tipster need not be independently verified to support a finding of reasonable suspicion. However, the more facts an officer can corroborate, the better. This is especially true if the tip comes



from an anonymous informant. In such cases, significant detail is required, including the tipster's ability to predict the suspect's movements and other future behavior.

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