

FLORIDA CASE LAW UPDATE 15-05

Case: Tucker v. State, 40 F.L.W. D924a (Fla. 4th DCA)

Date: August 19, 2015

Subject: Vehicle description in BOLO issued 40 days previously was not "stale," and detective's traffic stop of suspect based upon that BOLO was proper; Staleness is not determined exclusively by the passage of time.

FACTS: An intruder entered the victim's home but fled to a waiting vehicle after being confronted by the victim inside the residence. The victim described the vehicle as a "metallic gold older model Buick or Oldsmobile" bearing Florida tag AUK509. A BOLO for the vehicle was issued on the same day. Forty days later, a detective stopped Tucker driving a vehicle which he believed was consistent with the BOLO. The vehicle operated by Tucker was a gold 1991 Chevrolet Lumina bearing Florida tag AUKQ59. Tucker was ultimately charged with burglary. At trial, Tucker filed a Motion to Suppress, arguing that the BOLO relied upon for the traffic stop had grown "stale," and therefore the detective lacked reasonable suspicion to conduct the stop. The trial court denied the Motion, based upon the license plate and color and age of the car. As to the tag, the court found that the first three letters were the same, the two digits were the same though in the wrong order, and that a "Q" was easily mistaken for a "0". Tucker appealed the ruling.

RULING: The Fourth District Court of Appeal upheld the trial court, holding that the description contained in the BOLO was not stale, and that the detective reasonably relied on it in making the traffic stop. Conviction affirmed.

DISCUSSION: The appellate court initially explains that in order to justify an investigatory stop, "an officer must have a reasonable, well-founded suspicion that the person has committed, is committing, or is about to commit a criminal offense." *Sapp v. State*, 763 So.2d 1257 (Fla. 4th DCA 2000). In evaluating a vehicle stop pursuant to a BOLO, several factors should be considered: the length of time and distance from the offense, route of flight, specificity of the descriptions provided, and the source of the information. *Sapp* at 1258. The appellate court agreed with that the detective had reasonable suspicion to stop Tucker's vehicle based upon the license plate and the distinctive color and the older age of the vehicle. The court noted that although the BOLO description was old, it was not "stale" in the legal sense. "The mere lapse of substantial amounts of time is not controlling on a question of staleness. Staleness is to be evaluated in light of the particular facts of the case and the nature of the criminal activity and property sought." *Brachlow v. State*, 907 S.2d 626 (Fla. 4th DCA 2005). Information about items which are consumable, such as drugs, is more likely to become stale sooner than information concerning non-consumable items. *State v. Felix*, 942 So.2d 5 (Fla. 5th DCA 2006). In fact, information relating to certain types of non-consumable evidence has been found to remain valid even years after it was acquired (information gained four years earlier that the defendant possessed videos of pornography was not stale because "videotapes, unlike drugs, are non-consumable items" and "it is more reasonable to assume that such an item will still be present in a defendant's house even after a substantial passage of time." *Brachlow* at 629). See also *State v. Leyva*, 599 So.2d 691 (Fla. 3d DCA 1992) (four to five week-old knowledge that a defendant's driver's license was suspended was not stale and provided the officer with the reasonable suspicion to make a valid traffic stop).

COMMENTS: As this case illustrates, staleness cannot be determined solely based upon the passage of a given period of time. Information which gives rise to probable cause or reasonable suspicion will become stale much sooner for items such as narcotics or easily sold stolen property, than it will for "trophy" type evidence such as child pornography, which will often be possessed by offenders for years.

John E. Kemner
Regional Legal Advisor
Florida Department of Law Enforcement
Jacksonville Regional Operations Center

Officers should consult with their agency legal advisors to confirm the interpretation provided in this Update and to determine to what extent the case discussed will affect their activities.