JUNE 1976

POLICE OFFICER'S HANDBOOK

PART XXV

VEHICLE SEARCH...
TELEPHONE TIP

SOUTH CAROLINA'S NEW
DETOXIFICATION LAW
SC Act 1213 of 1974

FLEMING'S NOTEBOOK...Chapter 125:

(a) South Carolina's New Detoxification Law - Comments
(b) Change in SC Pistol Law, Act R 670
(Effective May 26, 1976)
(c) Restitution in Larceny or Destruction of Property
Cases, Effective 6/14/76
(d) Notice to State when DUS Conviction Reversed
(State v. Conley) SC Supreme Court No. 76-46
(Filed June 2, 1976)

Prepared under the direction of E. Fleming Mason
Producer of Crime-to-Court ETV Law Enforcement
Informational Programs, in cooperation with South
Carolina Educational Television Network with funds
provided through the South Carolina Criminal
Justice Academy.

LAW ENFORCEMENT - ETV TRAINING PROGRAM

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TELEPHONE TIP

SOUTH CAROLINA'S NEW
DETOXIFICATION LAW
SC Act 1213 of 1974

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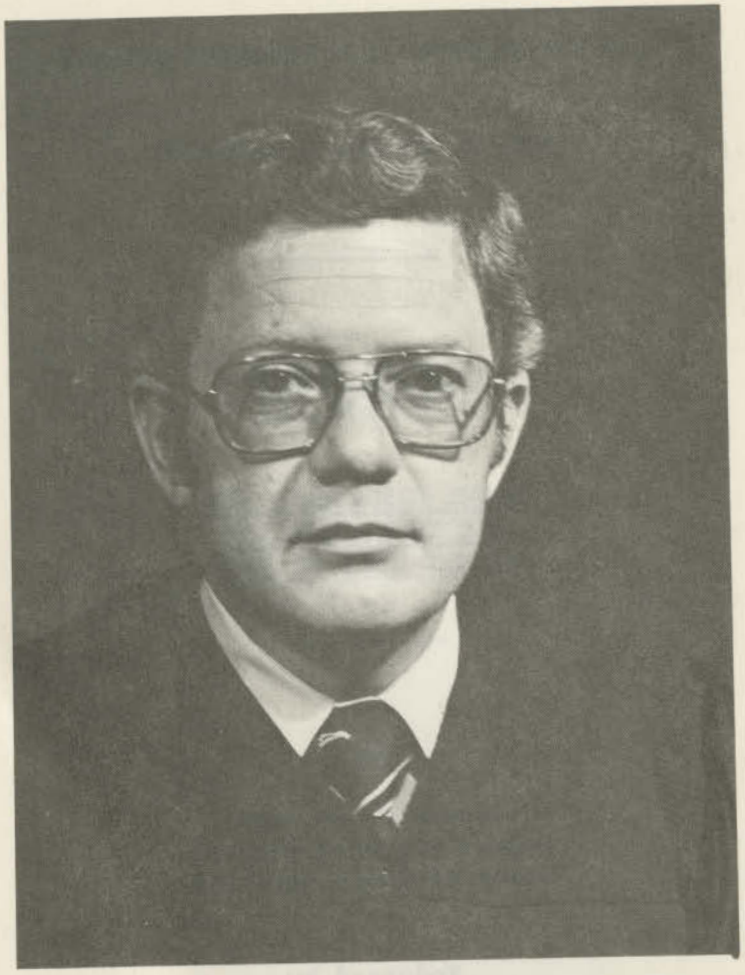

Hon. Owens T. Cobb, Jr.
Judge - Richland County Court
Columbia South Carolina

"In order to justify the warrantless search of a vehicle on the highway, the officer must have probable cause to believe that the search will turn up evidence of the offense he is investigating.

"There must be more than 'bare suspicion' that the evidence he seeks is in the place to be searched."

Owens T. Cobb, Jr.
Judge of
Richland County Court
Columbia, South Carolina

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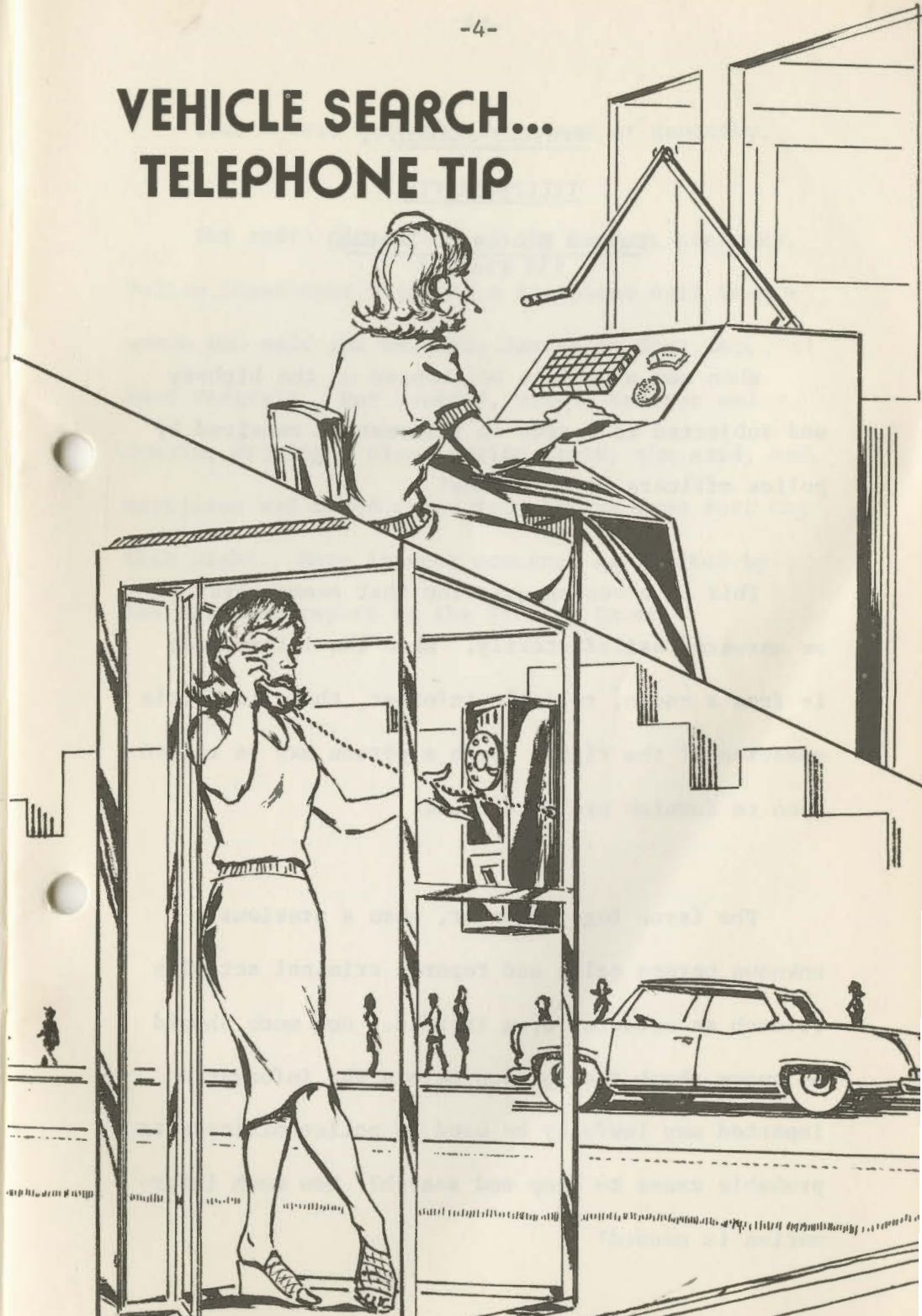
VEHICLE SEARCH... TELEPHONE TIP



VEHICLE SEARCH...

TELEPHONE TIP

(United States v. Jordan)
530 F2d 722

When may a vehicle be stopped on the highway and subjected to search on information received by police officers by telephone?

This is a vexing question that seems never to be answered satisfactorily. When the information is from a known, reliable informer, there is little question of the right. Such a person may be relied upon to furnish probable cause.

The issue fogs, however, when a previously unknown person calls and reports criminal activity ...such as unlawful drug traffic. How much should be known about that person before the information imparted may lawfully be used by police officers as probable cause to stop and search? How much information is needed?

Such a case recently arose out of Kentucky.

The radio dispatcher of the Louisa, Kentucky, Police Department received a telephone call from a woman who said she was Mrs. Jordan in Fort Gay, West Virginia. Her husband, with a brother and cousin, driving a blue logging truck, she said, had marijuana and would drive into Louisa from Fort Gay that night. Here is what occurred as related by the official report of the Federal Court:

THE TIP

"On the afternoon of January 27, 1974, the Police Department of Louisa, Kentucky received a telephone call from a woman who identified herself as Appellee's wife. She told the police that her husband, his brother and a cousin had a quantity of marijuana in Fort Gay, West Virginia. She also informed police that he drove a blue Ford logging truck."

The woman said that the truck would be driven into Kentucky that night.

THE STOP AND ARREST

"The police dispatcher radioed the information to units on patrol. Shortly after midnight, Sheldon Preece, a patrolman, spotted a truck matching the description proceeding slowly into the city via the bridge from Fort Gay. He radioed Randal Noble, a Kentucky State Policeman, to inform him that he had located the vehicle and required assistance. Patrolman Preece stopped the truck and requested that Appellee produce an operator's permit. Appellee left the vehicle and presented his driver's license to the officer. From his appearance and the smell of alcohol on his breath, the officer concluded that Appellee was intoxicated."

SEARCH OF TRUCK

"Meanwhile Trooper Noble, who had been across the street, crossed to Appellee's truck and began a warrantless search. When he opened the door on the passenger side he observed the barrel of a shotgun protruding from under the seat. No marijuana was discovered either in the truck or on the person of Appellee. Appellee was charged at the scene with driving while intoxicated. Subsequently, federal authorities charged him with the firearm offenses."

SEARCHES - GENERAL RULE

"Searches conducted without a warrant are PER SE unreasonable under the Fourth Amendment, except in "a few specifically established and well-delineated exceptions." The District Court concluded that the Government had failed to establish that the search in this case fell within any of the exceptions to the warrant requirement. Specifically, the Court found that the search could not be justified under the exception for a search of an automobile on the open highway, or as incident to Appellee's arrest."

VEHICLE SEARCHES...

EXCEPTION

"In order to qualify a search under the automobile exception to the warrant requirement, the officers conducting the search must have probable cause to believe that the search will turn up evidence of the offense they are investigating. They must have more than a "bare suspicion" that the evidence they seek is in the place to be searched. Probable cause exists where "the facts and circumstances within their (the officers') knowledge and of which they had reasonably trustworthy information (are) sufficient in themselves to warrant a man of reasonable caution in the belief that" an offense has been or is being committed."

PROBABLE CAUSE...

INFORMANTS

"Probable cause may be based upon hearsay information obtained from an informant. Even where the tip alone could not support a finding of probable cause, information gathered through independent investigation which substantially verifies the tip may satisfy the requirement."

WAS THE TIP IN

THIS CASE ENOUGH?

"The tip itself reveals very little. Officer Preece supplied the only detailed account of the information given by the informant in the record:

Q Prior to your pulling over Mr. Jordan, had you ever received any information concerning him?

A I did. When I went on duty the dispatcher informed me that him, his brother and a cousin were supposed to have some marijuana over in Fort Gay, West Virginia, and had a blue Ford log truck.

Q And were you advided of the source of that information?

A I was.

Q And how were you advised? How were you told about that?

A They advised that his wife had called the police station and informed them of his possession of marijuana.

Record at 17-18.

"An examination of the tip, standing alone, does not disclose a substantial basis for crediting the information supplied the police.

"The tip in this case does not purport to recount personal and recent observations of the informant. All the allegations contained in the tip are conclusory. There is no indication how the informant came by the information. Had she personally observed Appellee with marijuana? Had Appellee told her he possessed marijuana? If her source was indirect, was it reliable?

"Nor does the fact that the caller identified herself as Appellee's wife add anything to the credibility or the reliability of the information. There is no record that the police attempted to verify her identity or to inquire into the source of her information, steps which prudent police procedure would dictate. This was also not a case where the police have had prior dealings with an informer they deem "reliable".

"As far as the police knew, the caller could have been anyone out to satisfy a grudge against Appellee. In any event, the identity of the caller does not alter the conclusory nature of the tip or remedy the complete absence of any information upon which a court could make an independent judgment of its probative value."

TIPS...GENERAL RULE

"In the absence of underlying circumstances detailing the manner in which the information was gathered, it is especially important that the tip describe the accused's criminal activity in sufficient detail so that a court may determine that the informant is relying on something more than casual rumor.

"Here the information contained in the tip was quite sparse. The police were told that Appellee was in possession of marijuana, but there is no mention of the quantity involved. The tip stated that the marijuana was in Fort Gay, West Virginia, without further specification as to its location. The informant told police that appellee drove a blue Ford logging truck, but there was nothing in the record to indicate that the truck was to be used to transport marijuana."

CORROBORATION BY OFFICERS

"The testimony of the arresting officer while corroborative of some details of the informant's information, could not corroborate the essence of the tip, that Appellee was engaged in committing a crime. Officer Preece testified that he stopped Appellee's truck because it fit the description broadcast by the dispatcher and because it was being driven from the direction of Fort Gay. Nothing in the officer's testimony was inconsistent with completely innocent behavior. At most it verifies that the caller knew the type of truck that Appellee drove which, at some point in the day would be across the river in West Virginia. The officer's observation at the scene, viewed apart from the tip, gave no suggestion that Appellee was engaged in committing a crime.

"This situation closely parallels that confronted by the Supreme Court in Whiteley v. Warden, supra. In that case Justice Harlan, speaking for the

Court, summarized the proper role of corroborative testimony in curing deficiencies in an informant's report:

"This Court has held that where the initial impetus for an arrest is an informer's tip, information gathered by the arresting officers can be used to sustain a finding of probable cause for an arrest that could not adequately be supported by the tip alone.

"But the additional information acquired by the arresting officers must in some sense be corroborative of the informer's tip that the arrestees committed the felony or, as in Draper itself, were in the process of committing the felony. In the present case, the very most the additional information tended to establish is that either Sheriff Ogburn, or his informant, or both of them, knew Daley and Whiteley and the kind of car they drove; the record is devoid

of any information at any stage of the proceeding from the time of the burglary to the event of the arrest and search that would support either the reliability of the informant or the informant's conclusion that these men were connected with the crime."

THIS SEARCH NOT VALID

"Accordingly, we find the warrantless search initiated by the informant's tip was not based upon probable cause and therefore none of the exceptions to the warrant requirement are available."

FLEMING'S NOTEBOOK

NEW DETOXIFICATION LAW

NEW DETOXIFICATION LAW OF SOUTH CAROLINA

FLEMING'S NOTEBOOK...Chapter 125:

DETOXIFICATION LAW

(PENDING)

There has been much uncertainty about the State's so-called DETOXIFICATION LAW, passed in 1974, but not to become effective until July 1, 1976. Now there is real doubt as to when, if ever, it will become the law! A committee of the House of Representatives has recommended that the entire General Assembly defer its effective date for a year ...until July 1, 1977.

It is likely that many important changes will be made, or at least proposed, before the July 1, 1977, deadline...assuming that the General Assembly goes along with the House Committee's recommendation.

The Detoxification law provides that no person may be arrested and charged because he is in a

drunken condition...even though he is in a public place. In other words, alcoholism and drunkenness are decriminalized.

Drunk driving and ABC-type consumption laws remain crimes. They are not affected by the law. Longstanding public drunk laws and ordinances are out the window under the Detox law.

The principal work of enforcing the Detox law will be the duty of peace officers...the law provides that emergency services patrol units may be formed by counties and cities, and that existing rescue squads and auxiliary police may be used... but it is well known that when all is said and done the regular law enforcement officer will be called upon to do the bulk of all required work, and, probably, all of it over the long haul.

Subjects to be handled under the Detox Act are separated into two catagories:

(1) Incapaciated persons...unconscious drunks or those so under the influence that they are not rational.

(2) Intoxicated persons...those whose mental or physical functioning is substantially impaired, but who are conscious and in some degree rational.

HELPLESS DRUNK

(INCAPACITATED)

The helpless drunk under the Detox law as it now stands must be taken into protective custody and taken to an approved shelter or public treatment facility (provided by the Detox Commission)...if no shelter or facility is available, the drunk may be taken to a hospital. There is no specific provision that he may be taken to a jail, and the law is silent as to what the officer can do if the hospital refuses to accept him, except a vague provision that he may be detained in such facilities as may be available.

NORMAL DRUNK

The drunk in a public place who is not incapacitated may be assisted by the police officer to an approved shelter or other appropriate destination only if he consents to the proffered help. If he does not consent, the officer may not take him into custody.

It is possible that the effective date of the Detox Law will be put off until July 1, 1977. As soon as it is known for sure what the General Assembly has done, you will be notified at once via police teletype by the Crime-to-Court Program.

The legislative committee of the South Carolina Law Enforcement Officer's Association has done much effective work in 'bird-dogging' this legislation in an attempt to ensure that provisions offensive to law enforcement were not enacted. If the S.C. Legislature does not act prior to 7/1/76, the Law will go into effect on that date under its present provisions.

PISTOL LAW CHANGED

Violation of the pistol law by an individual (other than a dealer) has been changed back to a misdemeanor, rather than a felony, with a maximim penalty of $1000, one year, or both. Act R 670 (1976), effective May 26, 1976.

RESTITUTION IN LARCENY OR DESTRUCTION OF PROPERTY CASES

State law now permits a judge in a larceny or receiving stolen goods case, or malicious injury to property case, to make restitution by the defendant a condition of probation. Act R 752 (1976), effective June 14, 1976.

NOTICE TO STATE WHEN DUS CONVICTION REVERSED

DRIVING UNDER SUSPENSION

A DUS conviction in magistrate's court was reversed on appeal to the Spartanburg County Court ...no notice of the hearing of the appeal was given to the State.

The Supreme Court of South Carolina reversed the Spartanburg County Court because the State was not notified of the hearing. The conviction was reinstated.

State v. Conley, SC, No. 76-46, filed June 2, 1976.

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