

## Heavy Traffic to a Residence and Probable Cause

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The court of appeals decided a case today concerning a fact pattern that arises frequently in drug cases.

[State v. McKinney](#) began when an officer received a “citizen complaint” about “heavy traffic in and out of” a particular apartment, with the visitors staying only a short time. The citizen stated that he or she had “witnessed individuals exchanging narcotics in the parking lot with the person who lived in the apartment.” The officer set up surveillance on the apartment, and promptly saw an individual arrive, enter the apartment, and leave six minutes later. Another officer followed the visitor and stopped him for a traffic violation. The visitor had a history of narcotics arrests, and his car contained \$4,258 and a gallon-sized bag with just 7 grams of marijuana inside. His cell phone showed recent text messages that appeared to concern a drug transaction. For example, about half an hour before the visitor’s arrival at the apartment, he received a text message stating, “when you come out to get the money can you bring me a fat 25. I got the bread.”

The officer obtained a search warrant for the apartment based on the above information. He executed the warrant, finding drugs and guns. The defendant, the occupant of the apartment, was arrested and charged with several offenses. He moved to suppress, arguing that the warrant was not supported by probable cause, but his motion was denied. He pled guilty and appealed.

The court of appeals reversed, ruling that probable cause was absent. It focused on the lack of evidence concerning the inside of the apartment, noting that neither the officer nor the citizen “witnessed any narcotics in or about the apartment,” and stating that although the officer saw the visitor enter the apartment, there was “nothing in his affidavit which suggests that he saw [the visitor] carry marijuana or anything else inside.” The court cited *State v. Crisp*, 19 N.C. App. 456 (1973) (finding no probable cause where there was heavy traffic into and out of a residence at all hours and a traffic stop of a resident revealed drugs on his person and in his vehicle), and *State v. Hunt*, 150 N.C. App. 101 (2002) (finding no probable cause where an officer received complaints of suspicious traffic at a residence and verified that a large number of vehicles visited the residence briefly).

This strikes me as a fairly close case that another court might view differently. For example, a Texas appellate court found sufficient probable cause to search a residence based mostly on a stream of short visits to the residence plus nearby outdoor hand-to-hand transactions. *Polanco v. State*, 475 S.W.2d 763 (Tex. Ct. Cr. App. 1972). But in light of *McKinney* and its forbears, North Carolina officers should look for factors like an odor associated with controlled substances, a customer’s admission that he or she purchased drugs at the residence, or a controlled buy or other evidence from an informant.