



Police Law Bulletin



City Attorneys' Office

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NORTH CAROLINA COURT OF APPEALS



Reasonable Suspicion Supported Stop of Defendant's Vehicle

***State v. Simmons*, No. COA09-862 (20 July 2010).**

On December 28, 2006, Trooper Potter of the NC State Highway Patrol was traveling down N.C. 11 at approximately 9:40 p.m. He noticed a pickup truck, traveling in front of him, weaving on the roadway. The trooper testified that he observed defendant's truck cross the center line, travel back right again to the middle of the left lane, then travel back left again, then travel back all the way across the dotted line, then travel right again crossing the white line, and then travel back to the center of the right lane. At that time, the trooper activated his blue lights and pulled the truck over. Defendant rolled down his window and produced his driver's license. The trooper detected a strong odor of alcohol. He asked defendant if he had been drinking and defendant replied that he had "a couple of beers." The trooper asked defendant to step out of the vehicle. When he complied the officer noticed several beer bottles in the passenger area, one of which appeared to be half full. Defendant's eyes were red and glassy, and his speech was slightly slurred. The trooper administered two alco-sensor tests, both of which were positive for alcohol. Defendant was arrested and transported to the Pitt County Detention Center for a chemical analysis of his breath. The tests revealed an alcohol concentration of .11.

Defendant was charged with driving while impaired and possession of an open container of alcohol in the passenger area of a motor vehicle. Defendant filed a motion to suppress which was denied. Defendant was found guilty of both charges and gave notice of appeal.

On appeal, defendant argued, among other things, that the trial court erred in denying his motion to suppress because the trooper lacked reasonable suspicion to stop his vehicle.

In making this argument, the defendant relied upon *State v. Fields*, in which a detective stopped a driver for swerving to the white line three times. The North Carolina Court of Appeals held that Fields' weaving within his lane, standing alone, was insufficient to support reasonable suspicion that he was driving under the influence of alcohol. However, the Court of Appeals determined that the case at hand was distinguishable from *Fields*. The Court noted that the defendant was not only weaving within his lane, but was also weaving across and outside the lanes of travel, and at one point actually ran off the road. The Court concluded that this evidence was sufficient to support a reasonable suspicion that defendant was driving while impaired.

Traffic Stop Supported by Reasonable Suspicion

State v. Ford, No. COA 10-470 (21 December 2010).

On October 15, 2008, two officers with the Charlotte-Mecklenburg Police Department were on patrol in the Eastway area of Charlotte in a marked car. Around 10:00 p.m., they saw a gray Chrysler 300 sedan driving in the neighborhood but did not notice anything unusual about the car. Later that evening, they saw the same car “circling around” in the neighborhood. At approximately 1:45 a.m. on October 16, they saw the car for the third time going down Belmont Ave. toward Davidson St. The officers got within 50 feet of the rear of the car in order to run its tag, but noticed that it was not lit and so they “had to get really close to read the tag.” The officers stopped defendant’s vehicle for failing to maintain a properly functioning tag light. During the stop, defendant’s car was searched and, as a result of what was found during the search, defendant was charged with possession of a firearm by a felon, carrying a concealed weapon, maintaining a vehicle for controlled substances, possession with intent to manufacture, sell or deliver a controlled substance, possession with intent to sell or deliver cocaine, possession of marijuana, possession of drug paraphernalia, and having attained habitual felon status.

Defendant filed a motion to suppress the evidence obtained as a result of the search, contending that the officers lacked reasonable suspicion to conduct the traffic stop. The trial court denied defendant’s motion. Defendant pled guilty to possession of a firearm by a felon and having attained habitual felon status in exchange for the state dismissing the remainder of the charges. Defendant was sentenced to 110-141 months imprisonment. Defendant appealed.

A traffic stop is valid under the Fourth Amendment if the stop is based on an observed traffic violation or if the police officer has reasonable articulable suspicion that a traffic or equipment violation has occurred or is occurring. The stop of defendant’s vehicle was premised on his violation of GS 20-129 which provides that every motor vehicle is required to have “one rear lamp or a separate lamp so constructed and placed that the number plate carried on the rear of the vehicle shall under normal atmospheric conditions be illuminated by a white light as to be read from a distance of 50 feet to the rear of such vehicle.” Two officers testified that they pulled within 50 feet of the rear of defendant’s vehicle around 1:45 a.m. and were unable to read his license plate, despite having the patrol vehicle’s headlights on. One of the officers then explained that they even turned off the patrol vehicle’s headlights to verify their suspicion that the tag light was out. The Court of Appeals held that this evidence was sufficient to support the trial court’s finding that defendant’s vehicle tag was not functioning properly, in violation of GS 20-129. In addition, defendant argued at length that the traffic stop, ostensibly based on the equipment violation, was a pretext for the officers to search the vehicle which they had observed circling around for several hours in a high crime area. The Court of Appeals noted that defendant’s pretext argument was rejected by the United States Supreme Court in *Whren v. United States*, 517 U.S. 806, 813, 135 L. Ed. 2d 89, 98 (1996) where the Court held that “the constitutional reasonableness of traffic stops does not depend on the actual motivations of the individual officers involved.” The trial court, therefore, properly denied defendant’s motion to suppress.

Reasonable Suspicion Did Not Exist to Support Stop of Vehicle When Officer Testified That He Had No Reason to Believe That Person in Vehicle Was Engaged in Unlawful Activity

State v. Murray, No. COA07-1555 (16 September 2008).

At approximately 3:41 a.m., an officer with the Concord Police Department was performing a property check in the area of the Motorsports Industrial Park as part of increased patrols due to recent break-ins. As the officer came around a curve on the main road, he passed a vehicle coming out of the area which he thought “was kind of weird” because he “hadn’t seen the vehicle in any of his earlier property checks around the businesses.” He decided to turn around so that he could pull behind the vehicle and run its license plate. The check of the license plate showed that the vehicle had not been stolen and was in fact a rental vehicle from nearby Charlotte. Nevertheless, at that point, the officer decided to go ahead and do an investigatory traffic stop of the vehicle to find out what it was doing in that location. When the officer approached the vehicle, he immediately detected a strong odor of marijuana coming from its interior. The officer requested and received the driver’s license and rental agreement. The officer learned that the driver’s license had been suspended for his failure to appear on several different charges in Mecklenburg County. Additionally, the vehicle was rented to a female, with her name listed as the only authorized driver on the rental agreement, but no female was in the vehicle. When the officer contacted the rental company, the company requested that the vehicle be towed. The officer asked the driver to step out of the vehicle. After consenting to be searched, nothing was found on the driver. At the same time, another officer who had arrived on the scene, asked the passenger to step out of the vehicle. After consenting to a search, the officer found a rock of crack cocaine on the passenger who then stated, “S___, I forgot I had that.” Defendant was arrested for felony possession of crack cocaine.

At trial, defendant moved to suppress the evidence on the grounds that the officer did not have reasonable suspicion to stop the vehicle and the subsequent search was therefore unlawful. The trial court denied defendant’s motion and found reasonable suspicion based upon: prior break-ins in the area, the late hour, the fact that the businesses were closed and there were no residences nearby, and the vehicle had previously been parked at one of the businesses. Defendant pled guilty to felony possession of cocaine and then appealed the denial of his motion to suppress.

The North Carolina Court of Appeals noted that an investigatory stop must be justified by a reasonable suspicion, based on objective facts, that the individual is involved in criminal activity. In the instant case, although the officer’s patrol of the area was due to past break-ins, the officer had seen no indication that night of any damage to vehicles or businesses in the Park. Moreover, the officer testified that he had not seen the vehicle leaving any of the businesses’ parking lots, the vehicle was not trespassing but was on a public street, obeying all traffic laws, the check of the license plate showed no irregularities, and that he had no reason to believe that defendant was engaged in unlawful activity at the time of the stop. The officer never articulated any specific facts about the vehicle itself to justify the stop; instead, all of the acts relied upon by the trial court were general to the area (break-ins of property in the park, the businesses were closed, no residences were located there, and the early morning hours) and would thereby have justified the stop of *any* vehicle. Accordingly, the Court of Appeals held that the officer’s stop of the vehicle was based upon an unparticularized suspicion or hunch, and that the trial court erred in denying defendant’s motion to suppress evidence gathered during the unlawful stop.

Officer Did Not Have Reasonable Suspicion to Stop Vehicle When Sole Indicator of Impaired Driving Was Vehicle's Weaving Within Lane

***State v. Fields*, No. COA08-627 (17 March 2009).**

At approximately 4:00 p.m., a detective with the Columbus County Sheriff's Office Drug Enforcement Unit was patrolling Hwy 74 when he observed defendant's car. The detective followed the car for approximately one and a half miles and, on three separate occasions, saw the car swerve to the white line on the right side of the roadway. The detective stopped the car for suspicion of impaired driving. When the detective approached, the defendant produced his license and registration. The detective asked if he had consumed any alcohol and he responded that he had not. The detective did not smell alcohol or observe anything in defendant's car to indicate illegal activity. The detective went back to his vehicle to verify defendant's license and registration. After approximately five minutes, the detective returned defendant's license and registration and then observed a pack of rolling papers in the console of the driver's side door. When asked what the item was, defendant produced the cover to a pack of rolling papers. The detective then asked if there was anything illegal in the car. The defendant stated there was not and gave consent for his vehicle to be searched. The detective found 112 grams of marijuana and 142 grams of cocaine in the glove compartment.

Defendant was arrested and later indicted for trafficking in cocaine. The defendant filed a motion to suppress which was denied by the trial court. Defendant appealed to the North Carolina Court of Appeals.

The defendant argued that the stop of his vehicle was not supported by reasonable suspicion. The court noted that it has previously held that weaving may contribute to a reasonable suspicion of driving while impaired. However, in previous cases, the defendant's weaving was always coupled with additional specific articulable facts which also indicated that the driver was impaired. In the case at hand, the detective did not observe defendant violating any laws such as driving significantly above or below the speed limit; defendant was stopped at 4:00 p.m., which is not an unusual hour; and there was no evidence that defendant was near any establishments that sold alcohol. The court held that defendant's weaving, standing alone, is insufficient to support a reasonable suspicion of impaired driving. To hold otherwise would extend the grounds for reasonable suspicion farther than our courts ever have.

The order denying defendant's motion to suppress was reversed.