



Police Law Bulletin



City Attorneys' Office

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North Carolina Supreme Court



Reasonable Suspicion Supported Stop of Defendant's Vehicle

***State v. Otto*, No. 523A11 (14 June 2012), reversing ___ N.C. ___ App. ___, 718 S.E.2d 181 (Nov. 15, 2011).**

On February 29, 2008, around 11:00 p.m., Trooper Smith of the North Carolina Highway Patrol noticed that defendant was weaving within her own lane. Defendant's vehicle did not leave the roadway or cross the center line, but was "constantly weaving from the center line to the fog line." Defendant did not commit any additional traffic violations. Trooper Smith activated his blue lights after following her for approximately $\frac{3}{4}$ of a mile. When Trooper Smith initially observed defendant, she was approximately $\frac{1}{2}$ mile from a private club known as the Rock Springs Equestrian Club and was coming from the direction of that facility. Trooper Smith was aware that a Ducks Unlimited banquet was being held at the club that evening. The Trooper did not know if alcohol would be served at the club that evening, but had previously heard others indicate that the club hosted functions on occasion at which alcohol was served. Defendant was ultimately arrested for driving while impaired.

Defendant filed a motion to suppress in District Court. The trial judge granted defendant's motion, so the State appealed to Superior Court. The Superior Court reversed the granting of the motion and the case was remanded back to District Court. Defendant was convicted of impaired driving in District Court, and then appealed her conviction to Superior Court. She filed a motion to suppress evidence obtained as a result of the stop of her vehicle. The Superior Court denied her motion. Defendant appealed to the North Carolina Court of Appeals arguing that the Superior Court erred by denying her motion to suppress because the arresting officer lacked the reasonable suspicion necessary to stop her vehicle. The Court of Appeals noted that it has previously held that, without any additional circumstances giving rise to reasonable suspicion, stopping a vehicle for weaving is unreasonable* and therefore, concluded that reasonable suspicion did not exist to stop defendant's vehicle. The State appealed to the North Carolina Supreme Court which disagreed with the analysis and ruling of the North Carolina Court of Appeals.

The North Carolina Supreme Court held that there was reasonable suspicion for the stop. The court noted that unlike other cases in which weaving within a lane was held insufficient to support reasonable suspicion, the weaving in this case, which occurred around 11:00 on a Friday night, was "constant and continual" over $\frac{3}{4}$ of a mile.

*Note: The basis for the Court of Appeal's ruling has been referred to as the "weaving plus one" rule. In order to sufficiently articulate reasonable suspicion to stop a driver for impaired driving, weaving should

be accompanied by at least one additional factor. For instance, weaving plus: driving below/above the posted speed limit; driving off the roadway; causing other drivers to take evasive maneuvers; driving at an unusual hour in an area with drinking establishments; etc.



North Carolina Court of Appeals



Reasonable Suspicion Did Not Support Traffic Stop

***State v. Sampson County*, No. COA12-804 (18 December 2012).**

On April 15, 2011, Corporals Bass and Pope of the Sampson County Sheriff's Office were stationed along I-40 in Sampson County. Corporal Bass saw a green minivan slow from approximately 73 mph to 65 mph. The speed limit in that portion of I-40 was 70 mph. Corporal Pope described the reduction in speed as "dramatic" since the front of the vehicle dipped from the reduction in speed. Both officers testified that the two occupants of the vehicle stared straight ahead and appeared nervous. Corporal Bass pulled the patrol car from its location and began to follow the vehicle. At one point, Corporal Bass pulled the patrol car alongside of the vehicle and observed that the occupants would not make eye contact. Corporals Bass and Pope then observed that the vehicle had slowed to 59 mph. While following the vehicle, the officers testified that the vehicle crossed the solid white fog line separating the driving lane from the shoulder. Corporal Bass switched on the patrol car's lights only after the vehicle "completely crossed -- went across the fog line." Based on the reduction in speed and crossing the fog line, Corporal Bass initiated a traffic stop for "unsafe movement."

Corporal Pope approached the passenger side of the vehicle after the driver pulled over. Gina Canty was the driver and Defendant was the passenger. Ms. Canty was instructed to sit in the patrol vehicle with Corporal Bass whereupon he wrote a warning for unsafe movement. During that time, Corporal Pope asked Defendant about his travel plans and his destination. Corporal Pope became suspicious based on Defendant's lack of eye contact, evasive answers, and nervous demeanor. Corporal Pope could see a strong pulse in Defendant's stomach and neck. In Corporal Pope's experience, the driver, rather than a passenger, is nervous during a traffic stop. After writing the warning, Corporal Bass returned Ms. Canty's information and license and then asked her for permission to search the vehicle. Ms. Canty consented to a search which revealed a revolver and a rifle in a suitcase. Upon finding the weapons, Corporal Bass handcuffed Ms. Canty and Defendant. He read them their *Miranda* rights and questioned them about the weapons. Ms. Canty began crying and said she did not know anything about the weapons. According to Corporal Pope, Defendant agreed to speak to him about the weapons. Defendant said that he was taking the guns back to Philadelphia for his "old lady" who needed protection and that he had more guns in Philadelphia. Corporal Bass then placed Defendant under arrest for carrying a concealed weapon and possession of a firearm by a convicted felon.

Defendant was convicted on both charges and appealed to the North Carolina Court of Appeals.

Reasonable suspicion is the standard for all traffic stops. "A court must consider 'the totality of the circumstances, the whole picture' in determining whether a reasonable suspicion to make an investigatory stop exists." The State argued that Ms. Canty's alleged crossing of the fog line, Ms. Canty's and Defendant's alleged nervousness and failure to make eye contact with the officers as they drove by and drove alongside the patrol car, and the vehicle's slowed speed were legitimate grounds for the traffic

stop. The Court found that based on the totality of the circumstances, these factors fell short of reasonable suspicion.

First, the Court of Appeals found that the State's evidence showed that there was no traffic violation. A recording from the patrol car showed that the vehicle did not cross the fog line in the forty-five second interval before Corporal Bass engaged the lights and siren. Corporal Bass testified that he only turned on the blue lights and siren *after* he saw the vehicle cross the fog line. Second, the Court concluded that, in the absence of a "verifiable traffic code violation," the officer's beliefs about Defendant and Ms. Canty's conduct amounted to nothing more than an "unparticularized suspicion or hunch." Nervousness, slowing down, and not making eye contact is nothing unusual when passing law enforcement stationed on the side of the highway. The Court "found it hard to believe that the officers could tell Ms. Canty and Defendant were 'nervous' as they passed by the officers on the highway and as the officers momentarily rode alongside them." In addition, while a vehicle's slowed speed may be a factor in initiating a traffic stop, the Court found the weight of this factor minimal since the officers' reports stated that the vehicle was going 65 mph and slowed to 59 mph, which in the Court's opinion, was "hardly significant." The Court noted that even if the nose of the car dipping from the sudden reduction in speed demonstrated a significant change in speed, it was the only factor on which this stop was premised. The reduction in speed standing alone could be explained a number of different ways, including normal apprehension many people feel when approaching a law enforcement officer. Nervousness, failure to make eye contact with law enforcement, and a relatively small reduction in speed is "conduct falling within the broad range of what can be described as normal driving behavior." Based on the totality of the circumstances, the Court of Appeals held that these officers lacked reasonable suspicion to initiate the traffic stop that resulted in the search and seizure of the weapons.

Officer Lacked Reasonable Suspicion for Stop of Vehicle

***State v. Kochuk*, No. COA12-525 (6 November 2012).**

On July 3, 2010, Trooper Ellerbee with the NC State Highway Patrol was traveling eastbound on Interstate 40. Around 1:00 a.m., he began traveling 1-2 car lengths behind defendant's vehicle in the middle lane. He observed defendant's vehicle cross over the dotted white line, causing both wheels on the passenger side of the vehicle to cross into the right lane for about 3-4 seconds, and then move back into the middle lane. Defendant then lawfully merged into the right-hand lane. Defendant's vehicle then drifted over to the right-hand side of the right lane, with both wheels riding on top of the solid white line, twice for a period of 3-4 seconds each time. Based on these observations, Trooper Ellerbee stopped defendant's vehicle and cited defendant for driving while impaired.

Defendant was convicted and appealed to superior court. Defendant filed a motion to suppress which was granted. The State appealed to the North Carolina Court of Appeals. The State argued that the trial court erred in granting defendant's motion to suppress because Trooper Ellerbee had reasonable suspicion for the stop.

In *State v. Fields*, 195 N.C. App. 740, 673 S.E.2d 765 (2009), the North Carolina Court of Appeals held that weaving within one's own lane, standing alone, is insufficient to support a reasonable suspicion of driving under the influence. The Court of Appeals has also noted that weaving must be "coupled with additional specific articulable facts which also indicate that the defendant was driving while impaired."

In the case at hand, the Trooper witnessed defendant's vehicle cross over the dotted white line causing both wheels on the passenger side to enter the right lane for about 3-4 seconds, and later observed defendant's vehicle drift over to the right-hand side of the right lane twice for a period of 3-4 seconds each. The Court concluded that these movements amounted to nothing more than weaving. Other than those movements, the Trooper saw no other signs of a high or low speed, no prolonged weaving, no improper turns, no inappropriate use of signals, and no other evidence of any kind of improper or erratic driving. Thus, the Court held that defendant's weaving alone was insufficient to establish reasonable suspicion.

**Reasonable Suspicion Supported Stop of Vehicle;
Warrantless Search of Vehicle Was Valid Search Incident to Arrest and Also Supported by
Probable Cause**

***State v. Watkins*, No. COA11-1176 (1 May 2012).**

On December 30, 2009, the Graham County Sheriff's Office received an anonymous tip that a vehicle containing "a large amount of pills and drugs" would be traveling from Georgia through Macon County and possibly Graham County. The vehicle was described as a small or mid-sized passenger car, maroon or purple in color, with Georgia license plates. Officer Brooks and Detective Spencer, the department's narcotics investigators, decided the most likely route for the vehicle would be along NC Highway 28. The officers set up surveillance that night but did not see any vehicles matching the description given by the anonymous informant. The next morning the officers again set up surveillance along NC Highway 28 near the Swain/Graham County line. At approximately 1:30 p.m., a small purple Chevrolet passed. The officers pulled out approximately 3 or 4 car lengths behind it to confirm that it was bearing Georgia license plates. As the officers' vehicle entered the highway, the Chevrolet made an abrupt lane change into the left lane without signaling and slowed down by approximately 5-10 miles per hour. The driver then maintained a speed below the posted speed limit. The officers ran the vehicle's license plate and discovered the vehicle was registered to Christopher Corey Jackson. Jackson was a former resident of Graham County who was known to the officers to have outstanding arrest warrants. Although the officers were "pretty sure" the driver of the vehicle was not Jackson, they were unable to see who was sitting in the passenger seat. They also observed the driver repeatedly looking in his rearview mirror and glancing over his shoulders. The officers pulled the vehicle over for changing lanes without signaling and because the car was registered to a person with outstanding arrest warrants. The driver got out of the vehicle and approached the officers' car. The officers asked defendant to get back in the vehicle but he refused to do so and stated that he did not have an active driver's license. The defendant appeared nervous and was repeatedly looking into the vehicle and back at the officers. Detective Spencer walked around to the passenger side of the vehicle. The passenger identified himself as Henry Conway Watkins, the driver's brother. With consent, the officers patted down both occupants. A marijuana pipe was found in Watkins pocket and he was then arrested for possession of drug paraphernalia. Approximately five minutes after the Chevrolet was stopped, Officer Stevens arrived with a drug-sniffing dog. He waited less than two minutes for the other officers to move defendant and his brother away from the vehicle before leading the dog around it. The dog alerted at one of the rear passenger doors. On the basis of the dog's alert and the pipe found in Watkins' pocket, the officers decided to search the Chevrolet. A bag was found containing four large bottles of prescription narcotics. The driver stated that he was on his way to meet someone to exchange the bag for \$900. and ½ oz. of marijuana.

Defendant was issued a warning ticket for changing lanes without signaling. However, he was also arrested and indicted for multiple controlled substance violations as well as driving while license revoked. Defendant moved to suppress all evidence recovered during the traffic stop. The trial court denied the motion. Defendant pled guilty to a single consolidated charge of level II trafficking in opium, and was sentenced to 90-117 months imprisonment and fined \$100,000. Defendant appealed.

Defendant first argued that the officers were not justified in stopping the vehicle. A police officer's observation of a defendant's unsignaled lane change, in violation of G.S. §20-154(a), satisfies the reasonable suspicion standard required to stop a vehicle if the lane changes effects another vehicle. In the case at hand, the officers were traveling 3-4 car lengths behind defendant's vehicle when he changed lanes. The Court of Appeals found that there were insufficient facts to determine whether the lane change affected another vehicle and thus, whether or not a violation of the motor vehicle laws occurred. Nonetheless, the Court of Appeals held that even if the unsignaled lane change was not sufficient to justify the traffic stop, other factors were sufficient to give an experienced officer reasonable suspicion that illegal activity was taking place. These factors included the anonymous tip, the defendant's abrupt lane change, defendant's slow speed while driving in the passing lane, the driver's frequent glances in his rearview mirror, his repeated glances over his shoulder, and that he was driving a vehicle registered to another person. Moreover, not only was the defendant not the owner of the vehicle, the owner was known to have outstanding arrest warrants. It was reasonable to conclude that the unidentified passenger may have been the owner.

Defendant next argued that even if the stop of the vehicle was proper, the search was not constitutional as a search incident to arrest. The Supreme Court has held that officers may search a vehicle incident to arrest only if the arrestee is within reaching distance of the passenger compartment of the vehicle, or if there is reasonable suspicion to believe the vehicle contains evidence of the offense of arrest. When applying this rule, neither the United States Supreme Court nor the North Carolina Supreme Court have distinguished between the arrest of a driver and the arrest of a passenger. Rather the rule seemingly applies to the arrest of any occupant. In the case at hand, officers had reasonable suspicion that evidence relevant to Watkins' possession of drug paraphernalia might be found in the vehicle and thus, the search of the vehicle incident to his arrest was constitutional.

Moreover, the Court of Appeals found that based upon the drug paraphernalia found on the defendant, the anonymous tip, the outstanding arrest warrants for the car's owner, defendant's nervous behavior while driving and upon exiting the vehicle, and the alert by the drug-sniffing dog, the officers had probable cause for a warrantless search of the vehicle.

For the reasons set forth above, the Court of Appeals found no error in the trial court's denial of defendant's motion to suppress.

Officer Had Reasonable Suspicion to Stop Defendant's Vehicle

***State v. Fields*, No. COA11-613 (6 March 2012).**

Deputy Akers of the Sampson County Sheriff's Department observed a white Chevrolet Metro with dim taillights while he was going to lock up the post office in Garland. He alerted Deputy Sheriff Coleman regarding the automobile. Deputy Coleman followed the car for $\frac{3}{4}$ of a mile to a mile and observed that the driver was driving erratically. Defendant was weaving within his lane of travel constantly and drove

on the center line at least once. There was a high level of traffic that evening, and Deputy Coleman stopped defendant when he observed oncoming drivers pulling over to the side of the road in reaction to defendant's driving. The deputy later described the movements of the vehicle as being "like a ball bouncing in a small room." When the deputy approached defendant's car, he smelled a strong odor of alcohol coming from the vehicle and defendant's person. A consent search revealed an open container of malt liquor as well as other alcohol.

Defendant was charged with DWI and driving with his license revoked. Defendant was later indicted for driving with his license revoked and habitual DWI. The trial court denied defendant's motion to suppress evidence obtained as a result of the traffic stop. A jury convicted defendant on both charges. Defendant appealed arguing that the deputy lacked reasonable suspicion to justify the traffic stop and therefore, the trial court should have granted his motion to suppress.

The Court of Appeals has previously held that a defendant's weaving within his lane, standing alone, is insufficient to support a reasonable suspicion that the defendant was driving under the influence. Distinguishing these cases, the court noted that here "the trial court not only found that defendant was weaving in his lane, but rather that defendant's driving was 'like a ball bouncing in a small room'" and that "[t]he driving was so erratic that the officer observed other drivers -- in heavy traffic -- taking evasive maneuvers to avoid defendant's car." The court determined that none of the other cases involved the level of erratic driving and potential danger to other drivers that was involved in this case. Therefore, the Court of Appeals found that reasonable suspicion did exist to stop defendant's vehicle, and that the trial court properly denied defendant's motion to suppress.

*Note - In order to sufficiently establish reasonable suspicion to stop a motor vehicle that is weaving within its own lane, an officer will likely have to articulate either: "weaving plus one" (See note below summary of *State v Otto* included within this bulletin for further explanation), or "lots of weaving" i.e. extreme weaving articulated with details that include the number of times the vehicle weaved, the number of other vehicles upon the roadway which appeared to be impacted by the weaving, etc.

Reasonable Suspicion Existed to Stop Vehicle; Reasonable Suspicion Supported Length of Stop; Defendant's Consent to Search Vehicle Was Valid and Extended to Search Under Vehicle's Hood

***State v. Lopez*, No. COA11-957 (21 February 2012).**

Officer O'Hal of the Greensboro Police Department was on patrol in an area under surveillance by detectives. One of the investigators asked O'Hal to stop the white Honda driven by defendant indicating there was a large quantity of cocaine in the vehicle. The officer followed the white Honda for 2.5-3 miles and determined that the Honda was traveling 60 mph in a 70 mph zone. He initiated a routine traffic stop for the violation. He approached the defendant driver, Lopez, told him that he had been stopped for speeding, and asked for his driver's license. Lopez responded that he did not know he was speeding and that he was going to Winston for a construction job and just got off work. He then informed the officer that he did not have a valid operator's license. When asked about the vehicle, Lopez indicated that it belonged to his friend but he could not recall the friend's name. The officer noticed that Lopez was very well kept, and had clean hands, clothing, and a vehicle which, in the officer's opinion, was not consistent with Lopez' statements indicating that he was employed in the construction business. As the officer continued to talk with Lopez, Lopez became visibly nervous by breathing rapidly. He exchanged glances with the passenger and then both looked at an open plastic bag in the back seat of the vehicle. The officer noticed dryer sheets protruding from the bag. The officer asked for, and received, consent to search the vehicle. After searching the passenger compartment of the vehicle, the officer went to

the front of the vehicle and observed that as he did so the defendant became increasingly nervous. The officer opened the hood, which he knew the defendant had opened a few minutes earlier, and observed that the air intake compartment appeared cleaner than the rest of the parts in the engine compartment. He removed the top of the air filter and discovered a large quantity of cocaine wrapped in plastic.

Defendant was arrested, indicted and convicted of two separate trafficking in cocaine charges. Defendant appealed, arguing that the trial court erred in denying his motion to suppress. The Court of Appeals affirmed the denial of defendant's motion.

Defendant argued that the traffic stop was a pretext to search for drugs. However, the court noted this is irrelevant in light of the fact that defendant was lawfully stopped for speeding.

Defendant next argued that the duration of the stop was not supported by reasonable suspicion and thus, the consent he provided was tainted by the unlawful prolonged detention. The court noted that once a stop has been lawfully made, the detention must be tailored to its underlying justification (in this case, speeding). Once the original purpose of the stop has been addressed, in order to justify further delay, there must be grounds which provide the detaining officer with additional reasonable and articulable suspicion or the encounter must have become consensual. In the case at hand, the Court of Appeals concluded that Officer O'Hal had a reasonable suspicion to detain defendant after the initial purpose of the stop had been addressed: defendant did not have a valid license; defendant did not know the name of the friend to whom the vehicle he was driving belonged; defendant's questionable story about his work and where he was going; defendant's nervous demeanor; and the officer's observation of dryer sheets, which cover odor, protruding from a box in the back seat. Since Officer O'Hal had reasonable suspicion for further detaining the defendant, an unlawful seizure had not occurred at the time he requested consent to search the vehicle and thus, there was no indication that the consent was invalid.

Defendant also argued that even if he validly consented to a search of the vehicle, the consent did not extend to looking under the hood. The Court noted that the officer asked, "do you mind if I search the vehicle?" The hood and the air filter are part of the vehicle which a reasonable person would believe are included within the scope of the requested search, defendant did not explicitly exclude the hood, nor did defendant object when the officer began to search under the hood. Thus, the court concluded that the consent extended to a search under the hood of the vehicle.