



Police Law Bulletin



Durham Police Department

Police Attorneys' Office

Arnetta J. Herring, Senior Police Attorney

Toni M. Smith, Police Attorney

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North Carolina Court of Appeals



**Officer Conducted Valid Traffic Stop of Vehicle;
Officer Conducted Valid Frisk of Vehicle for Weapons;
Officer Conducted Valid Consent Search of Passenger's Purse;
Officer Had Probable Cause to Search Vehicle for Illegal Drugs, Including Locked
Briefcase Found Inside Vehicle**

State v. Parker, No. COA06-679 (2007)

An investigator in Surry County was conducting surveillance of the defendant in response to a complaint from a "concerned citizen" that defendant was trafficking methamphetamine. The officer stopped defendant on a highway after observing him driving approximately 60 mph in a 45 mile per hour zone, and passing another vehicle at approximately 80 mph in a 55 mph speed zone. Once stopped, the defendant stepped out of his car and approached the investigator's vehicle readily admitting that he had been speeding. The investigator ordered defendant to return to his vehicle which the defendant would not do. The investigator placed defendant in the back of his own car. While seated there, the defendant told the investigator that there was a gun in the car. Two passengers remained seated in the defendant's vehicle. The investigator opened the front passenger door where one of the passengers was seated and discovered a 12-gauge shotgun between the seat and the door. The front seat passenger was directed out of the vehicle. As she stood up to exit the car, a piece of newspaper fell to the ground. The investigator then removed the back seat passenger from the vehicle. The investigator conducted a frisk of the vehicle to ensure there were no other weapons in the car. During the frisk, the officer examined the newspaper and found that it was covering a drawstring bag. Inside the bag, the investigator found a substance he believed to be methamphetamine and a smoking device. The investigator also found a pistol under the front passenger seat. Thereafter, the front seat passenger consented to a search of her purse. Inside the purse, the investigator discovered a straw containing white powder residue. The investigator then searched the car's interior and found a briefcase in the hatchback. The defendant volunteered consent to search the briefcase and gave the investigator a combination to open it. When the combination did not unlock the briefcase, the investigator's

partner pried it open with a screwdriver. Inside, the investigators discovered what appeared to be methamphetamine and a set of scales. Defendant was arrested.

The trial court denied defendant's motion to suppress all evidence seized by the investigator during the search of his vehicle at the traffic stop. Defendant was convicted of six felony drug offenses and carrying a concealed weapon. Defendant appealed to the North Carolina Court of Appeals. The defendant made several contentions in support of his motion and appeal, all of which the Court of Appeals found to be unpersuasive.

First, defendant argued that the investigator conducted illegal surveillance of him. The Court noted that the State presented competent evidence that the investigator, in response to complaints from a "concerned citizen," followed defendant's car for approximately ten minutes and visually observed defendant's driving on a particular road and then highway. The Court then quoted a prior United States Supreme Court ruling finding that "a person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another." *United States v. Knotts*, 460 U.S. 276, 281, 75 L.Ed. 2d 55, 62 (1983).

Second, defendant contended that the investigator's traffic stop was a pretext to search his car for drugs. The Court noted that the investigator had probable cause to stop the defendant for exceeding the speed limit. The Court went on to rule, citing prior case law from the United States and North Carolina Supreme Courts, that a law enforcement officer's subjective motivation for stopping a motorist is irrelevant to the validity of the stop. *See Whren v. Ohio*, 517 U.S. 806, 135 L. Ed. 2d 89; *accord State v. McClendon*, 350 N.C. 630, 635-636, 517 S.E.2d 128, 132 (1999).

In addition, defendant argued that even if he had committed a traffic offense, police did not have the right to search his car. The Court found that the State presented competent evidence that the investigator conducted a vehicle frisk only after the defendant approached the investigator's car, disobeyed the investigator's order to return to his own car, and told the investigator that there was a firearm in the car that was still occupied by two passengers. Relying upon *Michigan v. Long*, the Court concluded that these circumstances were sufficient to create a reasonable belief that the defendant was dangerous and had immediate access to a weapon located in the car so that the officer had the requisite knowledge necessary to conduct a vehicle frisk. *See* 463 U.S. 1032, 1049-50, 77 L. Ed. 2d 1201, 1219-20 (1983). The investigator discovered methamphetamine and drug paraphernalia during the vehicle frisk and pursuant to a consent search of the passenger's purse which then provided him with probable cause to search the remainder of the car for additional drugs.

Next, the defendant argued that the officer's request to search the passenger's purse unlawfully expanded the scope of the detention for which the defendant was initially stopped. The Court ruled that although the investigator's request to search the passenger's purse was unrelated to the traffic offense for which the defendant was initially stopped, the request was nonetheless supported by reasonable suspicion that the purse would contain contraband. The Court noted that just prior to requesting consent to search the purse, the investigator had found methamphetamine and drug paraphernalia in a drawstring bag that fell out of the door where the passenger was seated. (*Note: When an officer has lawfully detained a person, an officer's questioning of that

person, including a request for consent, even if the questioning or request is unrelated to the purpose of the detention, is not a seizure under the Fourth Amendment and therefore needs no further justification, such as reasonable suspicion, so long as the questioning does not unnecessarily prolong the detention. *See Muehler v. Mena*, 544 U.S. 93 (2005)

Finally, defendant argued that the investigators exceeded the scope of his consent to search his briefcase by opening it with a screwdriver. The Court declined to address this argument finding that it was a moot point since the officers had probable cause to search the vehicle and any containers within the vehicle under the automobile exception.

The Court of Appeals affirmed the trial court's order denying defendant's motion to suppress the evidence.

Assuming Officer Seized Defendant After Defendant Evaded Drivers' License Checkpoint, Seizure Was Valid Based On Ruling in *State v. Foreman*

State v. Bowden, No. COA05-635 (6 June 2006)

Late one night, Greensboro police officers were conducting a drivers' license checkpoint at the bottom of a hill. The checkpoint was not visible to motorists until they crested the hill about 250 feet away. One officer was assigned to identify drivers who might try to elude the checkpoint. The officer saw a pickup truck crest the hill and descend rapidly towards the checkpoint. The truck braked hard, causing its front headlights to dip low. The truck then made an abrupt turn into the nearest apartment complex. The officer followed in his patrol car with the blue lights turned off, arriving at the entrance of the parking lot about 30 seconds later. Once in the parking lot, the officer saw a pickup truck matching the description of the one he had just seen. As the officer approached in his patrol car, he saw the truck pull out of a parking space into which it had apparently backed, travel towards the parking lot's exit, but then drive head first into a new parking space as the patrol car drove near. The officer pulled his patrol car behind the truck and activated his blue lights. The officer approached the truck and asked the defendant for his driver's license and registration. The defendant stated that a person named "Marcus" had been driving the truck, but that he had just left. Asked to explain further, defendant claimed that he had just come out of one of the apartments and that Marcus had asked him to drive the pickup to Marcus' girlfriend's apartment which was just around the corner, but he did not know exactly which apartment. As this conversation took place, the officer noticed that Bowden's speech was slurred, his eyes were glassy and red, and he smelled of alcohol. The officer asked Bowden to step out of the truck and, when he did, the officer noticed that defendant was unsteady and wavering from side to side. The officer asked Bowden to identify which apartment he had left when he moved the truck for Marcus. Bowden then denied being in any apartment and claimed that he had reached the apartment complex by foot. When the officer asked him how much he had had to drink, defendant relied "a few." The officer then asked Bowden to perform some field sobriety tests, at which point defendant stuck out his hands and said "You might as well arrest me. I'm not doing any tests."

Bowden was arrested for DWI. He was later indicted for DWI, habitual DWI and driving while license revoked. He was convicted of all three crimes and sentenced to 24-29 months in prison.

Defendant appealed arguing that the trial court erred in denying his motion to suppress all evidence obtained as a result of his encounter with the officer because the officer did not have reasonable suspicion to have stopped him. The North Carolina Court of Appeals disagreed with Bowden and upheld the denial of his motion to suppress.

The court reasoned that even if it assumed that the officer's use of blue lights and blocking the defendant's truck resulted in a stop, the totality of the circumstances justified the officer pursuing and stopping defendant's vehicle to inquire as to why he had turned away prior to the checkpoint. It was late at night; the defendant suddenly braked when he crested the hill and saw the checkpoint; the defendant abruptly turned into the nearest apartment complex; and the defendant's behavior in first backing his truck into one space, pulling out and proceeding towards the parking lot's exit, and then re-parking when he spotted the patrol car approaching him, provided reasonable suspicion for the officer to perform any investigatory stop that may have occurred.