



Police Law Bulletin



City Attorneys' Office

Toni M. Smith, Senior Assistant City Attorney

In this issue:

Reasonable Suspicion Supported Extension of Traffic Stop - Pgs. 1-7

Consent Invalid When Obtained During Period of Unlawful Detention – Pg. 7



NORTH CAROLINA COURT OF APPEALS



Officer Had Reasonable Suspicion to Prolong Traffic Stop

State v. Sutton, No. COA17-35 (June 5, 2018).

On January 13, 2015, Officer Wellmon with the Jackson County Sheriff's Office was on patrol in the vicinity of Cabe Road because the Sheriff's Office had received multiple complaints about drug activity in that area. That same morning, Officer Wellmon was advised by a SBI agent, who was involved in drug related investigations, to be on the lookout for a vehicle driven by defendant. According to the Agent, this vehicle was bringing large quantities of methamphetamine to a supplier off of Cabe Road.

At approximately 3:09 pm, Officer Wellmon was traveling on Cabe Road behind a pick-up truck. The truck traveled left of center with the driver's side tires crossing over the double yellow lines approximately 1". Officer Wellmon activated his blue lights and the vehicle pulled onto a gravel side street.

Officer Wellmon approached the vehicle and identified the defendant to be the driver. Officer Wellmon noticed that defendant appeared confused. His speech was so fast the officer had a difficult time understanding him. As the defendant handed his license and registration to the officer his hands were quivering. Officer Wellmon noticed that the defendant's eyes were bloodshot and glassy, and the skin underneath them was ashy. Defendant avoided making eye contact as the officer asked him questions. Based on Officer Wellmon's training and experience, the behaviors and physical appearance of the defendant were consistent with someone having used methamphetamine.

When asked where he was going, the defendant said he was going to "Rabbit's" house to collect on a car he had sold him. Officer Wellmon knew "Rabbit" was the nickname of Archie Stanberry, an individual with previous drug charges involving methamphetamine who lived in close proximity to Cabe Road. When the defendant, of his own volition, got out of his vehicle, Officer Wellmon asked to pat him down for weapons. The defendant said he did not mind. During the process, the defendant talked the entire time, but was stuttering so badly the officer was unable to understand anything he said. The officer asked the defendant to walk to the back of his truck and as he did so, the defendant placed his hand on the vehicle for stability. When he reached the back of his vehicle, the defendant leaned on its tailgate.

Officer Wellmon asked another officer who had arrived on scene request a canine unit. Officer Wellmon went to his patrol vehicle to check on the validity of the defendant's license and registration, and for any outstanding warrants. Before getting into his vehicle, Mallory Gayosso approached and told him "that was Archie's dope in the vehicle". Officer Wellmon knew that Ms. Gayosso lived nearby and had given drug information to law enforcement in the past. While Officer Wellmon was conducting his license and record checks, Ms. Gayosso approached him again. She told him she had "just got off the phone with Rabbit" and that "there was dope in the vehicle in a black tackle box and not to let us [law enforcement] find it." Officer Wellmon then determined that defendant's license and registration were valid, and there were no outstanding warrants against him. Within six to seven minutes after making that determination, an officer with a canine arrived on scene. A subsequent search of the vehicle revealed methamphetamine and drug paraphernalia.

Defendant was indicted for various violations of the Controlled Substances Act and driving left of center. Defendant made a motion to suppress all evidence obtained as a result of the traffic stop. The trial court denied the motion. Defendant pled guilty to all of the charges but then appealed.

Defendant challenged the trial court's conclusion that there was reasonable suspicion to stop his vehicle. The Court of Appeals agreed with the trial court. Where a vehicle actually crosses over the double yellow lines in the center of a road, even once, and even without endangering any other drivers, the driver has committed a violation of N.C.G.S. § 20-146 and the officer may stop the driver without violating his constitutional rights.

Defendant also argued that the traffic stop was unreasonably extended beyond the time necessary to address the traffic violation. Defendant's argument was based primarily on *Rodriguez v. United States* in which the United States Supreme Court held that an officer may not exceed the time reasonably needed to handle the matter for which a stop is made, unless the officer has additional reasonable suspicion which would justify further detention of the individual. In the case at hand, the Court of Appeals agreed with the trial court's conclusion that Officer Wellmon had reasonable suspicion to detain defendant beyond the time needed to issue a citation for driving left of center. Officer Wellmon was patrolling Cabe Road based upon complaints of drug activity in the area. He had been advised by the SBI to be on the lookout for defendant based upon reports he was bringing large quantities of methamphetamine to a supplier off of Cabe Road. After he stopped the truck, Officer Wellmon identified defendant as the person he was on the lookout for and noticed defendant was confused, spoke so quickly he was hard to understand, and began to stutter and mumble his words. Defendant would not make eye contact with the officer, who noticed that his eyes were bloodshot and glassy and the skin underneath them was ashy. Based upon his training and experience, Officer Wellmon believed defendant's behaviors and physical appearance were consistent with methamphetamine use. Defendant told Officer Wellmon he was going to "Rabbit's" house, and the officer knew that "Rabbit" was involved with methamphetamine and lived nearby. When defendant got out of the car - without having been asked - he put his hand on the car for stability. Although these facts alone would have given Officer Wellmon reasonable suspicion, at this point a woman Officer Wellmon knew had given drug information to law enforcement in the past approached and told him she had talked to "Rabbit" and defendant had dope in the vehicle in a black tackle box and not to let the police find it. The Court of Appeals found these facts to be more than sufficient to give Officer Wellmon reasonable suspicion that there may be drugs in the vehicle.

Based upon the conclusions above, the Court of Appeals affirmed the trial court's order denying defendant's motion to suppress.

Traffic Stop Was Not Unduly Extended

State v. Cox, No. COA17-862 (May 15, 2018).

On December 10, 2015, Sgt. Bryson of the Macon County Sheriff's Department (MCSD) was patrolling Route 441. Around 3:00 p.m., as a gold Pontiac passed by him, he noticed the driver slumped back and over toward the center console and the male passenger, who was wearing a cowboy style hat, tilted his head slightly, almost to block his face. Sgt. Bryson had been employed by the MCSD for over 16 years, had extensive training in drug interdiction, and had investigated more than one hundred drug cases. Sgt. Bryson found the occupants' movements to be suspicious based upon his training, and the fact that Route 441 is a major thoroughfare for traffic from Atlanta, and Atlanta is a major source of controlled substances for western North Carolina. Sgt. Bryson decided to begin following the vehicle in the far left lane. When the driver did not voluntarily switch lanes, Sgt. Bryson moved over into the right-hand lane and pulled up alongside the vehicle. As he did so, the driver swerved over into his lane causing Sgt. Bryson to pull his patrol car over the right-hand fog line in order to keep from having a collision. Sgt. Bryson then clocked the vehicle's speed at 62 mph in a 55 mph zone. Sgt. Bryson initiated a traffic stop for the unsafe movement and the speeding violation.

The driver, Pursley, produced a registration card and began fumbling through the vehicle for a driver's license. Sgt. Bryson noted that the driver's hands were shaking and he could see her heartbeat. Pursley eventually stopped searching for her license and told the sergeant that she believed she had left it at a gas station in Georgia. Sgt. Bryson asked her to exit the vehicle. While standing behind the vehicle, Sgt. Bryson asked Pursley where she was coming from, and where she was going. Pursley stated that she and her boyfriend were traveling from Georgia to Kentucky for Pursley to meet his parents for the first time. Pursley indicated that was the reason for her nervousness.

Sgt. Bryson approached the passenger side of the vehicle and began talking to defendant, Leslie Cox. He noticed that Cox had an open sore on the side of his face that looked like a methamphetamine sore. Cox told the sergeant that he and Pursley were headed to work on his camper in Cherokee. Sgt. Bryson indicated one of his purposes in speaking with Cox was to see if he could "vouch" for Pursley. When asked to verify Pursley's name, Defendant replied: "I guess that's her name." At the end of this initial conversation, he again asked Cox for Pursley's name, and defendant stated he did not remember.

Sgt. Bryson returned to his patrol car to enter Pursley's name and date of birth into his mobile data terminal. The search revealed Pursley's license expired the previous day. Sgt. Bryson prepared a written warning citation. While preparing Pursley's warning citation, Sgt. Bryson asked Deputy Stewart, who had arrived on the scene, to run Defendant's driver's license to see if it was valid so that Defendant could drive Pursley's vehicle.

Sgt. Bryson issued the citation to Pursley and returned Defendant's license and registration. In the process of returning the documents, Sgt. Bryson asked if there was anything illegal in the vehicle, to which Defendant responded, "Not that I'm aware of." At trial, Sgt. Bryson testified this was a "red flag," because it was "a yes or no question." Pursley continued to engage Sgt. Bryson in unsolicited conversation about her expired license. As they continued speaking, Sgt. Bryson asked Pursley whether she was "responsible for everything in the vehicle." Pursley hesitated and said, "my stuff," indicating that Cox had "his own stuff." Sgt. Bryson later testified this was another "red flag," because most people will give you a yes or no answer. Sgt. Bryson asked Pursley if a drug-sniffing dog was going to alert on her vehicle, and Pursley said, "I don't reckon," an equivocal response

that was another “red flag” for the officer. Sgt. Bryson told Pursley he was going to ask Defendant to exit the vehicle and then conduct a dog sniff around the exterior of it. Sgt. Bryson testified Pursley’s level of nervousness became elevated and she continued engaging him in conversation. Pursley then indicated Defendant might be in possession of some “personal use” marijuana and that there might be a hunting knife in the vehicle. Once the dog alerted to the vehicle, officers searched it and found a large amount of controlled substances and paraphernalia.

Defendant was arrested and subsequently indicted on various violations of the Controlled Substances Act. Defendant filed a motion to suppress contending that Sgt. Bryson unlawfully extended the traffic stop without reasonable suspicion of criminal activity by either Pursley or himself. The trial court denied the motion. A jury convicted Defendant on all charges. Defendant appealed. According to Defendant, the traffic stop concluded when Sgt. Bryson issued the warning citation to Pursley and, at that time, Sgt. Bryson lacked reasonable suspicion to justify extending the stop to conduct the dog sniff that ultimately led to the discovery of contraband inside Pursley’s vehicle.

The Court of Appeals disagreed. Sgt. Bryson had extensive training in drug interdiction, had investigated more than one hundred drug cases, and knew that Route 441 was a major thoroughfare for drug trafficking from Atlanta into western North Carolina. When Sgt. Bryson first saw Pursley’s vehicle, he observed body language by both Pursley and Defendant that he considered evasive. Pursley exhibited extreme and continued nervousness throughout the ensuing traffic stop and was unable to produce any form of personal identification. Defendant and Pursley gave conflicting accounts of their travel plans and their relationship to each other. Sgt. Bryson observed an open sore on Defendant’s face that appeared, based on his training and experience, to be related to the use of methamphetamine. Background checks further revealed that Pursley was driving with an expired license. Considering the totality of the circumstances, the court concluded Sgt. Bryson had reasonable suspicion of criminal activity, before issuing the written warning citation and returning Pursley’s vehicle registration, sufficient to justify extending the traffic stop for further investigation. Therefore, the court affirmed the trial court’s denial of Defendant’s motion to suppress.

Officer Had Reasonable Suspicion to Prolong Traffic Stop

State v. Campola, No. COA17-354 (March 6, 2018).

On November 26, 2014, Officer Freeman with the Charlotte-Mecklenburg Police Department (“CMPD”) was on patrol. Officer Freeman had received training in the identification of drugs and had been a patrolman for almost six years, participating in 100 drug arrests. Officer Freeman pulled into the parking lot of a Motel 6 in a high crime area of Charlotte. He saw two males sitting in a vehicle in the parking lot. After Officer Freeman passed by, the driver exited the lot at a high rate of speed. Officer Freeman followed the car and, after observing the driver nearly cause a collision by turning right at an intersection without yielding the right-of-way, he stopped the vehicle. Officer Freeman observed the car displayed a temporary license tag. Officer Freeman approached the driver’s side and asked the driver for his license, registration, and proof of insurance, observing that the driver’s hands seemed to be shaking more than usual. When asked why he was at the motel, the driver stated that he and his passenger went to meet a friend in the lobby, but couldn’t remember the friend’s name. Officer Freeman then returned to his patrol car to run the above information through the onboard computer.

Once in his patrol car, Officer Freeman called for a back-up unit because of the multiple occupants in the vehicle. While he waited for another officer, Officer Freeman determined through databases that the vehicle was not stolen and that neither the driver nor the passenger had any outstanding warrants. However, Officer Freeman found multiple prior drug arrests for both individuals. Shortly after the

database checks were completed, and twelve minutes after the stop was initiated, Officer Weston arrived as back-up. Officer Freeman told Officer Weston that he was going to issue a warning for the unsafe movement. About fourteen minutes after the stop was initiated, Officer Freeman asked the driver to step to the rear of the vehicle so that they could see the intersection where the illegal turn occurred while Officer Freeman explained his warning. Officer Freeman then gave the driver a warning, returned his documents, and requested a search of the vehicle. The driver declined.

While Officer Freeman was speaking with the driver, Officer Weston observed a syringe cap in the driver's seat. Officer Weston asked the passenger to step out of the car. The passenger complied. Officer Weston observed a second syringe cap in the passenger's seat. Now four minutes into their respective conversations, Officer Weston approached Officer Freeman and informed him of the syringe caps. Officer Freeman then searched the vehicle, discovering two syringes and a spoon with a brown "liquidy" substance. The officers then arrested both the driver and the passenger.

Prior to trial, Defendant filed a motion to suppress all evidence obtained as a result of the traffic stop, contending that the officer had impermissibly and unconstitutionally extended the traffic stop without reasonable suspicion. Following a hearing, the trial court denied the motion. The jury found Defendant guilty and Defendant appealed.

Under *Rodriguez v. United States*, 575 U.S. ___, 191 L. Ed. 2d 492 (2015), the duration of a traffic stop must be limited to the length of time that is reasonably necessary to handle the offense for which the driver was stopped, *unless reasonable suspicion of another crime arose before the mission was completed*. Beyond determining whether to issue a ticket, an officer's mission includes 'ordinary inquiries incident to the traffic stop.' These inquiries include checking the driver's license, determining whether there are outstanding warrants, inspecting the automobile's registration and proof of insurance, and conducting criminal history checks. Inquiries outside the mission of the stop, and without reasonable suspicion, are still permitted as long as those investigations do not extend the duration of the stop.

In the case at hand, Officer Freeman was engaged in a series of database searches during the time it took Officer Weston to arrive on scene. Because these searches were within the scope of his mission, no delay could occur until they were completed, and the evidence demonstrates that the database searches began within a minute of the officer returning to his vehicle and continued up until Officer Weston arrived.

In addition, Officer Freeman's request for back-up was itself a safety precaution. The back-up call was made because there were two occupants in the vehicle, and Officer Freeman testified that safety concerns and CMPD policy dictated that he request back-up when stopping a vehicle with multiple occupants. Time devoted to officer safety is time that is reasonably required to complete that mission. Even if one were to assume *arguendo* that Officer Freeman's call for back-up was outside the mission of the stop, such action is impermissible only if it extends the duration of the stop. Here, no extension of the stop occurred because database searches were running from the time Officer Freeman returned to his car and until Officer Weston arrived.

By the time Officer Weston arrived, Officer Freeman had developed reasonable suspicion of criminal activity sufficient to constitutionally extend the traffic stop. (1) Officer Freeman was a trained patrol officer of six years and had participated in 100 drug arrests; (2) Officer Freeman noticed Defendant in a high crime area; (3) after Officer Freeman drove by, the driver and Defendant took off at high speed and made an illegal right turn, nearly causing a collision; (4) the driver informed Officer Freeman that he and Defendant met a friend at the motel but did not know the friend's name; (5) the driver was unusually nervous; and (6) both the driver and Defendant had multiple prior drug arrests.

The Court of Appeals therefore held that Officer Freeman lawfully stopped the driver and Defendant for a traffic violation and that, before he completed the mission of the stop, the officer developed reasonable suspicion of illegal drug activity and thus, could lawfully extend the stop to investigate any wrongdoing. The lawful investigation yielded evidence of a crime, and the trial court did not err in denying defendant's motion to suppress.

Reasonable Suspicion Supported Extension of Traffic Stop

State v. Downey, No. COA16-302 (February 17, 2017).

On July 26, 2011, Deputy Clifton of the Johnston County Sheriff's Office stopped Defendant Glenwood Downey for a traffic violation. Deputy Clifton approached Downey's vehicle and asked to see his driver's license and registration. As Downey handed over the requested documentation, the deputy noticed that Downey's hands were shaking, his breathing was rapid, and he failed to make eye contact.

Deputy Clifton also noticed a prepaid cellphone inside the vehicle and a Black Ice air freshener hanging from the rearview mirror. Deputy Clifton had received training in drug interdiction, during which he learned that prepaid cell phones, and Black Ice air fresheners, because of their strong scent, are frequently used by drug traffickers. Deputy Clifton further noted that the car was not registered to Downey and that, based on his training, third-party vehicles are often used by drug traffickers because it makes it more difficult for police to track those individuals or tie them to a specific address.

Deputy Clifton asked Downey to exit the vehicle and accompany him to his patrol car. Once inside the car, Deputy Clifton asked Downey why he was in the area. Downey vaguely responded that he was searching for a place to rent. When the deputy further inquired as to whether Downey was able to find any places, he vaguely responded that he had seen a few places on "what's that, 231?"

Based on indicators gleaned from a warrants check, Deputy Clifton also asked Downey about his criminal history. Downey responded (honestly) that he had several breaking and entering convictions as well as a cocaine conviction.

Deputy Clifton issued Downey a warning ticket for the traffic violation and returned his documentation. Deputy Clifton continued to question Downey about his criminal history and eventually asked Downey for consent to search his vehicle. When Downey declined, Deputy Clifton called for a K-9 unit. 14 minutes later the K-9 arrived on scene, sniffed the exterior of the vehicle, and alerted to the presence of drugs. Officers searched the vehicle and found a digital scale, several cellphones, and a paper napkin containing approximately 3.2 grams of crack cocaine.

Downey was indicted for possession with intent to sell and deliver cocaine, maintaining a place to keep controlled substances, possession of drug paraphernalia, and attaining habitual felon status. Downey filed a motion to suppress all evidence obtained from his traffic stop. After a hearing, the trial court denied the motion. Downey pleaded guilty but then filed an appeal arguing that the officer did not have reasonable suspicion to continue detaining him after issuance of the warning citation and return of his documents.

When a law enforcement officer initiates a valid traffic stop, as happened here, the officer may not extend the duration of that stop beyond the time necessary to issue the traffic citation unless the officer has reasonable, articulable suspicion of some other crime. The trial court and the North Carolina Court of Appeals both concluded that the officer had reasonable suspicion due to (1) defendant's nervousness, rapid breathing, and lack of eye contact; (2) the presence of the Black Ice air freshener in the automobile, a type favored by drug traffickers due to its strong odor; (3) defendant was driving a vehicle registered to

a third person; (4) the presence of the prepaid cell phone; (5) Defendant's vague and suspicious statements as to his reason for being in the area; and (6) Defendant's admission that he had been arrested and imprisoned for possession of cocaine in the past. The North Carolina Supreme Court noted that while each factor is susceptible to innocent explanation, North Carolina appellate courts have held in several previous cases that all six factors taken together are sufficient to support the conclusion that the officer had reasonable suspicion of illegal drug activity. Therefore, the officer was justified to prolong the traffic stop to execute the dog sniff. Accordingly, the North Carolina Supreme Court held that the trial court properly denied Defendant's motion to suppress.

Consent Invalid When Obtained During Period of Unlawful Detention

State v. Parker, No. COA17-108 (7 November 2017).

On January 29, 2014, Greensboro Police officers were conducting surveillance "on a known drug house." In the previous month, heroin had been found at the house and four individuals were arrested. At approximately 4:25 p.m., the officers noticed the defendant leave the residence in a truck and then return twenty minutes later. Defendant parked in the driveway, exited his vehicle, and walked towards a woman salting the driveway of a nearby residence. Defendant and the woman began yelling at each other, with defendant asking, "Why are you taking pictures of me?" Believing that the confrontation was going to escalate into a physical altercation, the officers exited their surveillance vehicle and separated defendant and the woman. One of the officers asked defendant for his identification and checked his record. After verifying that defendant had no pending warrants, but while still in possession of his identification, the officer asked defendant if he had any narcotics on him. Defendant responded that he did not. Defendant then consented to a search of his person and his vehicle. Pursuant to the search, officers discovered crack cocaine in defendant's pants pocket.

Defendant was arrested for possession of cocaine. Prior to trial, defendant filed a motion to suppress the evidence obtained as a result of the search arguing that he had been unlawfully detained at the time he provided consent. The trial court denied defendant's motion. Defendant entered a guilty plea but preserved his right to appeal. On appeal, defendant's main argument was that once the officer failed to return his identification after finding no outstanding warrants and after the initial reason for the detention was satisfied, defendant became unlawfully seized so that his consent was not voluntarily given.

The Court of Appeals agreed with defendant's argument. After de-escalating the potential altercation and finding no outstanding warrants, the officer failed to return defendant's identification before pursuing an inquiry into defendant's possession of narcotics. Absent a reasonable and articulable suspicion to justify further delay, retaining defendant's driver's license beyond the point of satisfying the purpose of the initial detention was unreasonable. Thus, defendant's consent to search his person, given during the period of unreasonable detention, was not voluntary. Therefore, defendant's search was conducted in violation of his rights under the Fourth Amendment to the United States Constitution. Accordingly, the Court of Appeals reversed the trial court's order denying defendant's motion to suppress.