



Police Law Bulletin



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North Carolina Court of Appeals



Totality of Circumstances Showed Defendant Was Seized By Officer's Show Of Authority Despite Not Blocking Defendant's Path Or Using Blue Lights

State v. Steele, ___ N.C. App. ___ (April 20, 2021). An East Carolina University police officer was responding to a traffic accident call at 2:50 a.m. in Pitt County. He noticed a vehicle on the road and began following it, suspecting it may have been involved in the accident. The officer testified that the vehicle appeared to have its daytime running lights on, but no rear lights illuminated. There were no other cars on the road at the time. The vehicle pulled into an empty on-campus parking lot and then circled around to exit. The officer entered the parking lot and pulled alongside the defendant's car as it was exiting the lot. The officer gestured with his hand for the vehicle to stop, but did not activate his blue lights or siren and did not obstruct the defendant's path. The defendant's vehicle stopped, and the officer engaged the driver in conversation. The officer quickly suspected the driver was impaired and ultimately arrested the defendant for impaired driving.

The defendant moved to suppress the evidence obtained as a result of the stop arguing that the stop of his vehicle was an unlawful seizure. The trial court denied the motion, finding that the defendant was not seized and that the encounter was voluntary. The defendant pled guilty, reserving his right to appeal the denial of his motion to suppress. Defendant then appealed to the North Carolina Court of Appeals.

The issue before the Court was whether this encounter qualified as a traffic stop at all (as opposed to a voluntary encounter which did not implicate the Fourth Amendment).

A seizure occurs when an officer uses physical force with intent to seize a suspect or when a suspect submits to an officer's show of authority. An officer's show of authority amounts to a seizure when a reasonable person would not feel free to terminate the encounter and leave. Relevant circumstances include the number of officers present, whether the officer displayed a

weapon, the officer's words and tone of voice, any physical contact between the officer and the individual, whether the officer retained the individual's identification or property, the location of the encounter, and whether the officer blocked the individual's path. The court noted that this case was somewhat unusual because it involved an officer hailing down the defendant while both were driving separate vehicles.

First, the court found there is an important legal distinction between an officer who tails and waves down a moving vehicle in his patrol car, and an officer who walks up to a stationary vehicle on foot. In the latter scenario, the officer has taken no actions to impede the movement of the defendant—whereas in the former scenario, the officer's show of authority has obligated the defendant to halt the movement of his vehicle in order to converse with the officer. Given the criminal penalties for failure to follow traffic control commands and resisting a public officer, a reasonable driver would likely feel obligated to stop. Further, given the late hour and deserted parking lot, the environment was more intimidating than a public, daytime encounter, and a reasonable person would be more susceptible to police pressure in these circumstances. Finally, the authoritative gestures by the uniformed officer in a marked patrol car (and presumably armed) supported the defendant's argument that he was seized. Had the officer not been in a marked police vehicle, it was unlikely that a reasonable person would have voluntarily stopped under these circumstances.

Concluding that no reasonable person would feel free to leave when tailed by a marked police cruiser down empty streets at 3 a.m., followed into an empty parking lot, and hailed down by an officer's hand gestures, the majority of the Court of Appeals held that the defendant was seized and reversed the denial of his motion to suppress. The matter was sent back to the trial court for a determination as to whether the seizure was supported by reasonable suspicion. Note that while the officer had testified that defendant was operating his vehicle without rear lights, the defendant maintained that the officer's body worn camera footage clearly contradicted that assertion. While the Court of Appeals indicated that it was inclined to agree with the defendant on this point, the issue was not properly before the appellate court and so the matter was returned to the trial court.



Fourth Circuit Court of Appeals



Reasonable Suspicion Existed to Detain Armed Man Despite Open-Carry Laws

Walker v. Donahoe, 3 F.4th 676 (June 7, 2021). In February 2018, one week after the Parkland, Florida high school shootings, the plaintiff was walking through a suburban area near a school in the Southern District of West Virginia while armed with an AR-15 assault rifle and dressed in military-style garb. In response to a 911 call about the armed man, police briefly

detained the plaintiff. Open carry of weapons is permitted in the state, although state law restricts open carry to persons 18 years of age and older. The plaintiff was 24 years old at the time, but the officers believed he could have been under the legal age to carry based on his youthful appearance. The plaintiff was polite but largely uncooperative during the encounter, refusing to answer questions about the gun or his business and disputing the justification for his detention. After a background check revealed that the defendant was eligible to possess and carry the weapon, he was released. The interaction took less than nine minutes.

The plaintiff then initiated a civil action, alleging a Fourth Amendment illegal seizure. The trial court granted summary judgment to the officer, finding the seizure was brief, reasonable, and supported by reasonable suspicion. It held that the officer reasonably believed that the plaintiff could have been violating the age restrictions for open carry. The trial court further found that the totality of circumstances—the recent mass shooting which would cause a reasonable officer to be on high alert for copycat crimes, the 911 report, the plaintiff’s proximity to a school, his military-style dress, and young appearance—created reasonable suspicion to believe the plaintiff may have posed a threat to the nearby school. Plaintiff appealed the ruling to the Fourth Circuit Court of Appeals.

Where a state permits individuals to openly carry firearms, the exercise of this right, without more, cannot justify an investigatory detention. The district court correctly noted this rule and correctly found that the officer here had more than the mere fact of the plaintiff’s open carrying of a rifle. A suspect’s open possession of a weapon in open-carry states, while not enough on its own, may contribute to reasonable suspicion. Further, the type of firearm is a relevant consideration in the analysis. In *District of Columbia v. Heller*, 554 U.S. 570, 623 (2008), the U.S. Supreme Court noted that the right to possess and carry weapons “extends only to certain types of weapons,” observing that weapons like handguns, commonly used for self- and home-defense, were protected by the Second Amendment, while military-style weapons may be regulated without offending the constitutional right. Following *Heller*, the Fourth Circuit held that Maryland’s ban on AR-15 rifles and similar high-capacity rifles was constitutional. *Kolbe v. Hogan*, 849 F.3d 114 (4th Cir.) (en banc), cert. denied, 138 S. Ct. 469 (2017). While both *Heller* and *Kolbe* dealt with Second Amendment rights rather than Fourth Amendment reasonable suspicion, the court found them “instructive” and agreed with the district court that circumstances here supported reasonable suspicion: “Simply put, the circumstances of Walker’s firearm possession were unusual and alarming enough to engender reasonable suspicion,” for all the reasons identified by the district court. The district court’s ruling on reasonable suspicion was therefore affirmed.

Reasonable Suspicion Supported Stop of Defendant Parked in High School Parking Lot, Even Without Presence of Crossbow in Backseat; Crossbow Alternatively Provided Reasonable Suspicion and Any Mistake of Law as to the Legality of the Weapon on School Property Was Reasonable

U.S. v. Coleman, 18 F.4th 131 (Nov. 9, 2021). On September 20, 2017, as students were arriving at Patrick Henry High School in Washington County, Virginia, a school official noticed a man parked erratically in the school’s parking lot. The man appeared to be asleep in his car and had a crossbow in the backseat. The car was running, had its brakes on, and was parked partially

in a lane of travel. The school resource officer responded. As the deputy pulled behind the defendant's car, the defendant began to drive away. The deputy followed the defendant's vehicle, activating his blue lights. The defendant stopped in response. As the deputy approached the vehicle, he saw the crossbow and believed that its possession on school property was illegal under Virginia law. The deputy asked the defendant about other weapons. The defendant acknowledged a gun in the car. The deputy asked him to step out of the car. As the defendant exited, the deputy noticed a fairly large bag that appeared to contain marijuana between the door and the driver's seat. The defendant appeared tired and was administered field sobriety testing while another deputy searched his vehicle. The search revealed a gun, baggies, a scale, marijuana and methamphetamine.

The defendant was charged with various federal drug and gun offenses and moved to suppress, arguing that the deputy did not have reasonable suspicion of criminal activity to conduct the stop because possession of a crossbow on school grounds is not illegal in Virginia. The district court denied the motion, finding that the deputy had reasonable suspicion to stop the vehicle based on the corroborated report from the school official about a sleeping man on school grounds with a weapon and the defendant's driving away upon the deputy's approach. It further found that any mistake by the deputy about the legality of the crossbow on school grounds was an objectively reasonable mistake of law under *Heine v. N.C.*, 574 U.S. 54 (2014). The defendant was convicted at trial and sentenced to 211 months.

On appeal, a unanimous panel of the Fourth Circuit Court of Appeals affirmed. Even without the crossbow, the deputy had reasonable suspicion to stop the defendant's car for suspicion of trespassing on school grounds, impaired driving, and illegal parking. In the alternative, the court found that the crossbow provided reasonable suspicion by itself or in combination with other factors. The deputy was not required to ignore the presence of a strange man with a weapon on school grounds, whether or not the crossbow was legal to possess. "Here, as in *Terry [v. Ohio]*, the underlying behavior does not have to be illegal for us to conclude that Deputy Johnson had reasonable suspicion to stop Coleman." The district court's denial of the motion to suppress was therefore affirmed.

Federal Law Prohibiting Handgun Purchases from Licensed Firearms Dealers by Persons Less Than 21 Years Old Violates the Second Amendment

Hirschfeld v. ATF, No. 19-2250 (4th Circuit 2021). Federal law provides that only persons 21 years old and older may purchase handguns and handgun ammunition from a licensed firearms dealer. *See* 18 U.S.C. 922(b)(1). People under 21 years old may buy rifles or shotguns from a licensed dealer (but not handguns) and may purchase handguns from a source other than a licensed dealer. They may also be gifted handguns obtained from a licensed dealer by a parent or other person of age.

The plaintiffs were people under 21 who sought to purchase handguns from licensed dealer. They sought to establish that the age restriction violated their Second Amendment rights and to enjoin the federal government from enforcing it. The district court granted summary judgment to the government and denied relief. Plaintiffs appealed. On appeal, a majority of the Fourth Circuit reversed.

The court first determined that Second Amendment rights vest at age 18. “A review of the Constitution’s text, structure, and history reveals that 18-year-olds are covered by the Second Amendment.” It went on to find that the prohibition on handgun purchases by those less than 21 failed to meet intermediate scrutiny and could not survive. “Eighteen- to twenty-year-old’s have Second Amendment rights, and the challenged laws impermissibly burden those rights.” The matter was therefore reversed and returned to the lower court for additional proceedings.