



Police Law Bulletin



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North Carolina Court of Appeals



Paved Area Next to Fuel Pumps Constitutes a “Public Vehicular Area;” Warrantless Search of Vehicle Justified Under Automobile Exception

[State v. Parker](#), 2022-NCCOA-655, ___ N.C. App. ___ (Oct. 4, 2022).

Detective King and Master Corporal R.S. Cole of the Guilford County Sheriff's Office were part of a narcotics investigation into several individuals, including Defendant and Ms. Dalya Van. As part of this investigation, on May 28, 2019, a confidential and reliable informant contacted Ms. Van about purchasing a kilogram of heroin, with Corporal Cole listening on speaker phone. During this conversation, the informant arranged to meet Ms. Van at a hotel to get a sample of the drugs. At the hotel, Ms. Van joined the informant in his car, and they traveled, with police officers including Detective King following, to apartments where a black SUV pulled up to meet them. After surveillance officers told Detective King that Ms. Van had gotten out of her vehicle and into a black 2019 Chevrolet Tahoe, Detective King drove past the SUV to get its license plate number and reported it to Corporal Cole. Corporal Cole then ran the registration plate and connected the SUV to Defendant. He also recalled having previously received information about Defendant during the drug investigation. Corporal Cole then informed the other officers, including Detective King, of the connection between the black SUV and Defendant as well as the information he had received previously about Defendant. Ms. Van then got out of the black SUV and into the car she came in, and both vehicles left.

After Ms. Van and the informant got back to the hotel, Ms. Van left, and the police met with the informant to get the sample Ms. Van had given him. Corporal Cole tested the sample and confirmed it was heroin. The informant then arranged with Ms. Van to purchase two kilograms of heroin at the same hotel. At this point, Corporal Cole told the police officers conducting surveillance, including Detective King, to look out for the black SUV. Detective King then set up on the one main road leading to the hotel.

During this surveillance, Detective King's car ran low on gas, so he drove across the street from his lookout position to a gas station. At the gas station, Detective King saw Defendant and the black SUV, which he confirmed had the same license plate number, at or about the same time that the source with the larger supply of heroin was supposed to arrive at the hotel across the street. Detective King then alerted Corporal Cole, who told Detective King that the police Special Emergency Response Team ("SERT") would be there soon to detain Defendant.

Once SERT arrived and detained Defendant, Detective King walked around to the passenger side of Defendant's vehicle because the police "were specifically interested" in the larger supply of heroin they had ordered and that they "assum[ed] [Defendant] was bringing." Once there, Detective King smelled vinegar—which in his training and experience is what heroin smells like—through the open window and saw what appeared to be two kilograms of heroin sticking out of the top of an open cereal box. Detective King notified Corporal Cole of the suspected heroin, and Corporal Cole joined him at the gas station. Corporal Cole also observed what appeared to be heroin in the cereal box on the front seat and smelled through the open window "a distinct odor" that in his training and experience smelled like heroin. After taking pictures at the scene, Corporal Cole searched the vehicle and recovered a little more than two kilograms of heroin from the cereal box as well as a loaded gun, cell phones, and paperwork with Defendant's name on it. The police then arrested Defendant based on the items recovered from the search.

Defendant was indicted for several firearms and controlled substance violations. Defendant filed a Motion to Suppress. Specifically, Defendant challenged the search of his vehicle on the grounds that the search was without a warrant or any "other lawful justification" and therefore violated the Fourth Amendment. The trial court denied the Motion. Defendant pled guilty to reduced charges but reserved his right to appeal. On appeal, Defendant argued that the trial court erred because the officers' search of the SUV was not authorized by a warrant and could not be justified by the automobile exception.

Searches conducted outside the judicial process, without prior judicial approval, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions. One such doctrine is the automobile exception, which allows a search of a motor vehicle which is on a public roadway or in a public vehicular area if it is based on probable cause, even though a warrant has not been obtained. Within this framework, Defendant argued that the trial court erred in two ways.

First, Defendant argued the trial court should not have applied the automobile exception because it only applies to vehicles in a "public vehicular area" and the black SUV was parked next to a fuel pump, which Defendant contends is not such an area. In North Carolina, "public vehicular area" is defined by N.C. Gen. Stat. § 20-4.01(32), in pertinent part as, an area used by the public for vehicular traffic at any time, including by way of illustration and not limitation any drive, driveway, road, roadway, street, alley, or parking lot upon the grounds and premises of any of the following...any service station, store or any other business...establishment...providing parking space." Defendant argued that a fuel pump is not a driveway, road, alley, or parking lot, and is therefore not a public vehicular area. While the court agreed that a fuel pump at a service station is not "a driveway, road, alley, or parking lot," the court noted that the list of areas in the

statute are illustrations of the types of areas which may be included, but “public vehicular area” is not limited to these areas. The court determined that the appropriate question was whether the parking and driving area adjacent to a fuel pump is an area used by the public for vehicular traffic at any time and is on the premises of “any service station, store or any other business . . . establishment . . . providing parking space.” The court readily concluded that a service station’s *raison d’être* is to be open to the public for vehicular traffic to and from the gas pumps; its primary purpose is to invite drivers of vehicles onto the property to drive in and park their vehicles next to the gas pumps to buy gas.

Second, Defendant challenged the trial court’s conclusion that the officers had probable cause necessary for the automobile exception to apply. However, the Court of Appeals found that the trial court properly considered the totality of the circumstances when it determined that the police had probable cause to conduct a search of the vehicle because of: the time and location of the encounter with the Defendant; the Defendant’s connection with the Tahoe; the officers’ observation of the Tahoe being involved in a heroin transaction earlier in the day; observation of the Defendant driving the Tahoe alone; an odor consistent with heroin emanating from the vehicle; and a substance consistent with heroin observed by the officers in plain view inside the vehicle.

For the reasons stated above, the Court of Appeals upheld the denial of Defendant’s motion to suppress.

Officer Shining a Flashlight Through Defendant’s Windows During a Traffic Stop Was Not a “Search” for Fourth Amendment Purposes; Subsequent Search of Vehicle Permissible Under Plain View Doctrine; Officer’s Subjective Motivation for Stop Does Not Factor Into Constitutional Analysis

[State v. Hunter](#), 2022-NCCOA-683, ___ N.C. App. ___ (Oct. 18, 2022).

On the evening of October 19, 2020, Officers Stanley and Hoyle observed a car, driven by Defendant, roll through a stop sign. The officers activated their emergency lights and sirens, and the car continued to roll for approximately 200 feet before coming to a stop. Officer Stanley approached the passenger side of the car, initiated conversation with Defendant, and shined his flashlight around “[Defendant]’s area, the center console area, passenger area, and behind [Defendant]’s seat” to look for weapons or contraband. While Officer Stanley was doing so, Officer Hoyle returned to the police car to do a warrant and license check. While speaking with Defendant, Officer Stanley saw a plastic baggie between Defendant’s seat and the door. The officer suspected it contained illegal narcotics because it had a white rock-like substance inside and had the tie ripped off. Defendant was detained, and the plastic baggie retrieved. The substance field tested positive.

Defendant was indicted for possession of a schedule II controlled substance, and failure to stop at a stop sign. Defendant filed a motion to suppress which the trial court denied. Defendant appealed arguing that the trial court erred by denying his motion because Officer Stanley lacked probable cause to search the car, and the stop was pretextual.

Regarding Defendant's first argument, the Court of Appeals noted that it is been well-established that officers who lawfully approach a car and look inside with a flashlight do not conduct a 'search' within the meaning of the Fourth Amendment. Moreover, viewing an article that is already in plain view does not involve an invasion of privacy and, consequently, does not constitute a search implicating the Fourth Amendment. Because Officer Stanley was in a place where he had a right to be when the baggie was discovered, the baggie was discovered inadvertently, and Officer Stanley was able to immediately deduce that its contents were either crack or powder cocaine, Officer Stanley was authorized to seize the baggie without a warrant.

Regarding Defendant's second argument, even if the stop was pretextual, it was lawful because it was conducted after a violation of a traffic law. Both the United States Supreme Court and the North Carolina Supreme Court have ruled that an officer's subjective motive for a stop has no bearing on the Fourth Amendment analysis. Thus, there was no violation of State or Federal law and the stop of the defendant was Constitutional and valid.

For the reasons stated above, the Court of Appeals affirmed the trial court's denial of Defendant's motion to suppress.