



# Police Law Bulletin



Durham Police Department

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## North Carolina Court of Appeals



When Officer Ran Vehicle's Registration Plate and Then Registered Owner's Driver's License, Which Was Reported to Be Suspended, Officer Had Reasonable Suspicion to Stop Vehicle When There Was No Evidence That Owner Was Not Driving Vehicle



State v. Hess, No. COA06-1413 (21 August 2007)

Officer Doty of the Granite Quarry Police Department was on patrol one evening in an unmarked vehicle. At approximately 9:32 p.m., he pulled behind a Pontiac. It was dark and, from his vantage point, the officer could not determine the sex, race, or ethnicity of the driver nor could he determine who many individuals were riding inside the vehicle. The officer traveled behind the Pontiac for approximately 1-2 miles. While he did not observe the driver of the vehicle commit any traffic violations, he nevertheless decided to run the vehicle's registration plate in his MDT. The vehicle was registered to defendant Bryan Hess. Officer Doty then ran Hess' license number from the registration information and determined that Hess' license had been suspended. Once he had this information, but still not knowing whether Hess was actually driving the vehicle, Officer Doty activated his blue lights and stopped the Pontiac. Hess, who was operating the vehicle, was cited for driving while impaired and driving with a revoked license.

Hess made a motion to suppress any evidence obtained as a result of the stop arguing that it was not supported by reasonable suspicion. The trial court denied defendant's motion. Defendant appealed. The North Carolina Court of Appeals affirmed.

The appellate courts of this State had yet to address the constitutionality of an investigatory stop based solely on an officer's knowledge that an automobile currently being operated is registered to an individual with a suspended or revoked driver's license. Therefore, the Court of Appeals examined decisions from other jurisdictions. The Court was persuaded by the rationale of the majority of the other jurisdictions and held, consistent with them, that when a police officer

becomes aware that a vehicle being operated is registered to an owner with a suspended or revoked driver's license, and there is no evidence appearing to the officer that the owner is not the individual driving the automobile, reasonable suspicion exists to warrant an investigatory stop.

 **Authority to Request the**   
**Towing of Vehicles**

The authority to request that a vehicle be towed does not automatically flow from the fact that a vehicle has been parked or operated in violation of the law. Officers have the lawful authority to request that a vehicle be towed under the following circumstances:

1. The vehicle constitutes, or is believed to contain, evidence of a crime i.e. the vehicle, or its contents, is necessary or useful to prove one or more elements of a criminal offense;
2. The vehicle is a recovered stolen vehicle;
3. The vehicle has remained in the right of way for at least seven days after notice of imminent towing has been provided;
4. A State statute specifically authorizes the seizure of the vehicle, for example, DWI forfeiture;
5. The Durham City Code specifically authorizes the vehicle to be towed.  
DCC 20-210 authorizes law enforcement officers to order a vehicle removed from a street or public place owned or controlled by the City when:
  - a. The vehicle is left unattended so that it constitutes an obstruction to traffic, impedes the cleaning of or working on a street, or interferes with or obstructs street parades or processions.
  - b. The vehicle is so disabled that it constitutes an obstruction to traffic.
  - c. The person in charge of a vehicle is under arrest, has been removed from the vehicle, or by reason of physical injury or other cause, is incapacitated to such an extent as to be unable properly and safely to operate the vehicle or arrange for its custody or removal.
  - d. The vehicle is left unattended and is parked as to constitute a hazard or obstruction to traffic, or is parked unattended in front of a private driveway, within 15 feet of a fire hydrant, opposite the entrance to a fire station, within a designated bus zone or stop, in any area in which the parking of vehicles is prohibited, or in any area in excess of the authorized period of time.
  - e. The vehicle is parked in a City timed parking lot in violation of the provisions of the City Code regulating timed parking lots (with the exception of 20-131 - 20-132)

In addition to the above, officers should refer to General Order 4044 R-1 for departmental guidelines regulating the towing of vehicles.



## **Trespass from Vehicles**



**Q:** Suppose that an individual is in a vehicle, such as a City bus, and the driver of the vehicle wants the passenger ejected. What authority is there for a law enforcement officer to remove the individual?

**A:** If an officer happens to have an arrest warrant for the passenger or the passenger has committed an offense for which the officer could make a warrantless arrest, then obviously the officer could remove the individual from the bus as part of the arrest process.

The arrestable offense, however, should generally not be trespass. N.C.G.S. Section 14-132.2 makes it a Class 2 misdemeanor for a person to trespass upon a school bus. However, there are no specific statutes covering trespass to other types of vehicles. The trespass laws that most officers are familiar with, those found under N.C.G.S. Sections 14-159.12 and 14-159.13, deal with trespass to real property. Real property is land and things attached to it. A vehicle is not real property, but rather personal property. Thus, first and second degree trespass are not appropriate charges.

Note that N.C.G.S. Section 62-151 permits the driver of a common carrier to eject, without unnecessary force, a person who has not paid a fare or who violates the rules of the common carrier. However, violation of this statute is not a criminal offense. Of course, if the driver attempts to eject the person and the person resists by assaulting the driver, then an offense has occurred for which an officer could arrest and thereby, remove the individual from the vehicle.