



Police Law Bulletin



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UNITED STATES SUPREME COURT



Discovery of Valid Arrest Warrant Attenuated Connection Between Unconstitutional Investigatory Stop and Evidence Seized Incident to a Lawful Arrest

Utah v. Strieff, 579 U.S. ____ (June 20, 2016).

Narcotics detective Douglas Fackrell conducted surveillance on a South Salt Lake City residence based on an anonymous tip about drug activity. The number of people he observed making brief visits to the house over the course of a week made him suspicious that the occupants were dealing drugs. After observing respondent Edward Strieff leave the residence, Officer Fackrell detained Strieff at a nearby parking lot, identifying himself and asking Strieff what he was doing at the house. He then requested Strieff's identification and relayed the information to a police dispatcher, who informed him that Strieff had an outstanding arrest warrant for a traffic violation. Officer Fackrell arrested Strieff, searched him, and found methamphetamine and drug paraphernalia. The State charged Strieff with unlawful possession of methamphetamine and drug paraphernalia.

Strieff moved to suppress the evidence, arguing that it was derived from an unlawful investigatory stop. At the suppression hearing, the prosecutor conceded that Officer Fackrell lacked reasonable suspicion for the stop but argued that the evidence should not be suppressed because the existence of a valid arrest warrant attenuated the connection between the unlawful stop and the discovery of the contraband. The trial court agreed and denied the motion. The Utah Court of Appeals affirmed. The Utah Supreme Court reversed, however, and ordered the evidence suppressed. The United States Supreme Court agreed to hear the issue on petition of the State.

To enforce the Fourth Amendment's prohibition against unreasonable searches and seizures, the Supreme Court has at times required courts to exclude evidence obtained by unconstitutional police conduct. But the Court has also held that, even when there is a Fourth Amendment violation, this exclusionary rule does not apply when the costs of exclusion outweigh its deterrent benefits. In some cases, for example, the link between the unconstitutional conduct and the discovery of the evidence is too attenuated to

justify suppression. Thus, the question before the Court was whether this attenuation doctrine applies when an officer makes an unconstitutional investigatory stop; learns during that stop that the suspect is subject to a valid arrest warrant; and proceeds to arrest the suspect and seize incriminating evidence during a search incident to that arrest.

In addressing this issue, the Court considered three factors. The first was the time between the initial unlawful stop and the search. Officer Fackrell discovered contraband on Strieff only minutes after the illegal stop and therefore, this “temporal proximity” favored suppression of the evidence. The second factor was the presence of intervening circumstances. The existence of a valid warrant, predating the investigation and entirely unconnected with the stop, favored finding sufficient attenuation between the unlawful conduct and the discovery of evidence. That warrant authorized Officer Fackrell to arrest Strieff, and once the arrest was authorized, his search of Strieff incident to that arrest was undisputedly lawful. The third factor considered was the purpose and flagrancy of the official misconduct. The Court found that Officer Fackrell was at most negligent, but his errors in judgment did not rise to a purposeful or flagrant violation of Strieff’s Fourth Amendment rights. After the unlawful stop, his conduct was lawful, and there is no indication that the stop was part of any systemic or recurrent police misconduct. Thus, the third factor also weighed heavily in the State’s favor.

The Supreme Court held that based upon application of the above attenuation factors, the evidence Officer Fackwell seized incident to Strieff’s arrest was admissible. Officer Fackwell’s discovery of a valid, pre-existing and untainted arrest warrant attenuated the connection between the unconstitutional investigatory stop and the evidence seized incident to a lawful arrest.

Note: This case does not stand for the proposition that it is permissible to detain individuals without reasonable suspicion, and officers should not do so with the hope or expectation that there is an outstanding warrant. This case is most useful to a prosecutor in a motion to suppress or dismissal hearing when the initial seizure, though unlawful, appears from the totality of the circumstances to have been an isolated incident based upon a genuine and unintentional misapplication of the law.



NORTH CAROLINA SUPREME COURT



Investigatory Stop Supported by Reasonable Suspicion

State v. Jackson, No. 183A14 (11 June 2015).

Prior to April 9, 2012, Officer Brown, with the Greensboro Police Department, had on two occasions come into contact with Defendant Jackson. On the first occasion, Officer Brown, investigating a report of the discharging of a firearm, spoke with Jackson concerning the incident and recovered from him a stolen firearm. On the second occasion, which was approximately two months prior to April 9, 2012, Brown was investigating a breaking and entering and found Jackson standing with 3 to 4 individuals in the area of the reported crime. As Officer Brown approached, he could smell the odor of marijuana. Brown conducted a search of the individuals and found a small amount of marijuana, but not on Jackson.

On April 9, 2012, Brown was patrolling in the vicinity of Kim's Mart. Based on Brown's experience as a Greensboro Police Officer he knew that the immediate area outside of Kim's Mart had been the location of hundreds of narcotics investigations, some resulting in arrests. In fact, Brown had personally made drug arrests in the immediate area of Kim's Mart and was personally aware that hand-to-hand drug transactions have taken place on the sidewalk and street directly adjacent to Kim's Mart as well as inside the business. At approximately 9:00 pm, Brown saw Jackson and Curtis Benton standing near the newspaper dispenser outside of Kim's Mart. Two days prior, Brown had conducted a vehicle stop in which Curtis Benton was riding. During the stop, Brown noticed the smell of marijuana coming from the car.

Jackson and Benton, upon spotting Brown in his marked patrol car, stopped talking and dispersed. Jackson went to the East and walked into Kim's Mart and Benton walked away, in the opposite direction, to the West. Brown testified that his training and experience indicate that upon the approach of a law enforcement officer, two individuals engaged in a drug transaction will separate and walk away in opposite directions. Brown continued past Kim's Mart and down Phillips Avenue. After losing sight of Jackson and Benton, Brown made a U-turn and headed back up Phillips Avenue toward Kim's Mart. As Brown again approached Kim's Mart, Jackson and Benton were again standing in front of the business approximately 20 feet from where Brown saw them originally. As Brown pulled into the parking lot, Jackson and Benton again separated and began walking away in opposite directions. As Jackson was walking away, he came within 5-10 feet of Brown's patrol car. Brown wanted to speak with Jackson about possible drug activity. Brown asked Jackson to place his hands on the patrol car and Jackson complied. Jackson thereafter consented to a search of his person which led to the discovery of a handgun. A subsequent search of Benton yielded a bag containing a multitude of smaller bags of marijuana.

Following his arrest, Jackson made a motion to suppress the evidence found by Officer Brown following his investigatory stop. The motion was denied and the trial court concluded that, based on the totality of the circumstances, Brown had a reasonable and articulable suspicion that criminal activity was afoot and was legally permitted to make a brief investigatory stop of Jackson. Reserving the right to appeal the denial of his motion, Jackson then pled guilty to possession of a firearm by a felon, possession of a firearm with an altered serial number, and conspiracy to possess with intent to sell or deliver marijuana. Defendant then appealed. The NC Court of Appeals reversed the trial court, holding that these facts and circumstances did not establish the reasonable suspicion necessary to conduct an investigatory stop. The State appealed.

The Fourth Amendment permits a police officer to conduct a brief investigatory stop of an individual based upon reasonable suspicion that the individual is engaged in criminal activity. Reasonable suspicion requires specific, articulable facts indicating present, ongoing criminal activity and will not allow a stop based on a mere suspicion or hunch. In the case at hand, the following facts were determined to exist: 1. Brown had been a police officer since August 15, 2009; 2. Brown, through his training and experience, was familiar with marijuana and other drugs; 3. Brown had contact with defendant Jackson two times prior to this incident; 4. Brown knew that the immediate area outside of Kim's Mart had been the location of hundreds of narcotics investigations, some resulting in arrests; 5. Brown was personally aware that hand-to-hand drug transactions have taken place at this location; 6. At approximately 9:00 p.m., Brown saw defendant and Benton standing near a newspaper dispenser outside of Kim's Mart and upon spotting Brown, the two immediately stopped talking and dispersed, one walking East and one walking West; 7. Brown testified that in his training and experience, upon the approach of law enforcement, individuals engaged in a drug transaction will separate and walk away in opposite directions; 8. After doing a U-turn and returning to Kim's Mart, Brown saw that the two had returned to the location and were standing about 20 feet from where he had seen them originally; 9. Again, as Brown approached, defendant and Benton separated and began walking away in opposite directions.

The Court concluded that these facts were sufficient, considering the totality of the circumstances, to create reasonable suspicion for the stop.

The Court made it clear that walking away from the police in a high crime area is not sufficient to establish reasonable suspicion. Rather, in the case at hand, defendant stood at 9:00 p.m. in a specific location known for hand-to-hand drug transactions that had been the site of many narcotics investigations; defendant and his companion split up and walked in opposite directions upon seeing a marked patrol vehicle approach; both individuals came back to virtually the same location as soon as the patrol vehicle passed; and the individuals walked apart a second time upon seeing Officer Brown's return. Accordingly, the Court reversed the Court of Appeals.



NORTH CAROLINA COURT OF APPEALS

Defendant Not Seized Until He Submitted to Officer's Authority By Stopping His Vehicle; Stop of Defendant's Vehicle Supported by Reasonable Suspicion

State v. Mangum, No. COA16-344 (December 6, 2016)

On March 1, 2013, at approximately 6:55 p.m., Lieutenant Andrews of the Grifton Police Department received an anonymous phone call about an intoxicated person driving a black Hyundai leaving a Dollar General store and traveling north on Highland Boulevard. Shortly thereafter, Lt. Andrews saw a black Hyundai drive north on Highland Boulevard traveling roughly 20 mph in a 35 mph zone. After following the vehicle a short distance, Lt. Andrews watched it stop at an intersection, where there is no stop sign, traffic light, or traffic control device, for "longer than usual." The Hyundai resumed motion, turned right, still proceeding at 20 mph in a 35 mph zone, and then stopped at a railroad crossing for 15 to 20 seconds, although there was no train coming and no signal to stop. After the Hyundai crossed the tracks, Lt. Andrews activated his blue lights. Defendant did not stop for another two to three blocks. This failure to yield, which lasted for approximately two minutes, prompted Lt. Andrews to "bump" his siren a number of times. The vehicle eventually stopped in the middle of the road. Lt. Andrews arrested the driver for impaired driving.

Defendant was found guilty in district court and appealed to superior court. Prior to trial in superior court, defendant moved to suppress the evidence obtained as a result of the traffic stop. The trial court denied defendant's motion to suppress. On appeal, defendant contended that the trial court erred in denying his motion to suppress because Lt. Andrews lacked reasonable suspicion to stop defendant and the stop, therefore, violated the Fourth Amendment. The Court of Appeals disagreed.

The reasonable suspicion inquiry does not begin when police issue an order to stop; rather, it begins when the suspect actually yields to that show of authority. In the case at hand, defendant was not seized within the meaning of the Fourth Amendment until he stopped his vehicle in the middle of the street. It is important to note that the Court stated that a Fourth Amendment violation would likely have occurred if Lt. Andrews had stopped defendant's vehicle based solely on the tip. However, the tip was not the sole basis for the stop. The subsequent observations of Lt. Andrews buttressed the tip and ultimately formed

the basis for Lt. Andrews' suspicion of criminal activity. Lt. Andrews located defendant's vehicle after receiving the concerned citizen report, and observed it traveling 20 miles per hour in a 35 m.p.h. zone. The vehicle stopped at an intersection where there was no stop sign or signal to stop for "longer than usual," turned right, and continued traveling well below the speed limit. The vehicle stopped again at a railroad crossing and, although there was no train coming and no signal to stop, the vehicle remained motionless at the crossing for 15-20 seconds. After Lt. Andrews activated his blue lights and signaled the vehicle to pull over, defendant continued driving. Lt. Andrews bumped his siren, but still, the vehicle did not respond. The court found critical to its analysis the fact that defendant failed to yield for approximately two minutes. Defendant eventually stopped in the middle of the road after passing several safe places at which he could have pulled over.

For the foregoing reasons, the Court of Appeals concluded that the trial court properly considered events that occurred after Lt. Andrews activated his blue lights but before defendant complied with the order to stop. Based on the totality of these circumstances, Lt. Andrews possessed a reasonable, articulable suspicion that defendant might be engaged in criminal activity. Accordingly, the Court of Appeals affirmed the trial court's denial of defendant's motion to suppress.

Officer's Mistake of Law Was Not Objectively Reasonable and No Reasonable Suspicion Supported Stop of Vehicle

State v. Eldridge, No. COA16-173 (20 September 2016)

On June 12, 2014, Deputy Billings of the Watauga County Sheriff's Office was traveling north on U.S. 421 while talking on the phone to his supervisor, Lieutenant Greer. As he was driving, the deputy noticed a Ford Crown Victoria driving without an exterior mirror on the driver's side of the vehicle. The vehicle was registered in Tennessee. The deputy was aware that North Carolina law generally requires vehicles to be equipped with exterior mirrors on the driver's side. He asked Lieutenant Greer to confirm that the applicable statute did, in fact, require the presence of an exterior mirror on the driver's side of a vehicle, and Lieutenant Greer responded that was correct. Neither Deputy Billings nor Lieutenant Greer was aware that this statutory requirement, found in N.C.G.S. § 20-126(b), does not apply to vehicles registered out of state. Deputy Billings proceeded to perform a traffic stop on the vehicle. The stop led to a consent search of the car in which officers found 73 grams of crack cocaine and 12 grams of marijuana.

Defendant was arrested and subsequently indicted for trafficking in cocaine by transportation, trafficking in cocaine by possession, and possession with intent to manufacture, sell, or deliver cocaine. Defendant filed a motion to suppress. The trial court denied the motion finding that the deputy stopped the Defendant based on an objectively reasonable mistake of law that N.C.G.S. § 20-126(b) applied to the Defendant's vehicle even though it was registered in Tennessee and not North Carolina. Defendant entered a plea to the two trafficking charges but appealed the denial of his motion to the North Carolina Court of Appeals.

The key question was whether the deputy's genuine, but mistaken, belief that N.C.G.S. § 20-126(b) applied to Defendant's vehicle provided reasonable suspicion for the traffic stop. This issue is controlled by the United States Supreme Court's decision in *Heien v. North Carolina*, __ U.S. __, 135 S. Ct. 530, 190 L.Ed.2d 475 (2014). In *Heien*, a law enforcement officer stopped a vehicle because its left brake light was not working. The defendant, who was both a passenger in the vehicle and its owner, consented to a search of the vehicle. During the search, the officer found a sandwich bag containing cocaine in a duffel bag located inside the car, and the defendant was arrested. The defendant moved to suppress the evidence, contending that the traffic stop violated the Fourth Amendment. The defendant's motion was denied. On appeal, the North Carolina Court of Appeals held that the denial of the motion to suppress

had been improper, ruling that the statute at issue merely required vehicles to have at least one working brake light, which the defendant's vehicle clearly did. The North Carolina Supreme Court then reversed, concluding that even though having one faulty brake light was not a violation of the statute, the officer "could have reasonably, even if mistakenly, read the vehicle code to require that both brake lights be in good working order." The United States Supreme Court then upheld the validity of the traffic stop, holding that an officer's "mistake of law can give rise to the reasonable suspicion necessary to uphold a seizure under the Fourth Amendment." In so holding, the Supreme Court distinguished between reasonable and unreasonable mistakes of law, explaining that "the Fourth Amendment tolerates only objectively reasonable mistakes. We do not examine the subjective understanding of the particular officer involved." In analyzing the applicable North Carolina statute regulating brake lights, the Court had "little difficulty concluding that the officer's error of law was reasonable." The Court focused on the lack of clarity in the statutory text and noted the absence of prior caselaw from North Carolina courts interpreting this statutory provision.

In the case at hand, unlike the statutory language at issue in *Heien*, the text of N.C.G.S. § 20-126(b) is clear and unambiguous. The statute states (emphasis added):

It shall be unlawful for any person to operate upon the highways of this State any vehicle manufactured, assembled or first sold on or after January 1, 1966 and registered in this State unless such vehicle is equipped with at least one outside mirror mounted on the driver's side of the vehicle.

A reasonable officer reading this statute would understand the requirement that a vehicle be equipped with a driver's side exterior mirror does not apply to vehicles that, like Defendant's vehicle, are registered in another state. Thus, the deputy's mistake of law was not objectively reasonable under the standard set out in *Heien* and no reasonable suspicion existed to support the stop of Defendant's vehicle. Therefore, the Court of Appeals ruled that the trial court erred in denying Defendant's motion to suppress.