

Traffic Stops

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- I. **Introduction.** This paper is intended to serve as a quick reference regarding the Fourth Amendment issues that arise in connection with traffic stops. It begins by addressing officers' conduct before a stop, proceeds to discuss making the stop itself, then considers investigation during traffic stops, and finally covers the termination of traffic stops.¹

- II. **Before the Stop.** Sometimes, an officer will decide to "run" a vehicle's "tag" – that is, run a computer check to determine whether the license plate on the vehicle is current and matches the vehicle, and perhaps whether the vehicle is registered to a person with outstanding warrants or who is not permitted to drive. When this is done randomly, without individualized suspicion, defendants sometimes argue that the officer has conducted an illegal search by running the tag. Courts have uniformly rejected this argument, finding that license plates are open to public view. See, e.g., *State v. Chambers*, 2010 WL 1287068 (N.C. Ct. App. April 6, 2010) (unpublished) ("Defendant's license tag was displayed, as required by North Carolina law, on the back of his vehicle for all of society to view. Therefore, defendant did not have a subjective or objective reasonable expectation of privacy in his license tag. As such, the officer's actions did not constitute a search under the Fourth Amendment."); *State v. Davis*, 239 P.3d 1002 (Or. Ct. App. 2010) (upholding a random license check and stating that "[t]he state can access a person's driving records by observing a driver's registration plate that is displayed in plain view and looking up that registration plate number in the state's own records"); *State v. Donis*, 723 A.2d 35 (N.J. 1998) (holding that there is no reasonable expectation of privacy in the exterior of a vehicle, including the license plate, so an officer's ability to run a tag "should not be limited only to those instances when [the officer] actually witness[es] a violation of motor vehicle laws"). See also *infra* (discussion under heading "Driver's Identity" and cases cited therein).

- III. **Making the Stop.**
 - A. **Legal Standard.** "Reasonable suspicion [is] the necessary standard for stops based on traffic violations." *State v. Styles*, 362 N.C. 412 (2008) (rejecting the argument that full probable cause is required for stops based on readily observable traffic violations). Of course, reasonable suspicion is also the standard for investigative stops based on more serious offenses. *Terry v. Ohio*, 392 U.S. 1 (1968).

 - B. **Pretextual Stops.** If an officer has reasonable suspicion that a driver has committed a crime or an infraction, the officer may stop the driver's vehicle. This is so even if the officer is not interested in pursuing the crime or infraction for which reasonable suspicion exists, but rather is hoping to observe or gather evidence of another offense. *Whren v. United States*, 517 U.S. 806 (1996) (emphasizing that the "[s]ubjective intentions" of the officer are irrelevant); *State v. McClendon*, 350 N.C. 630 (1999) (adopting *Whren* under the state constitution). It follows from this that whether "an officer conducting a traffic stop [did or] did not subsequently issue a citation is also irrelevant to the validity of the stop." *State v. Parker*, 183 N.C. App. 1 (2007).

¹ The organization of this paper was inspired in part by Wayne R. LaFare, *The "Routine Traffic Stop" From Start to Finish: Too Much "Routine," Not Enough Fourth Amendment*, 102 MICH. L. REV. 1843 (2004).

C. When Reasonable Suspicion Must Exist. Normally, a law enforcement officer will attempt to develop reasonable suspicion *before* instructing a person to stop. But what if the officer does not have reasonable suspicion at that point, yet develops reasonable suspicion prior to the suspect's compliance with the officer's instruction? In *California v. Hodari D.*, 499 U.S. 621 (1991), the United States Supreme Court held that a show of authority is not a seizure until the subject complies. Because the propriety of a seizure depends on the facts known at the time of the seizure, it appears that events after an officer's show of authority, but before a driver's submission to it, may be used to justify the stop. For example, an officer who activates his blue lights after observing a driver traveling 45 m.p.h. in a 55 m.p.h. zone may be without reasonable suspicion. But if the driver ignores the blue lights, continues driving, and weaves within his lane before stopping, the seizure may be upheld based on the driver's weaving in addition to his slow rate of speed. *United States v. Swindle*, 407 F.3d 562 (2d Cir. 2005) (reluctantly concluding that a court may "consider[] events that occur[] after [a driver is] ordered to pull over" but before he complies in determining the constitutionality of a seizure); *United States v. Smith*, 217 F.3d 746 (9th Cir. 2000) (relying on *Hodari D.* to reject the argument that "only the factors present up to the point when [the officer] turned on the lights of his patrol car can be considered in analyzing the validity of the stop"). Cf. *United States v. McCauley*, 548 F.3d 440 (6th Cir. 2008) ("We determine whether reasonable suspicion existed at the point of seizure – not . . . at the point of *attempted* seizure."); *United States v. Johnson*, 212 F.3d 1212 (D.C. Cir. 2000) (similar). Cf. *generally* 4 WAYNE R. LAFAVE, SEARCH AND SEIZURE § 9.4(d) n. 170 (collecting cases) (hereinafter, LAFAVE, SEARCH AND SEIZURE).

D. Common Issues.

- 1. Weaving.** G.S. 20-146 requires that "[a] vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety." Weaving within a single lane does not appear to violate G.S. 20-146 and so is not itself a crime. However, in some circumstances, weaving within a single lane may contribute to reasonable suspicion that a driver is impaired or is driving carelessly. In *State v. Fields*, 195 N.C. App. 740 (2009), the court of appeals held that an officer did not have reasonable suspicion that a driver was impaired where the driver "swerve[d] to the white line on the right side of the traffic lane" three times over a mile and a half. However, the court stated that weaving, "coupled with additional . . . facts," may provide reasonable suspicion. The court cited cases involving additional facts such as driving "significantly below the speed limit;" driving at an unusually late hour; and driving in the proximity of drinking establishments. The short version of *Fields*, then, is that moderate weaving within a single lane does not provide reasonable suspicion, but that "weaving plus" may do so. See also *generally State v. Peele*, 196 N.C. App. 668 (2009) (no reasonable suspicion of DWI where an officer received an anonymous tip that defendant was "possibl[y]" driving while impaired, then saw the defendant "weave within his lane once"); *State v. Simmons*, ___ N.C. App. ___, 698 S.E.2d 95 (2010) (stop was supported by reasonable suspicion where the defendant "was not only weaving within his lane, but was also weaving across and outside the lanes of travel, and at one point actually ran off the road"); *State v. Brown*, 2010 WL 3860440 (N.C. Ct. App. Oct. 5, 2010) (unpublished) (stop was supported by reasonable suspicion where the defendant was weaving within her lane and traveling 10 m.p.h. under the speed limit at 1:40 a.m.).
- 2. Sitting at a Stoplight.** Like weaving within a single lane, remaining at a stoplight after the light turns green is not, in itself, a violation of the law. But also like weaving,

- it may contribute to reasonable suspicion that the driver is impaired. An important factor in such cases is the length of the delay. *Compare State v. Barnard*, 362 N.C. 244 (2008) (reasonable suspicion supported an officer's decision to stop the defendant where the defendant was waiting at a traffic light in a high-crime area, near several bars, at 12:15 a.m., and "[w]hen the light turned green, defendant remained stopped for approximately thirty seconds" before proceeding), *with State v. Roberson*, 163 N.C. App. 129 (2004) (finding no reasonable suspicion where the defendant sat at a green light, at 4:30 a.m., near several bars, for 8 to 10 seconds, and stating that "[a] motorist waiting at a traffic light can have her attention diverted for any number of reasons. . . . [so] a time lapse of eight to ten seconds does not appear so unusual as to give rise to suspicion justifying a stop").
3. **Unsafe Movement/Lack of Turn Signal.** Under G.S. 20-154(a), "before starting, stopping or turning from a direct line[, a driver] shall first see that such movement can be made in safety . . . and whenever the operation of any other vehicle may be affected by such movement, shall give a signal as required." Litigation under this statute has focused on the phrase "the operation of any other vehicle may be affected." Generally, the appellate courts have held that a driver need not signal when making a mandatory turn, but must if the turn is optional and there is another vehicle following. *Compare State v. Ivey*, 360 N.C. 562 (2006) (the defendant was not required to signal at what amounted to a right-turn-only intersection; a right turn was the "only legal movement he could make," and the vehicle behind him was likewise required to stop, then turn right, so the defendant's turn did not affect the trailing vehicle), *with State v. Styles*, 362 N.C. 412 (2008) (where the defendant changed lanes "immediately in front of" an officer, he violated the statute; "changing lanes immediately in front of another vehicle may affect the operation of the trailing vehicle."), and *State v. McRae*, ___ N.C. App. ___, 691 S.E.2d 56 (2010) (similar).
 4. **Late Hour, High-Crime Area.** The United States Supreme Court has held that presence in a high-crime area, "standing alone, is not a basis for concluding that [a suspect is] engaged in criminal conduct." *Brown v. Texas*, 443 U.S. 47 (1979). Although the stop in *Brown* took place at noon, presence in a high-crime area at an unusually late hour is also alone insufficient to provide reasonable suspicion. *State v. Murray*, 192 N.C. App. 684 (2008) (no reasonable suspicion to stop defendant, who was driving in a commercial area with a high incidence of property crimes at 3:41 a.m.). But the incidence of crime in the area and the hour of night are factors that, combined with others such as nervousness or evasive action, may contribute to reasonable suspicion. *Cf. In re I.R.T.*, 184 N.C. App. 579 (2007) (listing factors); *State v. Mello*, ___ N.C. App. ___, 684 S.E.2d 477 (2009), *aff'd per curiam*, ___ N.C. ___ (Oct. 8, 2010) (holding that the defendant's presence in a high-drug area, coupled with evasive action on the part of individuals seen interacting with defendant, provided reasonable suspicion supporting a stop).
 5. **Informants.** Whether information from an informant provides reasonable suspicion to stop a vehicle depends on the totality of the circumstances. Information from an anonymous tipster is usually insufficient unless (1) the tip itself contains strong indicia of reliability, such as very detailed information, or (2) the police are able to corroborate the tip in a meaningful way. *State v. Johnson*, ___ N.C. App. ___, 693 S.E.2d 711 (2010) (stating that "[c]ourts have repeatedly recognized, as a general rule, the inherent unreliability of anonymous tips standing on their own" unless such a tip "itself possess[es] sufficient indicia of reliability, or [is] corroborated by [an] officer's investigation or observations"); *State v. Peele*, 96 N.C. App. 668 (2009) (an anonymous tip that defendant was driving recklessly, combined with an officer's observation of a single instance of weaving, was insufficient to give rise to

reasonable suspicion). On the other hand, where an informant “willingly place[s] her anonymity at risk,” by identifying herself or by speaking to an officer face to face, the information is much more likely to provide reasonable suspicion. *State v. Maready*, 362 N.C. 614 (2008) (court gave significant weight to information provided by a driver who approached officers in person, thereby allowing officers to see her, her vehicle, and her license plate, notwithstanding the fact that the officers did not in fact make note of any identifying information about her). See also *State v. Hudgins*, 195 N.C. App. 430 (2009) (a driver called the police to report that he was being followed, then complied with the dispatcher’s instructions to go to a specific location to allow an officer to intercept the trailing vehicle; when the officer stopped the second vehicle, the caller also stopped briefly; the defendant, who was driving the second vehicle, was impaired; the stop was proper, in part because “by calling on a cell phone and remaining at the scene, [the] caller placed his anonymity at risk”).

6. **Driver’s Identity.** “[W]hen 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.” *State v. Hess*, 185 N.C. App. 530 (2007). See also *State v. Johnson*, ___ N.C. App. ___, 693 S.E.2d 711 (2010) (“[T]he officers did lawfully stop the vehicle after discovering that the registered owner’s driver’s license was suspended.”). Presumably, an officer would also be justified in stopping a vehicle if he determined that the registered owner was the subject of an outstanding arrest warrant or other criminal process.

IV. Investigation During the Stop.

- A. **Ordering Occupants Out of the Vehicle.** In the interest of officer safety, an officer may order any or all of a vehicle’s occupants out of the vehicle during a traffic stop. *Pennsylvania v. Mimms*, 434 U.S. 106 (1977) (driver); *Maryland v. Wilson*, 519 U.S. 408 (1997) (passengers). Likewise, an officer may order the vehicle’s occupants to remain in the vehicle. ROBERT L. FARB, ARREST, SEARCH, AND INVESTIGATION IN NORTH CAROLINA 30 & n.160 (3rd ed. 2003) (collecting cases). Whether, and under what circumstances, an officer can order a driver or passenger into the back seat of the officer’s cruiser is an open question in North Carolina and is the subject of a split of authority nationally. Jeff Welty, *Traffic Stops, Part II*, <http://soqweb.sog.unc.edu/blogs/ncclaw/?p=811> (October 28, 2009).
- B. **Frisking Occupants.** A frisk does not follow automatically from a valid stop. It is justified only if the officer reasonably suspects that the person or people to be frisked are armed and dangerous. *Terry v. Ohio*, 392 U.S. 1 (1968). An officer may frisk a passenger based on reasonable suspicion that the passenger is armed and dangerous, even if the officer does not suspect the passenger of criminal activity. *Arizona v. Johnson*, ___ U.S. ___, 129 S. Ct. 781 (2009).
- C. **“Car Frisks.”** In *Michigan v. Long*, 463 U.S. 1032 (1983), the Supreme Court held that “the search of the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden, is permissible if the police officer possesses [reasonable suspicion] that the suspect is dangerous and the suspect may gain immediate control of weapons.” Although *Long* was decided in the context of what might be described as a *Terry* stop rather than a routine traffic stop, the two types of stops are

similar if not functionally identical,² and the concept of a car frisk applies with equal force to traffic stops. *State v. Hudson*, 103 N.C. App. 708 (1991) (upholding car frisk arising out of a traffic stop). Factors that courts consider in determining whether reasonable suspicion exists include furtive movements by the occupants of the vehicle, lack of compliance with police instructions, belligerence, and visible indications that a weapon may be present in the car. See, e.g., *State v. Edwards*, 164 N.C. App. 130 (2004); *State v. Minor*, 132 N.C. App. 478 (1999); *State v. Clyburn*, 120 N.C. App. 377 (1995). Our appellate courts have been fairly demanding regarding reasonable suspicion in this context, several times finding ambiguously furtive movements, standing alone, to be insufficient. *Minor*, *supra*; *State v. Braxton*, 90 N.C. App. 204 (1988).

D. License, Warrant, and Record Checks. Officers will often check the validity of a driver's license during a traffic stop, and may also check the driver's criminal record, including a check for outstanding arrest warrants. The courts have generally viewed these checks, and the associated brief delays, as permissible. *State v. Hernandez*, 170 N.C. App. 299 (2005) (holding that "running checks on Defendant's license and registration" was "reasonably related to the stop based on the seat belt infraction"); *State v. Castellon*, 151 N.C. App. 675 (2002) (twenty-five minute "detention for the purpose of determining the validity of defendant's license was not unreasonable" when officer's computer was working slowly). See also, e.g., *United States v. Villa*, 589 F.3d 1334 (10th Cir. 2009) ("It is well-established that [a] law enforcement officer conducting a routine traffic stop may request a driver's license and vehicle registration, run a computer check, and issue a citation."); See generally Wayne R. LaFave, *The "Routine Traffic Stop" From Start to Finish: Too Much "Routine," Not Enough Fourth Amendment*, 102 MICH. L. REV. 1843, 1874-85 (2004) (concluding that most courts have permitted license, warrant, and record checks incident to traffic stops, though criticizing some of these conclusions) (hereinafter LaFave, "Routine").

E. Questions about Unrelated Matters. The United States Supreme Court held in *Muehler v. Mena*, 544 U.S. 93 (2005), that questioning is not a seizure, so the police may question a person who has been detained about matters unrelated to the justification for the detention, even without any individualized suspicion supporting the questions. Although *Muehler* involved a person who was detained during the execution of a search warrant, not the subject of a traffic stop, its reasoning applies equally in the traffic stop setting. The Court has recognized as much. *Arizona v. Johnson*, ___ U.S. ___, 129 S. Ct. 781 (2009) ("An officer's inquiries into matters unrelated to the justification for the traffic stop, this Court has made plain, do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop."). See also e.g., *United States v. Olivera-Mendez*, 484 F.3d 505 (8th Cir. 2007); *United States v. Stewart*, 473 F.3d 1265 (10th Cir. 2007). It should be emphasized that the questioning in *Muehler* did not extend the subject's detention; whether a traffic stop may be prolonged for additional questioning is discussed below.

F. Use of Drug-Sniffing Dogs. Having a dog sniff a car is not a search and so requires no quantum of suspicion. *Illinois v. Caballes*, 543 U.S. 405 (2005). Therefore, a dog sniff is permitted during any traffic stop, so long as the sniff does not extend the stop. (Again, whether a traffic stop may be prolonged for a dog sniff is discussed below.)

² *Berkemer v. McCarty*, 468 U.S. 420 (1984) ("[T]he usual traffic stop is more analogous to a so-called 'Terry stop' than to a formal arrest."); *State v. Styles*, 362 N.C. 412 (2008) ("Traffic stops have 'been historically reviewed under the investigatory detention framework first articulated in *Terry*.'").

G. Asking for Consent to Search. Requests to search made during a traffic stop probably should be analyzed just like any other inquiry about matters unrelated to the purpose of the stop: because such a request is not, in itself, a seizure, most courts find such requests to be permissible if they do not significantly extend the duration of the stop. 4 LAFAVE, SEARCH AND SEIZURE 391. See also *United States v. Turvin*, 517 F.3d 1097 (9th Cir. 2008) (because “officers do not need reasonable suspicion to ask questions unrelated to the purpose of an initially lawful stop,” a request for consent to search that did not substantially prolong a traffic stop was permissible). However, at least one North Carolina Court of Appeals case has stated that “[i]f the officer’s request for consent to search is unrelated to the initial purpose for the stop, then the request must be supported by reasonable articulable suspicion of additional criminal activity.” *State v. Parker*, 183 N.C. App. 1 (2007). The court’s reasoning appears to have been that such a request inherently involves at least a minimal extension of the stop and is therefore unreasonable.³ But cf. *State v. Jacobs*, 162 N.C. App. 251 (2004) (“Defendant argues alternatively that the State failed to establish that Officer Smith had sufficient reasonable suspicion to request defendant’s consent for the search [during an investigative stop]. No such showing is required.”).

H. Prolonging the Stop for Questions about Unrelated Matters, Use of Drug-Sniffing Dogs, or Asking for Consent to Search. Whether an officer may briefly extend a stop in order to engage in the investigative techniques described immediately above is controversial. (A lengthy extension of the stop would plainly be improper, unless the officer had developed reasonable suspicion regarding another criminal offense.) The case law in North Carolina is inconsistent, with brief delays in order to conduct dog sniffs permitted under *State v. Brimmer*, 187 N.C. App. 451 (2007) (delay of approximately four minutes to allow a dog sniff to take place was de minimis),⁴ but brief delays associated with requests for consent to search arguably prohibited by *Parker*, and brief delays for questions unrelated to the stop perhaps barred by *State v. Jackson*, __ N.C. App. __, 681 S.E.2d 492 (2009) (finding that an officer unreasonably extended a traffic stop when she asked just a handful of drug-related questions).

Most post-*Muehler* federal cases have allowed short delays for any of the investigative techniques under consideration. Compare *United States v. Harrison*, 606 F.3d 42 (2d Cir. 2010) (per curiam) (five to six minutes of questioning unrelated to the purpose of the traffic stop “did not prolong the stop so as to render it unconstitutional”), and *Turvin*, *supra*, (asking a “few questions” unrelated to the stop that prolonged the stop by a “few moments” was not unreasonable, and collecting cases), with *United States v. Peralez*, 526 F.3d 1115 (8th Cir.2008) (extending traffic stop by ten minutes to ask drug-related questions was unreasonable). See generally *United States v. Everett*, 601 F.3d 484 (6th Cir. 2010) (collecting cases and concluding that whether a delay is de minimis depends on all the circumstances, including whether the officer is diligently moving toward a conclusion of the stop, and the ratio of stop-related questions to non-stop-related questions).

³ This may not be so in some cases, as when one officer asks for consent to search while another is writing a citation. The issue of delays is addressed *infra* in this manuscript.

⁴ As to how long a delay is de minimis, consider *State v. Branch*, 194 N.C. App. 173 (2008) (ten-minute delay “beyond the time it took to check [the driver’s] license and registration was unlawful”), and *United States v. Blair*, 524 F.3d 740 (6th Cir. 2008) (unreasonable to extend traffic stop by thirteen minutes to allow drug dog to arrive and sniff).

- I. **Total Duration.** There is no bright-line rule regarding the length of traffic stops. As a rule of thumb, “routine” stops that exceed twenty minutes may deserve closer scrutiny. See ROBERT L. FARB, *ARREST, SEARCH, AND INVESTIGATION IN NORTH CAROLINA* 29 (3rd ed. 2003). Stops of various lengths have been upheld by the courts. See, e.g., *Castellon, supra* (twenty-five minutes); *United States v. Rivera*, 570 F.3d 1009 (8th Cir. 2009) (seventeen minutes); *United States v. Eckhart*, 569 F.3d 1263 (10th Cir. 2009) (twenty-seven minutes); *United States v. Muriel*, 418 F.3d 720 (7th Cir. 2005) (thirteen minutes).

V. Termination of the Stop.

- A. **When Termination Takes Place.** “Generally, an initial stop concludes . . . after an officer returns the detainee’s license and registration.” *Jackson, supra*. As the Fourth Circuit explains, when an officer returns a driver’s documents, it “indicate[s] that all business with [the driver is] completed and that he [is] free to leave.” *United States v. Lattimore*, 87 F.3d 647 (4th Cir. 1996). The United States Supreme Court has rejected the idea that drivers must be told that they are free to go before a stop terminates. *Ohio v. Robinette*, 519 U.S. 33 (1996) (adopting a totality of the circumstances approach). However, while returning the driver’s paperwork is a strong signal that a stop has terminated, it is not always dispositive. Some commentators have argued that many motorists will not, in fact, feel free to depart until they are expressly permitted to do so. LaFave, *Routine* at 1899-1902. And the North Carolina Court of Appeals has held, in at least one case, that under the totality of the circumstances, the occupants of a vehicle remained seized even after the return of the driver’s paperwork, in part because the officer “never told [the driver] he was free to leave.” *State v. Myles*, 188 N.C. App. 42 (2008). See also *State v. Kincaid*, 147 N.C. App. 94 (2001) (suggesting that the return of a driver’s license and registration is a necessary, but not invariably a sufficient, condition for the termination of a stop).

Effect of Termination. Once a stop has ended, the driver and any other occupants of the vehicle may depart. Any further interaction between the officer and the occupants of the vehicle is, therefore, consensual. The officer may ask questions about any subject at all, at any length; may request consent to search; and so on. In other words, the “time and scope limitations” that apply to a traffic stop cease to be relevant. LaFave, “*Routine*”.