

Traffic Stop Scenario

Jeff Welty
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Officer Ollie Ogletree is on patrol one Saturday night at about 10:00 p.m. He's driving along a major commercial road in a lower-middle-class section of town when he sees a 2004 Chevrolet Malibu with three occupants turn without signaling, causing a following car to brake suddenly. Although an accident does not result, Officer Ogletree activates his blue lights and pulls the Malibu over for unsafe movement in violation of G.S. 20-154. The Malibu pulls over promptly. The driver is a male in his late 20s. The front-seat passenger is a female of the same age. The rear-seat passenger is a teenage female.

1. Officer Ogletree orders all of the occupants out of the vehicle. OK?

Yes. 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).

2. The occupants comply with Officer Ogletree's order to exit the vehicle. Although they are compliant, he is concerned for his safety. A fellow officer was shot the week before during a traffic stop, it is nighttime, and the vehicle has multiple occupants. Officer Ogletree decides to frisk the two adults. OK?

No, unless the subjects consent. A frisk does not follow automatically from a valid stop, or from an officer's subjective safety concerns. In order for a frisk to be justified, Officer Ogletree needs objectively reasonable suspicion that the subjects to be frisked are armed and dangerous. Terry v. Ohio, 392 U.S. 1 (1968). Officer Ogletree's concerns here are general in nature, and provide no reason to believe that the driver or the passenger is armed or dangerous. Note that if Officer Ogletree did have reason to believe that the passenger was armed and dangerous, he could frisk her even without suspecting her of criminal activity. Arizona v. Johnson, 555 U.S. 323 (2009).

3. Officer Ogletree asks for, and receives, the driver's license and registration. He engages the driver in chit-chat for a minute or two, asking where the driver is going, who the other occupants of the car are, and the like. Is it OK for the officer to engage in this general conversation?

Probably. In the past, there was no question about the propriety of this sort of interaction. After the Supreme Court's decision in Rodriguez v. United States, ___ U.S. ___, 135 S.Ct. 1609 (2015), ruling that an officer could not briefly extend a traffic stop to deploy a drug sniffing dog, courts are likely to scrutinize conversation that is not directly related to the purpose of the stop to determine whether it constitutes an unnecessary extension of the stop. Still, a bit of brief rapport-building and a few general travel-related inquiries are likely permissible. See United States v. Iturbe-Gonzalez, ___ F.Supp.3d ___, 2015 WL 1843046 (D. Mont. April 23, 2015) (ruling, after Rodriguez, that an officer may make "traffic safety-related inquiries of a general nature [including about the driver's] travel plans and travel objectives," and that

“any suggestion to the contrary would ask that officers issuing traffic violations temporarily become traffic ticket automatons while processing a traffic violation, as opposed to human beings”).

4. Something about the demeanor of the vehicle’s occupants gives Officer Ogletree a hunch that they are up to no good. He decides to ask the occupants a few more probing questions unrelated to the traffic stop itself, including whether there are any drugs in the car. He does this while he’s examining the driver’s license and registration, so it doesn’t prolong the stop. Is it OK for Officer Ogletree to ask about unrelated matters?

Yes. The United States Supreme Court held in Muehler v. Mena, 544 U.S. 93 (2005), that “mere police questioning does not constitute a seizure.” Therefore, the police may question someone who has been detained about matters unrelated to the justification for the detention, even without any individualized suspicion about the subject of the questions. Although Muehler did not involve a traffic stop, its reasoning applies in the traffic stop setting, as the United States Supreme Court recognized in Johnson, supra (“An officer’s inquiries into matters unrelated to the justification for the traffic stop . . . 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.”).

5. After he finishes looking at the license and registration, Officer Ogletree continues questioning the vehicle’s occupants about their possible involvement in the drug trade or other criminal activity. This prolongs the stop, but very briefly – for about two minutes. Is this permissible?

No. The United States Supreme Court recently decided Rodriguez v. United States, ___ U.S. ___, 135 S.Ct. 1609 (2015), ruling that an officer could not briefly extend a traffic stop to deploy a drug sniffing dog. The Court reasoned that a stop may not be extended beyond the time necessary to complete the “mission” of the stop, which is “to address the traffic violation that warranted the stop . . . and attend to related safety concerns.” That is, “[a]uthority for the seizure ends when tasks tied to the traffic infraction are – or reasonably should have been – completed.” The Court expressly rejected the idea that a brief delay of a few minutes was “de minimis” and did not rise to the level of a constitutional concern. The same reasoning clearly would apply to prolonging a stop to ask questions unrelated to the “mission” of the stop.

6. The occupants deny having any drugs and don’t say anything incriminating. Officer Ogletree returns to his vehicle to write a citation for the driver. This takes him an additional five minutes. Any problem with the total duration of the stop, which is about ten minutes so far?

No. Although there is no bright-line rule regarding the length of traffic stops, courts routinely allow stops longer than ten minutes. See generally Traffic Stops paper, under “Total Duration.”

7. As Officer Ogletree is writing the citation, Officer Duncan arrives on the scene. Officer Duncan is a K-9 officer. May Officer Duncan’s dog sniff the vehicle while Officer Ogletree completes the paperwork?

Yes. Having the dog sniff the car is not a search and so requires no quantum of suspicion. Illinois v. Caballes, 43 U.S. 405 (2005). Although Rodriguez, supra prevents prolonging the stop in order to allow the dog to arrive and sniff, in this case the stop is not extended because Officer Duncan is able to deploy the dog during the time that Officer Ogletree is diligently working on the citation.

8. What if Officer Duncan hadn't been on scene already? Could Officer Ogletree have extended the stop by a few minutes to wait for a K-9 unit to arrive and then for the dog to sniff the exterior of the vehicle?

No, under Rodriguez. Officer Ogletree could have completed the stop and asked for the driver to wait for a consent dog sniff, but he could not require the driver to remain.

9. Officer Duncan's dog doesn't alert. But Officer Ogletree is nothing if not thorough. As he is about to hand the citation to the driver, he asks if the driver would consent to a search of the vehicle. The driver consents. Officer Ogletree searches the car. Is this OK?

Probably not. Because Officer Ogletree has not yet handed the citation to the driver, the traffic stop is ongoing. Requests to search made during a traffic stop probably should be analyzed just like using a drug dog or asking questions about matters unrelated to the purpose of the stop: if seeking consent requires an extension of the stop, it is prohibited by Rodriguez. Here, although the delay is no longer than the few seconds required to ask for consent (the time it takes to complete the search is probably immaterial as any associated delay would be supported by the driver's consent), it is still a delay.

Note that if Officer Ogletree had already handed the citation to the driver, and had returned the driver's license and registration, a court would likely find that the traffic stop was over and that any further interactions between Officer Ogletree and the driver would be, legally, a consensual encounter. Jackson, supra ("Generally, an initial stop concludes and the encounter becomes consensual only after an officer returns the detainee's license and registration."). In that case, it would be entirely proper for Officer Ogletree to ask for consent to search the vehicle.