

## Fourth Amendment – Search and Seizure

10/12/07

### Analytical Framework

1. Did the officer seize the defendant?
2. Did the officer have grounds for the seizure?
3. Did the officer act within the scope of the seizure?
4. Did the officer have grounds to arrest or search?
5. Did the officer act within the scope of the arrest or search?

### Seizure

Florida v. Bostick, 501 U.S. 429 (1991) – “a seizure does not occur simply because a police officer approaches an individual as asks a few questions.” Seizure - when a reasonable person would not feel free to decline officer’s request or otherwise terminate encounter

California v. Hadari D., 499 U.S. 621 (1991) – applying actual physical force to suspect or submitting to officer’s “show of authority.” Not seized while running from police.

State v. Farmer, 333 N.C. 172 (1993) – seizure/consensual factors: number of officers present, display of weapon, physical touching of Defendant, use of language or tone of voice, citing Mendenhall.

### Stop/Seizure

State v. Adkerson, 90 N.C. App. 333 (1988) – within ¼ mile weaving within lane and drove off road 1X

State v. Hudson, 103 N.C. App. 708 (1991) – reasonable suspicion that illegible temporary tag had expired

State v. Watson, 122 N.C. App. 596 (1996) – driving on center line, weaving within lane for 15 seconds near nightclub at 2:30 AM

State v. Jacobs, 162 N.C. App. 251 (2004) – similar to Watson - 1:43 AM, continuously weaving in lane for ¾ mile and bars in the area.

State v. Schiffer, 132 N.C. App. 22 (1999) – reasonable suspicion to stop for windshield tint violation

State v. Foreman, 351 N.C. 627 (2000) –turning away from a checkpoint within its perimeters is sufficient for reasonable suspicion

State v. Bonds, 139 N.C. App. 627 (2000) – blank look, staring straight ahead, no eye contact with officer, window down and 28 degrees, and 10 mph below speed limit

State v. Barnhill, 166 N.C. App. 228 (2004) – Probable cause to stop for speeding, a readily observed traffic violation

Alabama v. White, 496 U.S. 325 (1990) – sufficient corroboration of anonymous tip to support reasonable suspicion to make stop

State v. Ivey, 360 N.C. 562 (2005) – As a general rule, “the decision to stop an automobile is reasonable where the police have probable cause to believe a traffic violation has occurred.” Citing Whren.

State v. Fox, 58 N.C. App. 692 (1982) – vehicle proceeding slowly on dead-end street of locked businesses, previously fraught with property crime, at 12:50 AM; avoided officer’s gaze, shabbily dressed in a “real nice” car.

N.C.G.S. § 15A-1113(b) – requires probable cause to detain for infraction for a reasonable period of time to issue and serve citation

State v. Aubin, 100 N.C. App. 628 (1990) – excessively slow (45 mph on I-95) and weaving in own lane

State v. Jones, 96 N.C. App. 389 (1989) – 20 mph below speed limit, weaving within lane, experienced trooper knew low speed could mean intoxicated driver

State v. Watkins, 337 N.C. 437 (1994) – dispatch stated suspicious vehicle behind business, veteran officer requested his assistance, officer saw vehicle driving with lights off in parking lot of business closed at 3:00 AM in rural area – corroborate anonymous tip

City of Indianapolis v. Edmond, 531 U.S. 32 (2000) – must have reasonable suspicion to stop for drugs – No drug checkpoints

State v. Hess, \_\_\_\_ N.C. App. \_\_\_\_ (2007) – stop reasonable when officer ran tag of vehicle and discovered the owner's license was revoked and even though officer could not determine the race or sex of the driver

State v. Barnard, \_\_\_\_ N.C. App. \_\_\_\_ (2007) – stop reasonable when 30 second delay at green light at 12:15 in a high crime area near bars

Florida v. J.L., 529 U.S. 266 (2000) – unreasonable stop when tip was that a young black male would be at a particular bus stop wearing a plaid shirt would be carrying a gun. Tip lacked significant indicia of reliability and provided no predictive information about Defendant's conduct. Case requires tip to be reliable in its assertion of illegality, not just in its tendency to ID person.

State v. Fleming, 106 N.C. App. 165 (1992) – stop unreasonable when Defendant standing in open area between two apartment buildings after midnight and Defendant walked away from officers

State v. Roberson, 163 N.C. App. 129 (2004) – stop unreasonable where there was an 8 to 10 second delay at intersection after green light

### **Scope of Seizure**

Terry v. Ohio, 392 U.S. 1 (1968) – reasonable suspicion to stop does not automatically include right to frisk

State v. Pearson, 348 N.C. 272 (1998) – consent to search car does not authorize a frisk of the person

State v. Sanchez, 147 N.C. App. 619 (2001) – multiple occupants of vehicle were briefly handcuffed while officers frisked for weapons then the handcuffs were removed – handcuffing does not exceed scope of stop and into arrest

Pennsylvania v. Mimms, 434 U.S. 106 (1977) – may order driver out of vehicle if stop is valid

Maryland v. Wilson, 519 U.S. 408 (1997) – if valid stop, then can order passengers out of car

Michigan v. Long, 463 U.S. 1032 (1983) – may do “vehicle frisk” for weapons if reasonably believe that suspect is dangerous and may gain control of weapon

Florida v. Royer, 460 U.S. 491 (1983) – stop may last no longer than necessary to effectuate the purpose of stop

State v. Morocco, 99 N.C. App. 421 (1990) – once detention has ended and person free to leave, then officer may request consent search – ticket written and property returned

### **Grounds to Arrest/Search**

State v. Pittman, 111 N.C. App. 808 (1993) – initial encounter was consensual and subsequent stop of car was supported by reasonable suspicion, but officers did not have probable cause to search person

Schneckloth v. Bustamonte, 412 U.S. 218 (1973) – voluntariness of consent determined from totality of circumstances; State has burden of proving consent.

State v. Pearson, 348 N.C. 272 (1998) – consent to search car does not authorize frisk of person

### **Scope of Arrest/Search**

U.S. v. Robinson, 414 U.S. 218 (1973) – person may be searched incident to lawful arrest

State v. Logner, 148 N.C. App. 135 (2001) – if lawful arrest occupant of automobile, officer may contemporaneously search passenger compartment – entire interior of vehicle, including the glove compartment, the console, or any other compartment, whether locked or unlocked, and all containers found within the interior

State v. Thomas, 81 N.C. App. 2000 (1986) – if search incident to lawful arrest, officer may search arrestee's person and area within arrestee's immediate control [where he could gain possession of weapon or destroy evidence

Knowles v. Iowa, 525 U.S. 113 (1998) – cannot search incident to issuing a citation