Stopping a Vehicle

Jeff Welty
November 2010

General Principles

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).

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). 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).

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).

Common Issues

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]" DWI, 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.).

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 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").

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 staute; "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).

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). But the stop in Brown took place at noon. What about presence in a high-crime area at an unusually late hour? That's still not enough. 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).

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). 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").

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.