

Fourth Amendment Issues in DWI Cases

Shea R. Denning
School of Government
June 18, 2014

Motor Vehicle Checkpoints



Delaware v. Prouse, 440 U.S. 648 (1979)



**Michigan v. Sitz,
496 U.S. 444 (1990)**



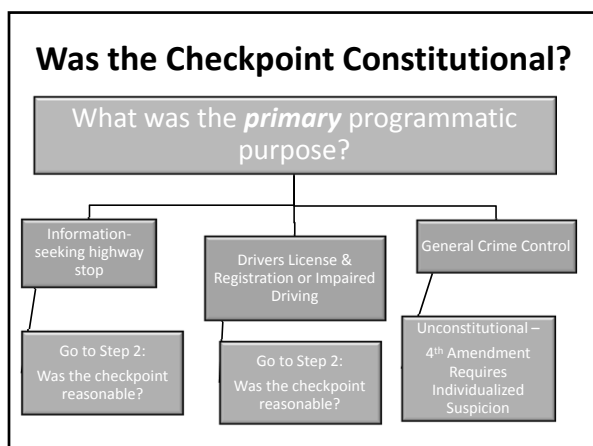
**City of Indianapolis v. Edmond,
531 U.S. 32 (2000)**



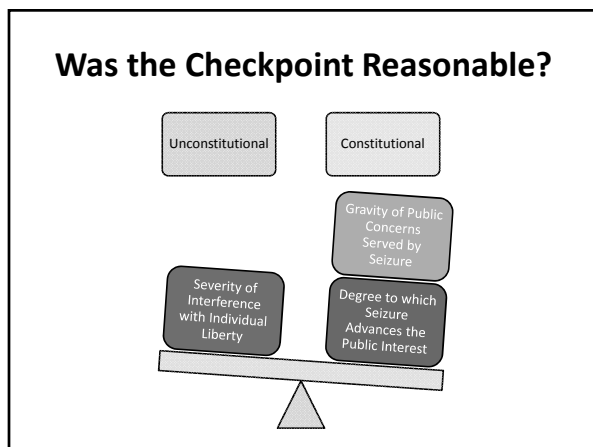
**Illinois v. Lidster,
540 U.S. 419 (2004)**



Was the Checkpoint Constitutional?



Was the Checkpoint Reasonable?



Was the Checkpoint Reasonable?

1. Gravity of Public Concerns

- License and registration checkpoints advance an important purpose
- States have vital interest in ensuring compliance with motor vehicle laws that promote public safety on roads

2. Degree to which Seizure Advances Interest

- Did the police tailor checkpoint to serve primary purpose?
- Did police spontaneously decide to set up checkpoint?
- Did police offer a reason why a particular road was chosen?
- Did checkpoint have a set starting or ending time?
- Did police offer a reason why the time span was selected?

Was the Checkpoint Reasonable?

3. Severity of Interference with Individual Liberty

- What was the checkpoint's potential interference with legitimate traffic?
- Did police put drivers on notice of an approaching checkpoint?
- Was the location selected by a supervising official rather than by field officers?
- Did the police stop every vehicle or stop vehicles pursuant to a pattern?
- Could drivers see visible signs of officer's authority?
- Did police operate the checkpoint pursuant to oral or written guidelines?
- Were the officers supervised?
- Did a supervising officer authorize the checkpoint?

Did Checkpoint Satisfy G.S. 20-16.3A?

- Designate pattern for stopping vehicles and requesting information
- Operate under written policy that provides guidelines for the pattern
- Advise public of checking station; at least one LEO vehicle must have lights on
- Placement of checkpoints must be random or statistically indicated (not a basis for suppression)

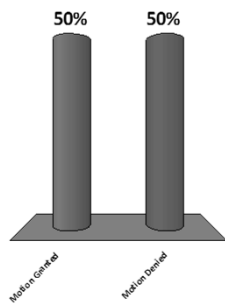
Did Checkpoint Satisfy G.S. 20-16.3A?

- Designate pattern for stopping vehicles and requesting information
- Operate under written policy that provides guidelines for the pattern
- Advise public of checking station; at least one LEO vehicle must have lights on
- Placement of checkpoints must be random or statistically indicated (not a basis for suppression)

Case Problems

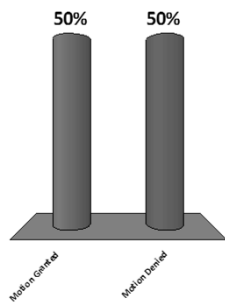
Case 1: How do you rule on the motion to suppress?

- A. Motion Granted
- B. Motion Denied



Case 2: How do you rule on the motion to suppress?

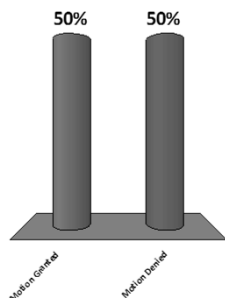
- A. Motion Granted
- B. Motion Denied



Case 3: How do you rule on the motion to suppress?

A. Motion Granted

B. Motion Denied



Warrantless Searches

- 4th Amendment generally requires that search be based on probable cause and carried out pursuant to warrant
- Exceptions to PC and/or warrant requirement
 - Search incident to arrest (both)
 - Consent (both)
 - Special governmental needs (both)
 - Exigent circumstances (warrant exception)

Compelled Blood Draws in DWI cases

- *Schmerber v. California*, 384 U.S. 757 (1966)
 - Warrantless blood draw permissible
 - Officer might reasonably believed this was emergency and that delay threatened destruction of evidence given dissipation of alcohol
- Post-*Schmerber*, courts split on whether dissipation of alcohol alone provided exigency
 - *State v. Fletcher*: 202 N.C. App. 107 (2010)
 - Dissipation plus evidence regarding delay established exigency

Compelled Blood Draws in DWI Cases

- Missouri v. McNeely, 133 S.Ct. 1552 (2013)
 - Dissipation of alcohol not a per se exigency
 - If officer can obtain warrant without “significantly undermining” search, must do so
 - Whether nonconsensual warrantless blood draw is reasonable must be determined case by case on totality of circumstances
 - May have exigency w/o accident
 - Warrant procedures relevant
 - Availability of magistrate relevant

Compelled Blood Draws in DWI Cases

- State v. Dahlquist (N.C. App. 2013)
- Four to five hour delay created exigency
- Dicta.
 - G.S. 15A-245 allows search warrant to be issued based on audiovisual transmission of oral testimony under oath
 - Better practice is to verify waiting times

How much force?

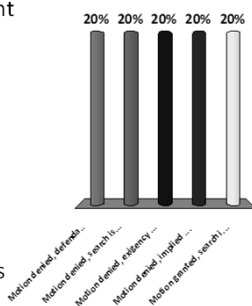
- Forced extraction must be performed in reasonable manner. *Schmerber*, 384 U.S. 757 (1966) (determining that withdrawal by physician in hospital according to accepted medical practices was reasonable)
- Do-Rite sticks? *People v. Hanna*, 567 N.W.2d 12 (Mich. App. 1997) (reasonable)
- Multiple officers holding down arms and legs? *Laskey v. Legates*, 519 F.Supp.2d 449 (D. Del. 2007) (reasonable)
- Use of several people and mechanical constraints? *State v. Ravatto*, 777 A.2d 301 (N.J. 2001) (unreasonable)

Implied Consent Testing

- What's the theory?
- Breath, blood and urine testing is a search.
- "[Y]ou can refuse any test, but your drivers license will be revoked for one year"
- Why is no warrant required?

How do you rule on the motion to suppress?

- Motion denied, defendant consented to search
- Motion denied, search is reasonable
- Motion denied, exigency justified search
- Motion denied, implied consent is the same as consent under 4th amendment
- Motion granted, search is unlawful



Traffic Stops, Generally

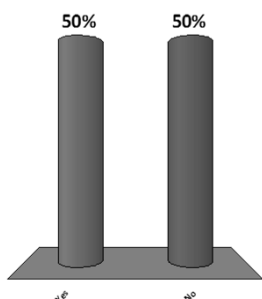
1. Reasonable suspicion is the standard for stops based on traffic violations. *State v. Styles*, 362 N.C. 412 (2008).

Case 4: Reasonable Suspicion

- Officer Taylor: *"The defendant made a wide right turn. Half of his car went over the double yellow line into the turning lane for traffic coming in the opposite direction."*
- Defendant was cited for driving left of center in violation of G.S. 20-146(a).
- Defendant also charged with DWI.
- Defendant moves to suppress evidence.

Case 4: Was stop supported by reasonable suspicion?

- A. Yes
B. No



Reasonable Suspicion

- Officer had reasonable suspicion to stop defendant based on observed traffic violations
"notwithstanding his mistaken belief that defendant had violated G.S. 20-146(a)." State v. Osterhoudt, ___ N.C. App. ___, 731 S.E.2d 454 (2012)
- The question is whether objective criteria establish an objectively reasonable basis for stop.
- Observations in *Osterhoudt* provided RS to stop defendant for violating G.S. 20-146(d) and G.S. 20-153.

Traffic Stops, Generally

1. Reasonable suspicion is the standard for stops based on traffic violations. State v. Styles, 362 N.C. 412 (2008).
2. Officer's subjective intent is not relevant. Whren v. United States, 517 U.S. 806 (1996).

Reasonable Suspicion

- Police action related to probable cause should be judged in objective terms, not subjective terms. Provided objective circumstances justify the action taken, any "ulterior motive" of the officer is immaterial.

State v. McClendon, 350 N.C. 630, 635, 517 S.E.2d 128, 131 (1999)

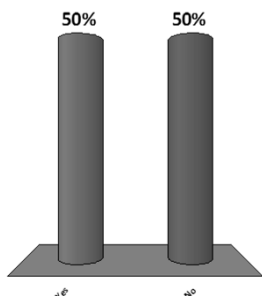
Case 5: Reasonable Suspicion

- A sheriff's deputy who is part of a drug interdiction task force is patrolling I-95. The deputy sees a transfer truck with a high Department of Transportation identification number. He is suspicious of drug activity. He follows the vehicle for two miles. He observes the tractor trailer cross the dividing line between two northbound lanes and weave back over the fog line two times.

Case 5: Is the stop supported by reasonable suspicion?

A. Yes

B. No



Traffic Stops, Generally

1. Reasonable suspicion is the standard for stops based on traffic violations. State v. Styles, 362 N.C. 412 (2008).
2. Officer's subjective intent is not relevant. Whren v. United States, 517 U.S. 806 (1996).
3. Issuance of citation is not relevant to the validity of stop. State v. Parker, 183 N.C. App. 1 (2007).

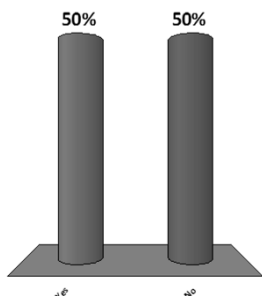
Case 6: Reasonable Suspicion

- Officer Jones activates his blue lights after observing a driver traveling 50 m.p.h. in a 55 m.p.h. zone. (Jones is mistaken about the speed limit.) The driver initially ignores the blue lights, continues driving, and weaves severely before stopping.

Case 6: Is the stop supported by reasonable suspicion?

A. Yes

B. No



Traffic Stops, Generally

1. Reasonable suspicion is the standard for stops based on traffic violations. State v. Styles, 362 N.C. 412 (2008).
2. Officer's subjective intent is not relevant. Whren v. United States, 517 U.S. 806 (1996).
3. Issuance of citation is not relevant to the validity of stop. State v. Parker, 183 N.C. App. 1 (2007).
4. A show of authority is not a seizure until the suspect complies. California v. Hodari D., 499 U.S. 621 (1991).

What about mistakes?

- An officer's **objectively reasonable but mistaken** belief that a traffic violation has occurred can provide reasonable suspicion for a stop. State v. Heien, 366 N.C. 271 (2012), cert. granted, Heien v. North Carolina, 134 S. Ct. 1872 (2014).
