# Vehicle in Motion: Traffic Stops and other Investigative Detentions

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# Introduction

Most DWI cases involve a situation where your client is operating a vehicle and is pulled over by law enforcement for committing an obvious traffic violation, *e.g.*, speeding, failing to maintain their lane, failing to stop for a stop sign, or any other obvious motor vehicle violation. In these cases, you may simply move on and review the remaining issues of your client's DWI investigation and arrest. The purpose of this section is to review situations where you may creatively attack the initial or continuing investigative detention of your client.

As a roadmap, we will discuss the following issues:

1. The legal standard for making a traffic stop or otherwise effectuating an investigative detention.

2. Whether the North Carolina Rules of Evidence apply during your suppression hearing.

3. Investigative detentions ***with*** Reasonable Suspicion:

    a. Scope and length of time allowed for investigative stop; and

    b. Officer's mistake of fact or law.

4. Investigative detentions ***without*** Reasonable Suspicion:

    a. Checkpoints; and

    b. Community Caretaking Doctrine.

5. Fact specific issues:

    a. Weaving;

    b. Lack of turn signal;

    c. Sitting at a stop light;

    d. Driving slower than the speed limit;

    e. Late hour or high-crime area;

    f. Tips; and

    g. Driving too fast for conditions.

# Legal Standard for Traffic Stops

Reasonable suspicion that criminal activity is afoot, as opposed to probable cause that a crime has been committed, is the necessary standard for investigatory vehicle stops. State v. Styles, 362 N.C. 412 (2008).

While reasonable suspicion is a less demanding standard than probable cause, the requisite degree of suspicion must be high enough to assure that an individual's reasonable expectation of privacy is not subject to arbitrary invasions solely at the unfettered discretion of officers in the field. State v. Fields, 195 N.C. App. 740 (2009).

The stop must be based on specific and articulable facts, as well as the rational inferences from those facts, as viewed through the eyes of a reasonable, cautious officer, guided by his experience and training. Id. This "cautious officer" must have more than an unparticularized suspicion or hunch. Id.

Remember: Reasonable suspicion requires facts that reasonably indicate to an officer that a crime is or has occurred. Case law provides examples of the difference between there being **actual reasonable suspicion of criminal activity versus just a hunch that something seems weird, off, or unusual**.

## When Reasonable Suspicion Must Exist

**Reasonable suspicion criminal activity is afoot must exist at the time a seizure occurs**. A seizure does not necessarily occur once a law enforcement officer's blue lights are activated. For example, even if an officer did not have reasonable suspicion that defendant was involved in criminal activity before turning on his blue lights, defendant's subsequent actions of erratic driving and running two stop signs gave the officer reasonable suspicion of traffic violations at the time of the seizure. State v. Atwater, 220 N.C. App. 159 (2012) (unpublished). **A seizure occurs at the moment there has been a show of authority** (e.g., blue lights) **coupled with either compliance by the citizen to the officer's show of authority** (e.g., the defendant actually pulling the vehicle over) **or use of force by the officer**. California v. Hodari D., 499 U.S. 621 (1991).

# Whether the Rules of Evidence Apply to your Suppression Hearing

If you've filed and litigated a Motion to Suppress, you've heard the State argue the Rules of Evidence do not apply during suppression hearings. In other contexts, I've seen prosecutors take the argument an additional step, positing to the judge that the Rules of Evidence do not apply to any matter that is "pre-trial." During a suppression hearing, this issue crops up in a variety of contexts, such as:

1. In the context of where one officer originated the motor vehicle stop, but a second officer ended up investigating and charging your client with impaired driving, the prosecution attempts to use the second/charging officer to testify why a first/non-testifying former officer pulled your client over (such as where the former officer was fired for job related misconduct);

2. Where the charging officer did not observe any illegal or suspicious driving behavior, but pulled your client over based upon a dispatch of reported reckless driving by a known or unknown citizen informant, the prosecution attempts to use the spoken word within the 911 recording without the actual 911 caller testifying or otherwise without offering proper foundation through a hearsay exception;

3. The prosecution attempts to elicit testimony from the charging or field officer regarding why a non-testifying supervisor decided to implement a checkpoint, the stated purpose(s) for the checkpoint, and the reasons why the date/time/location were selected by the non-testifying supervisor; and

4. The results of your client's Horizontal Gaze Nystagmus testing without proper foundation coupled with an explicit or implicit finding that the officer is an expert in same.

**The Rules of Evidence apply during your suppression hearing** and you should be prepared to argue the same. It is understandable, however, why the prosecution routinely argues the Rules of Evidence are not applicable during suppression hearings and why judges are sometimes slow to rule in your favor on this issue. The reason? In every School of Government secondary source I've been privy to, as well as daily criminal blogposts that sometimes discuss this hot topic issue, you will find the following instruction from the School of Government: The Rules of Evidence do not apply during suppression hearings.[i] Why am I so emphatic the Rules of Evidence dictate a different conclusion? Review the argument below which was prepared by my father, James A. Davis, who is a Board Certified Specialist in both Federal and State Criminal Law.

The question presented is whether the rules of evidence apply during suppression hearings. One school of thought is the rules of evidence do not apply to suppression hearings, asserting N.C. R. Evid. 104(a) states that in determining preliminary questions of admissibility—a central issue in suppression hearings—the court is not bound by the rules of evidence except as to privilege. Thus, an officer does not have to be formally tendered as an expert under Rule 702 before testifying about HGN. This result should give us pause. Why would we allow a process which delays application of the rules to a proffered expert until a trial because of a failure to enforce foundational rules at a suppression hearing?

Case law does not address the issue specifically, but, on balance, bolsters the position that the rules apply. Expert evidence is common in suppression hearings, particularly DWI and high level felony cases. Reliability is the touchstone of expert evidence. Therefore, while HGN is deemed a scientifically reliable test for impaired driving investigations targeted at alcohol consumption, the law on expert evidence *requires* the witness qualify as an expert before testifying. State v. Godwin, 369 N.C. 605 (2017) (holding a witness must be qualified as an expert—although the court may do so implicitly—before testifying to HGN results at trial); see also State v. Younts, ___ N.C. App. ___, 803 S.E.2d. 641 (2017) (holding HGN is a scientifically reliable test). For probable cause to arrest, the law *requires*—as a balancing test—an officer to rely upon "reasonably trustworthy information" supporting a reasonable belief the suspect committed an offense. Beck v. Ohio, 379 U.S. 89, 91 (1964). Cases are replete recognizing the disparate experience and training of officers. Thus, as a whole, it appears a judge may find the officer has sufficient experience and training in HGN to testify, or the judge may require the State to offer additional evidence of the officer's command of the facts, understanding of reliable principles and methods, and application of the principles and methods in a reliable manner to the facts of the case. N.C. R. Evid. 702.

The rules of evidence are silent on their application to motions to suppress, but together support the position they apply. **First**, as a threshold, Rule 101 states the rules *apply* in court proceedings unless excepted in Rule 1101. Rule 1101(b)(1) creates a *limited exception* for "the determination of questions of *fact* preliminary to admissibility of evidence" under Rule 104(a). Rule 104(a) primarily focuses upon situations where evidence requires a prerequisite showing for admission, known as "laying a foundation." BLAKEY,

LOVEN & WEISSENBERGER, NORTH CAROLINA EVIDENCE 2018 COURTROOM MANUAL 40 (Matthew Bender 2018). The troubling—and impractical—aspect of Rule 104(a) is the broad, sweeping language stating the court is authorized to determine "preliminary questions concerning . . . admissibility of evidence" and "is not bound by the rules of evidence" except as to privileges. However, the scope of Rule 104(a) cannot be greater than its incorporating rule. Hence, asserting Rule 104(a) grants unlimited authority to admit evidence fails to consider *the very rule has self-limiting language to "questions of fact"* under Rule 1101(b)(1). **Second**, to assert the rules do not apply to preliminary questions on admissibility of evidence fails to recognize the *distinct nature and purpose of suppression hearings* as opposed to other evidentiary hearings. In other threshold determinations, such as motions *in limine* and to *voir dire*, the court applies the evidence code to the issues raised (e.g., personal knowledge, competency, foundation, qualification, privilege, unavailability, hearsay, authentication, etc.). **Third**, suppression hearings decide questions of *law* applied to facts found by the court. *See, e.g.*, N.C. Gen Stat. § 15A-971, *et seq*. In sum, although the rules are silent as to their applicability in suppression hearings, statutory construction—and common sense—suggest the limited exception does not apply and the rules therefore govern.

Analytically, while a judge may consider extrinsic evidence when determining preliminary questions of fact to provide context, suppression hearings are about specific issues of *law*. N.C. Gen. Stat. § 20-38.6 addresses motions to suppress for, *inter alia*, delays in processing, limitations on the defendant's access to witnesses, and challenges to chemical analysis results. In essence, these motions test procedural due process issues. In N.C. Gen. Stat. § 15A, motions to suppress address constitutional violations and substantial violations of the Criminal Procedure Act. As an example, motions to suppress consider the importance of the particular interest violated, the extent of deviation from lawful conduct, the extent the violation was willful, the extent to which privacy was invaded, the extent to which exclusion will tend to prevent subsequent violations, whether the thing seized would have inevitably be discovered, and the extent to which the violation prejudiced the defendant's ability to defend himself, and legal considerations overlaying the facts. See Official Commentary to N.C. Gen. Stat. § 15A-974. Overarchingly, suppression hearings address constitutional and statutory concepts rather than evidence code issues.

Sound public policy drives sounds principles of law. The policy framing the rules of evidence is to "secure fairness in administration" so that "the truth may be ascertained and proceedings justly determined." N.C. R. Evid. 102(a). A jurist may elect to hear factual evidence otherwise inadmissible to provide context; however, the same jurist would likely apply the template of the rules to insure reliability when determining complex legal issues involving a defendant's liberty interest. *A fortiori*, judicial economy is promoted by early application of the rules rather than later application at trial. N.C. R. Evid. 102(a) (stating the rules shall be construed to eliminate unjustifiable delay). The foregoing case law focuses on reliability of evidence at various stages of judicial hearings. The very nature of a motion to suppress *requires* the court to find the *reliable* evidence and determine questions of *law*.

Construing the rules, no express exception to their application exists for motions to suppress. As a unitary concept, *expressio unius est exclusio alterius*: the express mention of one thing excludes all others. Moreover, the rule of lenity and case law support strict construction of the law in a criminal context. *See, e.g.*, *State v. Reaves*, 142 N.C. App. 629 (2001) (holding criminal statutes are strictly construed). The better interpretation of the rules suggests they should apply. The rules of evidence are designed to address relevance, reliability, and the right result, the very essence of a suppression hearing and criminal proceedings.

Thus, why wouldn't the rules apply to—and guide—a suppression hearing to find *reliable* evidence and determine questions of *law*? I posit sound public policy, judicial economy, reliability considerations, a superior interpretation of the rules, and the recognition that suppression hearings ultimately address issues of constitutional and statutory law compel the conclusion that the rules of evidence should apply. One author appears to agree with me. *See* BLAKEY, LOVEN & WEISSENBERGER, NORTH CAROLINA EVIDENCE 2018 COURTROOM MANUAL 40 (Matthew Bender 2018).

# Investigative Detentions *With* Reasonable Suspicion

1. **Scope and length of time allowed for an investigative detention.**
    a. The law no longer permits *de minimis* extensions absent lawful justification. Rodriguez v. U.S., 135 S.Ct. 1609 (2015). However, some scholars may posit recent cases are an attempt to erode the bright line rule of Rodriguez. See also State v. Reed, 805 S.E.2d 670 (N.C. Sup. Ct. November 3, 2017), *stay entered on June 7, 2018*, (holding the trial court erred in denying Defendant's motion to suppress in that he remained unlawfully seized in the patrol car after the trooper returned his paperwork, issued a warning ticket, and told him to "sit tight"; that the continued detention was neither consensual nor supported by reasonable suspicion in that Defendant's nervous appearance, a dog, dog food, and debris in the car were "legal activity consistent with lawful travel"). But see State v. McNeil, 2018 N.C. App. LEXIS 1147 (2018) (holding, after officers determined the registered owner of a passing car was a male with a suspended license, continued detention of the female driver was lawful when she did not initially roll down her window, fumbled with her wallet, opened her window about two inches after the officer asked her to roll it down, failed to produce a license upon request, the officer smelled an odor of alcohol emanating from the vehicle, and she was slurring her words slightly; that the appearance of a female did not rule out the possibility that the driver was a male, and every traffic stop may include certain routine inquiries such as checking a driver's license, determining whether there are outstanding warrants against the driver, and reviewing registration and insurance); State v. Bullock, 805 S.E.2d 671 (N.C. Sup. Ct. November 3, 2017) (holding, although the officer ordered the driver out of his vehicle and into the patrol car, frisked him, and then ran record checks, the officer developed reasonable suspicion via Defendant's nervous behavior, contradictory and illogical statements, possession of large amounts of cash and multiple cell phones, and his driving of a rental car registered to another person – all before the database checks were complete – to permit lawful detention for dog sniff).
    b. How can this come up in a DWI case? Consider the following fact pattern which I recently litigated:
        i. Traffic stop initiated on a vehicle speeding 15 mph over the speed limit. There are no other issues with the vehicle's operation and Defendant pulls the vehicle over appropriately and in a timely fashion;
        ii. Defendant, without issue, provides the officer with his license and registration. His speech is not slurred, eyes are not red nor glassy, and no odor of alcohol or any other substance is observed. Testimony is that, at that point, there are no observations leading the officer to believe Defendant is anything other than sober;
        iii. The officer confirms there are no outstanding warrants against Defendant and that registration and insurance information are up to date. Officer writes a speeding citation;

iv. Officer comes back to the vehicle and hands Defendant his license and registration, explains the speeding citation including the first court date, and hands Defendant the citation. Defendant's speech is still not slurred, eyes are not red nor glassy, and there are no observations leading the officer to believe Defendant is anything other than sober;

v. At the moment the officer completes the speeding stop, he, for the first time, smells a slight odor of alcohol coming from the Defendant who is over the age of 21 and is lawfully allowed to have alcohol in his system so long as he is not appreciably impaired nor at or above an alcohol concentration of .08.

vi. Under the law existing before *Rodriguez*, the officer would have been permitted to have Defendant exit the vehicle and to briefly investigate the possibility of impaired driving as a *de minimis* extension of the stop. Now, to delay or otherwise extend an already completed stop, the officer must have reasonable suspicion of criminal activity. *Does the slight odor of alcohol, standing alone, constitute reasonable suspicion to investigate the possible offense of DWI?*

2. **Officer's mistake of fact or law.**

   a. Mistake of fact – State v. Baskins, 818 S.E.2d 381 (N.C. Ct. App. Aug. 7, 2018) *temp. stay granted,* _____ N.C. _____, 817 S.E.2d 586 (Aug. 27, 2018).

      i. For these purposes, ignoring the other issues in the case, and focusing only on the mistake of fact, on October 6, 2014, an interdiction officer stopped a vehicle because he mistakenly believed the vehicle was being operated without a valid registration. The State presented a printout of the DMV request for the vehicle which was the "same information" that was available to the interdiction officer when he ran the plate on the vehicle. In pertinent part, the vehicle information indicated:

         PLT STATUS: EXPIRED
         ISSUE DT: 09262013 VALID THROUGH 10152014

      ii. While the registration was technically expired (just over one year had passed since its issuance), the DMV printout plainly indicated the plate was valid through October 15, 2014. Additionally, the interdiction officer testified (i) he was aware of the fifteen-day grace period within which the vehicle could be lawfully operated pursuant to N.C. Gen. Stat. § 20-66.1; (ii) that, before stopping the vehicle, he stopped reading the DMV printout when he read that the registration plate was expired and thus he did not learn it was still valid; (iii) that his oversight regarding the vehicle's lawful status was due to the fact that "We're not going to scroll down to check a date being valid or not valid"; and (iv) that, to the best of his knowledge, it was in fact lawful for Defendant's vehicle to be operated on the date of the stop.

iii. Case analysis: The ultimate touchstone of the Fourth Amendment is "reasonableness," and to be reasonable is not to be perfect. Of course, however, this does not permit law enforcement officials with unfettered liberty to be inaccurate. The Fourth Amendment tolerates only reasonable mistakes, and those mistakes – whether of fact or law – must be objectively reasonable. In Baskins, the DMV information upon which the interdiction officer relied at the time of the stop **explicitly provided the vehicle's registration was valid through October 15, 2014**. Moreover, the interdiction officer **intentionally neglected to read the very sentence in which the relevant expiration date appeared**. Those two facts rendered questionable the reasonableness of any resultant mistake that ensued. Other factors were important, including that the interdiction officer did not have to make a quick decision to stop the vehicle: it was obeying the speed limit, at 7:00 a.m., in an area with "not a lot of vehicles on the road," and with the active assistance of at least four additional officers. For a host of reasons, including that the vehicle stop was not based on a reasonable mistake of fact, the matter was reversed and remanded for entry of an order vacating Defendant's convictions. As indicated above, however, this opinion is under a temporary stay.

b. Mistake of Law
   i. Heien v. North Carolina, 135 S. Ct. 530 (2014)
      1. An officer was mistaken about the brake light statute in North Carolina. The officer stopped a vehicle because one of its two brake lights was out, believing this to be a violation of law, but the law only required a single working brake light. Cocaine was found in the vehicle pursuant to a consent search. A motion to suppress any and all evidence obtained pursuant to the vehicle stop followed.
      2. Issue: Can a mistake of law nonetheless give rise to the reasonable suspicion necessary to uphold the seizure under the Fourth Amendment?
      3. Yes, if the officer's legal error was *objectively reasonable*. The officer's subjective reasoning for his legal error is irrelevant. As the statute was extraordinarily confusing regarding whether one or all brake lights must be working, and in the absence of appellate decisions clarifying the question, it was objectively reasonable for the officer to think Heien's faulty right brake light was in violation of the law. Because the mistake of law was reasonable, there was reasonable suspicion justifying the stop.
   ii. State v. Eldridge, 790 S.E.2d 740 (N.C. Ct. App. Aug. 24, 2016)
      1. A deputy patrolling the highway viewed a vehicle, which was registered in Tennessee, driving without an exterior mirror on the driver's side of the vehicle. The deputy was aware that North

Carolina generally requires vehicles to be equipped with exterior mirrors on the driver's side and confirmed the same with his supervisor. Based on the apparent regulatory violation, the deputy conducted a traffic stop, which yielded, *inter alia*, 73 grams of crack cocaine.

2. Mistake of law: It shall be unlawful for any person to operate upon the highways of this State any vehicle manufactured, assembled, or first sold on or after January 1, 1966 ***and registered in this State*** unless such vehicle is equipped with at least one outside mirror mounted on the driver's side of the vehicle. N.C. Gen. Stat. § 20-126(b) (2015) (emphasis added).
3. Case analysis: Mistakes of law can give rise to the reasonable suspicion necessary to uphold a seizure under the Fourth Amendment. The Fourth Amendment, however, only tolerates *objectively reasonable* mistakes; the subjective understanding of the particular officer involved is not examined.
    a. Two major factors: (i) Is the statute ambiguous or unambiguous? (ii) Is there settled caselaw interpreting the statute at issue?
4. Because the statutory language at issue was clear and unambiguous – "registered in this State" is susceptible to only one meaning – a reasonable officer reading the statute would understand the requirement that a vehicle be equipped with a driver's side exterior mirror does not apply to vehicles that are registered in another state. Trial court's Order denying Defendant's motion to suppress was reversed and Defendant's guilty plea was vacated.

iii. State v. Coleman, 228 N.C. App. 76 (2013)

1. Ignoring the other issues in the case (the case also analyzes the sufficiency and reliability of a citizen tip), and focusing only on the officer's mistake of law, a citizen informant reported there was a cup of beer in a vehicle parked in the Kangaroo gas station parking lot. The license plate number of the vehicle was also provided. After receiving the call, an officer responded to the Kangaroo gas station and observed the vehicle. Once the vehicle pulled out into the road, the officer pulled the vehicle over. The officer had not observed any traffic violations and pulled the vehicle over because he believed it was illegal to possess an open container in a PVA.
2. Mistake of law: While it is illegal to possess an open container of alcohol in the passenger area of a vehicle while the motor vehicle is on the highway or highway right-of-way, possessing an open container of alcohol in a gas station parking lot is not illegal. *See* N.C. Gen. Stat. § 20-138.7(a1).

3. Case analysis: The open container law is neither novel nor complex. It clearly and unambiguously prohibits the possession of an open container in a motor vehicle only on highways and highway right-of-ways. Furthermore, while the open container statute formerly prohibited driving in a PVA with an open container of alcohol, it was changed over ten years earlier.
4. Officer's mistaken understanding of the open container law was unreasonable, and his mistaken belief Defendant was violating the open container law was unreasonable. Trial court's denial of Defendant's motion to suppress was reversed and Defendant was granted a new trial.[ii]

# Investigative Detentions *Without* Reasonable Suspicion

## General Checkpoint Considerations

1. **State must introduce a written checkpoint policy in effect at the time of checkpoint**. If the policy is not introduced to the Court, any and all evidence acquired as a result of defendant's seizure at the checkpoint must be suppressed.[iii]
2. The **State carries the burden of proof** regarding the constitutionality of the checkpoint. Remember – checkpoints are suspicionless seizures!
3. **Checkpoint avoidance: Was your client stopped "under the totality of the circumstances" or as "part of the checkpoint plan?"** Under the totality of the circumstances, an officer may pursue and stop a vehicle which has turned away from a checkpoint for reasonable inquiry to determine why the vehicle turned away. North Carolina's interest in combating intoxicated drivers outweighs the minimal intrusion that an investigatory stop may impose upon a motorist under these circumstances.[iv] This seizure need not take into account the constitutionality of the checkpoint, as it is based on reasonable suspicion criminal activity is afoot under the totality of the circumstances. **That said, with slick lawyering, you can still challenge the checkpoint's constitutionality**. If the law enforcement officer testifies it is part of the "checkpoint plan" to stop persons avoiding the checkpoint; and that the officer "acted pursuant to the checkpoint plan" in stopping your client, the checkpoint avoider, your client has standing to challenge the constitutionality of the plan by which she was "snared."[v]
    a. Tip: Look for circumstances where, as a part of the checkpoint, there is a dedicated officer at its outer limits who is specifically looking for checkpoint avoiders.
4. As a practical matter, **I do not consult with the ADA or arresting officer about the specifics of the checkpoint prior do the hearing**. It is difficult for the State to prove your client was stopped by a constitutionally valid checkpoint and I have learned my questions, pre-hearing, only work to prepare the ADA and/or arresting officer for the hearing.

## Constitutional Checkpoint Considerations

1. **First**, the Court must consider the **primary programmatic purpose** of the checkpoint.
    a. Four proper purposes:[vi]
        i. License and registration checkpoints;
        ii. DWI checkpoints;
        iii. Checkpoints designed to intercept illegal aliens; and
        iv. Attempts to uncover information about a recent and known crime, as opposed to unknown crimes of the general sort.

b. A trial court may not simply accept the State's invocation of a proper purpose, but instead must carry out a close review of the scheme at issue.[vii] The Court must consider all the available evidence in order to determine the relevant primary purpose.
c. **The primary purpose inquiry is to be conducted only at the programmatic level and is not an invitation to probe the minds of individual officers acting at the scene**.[viii] This requires testimony and a finding as to the programmatic purpose at the supervisory level – as opposed to the field officers' purpose – for any checkpoint at issue.[ix] In practice, the State routinely elicits testimony from the officers who conducted the checkpoint and their stated purpose; not their supervisors. Seize this opportunity.
    i. "We hold the state must present some admissible evidence, testimonial or written, of the supervisor's purpose, *i.e.*, purpose at the "programmatic level," in the words of Edmond."[x]
d. As a primary purpose, general crime control is not allowed. Closely examine the true purpose regarding why the checkpoint was requested/approved (a known problem with impaired driving in that area during that time period?); the officers that are participating in the checkpoint (narcotics officers checking for vehicle registrations? Drug dogs walking around stopped vehicles?); etc.
    i. "We decline to suspend the usual requirement of individualized suspicion where the police seek to employ a checkpoint primarily for the ordinary enterprise of investigating crimes."[xi] Individualized suspicion is normally required for a warrantless seizure to be valid, and courts will not approve of checkpoints whose primary purpose is to uncover general unknown crimes.
    ii. "Surely an illegal multi-purpose checkpoint cannot be made legal by the simple device of assigning 'the primary purpose' to one objective instead of the other, especially since that change is unlikely to be reflected in any significant change in the magnitude of the intrusion suffered by the checkpoint detainee."[xii]

2. **Second**, if a legitimate primary programmatic purpose is found, that does not mean the stop is automatically, or even presumptively, constitutional. It simply means **the court must judge its reasonableness**, hence, its constitutionality, on the basis of the individual circumstances.[xiii] To determine whether a seizure at a checkpoint is reasonable requires a balancing of the public's interest and the individual's privacy interest. Three-part inquiry:
    a. **The gravity of the public concerns by the seizure**, which analyzes the importance of the purpose of the checkpoint.
        i. The aforementioned proper purposes have all been held to be important.
    b. **The degree to which the seizure advances the public interest**, which analyzes *whether a checkpoint is appropriately tailored to the alleged public concern*. In my opinion, this is the most important factor, because law enforcement knows the buzzwords to use: "License checking station"; "DWI checking station." **These**

**factors allow you to examine if law enforcement targeted the specific area, during the specific time allotted, because they've had problems with the specific offenses they are trying to curtail.** "Without tailoring, it is possible that a roadblock purportedly established to check licenses would be located and conducted in a way as to facilitate the detection of crimes unrelated to licensing. Those risks can be minimized by a requirement that the location of roadblocks be determined by a supervisory official, *considering where license and registration checks would likely be effective*."[xiv] Factors:

i. Whether police spontaneously decided to set up the checkpoint on a whim;
ii. Whether police offered any particular reason why a stretch of road was chosen for the checkpoint;
iii. Whether the checkpoint had a predetermined starting or ending time; and
iv. Whether the police offered any reason why that particular time span was selected.

c. **The severity of the interference with individual liberty**, which closely analyzes officer discretion in conducting the checkpoint. Factors:

i. The checkpoint's potential interference with legitimate traffic;
ii. Whether police took steps to put drivers on notice of an approaching checkpoint;
iii. Whether the location of the checkpoint was selected by a supervising official, rather than officers in the field;
iv. Whether police stopped every vehicle that passed through the checkpoint, or stopped vehicles pursuant to a set pattern;
v. Whether drivers could see visible signs of the officers' authority;
vi. Whether police operated the checkpoint pursuant to any oral or written guidelines;
vii. Whether the officers were subject to any form of supervision; and
viii. Whether the officers received permission from their supervising officer to conduct the checkpoint.

# Checkpoint Case Cites

1. City of Indianapolis v. Edmond, 531 U.S. 32 (2000).
2. State v. Rose, 170 N.C. App. 284 (2005).
3. State v. Gabriel, 192 N.C. App. 517 (2008).
4. State v. Veazey, 191 N.C. App. 181 (2008) (also referred to as Veazey I).
5. State v. Veazey, 201 N.C. App. 398 (2009) (also referred to as Veazey II).
6. State v. White, 232 N.C. App. 296 (2014).
7. State v. McDonald, 239 N.C. App. 559 (2015).
8. State v. Ashworth, 790 S.E.2d 173 (N.C. Ct. App. August 2, 2016).

# Community Caretaking Doctrine

Like checkpoint seizures, a seizure pursuant to the Community Caretaking Doctrine involves a suspicionless seizure. The Community Caretaking Doctrine was first recognized as an exception to the warrant requirement for a search or seizure in North Carolina in State v. Smathers, 232 N.C. App. 120 (2014), and is based upon the overarching public policy that police officers should have the flexibility to seize a citizen in order to **help** or **protect the public** even in situations where suspicion of criminal activity is nonexistent. The first thing you want to bring to the court's attention is that **the Community Caretaking Doctrine is to be applied narrowly to prevent potential abuses**.

I am only going to outline Smathers because it involves both a motor vehicle seizure and a DWI. If you have a case involving the Community Caretaking Doctrine, you should also consult State v. Sawyers, 786 S.E.2d 753 (N.C. Ct. App. June 7, 2016) and State v. Huddy, 799 S.E.2d 650 (N.C. Ct. App. April 18, 2017).

1. State v. Smathers, 232 N.C. App. 120 (2014)
   a) Facts: After 10:00 p.m. on a highway road, a deputy observed a large animal run in front of a Corvette being operated by Defendant. The vehicle struck the animal, causing the vehicle to bounce and produce sparks as it scraped the road. The vehicle decreased its speed from around 45 mph to 35 mph, and since the deputy knew Corvettes have a fiberglass body, he initiated a traffic stop to ensure the driver and the vehicle were "okay." Nothing illegal or suspicious was observed regarding Defendant's operation of the vehicle. Defendant was arrested for DWI and her blood alcohol concentration was found to be a .18.
   b) In this decision, the Court of Appeals formally recognized the Community Caretaking Doctrine as an exception to the warrant requirement of the Fourth Amendment.
   c) The rule: For the Community Caretaking Doctrine to apply, the State has the burden of proving:
      i) A search or seizure within the meaning of the Fourth Amendment has occurred;
      ii) If so, that under the totality of the circumstances an objectively reasonable basis for a community caretaking function is shown;
         (1) Evaluate the facts objectively and do not consider the officer's subjective motivations;
      iii) If so, that the public need or interest outweighs the intrusion upon the privacy of the individual. Four factors under this element:
         (1) The degree of the public interest and the exigency of the situation;
         (2) The attendant circumstances surrounding the seizure, including time, location, the degree of overt authority and force displayed;
         (3) Whether an automobile is involved; and
         (4) The availability, feasibility and effectiveness of alternatives to the type of intrusion actually accomplished.

d) Analysis: The Court balanced the factors both in favor of the State and the defense.
   i) Factors in favor of the State:
      (1) The seizure occurred at nighttime in what was described by the deputy as a rural and dimly lit stretch of road. Since there was a lower probability that the defendant could have gotten help from someone if she needed it, compared to if she had a similar collision during the day time in a highly populated area, the public need or interest was furthered by the deputy's conduct.
      (2) The deputy observed the vehicle strike a large animal and saw sparks when the car bounced on the road. These are specific facts that led the deputy to believe help was needed, rather than a general sense that something was wrong.
      (3) Defendant was operating a vehicle rather than enjoying the privacy of her home. Of course, there is a lesser expectation of privacy in a motor vehicle which weighs in favor of the State's argument the seizure was reasonable.
      (4) Because the deputy observed the collision, he had a duty to ascertain the nature and extent of the damage to the vehicle as N.C. Gen. Stat. § 20-166.1(e) states that the "appropriate law enforcement agency ***must*** investigate a reportable accident." The applicable statute underscores the significance of the public interest involved.
   ii) Factors in favor of the Defense:
      (1) Trial court entered a finding that Defendant's vehicle was only affected by the collision with the animal at the point of impact. According to the deputy, at impact sparks came from the rear end where the car struck the roadway. However, the car continued on for almost two miles before it ultimately pulled over without noticing anything which indicated that Defendant was injured or otherwise unfit to drive, or that the vehicle itself could not be operated safely.
      (2) A traffic stop is a substantial intrusion on a citizen's liberty, which may create "substantial anxiety."
e) Holding: After weighing the facts, in addition to considering the deputy's statutory duty to investigate a reportable collision, the stop fits into the Community Caretaking Doctrine and was reasonable under the Fourth Amendment. The Court once again cautions this exception is to be applied narrowly to prevent potential abuses.

# Fact Specific Issues

1. Weaving[xv]

   a. **Prosecution friendly cases**.

      i. State v. Wainwright, 770 S.E.2d 99 (2015) (reasonable suspicion for impaired driving existed based upon the vehicle swerving right, crossing the white line marking the outside lane of travel, and almost hitting a curb; the late hour (2:37 a.m.); officer's concern vehicle might hit and strike a student given heavy pedestrian traffic; and the vehicle's proximity to numerous East Carolina University bars, nightclubs, and restaurants that serve alcohol).

      ii. State v. Kochuk, 366 N.C. 549 (2013) (reasonable suspicion for vehicle stop existed where the vehicle completely – albeit momentarily – crossed the dotted line once while in the middle lane; then made a lane change to the right lane and drove on the fog line twice; and it was 1:10 a.m.).

      iii. State v. Fields, 219 N.C. App. 385 (2012) (reasonable suspicion for vehicle stop existed where officer followed vehicle for three quarters of a mile and saw it weaving within its lane so frequently and erratically it prompted other drivers pulling over to the side of the road in reaction to Defendant's driving. Vehicle also drove on the center line at least once).

      iv. State v. Otto, 366 N.C. 134 (2012) (reasonable suspicion for vehicle stop existed where the vehicle was constantly and continually weaving for three-quarters of a mile at 11:00 p.m. on a Friday night from an area in which alcohol was possibly being served).

   b. **Defense friendly cases**.

      i. State v. Derbyshire, 745 S.E.2d 886 (2013) (weaving alone did not provide reasonable suspicion for the vehicle stop; that driving at 10:05 p.m. on a Wednesday is "utterly ordinary" and insufficient to render weaving suspicious; and that having "very bright" headlights also was not suspicious).

      ii. State v. Peele, 196 N.C. App. 668 (2009) (no reasonable suspicion to support vehicle stop where an officer received an anonymous tip that defendant was possibly driving while impaired; then the officer saw the defendant weave within his lane once).

      iii. State v. Fields, 195 N.C. App. 740 (2009) (reasonable suspicion did not support a vehicle stop where the driver weaved within his lane three times over a mile and a half but was not driving at an inappropriate speed, at an unusually late hour, or within close proximity to bars).

2. Lack of turn signal.

   a. **Prosecution friendly cases**.

      i. State v. Styles, 362 N.C. 412 (2008) (the defendant violated G.S. 20-154(a) where he changed lanes immediately in front of an officer without using a turn signal; changing lanes immediately in front of another vehicle may affect the operation of the trailing vehicle thus violating the statute).

      ii. State v. McRae, 203 N.C. App. 319 (2010) (reasonable suspicion existed where the defendant turned right into a gas station without using a turn signal in medium traffic and with the officer following a short distance behind the defendant's vehicle).

   b. **Defense friendly cases**.

      i. State v. Ivey, 360 N.C. 562 (2006) (a turn signal is not necessary when entering what amounts to a right-turn-only intersection; where a right turn was the only legal move the defendant 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).

      ii. State v. Watkins, 220 N.C. App. 384 (2012) (vehicle stop inappropriate where the defendant changed lanes without signaling while driving three to four car lengths in front of a police vehicle on a road with heavy traffic, but it was not clear that another vehicle was affected by the defendant's lane change).

3. Sitting at a stop light.

   a. **Prosecution friendly cases**.

      i. State v. Barnard, 362 N.C. 244 (2008) (reasonable suspicion supported a vehicle stop where the vehicle remained stopped at a green light for approximately thirty seconds).

   b. **Defense friendly cases**.

      i. State v. Roberson, 163 N.C. App. 129 (2004) (no reasonable suspicion supported a vehicle stop where the vehicle sat at a green light at 4:30 a.m., near several bars, for 8 to 10 seconds).

4. Driving slower than the speed limit

   a. **Prosecution friendly cases**.

      i. State v. Bonds, 139 N.C. App. 627 (2000) (defendant's blank look, slow speed, and the fact that he had his window down in cold weather provided reasonable suspicion).

ii. State v. Aubin, 100 N.C. App. 628 (1990) (reasonable suspicion existed where the defendant slowed to 45 m.p.h. on I-95 and weaved within his lane).

iii. State v. Jones, 96 N.C. App. 389 (1989) (reasonable suspicion existed where the defendant drove 20 m.p.h. below the speed limit and weaved within his lane).

b. **Defense friendly cases**.

i. State v. Canty, 224 N.C. App. 514 (2012) (no reasonable suspicion where, upon seeing officers, vehicle slowed to 59 m.p.h. in a 65 m.p.h. zone).

ii. State v. Brown, 207 N.C. App. 377 (2010) (unpublished) (traveling 10 m.p.h. below the speed limit is not alone enough to create reasonable suspicion for a traffic stop; reasonable suspicion found based upon slow speed, weaving, and the late hour).

iii. State v. Bacher, 867 N.E.2d 864 (Ohio Ct. App. 2007) (slow travel alone – in this case 23 m.p.h. below the speed limit – does not create a reasonable suspicion of criminal activity to permit a traffic stop).

5. Late hour or high-crime area

a. **Prosecution friendly cases**.

i. State v. Mello, 200 N.C. App. 437 (2009) (reasonable suspicion existed for a stop where the defendant was present in a high-crime area and persons he interacted with took evasive action).

b. **Defense friendly cases**.

i. State v. Murray, 192 N.C. App. 684 (2008) (no reasonable suspicion where officer stopped at vehicle who was driving out of a commercial area with a high incidence of break-ins at 3:41 a.m.; defendant was not violating any traffic laws, was not trespassing, speeding, or making any erratic movements, and was on a public street).

ii. Brown v. Texas, 443 U.S. 47 (1979) (presence in a high-crime area, standing alone, is not a basis for concluding a person is engaged in criminal conduct).

6. Tips

a. Anonymous tips[xvi]

i. **Prosecution friendly cases**.

1. Navarette v. California, 134 S. Ct. 1683 (2014) (although a "close case," anonymous tip was sufficiently reliable to justify an

investigatory vehicle stop in that the 911 caller reported she had been run off the road by a specific vehicle – a silver F-150 pickup, license plate 8D94925. The 911 caller reported the incident contemporaneously as it occurred. The 911 caller reported more than a minor traffic infraction and more than a conclusory allegation of drunk or reckless driving. Instead, she alleged a specific and dangerous result: running another car off the highway).

ii. **Defense friendly cases**.

1. State v. Coleman, 228 N.C. App. 76 (2013) (tipster treated as anonymous, even though the communications center obtained tipster's name and phone number, because tipster wished to remain anonymous; officer did not know tipster; and officer had not worked with tipster in the past. Tip did not provide reasonable suspicion, in part because it did not provide any way for the officer to assess the tipster's credibility, failed to explain her basis of knowledge, and did not include any information concerning the defendant's future actions).

2. State v. Blankenship, 230 N.C. App. 113 (2013) (taxicab driver anonymously contacted 911 via his personal cell phone; although 911 operator was later able to identify the taxicab driver, the caller was anonymous at the time of the tip. Tipster reported observing a specific red Ford Mustang, driving in a specific direction, driving erratically and running over traffic cones. Tip did not provide reasonable suspicion for the stop, as the officer did not personally observe any unlawful behavior or have an opportunity to meet the tipster prior to the stop).

3. State v. Peele, 196 N.C. App. 668 (2009) (anonymous tip the defendant was driving recklessly, combined with the officer's observation of a single instance of weaving, did not give rise to a reasonable suspicion of criminal activity to effectuate this stop).

b. Known tipsters

i. **Prosecution friendly cases**.

1. State v. Maready, 362 N.C. 614 (2008) (court gave significant weight to information provided by a driver who approached officers in person and put her anonymity at risk, notwithstanding the fact that the officers did not make note of any identifying information about the tipster).

2. State v. Hudgins, 195 N.C. App. 430 (2009) (a driver called the police to report 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 trailing vehicle, the caller also stopped briefly. Stop was proper, in part, because the tipster called on a cell phone and remained at the scene, thereby placing her anonymity at risk).

ii. **Defense friendly cases**.

1. State v. Hughes, 353 N.C. 200 (2000) (law enforcement officer who filed the affidavit had never spoken with the informant and knew nothing about the informant other than his captain's claim that he was a confidential and reliable informant. Although the captain received the tip from a phone call rather than a face-to-face meeting, the captain told the affiant the confidential source was reliable. Although the source of the information came from a known individual, Court concluded the source must be analyzed under the anonymous tip standard because the affiant had nothing more than the captain's conclusory statement that the informant was confidential and reliable. Anonymous tip and police corroboration did not approach the level of a close case. Upheld trial court's order allowing Defendant's motion to suppress); see also State v. Benters, 367 N.C. 660 (2014).

2. State v. Walker, 2017 N.C. App. LEXIS 814 (October 3, 2017) (Trooper, while on routine patrol, was notified by dispatch that a driver reported a vehicle for DWI. Specifically, the reporting driver observed Defendant driving at speeds of approximately 80 to 100 mph while drinking a beer; driver drove "very erratically"; and almost ran him off the road "a few times." While Trooper drove to the area in response, the informant flagged him down. Informant told Trooper the vehicle was no longer visible but had just passed through a specific intersection. At some point the vehicle in question was described as a gray Ford passenger vehicle but it is unclear whether the Trooper was aware of that description before or after he stopped Defendant. Defendant stopped and arrested. Tip did not provide reasonable suspicion to make an investigatory stop. While informant was not anonymous, he was unable to specifically point out Defendant's vehicle as being the one driving unlawfully, as it was out of sight, and the Trooper did not observe Defendant's vehicle being driven in an unusual or erratic fashion. Moreover, it is unknown whether the Trooper had the license plate number before or after the stop and, further, we do

not know whether he had any vehicle description besides a "gray Ford passenger vehicle" to specify the search.

7. Driving too fast for lane conditions

   a. State v. Johnson, 2017 N.C. Lexis 552 (August 18, 2017) (This reversed the Court of Appeals opinion which was favorable to the defense and held the officer had reasonable suspicion to initiate a traffic stop under N.C. Gen. Stat. 20-141(a) by driving too quickly for the road conditions where officer observed defendant abruptly accelerate his truck and turn left, causing the truck to fishtail in the snow before defendant gained control of the vehicle. This is true even though the defendant did not leave the lane that he was traveling in or hit the curb.

[i] See, Shea Denning, HGN, the Rules of Evidence and Suppression Hearings, N.C. Crim. L. Blog (Aug. 31, 2016).

[ii] Note the Court of Appeals went through a secondary analysis, where it held that even if the officer's mistaken belief of law was reasonable, the tip lacked sufficient indicia of reliability to provide the officer with reasonable suspicion to stop Defendant.

[iii] State v. White, 232 N.C. App. 296 (2014).

[iv] State v. Foreman, 351 N.C. 627 (2000).

[v] State v. Haislip, 186 N.C. App. 275, 280 (2007). Note that the Court of Appeals decision cited above was vacated by State v. Haislip, 362 N.C. 499 (2008), but not because of the logic of the Court of Appeals decision. Although not controlling law, you should still argue the Court of Appeals' rationale. The decision was vacated by the North Carolina Supreme Court because it concluded the record was inadequate for appellate review as the transcript revealed no ruling on the motion to suppress, nor was there a written order on the motion to suppress from the trial court that was included in the record.

[vi] State v. Gabriel, 192 N.C. App. 517, 520 (2008); State v. Rose, 170 N.C. App. 284, 288 (2005). Rose lays out the many United States Supreme Court opinions on the validity of suspicionless seizures at fixed checkpoints.

[vii] Ferguson v. City of Charleston, 532 U.S. 67, 81 (2001); State v. Rose, 170 N.C. App. 284, 289 (2005).

[viii] City of Indianapolis v. Edmond, 531 U.S. 32, 48 (2000); State v. Rose, 170 N.C. App. 284, 289 (2005).

[ix] People v. Jackson, 99 N.Y.2d 125, 131-32 (2002); State v. Rose, 170 N.C. App. 284, 289 (2005).

[x] State v. Rose, 170 N.C. App. 284, 292 (2005).

[xi] City of Indianapolis v. Edmond, 531 U.S. 32, 44 (2000); State v. Rose, 170 N.C. App. 284, 289 (2005).

[xii] State v. Rose, 170 N.C. App. 284, 290 (2005).

[xiii] State v. Rose, 170 N.C. App. 284, 293 (2005).

[xiv] State v. Rose, 170 N.C. App. 284, 294-95 (2005).

[xv] Shea Denning says that driving so one's tires touch, but do not cross, a lane line should be treated as weaving within a lane, not across lanes. Shea Denning, Keeping It Between the Lines, N.C. Crim. L. Blog (Mar. 11, 2015).

[xvi] Standing alone, anonymous tips are inherently unreliable and rarely provide reasonable suspicion. Florida v. J.L., 529 U.S. 266 (2000).