Beating the Rap . . . But Taking the Revocation

Author : Shea Denning

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Myra Lynne Combs beat her DWI charges in court. The trial court held that the officer who stopped her didn't have a lawful reason to do so. So the trial court suppressed all the evidence resulting from the stop, and the State dismissed the charges. But Combs' license was revoked for a year anyway based on her refusal to submit to a breath test after she was arrested. Combs didn't think that was right, so she took her case to the state court of appeals.

Combs v. Robertson. The court of appeals affirmed the license revocation, holding that the exclusionary rule that bars the admission of evidence gathered in violation of a defendant's Fourth Amendment rights does not apply to civil license revocation proceedings. Thus, the trial court's determination that evidence resulting from the stop of Combs should be suppressed on the basis that the officer lacked reasonable suspicion to stop Combs did not bar DMV from relying on that same evidence to revoke Combs' driver's license.

Facts. The Mount Airy police received an anonymous tip on January 6, 2013 that the driver of a blue Ford Explorer might be impaired as the car was weaving in the roadway. Officer David Grubbs traveled to the area and saw a vehicle that matched the caller's description. He followed the vehicle and did not see it weave. The vehicle made several turns, and at the last such turn, Officer Grubbs believed it crossed slightly over the center of the road, which did not have a painted center line. Officer Grubbs stopped the vehicle after it turned into a driveway.

Combs was driving. Officer Grubbs smelled alcohol when he approached Combs and noticed that her eyes were bloodshot. He asked Combs if she had been drinking, and she said she had a beer earlier in the evening. Combs got out of the car at Officer Grubbs' request—swaying as she did so—and performed several field sobriety tests. Officer Grubbs noted several clues of impairment based on those tests. He arrested Combs and took her to the police department for implied consent testing.

At the police department, a certified chemical analyst advised Combs of her implied consent rights. The analyst delayed testing for 30 minutes so that Combs could contact a witness. At the end of that period, Combs refused to blow into the breath testing instrument.

Procedure. When a DWI suspect refuses to submit to a breath test, an officer completes an affidavit noting the refusal. The officer submits that affidavit to the magistrate at the suspect's initial appearance and mails a copy to DMV. So long as the law enforcement officer had probable cause to believe the person committed an implied consent offense, charged the person with that offense, and complied with implied consent procedures, the person's refusal triggers an immediate civil license revocation of at least 30 days, which is ordered by the magistrate, as well as a one-year driver's license suspension, ordered by DMV. G.S. 20-16.2(d). Neither the magistrate nor DMV is charged with evaluating whether the stop of the person was supported by reasonable suspicion before ordering the revocation of a person's driver's license.

Combs stayed the imposition of the one-year refusal revocation by requesting a hearing before DMV. When the matter was heard on September 27, 2013, the hearing officer determined that the statutory conditions for a willful refusal revocation were satisfied and ordered Combs' license revoked. Combs appealed the order to superior court pursuant to G.S. 20-16.2(e). The superior court reversed DMV's decision by written order stating that there was insufficient

evidence to support DMV's findings. The court's order did not explain its analysis or specify which of the forty-six findings below was not supported by sufficient evidence. DMV appealed to the court of appeals.

Holding. The court of appeals reversed the superior court, holding that the record of the proceedings before DMV contained sufficient evidence to support its findings of fact. Combs argued on appeal that because the district court in her criminal case found that the officer lacked reasonable suspicion to stop her and excluded all evidence resulting from the stop, the officer did not have reasonable grounds to believe she had committed an implied consent offense. The appellate court rejected that argument as precluded by earlier case law, citing Hartman v. Robertson, 208 N.C. App. 692, 696 (2010) (holding that the "propriety of the initial stop is not with the statutorily-prescribed purview of a license revocation hearing") and Quick v. N.C. Div. of Motor Vehicles, 125 N.C. App. 123, 126 (1997) (holding that the question of the legality of a defendant's arrest is not relevant to any issue presented in a refusal revocation hearing).

They digress. The *Combs* court "pause[d]" its analysis to observe that there is a split among the states as to whether the exclusionary rule applies to license revocation proceedings. *Combs* cited cases from the supreme courts of Minnesota, Oregon and Vermont applying the exclusionary rule to civil license suspension proceedings stemming from DWI charges. *See, e.g.*, State v. Lussier, 757 A.2d 1017, 1020 (2000) (concluding that, "in permitting defendants in a civil suspension proceeding to dispute whether the processing officer had reasonable grounds to believe that the motorist was driving while intoxicated, the Legislature assumed that a constitutional stop would be a necessary predicate to finding 'reasonable grounds' for suspicion of DUI"). *Combs* noted that the North Carolina Supreme Court had not yet considered the issue.

Unsettling effect? The digression by the court makes me wonder whether the issue will remain settled. The precedent cited by *Combs* is consistent with our appellate courts' parsimonious application of the exclusionary rule in other contexts, see, for example State v. Lombardo, 306 N.C. 594 (1982) (holding that the exclusionary rule does not apply to probation revocation proceedings), and generally accords with the principle that the rules of evidence of do not apply in refusal revocation proceedings. *See* Johnson v. Robertson, __ N.C. App. ___, 742 S.E.2d 603, 605-06 (2013). Perhaps, however, our state supreme court will take up the court of appeals' invitation to revisit the issue.