

## By Popular Demand

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Once in a while, someone requests a post on a particular topic. Today's post is in response to such a request -- which, as I understand it, is not based on any particular pending case. It involves the following scenario: an officer who works in a college town sees a young person walking out of a grocery store with a case of beer. What can the officer do to investigate what she suspects is an underage purchase of alcohol?

If the buyer looks young enough, the officer can simply arrest him for a violation of G.S. 18B-302, which makes it illegal for a person under 21 to purchase beer. In the child pornography context, among others, courts have recognized that in appropriate circumstances, probable cause regarding a person's age can be based on the person's appearance. So if our hypothetical beer buyer is a [Doogie Howser](#) type, plainly far under 21, the officer can arrest him and then undertake whatever additional investigation is necessary to determine his age.

Presumably, though, it isn't very often that an officer sees a ten-year-old leaving Harris Teeter with a case of Coors Light. More often, the beer buyer will be college-aged, and although the officer may suspect that he's under 21, the officer won't have probable cause based on the buyer's appearance alone. More likely, the officer will have reasonable suspicion based on the buyer's appearance, so one option is for the officer to conduct a *Terry* stop to investigate the possible underage purchase. Sometimes a stop and a few questions will resolve the matter: the buyer may admit to being under 21, or may be willing to produce identification that can confirm his age, or, more likely, that will be an obvious product of someone's dorm-room inkjet printer and a Kinko's laminating machine.

Suppose that the buyer is a tougher nut to crack, though, and claims (1) that he is old enough to buy the beer, and (2) that he isn't required to produce any identification. The officer's immediate options are limited. The buyer is right that he isn't required to produce identification. But wait, you say, wasn't there a Supreme Court case to the contrary a few years ago? No. In [Hiibel v. Sixth Judicial Dist. Court of Nev.](#), 542 U.S. 177 (2004), the United States Supreme Court upheld the constitutionality of a Nevada law that required people stopped by police to identify themselves. However, North Carolina has no similar stop-and-identify statute, and *Hiibel* did not create a free-standing requirement that detained persons identify themselves. So although the officer may be able to detain the beer buyer for a few minutes while attempting to verify his age -- for example, by asking the store clerk who sold him the beer about the transaction -- if the officer can't make any progress within a reasonable time, the officer likely must let the buyer go.

A clever officer, though, will take a slightly different approach. Rather than stop the buyer as he leaves the store, the officer will wait until the buyer enters his car and begins to drive away. Then the officer will then conduct a *Terry* stop. But because it is a *vehicular* stop, the officer can compel the buyer to produce his license under G.S. 20-29. Of course, this won't work if the buyer walked to the store, or if the buyer got a ride from a friend, but most of the time, it will enable the officer to check the buyer's identification.

I'd be interested to hear about how these stops happen in the real world. My guess is that most college students, confronted by a uniformed officer shortly after making an underage purchase, will voluntarily produce their identification upon request, but maybe undergraduates are a tougher bunch than I think they are.