



Do You Know How Fast You Were Driving?

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Recently, I blogged about limitations on a judge's authority to enter a disposition of prayer for judgment continued in

speeding cases depending upon the speeding charge. (You can read that post [here](#).) The recent discussion regarding

judgments in speeding cases begs the question of why specific speeds are part of the adjudication in the first place.

A person can violate the speed restrictions that apply on North Carolina roads in one of three ways: (1) by driving at a speed greater than is reasonable and prudent under existing conditions ; (2) by exceeding maximum speed limits; or (3) by operating a vehicle at less than a minimum posted speed. See G.S. 20-141. Generally speaking, speeding is an infraction -- a noncriminal violation of the law -- punishable by a penalty of not more than \$100. Driving on a highway at a speed of more than 15 miles per hour over the speed limit or over 80 miles per hour, however, is a Class 2 misdemeanor, punishable by up to 60 days imprisonment, depending upon the person's prior record level.

A plain reading of the statute reveals that charges involving the second variety of speeding (which is commonly referred to as exceeding the posted speed, though there is no requirement that the speed be posted unless it is higher or lower than the presumptive 35 mph inside municipal corporate limits or 55 mph outside municipal corporate limits) require only a determination of whether the person drove a vehicle on a highway in excess of the maximum speed limit by driving more than 15 mph or by driving more than 80 mph, in which case the person committed a misdemeanor criminal offense. Otherwise, the offense is an infraction.

But in many speeding cases involving charges of exceeding the maximum speed, both the charges and the determination of the person's responsibility (in the case of an infraction) or guilt (in the case of a misdemeanor) is far more precise. The citation issued to a defendant often, but not always, specifies the rate of speed (and, indeed, may even specify the rate of speed registered by radar, which can be different from the speed "charged" on the citation). And, as noted in my earlier post, those charges may be changed by the district attorney before the case proceeds to trial. When a defendant pleads guilty to a speeding charge in which the specific speed is alleged, the defendant pleads not just to speeding but to driving a specific speed in a specific speed zone. In a bench trial in district court, the judge may find the defendant not responsible or not guilty of the charged offense or responsible or guilty of the charged offense or a lesser included offense. The infraction of exceeding the maximum speed is a lesser included offense of the misdemeanor. In addition, unless the speeding charged is speeding more than 25 miles per hour over the posted speed limit, a violation of G.S. 20-123.2, which prohibits driving a motor vehicle on a highway without a working speedometer, is a lesser included offense of speeding.

If a defendant is found guilty or responsible in district court for a violation of G.S. 20-141, the judge may find the defendant guilty or responsible not only for speeding but also for driving a particular speed, which, again, is a determination that may have collateral licensure and insurance consequences. The same holds true for the jury in superior court.

A judge may enter a prayer for judgment continued in a speeding case, subject to the limitations mentioned in the earlier post. The entry of a prayer for judgment prevents the conviction from being considered by DMV for license points and revocation purposes (until the third or subsequent prayer for judgment continued in a five-year period) and from resulting in the accumulation of points under North Carolina's Safe Driver Incentive Plan.

It also bears mentioning that many speeding violations are waivable offenses. The Conference of Chief District Court Judges promulgates annually a list of traffic offenses for which magistrates and clerks of court may accept written appearances, waivers of trial, and pleas of guilty or admissions of responsibility. The traffic offense waiver list effective for offenses committed on or after December 1, 2008, is available [here](#). Speeding is a waivable offense so long as the speed driven does not exceed 80 mph and is not more than 15 mph over the speed limit if the speed driven is over 55 mph. A person originally cited for a nonwaivable speeding offense may, upon the district attorney's reduction of those charges to a waivable charge, dispose of those charges by waiving appearance and trial and pleading guilty or responsible to the magistrate or clerk and paying the applicable fine and costs.