

Fourth Circuit Adds to the Controversy over Traffic Stops

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I've written about traffic stops at some length, in [this paper](#). One of the areas in which the law is unsettled is the extent to which officers may engage in investigative activity during the stop that is not related to the purpose of the stop, especially if such investigative conduct prolongs the stop. Here's what my paper says about that:

Whether an officer may briefly extend a stop in order to engage in the investigative techniques described immediately above is controversial. (A lengthy extension of the stop would plainly be improper, unless the officer had developed reasonable suspicion regarding another criminal offense.) The case law in North Carolina is inconsistent, with brief delays in order to conduct dog sniffs permitted under *State v. Brimmer*, 187 N.C. App. 451 (2007) (delay of approximately four minutes to allow a dog sniff to take place was de minimis), but brief delays associated with requests for consent to search arguably prohibited by [*State v. Parker*, 183 N.C. App. 1 (2007)], and brief delays for questions unrelated to the stop perhaps barred by *State v. Jackson*, 199 N.C. App. 236 (2009) (finding that an officer unreasonably extended a traffic stop when she asked just a handful of drug-related questions).

Most [recent] federal cases have allowed short delays for any of the investigative techniques under consideration. [Citations follow.]

The Fourth Circuit recently decided a major case on point. The case is [United States v. Digiovanni](#), ___ F.3d ___ (4th Cir. 2011). The case began when a Maryland officer stopped the defendant on I-95 for a traffic violation. The stop began at 11:53, and for about ten minutes, the officer essentially conducted a drug investigation, asking the defendant about his travel plans, whether he had any drugs in the car, whether the officer could search the car (the defendant consented, but wasn't able to open the trunk of the vehicle, so no search was completed), and so on. At 12:03, the officer began a license check, and at 12:08, the officer returned the defendant's license, issued him a warning ticket, and told him he was free to go. Just moments later, however, the officer reminded the defendant that they "were talking about drugs," and again asked the defendant whether he would consent to a search, reminding him that he had previously consented. The defendant consented again, and the officer was able to complete a search, finding over 34,000 pills of Oxycodone.

The defendant was charged with drug offenses. He moved to suppress, arguing that the officer's conduct exceeded the permissible bounds of a traffic stop, and that his own consent to search was tainted by the officer's overreaching. The district court granted the motion, and the government appealed.

The Fourth Circuit affirmed. The court acknowledged that an officer may ask questions unrelated to the purpose of a traffic stop if the questions do not extend the duration of the stop, or if the questions extend the duration by only a minimal amount. However, it noted that in this case, at least ten minutes of the fifteen-minute traffic stop were devoted to a drug investigation. The court concluded that the officer had effectively abandoned "the purposes of the stop and embarked on a sustained course of investigation into the presence of drugs," thereby exceeding the proper scope of the stop.

The court rejected the government's contention that the officer had reasonable suspicion to conduct a drug investigation, which would, of course, have justified the officer's conduct. The officer testified about several facts that

he viewed as indicative of drug activity, such as that "the car was clean" and that "two shirts were hanging in the rear passenger compartment." The Fourth Circuit found nothing troubling about these facts, nor about the other, almost equally benign facts listed by the officer.

Finally, the court rejected the government's argument that even if the stop was unduly prolonged, the defendant's consent to search was given after the stop ended, and so was not a product of the Fourth Amendment violation. The court affirmed the district court's finding that the defendant's consent was involuntary, suggesting that the detention continued even after the officer returned the defendant's license and told him that he was free to go, and noting that the officer falsely insinuated that the defendant was bound by his earlier consent.

A few thoughts about this case. First, I suspect that the fact that the stop was recorded made a difference in the outcome of this case. The court was able to identify exactly how much time was spent on each stage of the stop because it had a time-stamped recording. Second, the federal courts are moving toward a rough consensus about traffic stops: a little extracurricular investigation is OK, but not much. We'll see if our appellate courts eventually fall in line with that, or chart their own course. Finally, while most of the court's opinion is quite persuasive, the court's analysis of the voluntariness of the defendant's consent isn't as convincing. If the government elects to seek further review, I would expect it to focus on that issue. As always, stay tuned.