Is the Use of a Blue Light a Show of Authority?

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Today, the court of appeals decided *State v. Baker*. *Baker* explains when a trial judge is required to make findings of fact when hearing a motion to suppress, and it raises what I think is an interesting search and seizure issue.

The facts were as follows. An officer was on patrol near a nursing facility where several minor crimes had recently been committed. He saw the defendant walking in the area at 11:00 p.m., and stopped him (or stopped to talk to him -- more on this later). In part because the defendant was "fidgety" and smelled of alcohol, the officer decided to frisk him. The defendant had a gun in his pants, and the officer charged him with carrying a concealed weapon and with being a felon in possession of a firearm. The defendant moved to suppress. Both the officer and the defendant testified at the suppression hearing. The motion was denied, the defendant was convicted, and he appealed.

The court of appeals held that the trial judge erred in failing to make findings of fact and conclusions of law in violation of G.S. 15A-977(f). The court explained that a judge is excused from making findings only if (1) there is no material conflict in the evidence, and (2) the judge explains the reason for his decision clearly from the bench. In such a case, proper findings are implicit in the court's ruling. If either condition is not met, however, the failure to make findings "is fatal to the validity of [the court's] ruling and constitutes reversible error."

Applying this standard to the case at bar, the court first noted that it had never previously reversed a trial judge for failing to make findings of fact in the face of conflicting evidence. It determined that a material conflict exists when "evidence presented by one party controverts evidence presented by an opposing party such that the outcome of the matter to be decided is likely to be affected." (As an aside, I don't see why it matters which party presents the evidence. If, for example, the state calls two officers to testify, and the officers contradict one another on an important point, it seems to me that there is a material conflict, even if the defendant doesn't present any evidence.) The court found that standard to be satisfied, because the parties' evidence conflicted about the number of officers who were present on the scene, a factor that could be relevant to whether the interaction was a "stop" or a consensual encounter.

The court's procedural clarification of when findings are required is helpful. But, as I suggested at the beginning of this post, I think the substantive issue in this case is even more interesting. Here's the heart of it: "Defendant argues that he was seized . . . when [the officer] activated his blue lights [which he did as he pulled his car directly behind the defendant]. The State contends that defendant was free to leave until the time the gun was found." As far as I can tell from the opinion, the officer did not activate his siren. He explained that he turned on his lights "to notify other motorists of the presence of his patrol vehicle," which apparently protruded into the road to some extent, not as a way of compelling the defendant to stop.

The court didn't conclusively resolve the significance of the blue lights. That isn't surprising, given that it remanded the case for further findings. It did state that "[t]he activation of blue lights on a police vehicle has been included among factors for consideration to determine when a seizure occurs." My initial reaction was that the use of blue lights is conclusive, not merely a "factor[] for consideration." Only police vehicles may be equipped with blue lights. G.S. 20-130.1(c). Motorists are required by law to pull over when an officer activates his blue lights and siren. G.S. 20-157. At least when a reasonable person would believe that the officer's activation of his blue lights is directed at him, it seemed to me that the use of blue lights constitutes a show of authority. If the person stops, the interaction is a seizure.

Cf. Brower v. County of Inyo, 489 U.S. 593 (1989) (characterizing "flashing lights and continuing pursuit" as a show of authority). *See generally* 4 Wayne R. LaFave, Search and Seizure § 9.4(a) (discussing what constitutes a show of authority). But the Fourth Circuit held that the use of blue lights does not always constitute a show of authority with respect to pedestrians in an interesting unpublished case. The dissent in *United States v. Williams*, 2000 WL 718395 (4th Cir. June 5, 2000), argued that "[a] reasonable person is certain to understand that when he is approached directly by a police cruiser with flashing red and blue lights, the officer is making a display of authority, not giving a safety warning." But the majority noted that a pedestrian, unlike a motorist, is not required to stop in response to blue lights. Therefore, it concluded, when a pedestrian does stop upon seeing blue lights, he does so consensually. I admit that I'm not fully persuaded by *Williams*, but the issue does seem to be meatier than I initially believed. I would be very interested to hear readers' analyses of it.