

May an Officer Run a Motorist's Criminal Record During a Traffic Stop?

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An officer who stops a motorist for a traffic infraction may run a computer check on the driver's license and may check for outstanding warrants. The results of these checks may determine how the officer proceeds. For example, if a check reveals that the driver's license is revoked, the officer may charge the driver with DWLR and may direct the driver that he or she cannot drive the vehicle away from the location of the stop.

May an officer also check a motorist's criminal record? Such historical information is less likely to dictate the officer's course of action. But knowing whether a motorist has a record of violent crimes may help an officer determine how cautious he or she must be while completing the stop. This post discusses whether an officer may take time to run a motorist's criminal record, and summarizes two recent cases on point.

Record checks and *Rodriguez*. In *Rodriguez v. United States*, ___ U.S. ___, 135 S. Ct. 1609 (2015), the Supreme Court ruled that a stop may not be extended beyond the time necessary to complete the "mission" of the stop, which is "to address the traffic violation that warranted the stop . . . and attend to related safety concerns." *Rodriguez* states that "checking the driver's license" and "determining whether there are outstanding warrants against the driver" are "ordinary inquiries" that are a legitimate part of a traffic stop. However, the case doesn't address criminal record checks.

Split of authority. Since *Rodriguez*, courts have disagreed about whether criminal history checks that add to the duration of a stop are permitted under this standard. Compare, e.g., *United States v. Evans*, 786 F.3d 779 (9th Cir. 2015) (ruling that an officer improperly extended a traffic stop to conduct an "ex-felon registration check," a procedure that inquired into a subject's criminal history and whether he had registered his address with the sheriff as required for certain offenders in the state in which the stop took place), with, e.g., *United States v. Palmer*, 820 F.3d 640 (4th Cir. 2016) (stating that "[a]n officer is entitled to conduct safety-related checks that do not bear directly on the reasons for the stop, such as requesting a driver's license and vehicle registration, or *checking for criminal records* and outstanding arrest warrants"). A criminal record check that doesn't extend a stop would clearly be permissible under *Rodriguez*.

The Court of Appeals of North Carolina touched on this issue when it ruled that an officer improperly "extended [a] stop further when he had defendant get into his patrol vehicle and ran defendant's name through numerous databases while being questioned, *as this went beyond an authorized, routine check of a driver's license or for warrants.*" *State v. Bullock*, ___ N.C. App. ___, 785 S.E.2d 746 (2016) (emphasis supplied), temp. stay allowed, ___ N.C. ___, 786 S.E.2d 3. That ruling has been stayed, so stay tuned for further developments.

Fourth Circuit case. The new case that prompted this post is *United States v. Hill*, 852 F.3d 377 (4th Cir. 2017). Virginia officers stopped a vehicle for speeding and crossing a double yellow line. There were two occupants in the vehicle, and the officers ran computer checks on both using "databases operated by the Department of Motor Vehicles (DMV) and the National Crime Information Center (NCIC)" as well as a local database that tracked "every person that has had prior contacts with the police." While one officer was running the computer checks and writing citations, the other was talking with the vehicle's occupants. The passenger eventually admitted having a gun, and was arrested for being a felon in possession of a firearm. The case made its way to the Fourth Circuit, which considered and rejected

the passenger's argument that checking the local database improperly extended the stop and enabled the questioning that resulted in his admission of gun possession. The court ruled that, in the interest of officer safety, "an officer reasonably may search a computer database during a traffic stop to determine an individual's prior contact with local law enforcement." And it held that this was true for passengers as well as drivers of stopped vehicles.

Georgia case. While researching the law pertinent to this post, I came across a case from Georgia that I had not seen before. It addresses whether it matters *when* during a stop a criminal record check takes place. The case is *State v. Allen*, 779 S.E.2d 248 (Ga. 2015). It began when an officer stopped a car for making an illegal lane change. The officer completed all the steps necessary to address the infraction, including writing a warning ticket. Only at that point, as the stop was about to conclude, did the officer radio in a request for "computer records checks through . . . NCIC" on both the driver and the passenger. While awaiting a response, the officer deployed a drug dog, which alerted, and a subsequent probable cause search of the vehicle revealed drugs. The propriety of the record check perplexed the Georgia courts. The trial court ruled that checking the *passenger's* record was not relevant to the mission of the stop and so improperly extended the stop. The intermediate court of appeals disagreed, but ruled that the record check was nonetheless improper because it took place *at the conclusion* of the stop, after any likely danger had passed and after the record check was of likely utility. Finally, the state supreme court rejected both views and determined that a record check of any vehicle occupant is a valid officer safety measure that may be completed at any point during a traffic stop.

Practical question. I'm curious about how separable a criminal history check is from a warrant check, given that the latter is clearly permissible. For example, does an NCIC warrant check automatically return criminal history information? If so, how detailed is that information? Both *Hill* and *Bullock* involve situations where officers queried databases beyond NCIC in order to learn more about a motorist, which makes me think that a warrant check doesn't provide a great deal of information about a person's record. If that is the case, and if officers frequently check additional sources of information to learn more about the people with whom they are interacting, then how courts view criminal history checks is an important issue.