

State v. Hopper: Public Streets and Motor Vehicle Regulation

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Jeff wrote [here](#) about the court of appeals' April 20, 2010 opinion in *State v. Hopper (Hopper I)*, which analyzed when an officer's mistaken beliefs can support an investigative stop. The defendant in *Hopper* was stopped for violating [G.S. 20-129\(a\)\(4\)](#) by failing to operate the taillights on his vehicle when the windshield wipers were in use as a result of heavy rain. Officers searched the vehicle during the stop, finding drugs and a gun. The defendant argued that the stop was unlawful because he was not driving on a street open to the public. In *Hopper I*, the court assumed *arguendo* that the street was not public, but concluded that since the officer reasonably believed that it was public, the stop was supported by reasonable suspicion. As Jeff noted in his earlier post, *Hopper I* was difficult to reconcile with [State v. McLamb](#), 186 N.C. App. 124 (2007), a case in which the court found no reasonable suspicion supporting the stop of the defendant's vehicle for speeding when the officer was mistaken about the applicable speed limit.

Hopper I was withdrawn, and a new opinion—[Hopper II](#)—was filed on July 6, 2010. *Hopper II* likewise finds reasonable suspicion for the stop, but avoids the mistaken belief analysis, distinguishing the case from decisions (including *McLamb*) holding that a law enforcement officer's mistaken belief that a defendant has committed a traffic violation is constitutionally insufficient to support a traffic stop. Noting that whether a street is public or private is a question of fact, *Hopper II* finds sufficient evidence in the record to support the trial court's conclusion that the road was open to the public. *Hopper II* further considers and rejects the defendant's argument that G.S. 20-129 did not apply because the street was not part of the state highway system. The court's analysis provides a useful primer on the applicability of the motor vehicle laws in Chapter 20, which generally apply only on "highway(s) within this State" rather than on private property.

[G.S. 20-4.01](#) defines the term highway as "[t]he entire width between property or right-of-way lines of every way or place of whatever nature, when any part thereof is open to the use of the public as a matter or right for the purposes of vehicular traffic." The provision further specifies that "[t]he terms 'highway' and 'street' and their cognates are synonymous."

Given this definition, it isn't surprising that *Hopper II* rejected the defendant's argument that the street had to be part of the State highway system for the provisions of G.S. 20-129 to apply. The defendant based his argument on *Coleman v. Burris*, 265 N.C. 409 (1965), a civil case holding that the provisions of G.S. 20-129 did not apply to roads within the municipal street system but instead only to highways or streets that form part of the state highway system. *Hopper II* concluded that *Coleman* was superseded by the legislature's subsequent enactment of G.S. 20-4.01. Moreover, the court noted that its construction of G.S. 20-129 was consistent with other provisions of Chapter 20 such as [G.S. 20-28](#), which prohibits driving "upon the highways of the State" by a person whose North Carolina driver's license or privilege to drive in the state has been revoked.

The officer who stopped *Hopper* testified that the street on which the defendant drove was within an apartment complex owned by the City of Winston-Salem. He further testified that he was assigned to patrol the complex and did so daily. He said that there were parking spots on the street with cars parked in them at the time of the stop. The appellate court found this evidence sufficient to support the trial court's finding that the defendant was traveling on a street "open to the use of the public as a matter of right for the purposes of vehicular traffic," and thus was required to comply with G.S. 20-129(a)(4). Photographs proffered by the defendant at the suppression hearing of "No

Trespassing” signs posted at the apartment complex did not dictate a contrary conclusion given that the defendant failed to demonstrate that the signs were posted at the time he was stopped or to indicate to what specific property they referred.

As noted above, like G.S. 20-129(a)(4), most Chapter 20 provisions apply only on highways. Some Chapter 20 regulations, including provisions of G.S. 20-129 requiring the use of headlamps and rear lamps on motorcycles, apply more broadly, regulating the operation of vehicles in public vehicular areas as well as upon highways. Public vehicular areas, which may be located on privately owned property, include “area[s] used by the public for vehicular traffic at any time,” as well as other specified areas. [G.S. 20-4.01](#)(32). Among the Chapter 20 offenses that may be committed in a public vehicular area in addition to upon a highway are: [driving while impaired](#), [driving after consuming by a person under 21](#), [open container violations](#), [reckless driving](#), [speeding](#), [texting while driving](#), [unlawful mobile phone use by school bus driver](#) or [person under 18](#), and [window tinting violations](#).