

State v. Leak: Defendant Unlawfully Seized During License Check

Author : Shea Denning

Categories : [Motor Vehicles](#), [Search and Seizure](#)

Tagged as : [20-29](#), [fourth amendment](#), [leak](#), [license check](#), [rodriguez](#), [seizure](#), [warrant check](#)

Date : June 3, 2015

The United States Supreme Court held in [Rodriguez v. United States](#), ___ U.S. ___, 135 S. Ct. 1609 (2015) (discussed [here](#)), that a law enforcement officer may not extend a traffic stop to investigate matters unrelated to the basis for the stop—not even for a matter of minutes—unless the additional delay is supported by reasonable suspicion. The North Carolina Court of Appeals applied that principle this week in [State v. Leak](#), ___ N.C. App. ___ (2015), reversing the trial court’s denial of the defendant’s motion to suppress and vacating the defendant’s conviction for possession of a firearm by a convicted felon.

Facts. Bobby Gallimore, the police chief of [Lilesville, NC](#), was patrolling the town late at night when he saw a car parked in a gravel area near a state highway. Gallimore stopped to see if the driver needed help. Before he approached the car, Gallimore ran its license plate number through his computer and saw that it was registered to Keith Leak. Gallimore then approached the car and spoke to the driver. The driver said he did not need help. He explained that he had pulled off the road to return a text message. Gallimore asked to see his driver’s license, which the driver produced. The name on the license—Keith Leak—matched the name on the registration. Gallimore then took the license to his patrol car to “investigate [its] status.” Gallimore confirmed that the license was valid, but, in the process, discovered that there was an outstanding 2007 warrant for Leak’s arrest. Gallimore then asked Leak to step out of his car. Leak, who previously had been convicted of a felony, told Gallimore that he had a pistol in his pocket. Leak was then arrested for his unlawful possession of a firearm.

Procedural History. Before trial on charges of possession of a firearm by a felon and carrying a concealed weapon, Leak filed a motion to suppress, claiming that he was seized in violation of the Fourth Amendment. The trial judge denied the motion, and Leak [pled](#) guilty to possession of a firearm by a felon pursuant to a plea agreement, reserving his right to appeal the denial of his suppression motion. The trial court imposed a suspended sentence of 9 to 20 months imprisonment and placed Leak on supervised probation for 12 months. Leak appealed.

Holding. Leak argued that he was unlawfully seized when Gallimore took his driver’s license to his patrol vehicle as Gallimore had no basis for suspecting that Leak was engaged in criminal activity. The court of appeals agreed.

Court’s analysis. Gallimore’s initial contact with Leak was consensual, and thus required no suspicion of criminal activity. The court further characterized Leak’s handing of his driver’s license to Gallimore as “voluntary,” though [G.S. 20-29](#) requires drivers to display their driver’s licenses when requested by a uniformed law enforcement officer. The court’s determination that Leak voluntarily handed over his license avoids the potentially sticky issue of determining just when the requirements of G.S. 20-29 apply and whether compliance with such a request effectuates a Fourth Amendment seizure. *Compare Keziah v. Bostic*, 452 F. Supp. 912, 915 (W.D.N.C. 1978) (stating that “[s]ince the initial stop and demand themselves were illegal, the officer could not invoke § 20-29 to bootstrap himself into a legal arrest”) with [State v. Adams](#), 88 N.C. App. 139, 142 (1987) (holding that defendant’s failure to produce his license in response to requests from police officers who were investigating an accident in a parking lot in which defendant was involved was a clear violation of G.S. 20-29).

But when Gallimore took Leak’s license back to his patrol car, the consensual encounter ended. Because Gallimore’s

actions would have communicated to a reasonable person that he was not free to leave the scene, they amounted to a seizure of Leak within the meaning of the Fourth Amendment. For such a seizure to be lawful, it must be supported by reasonable suspicion.

The trial court had concluded that any seizure of Leak was *de minimus* and thus no standard of suspicion was required. The court of appeals rejected that conclusion in light of the Supreme Court's determination in *Rodriguez* that even brief extensions of lawful Fourth Amendment seizures must be supported by reasonable suspicion.

Dissenting opinion. Judge McCullough dissented on the basis that the majority read *Rodriguez* too narrowly. The dissent would have held that an officer who approaches a vehicle for a legitimate reason—be it a traffic stop, to see whether the driver needs assistance, or some other reason—may “perform the routine functions we associate with a traffic stop for a traffic violation.” Checking for outstanding warrants was one such function that the *Rodriguez* court deemed ordinarily incident to a traffic stop. The dissent criticized the majority opinion with leaving officers with two standards for investigative activity related to drivers: one when a violation occurs and another when a vehicle is approached for another reason.

Some would say that's just what the Constitution requires. If law enforcement officers don't have reason to suspect you are engaging in unlawful activity, they can't detain you while they investigate further.