# Visual Estimates of Speed and "Slight Speeding"

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**Categories :** Evidence, Search and Seizure, Uncategorized

**Tagged as :** fourth circuit, sowards, speed, speeding, visual

**Date :** July 11, 2012

The Fourth Circuit recently decided United States v. Sowards, an interesting case about a traffic stop. The case arose when an experienced traffic enforcement officer stopped the defendant on I-77 near Charlotte. The basis for the stop was the officer's visual estimate that the defendant was driving 75 m.p.h. in a 70 m.p.h. zone. During the stop, the officer had a drug dog sniff the vehicle. The dog alerted, and the officer found 10 kilograms of cocaine in the car.

Charged with federal drug crimes, the defendant moved to suppress, arguing that the officer "lacked probable cause to initiate the traffic stop." At the suppression hearing, the officer testified that

he was certified in the use of radar. . . . As a condition of obtaining . . . certification, [he] was required to visually estimate the speed of twelve separate vehicles and then have his visual speed estimates verified with radar. . . . [His] visual speed estimates could not vary from the radar by greater than a total of 42[] mph for all twelve vehicles combined. . . . [F]or any one vehicle, his visual speed estimate could have been off by as much as 12 mph, so long as he did not exceed the 42 mph total for all twelve vehicles combined.

The officer testified that he did not use any particular technique to estimate speed, but relied on his training and experience. He also acknowledged that he did not verify his estimate of the defendant's speed using radar, pacing, or any other means. Finally, he struggled to answer questions about basic measurements, variously opining that there are 12 feet in a yard, that there are 4 feet in a yard, and that there are 12 inches on a yardstick.

The district court denied the motion to suppress, finding that the officer's estimate provided probable cause for the stop. The defendant pled guilty, reserving his right to appeal the ruling.

A split panel of the Fourth Circuit reversed, resulting in two rather testy opinions. The majority opinion was written by Judge Wynn, formerly of the North Carolina Court of Appeals. First, it noted that the officer received training on operating radar, but received no training on visually estimating speed. Second, it stated that the officer's difficulty with inches, feet, and yards cast doubt on his speed estimate because "one cannot discern [the] speed of a vehicle . . . without discerning both the increment of distance traveled and the increment of time passed." Ultimately, the court ruled that a visual estimate of speed can support a stop if the driver is traveling *greatly* in excess of the posted limit, but that if the driver is traveling only *slightly* in excess of the limit, corroborating evidence of speeding is needed. However, the court did not identify a bright dividing line between slight and great speeding.

The dissent, written by Chief Judge Traxler, argued that a trained officer's estimate of a vehicle's speed may, in some circumstances, be sufficient to support a stop even for "slight" speeding. The dissent argued first that the officer was experienced in traffic enforcement and had demonstrated, during the radar certification process, the ability to estimate vehicle speeds within a few miles per hour. Next, the dissent noted that even untrained witnesses may properly testify to their visual estimates of vehicle speed. In support of this claim, the dissent cited *State v. Barnhill*, 166 N.C. App. 228 (2004), a case in which the court of appeals ruled that an untrained officer's visual estimate of a vehicle's speed provided probable cause to stop the vehicle: "[I]f an ordinary citizen can estimate the speed of a vehicle, so can [an officer] . . . it is not necessary that an officer have specialized training to be able to visually estimate the speed of a vehicle." (It's worth noting that Judge Wynn was on the *Barnhill* panel, though the officer in that case estimated that the

defendant was going 40 m.p.h. in a 25 m.p.h. zone, which likely qualifies as more than slight speeding.) Finally, the dissent noted that probable cause is a relatively low hurdle, and suggested that while a visual estimate may often be insufficient to convict a defendant of speeding, it may still be sufficient to provide probable cause to stop.

I don't know what the prospects are for further review of the case. This isn't a tremendously sexy issue, even if it is practically important. In the meantime, I tend to think that officers should follow *Sowards*. Admittedly, the case doesn't bind state judges, and it concerns a different legal standard than is used in state court: it discusses probable cause rather than reasonable suspicion, which is all that is required for a vehicle stop under *State v. Styles*, 362 N.C. 412 (2008). So at least for officers who don't expect to be building federal cases, the case doesn't have much direct significance. But (1) an officer can't know in advance when a traffic stop may result in the discovery of drugs, guns, or other items that may be of interest to federal authorities, so it's probably wise to abide by federal standards when possible. Furthermore, (2) even if *Sowards* doesn't bind state judges, it may persuade them. There's something intuitively appealing about the idea that an officer can't reliably distinguish relatively small differences in speed with the naked eye. So officers are probably better off verifying borderline cases of speeding with radar, pacing, or some other objective technique, at least when that's feasible.

Those interested in reading more about various kinds of evidence of speeding might be interested in this post that Shea wrote a couple of years back.