

What's NOT a Public Vehicular Area?

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Categories : [Evidence](#), [Motor Vehicles](#)

Tagged as : [DWI](#), [public vehicular area](#), [State v. Ricks](#)

Date : September 23, 2015

After the legislature broadened the definition of “public vehicular area” in 2006 to include areas “used by the public for vehicular traffic *at any time*,” many wondered whether there was any place where one could drive a vehicle (other than a private driveway) that *wasn't* considered a public vehicular area. There was even some doubt about those private driveways, since members of the public can drive into them and sometimes do so even without an invitation from the resident. Moreover, North Carolina’s appellate courts had [broadly interpreted the term](#) for years—even when it was more narrowly defined. But the court of appeals put the brakes on an overly expansive reading of public vehicular area last year, rejecting, in [State v. Ricks](#), ___ N.C. App. ___, 764 S.E.2d 692 (2014), the State’s argument that all property used by the public for vehicular traffic is, in fact, a public vehicular area.

The facts in State v. Ricks. William Ricks was indicted for habitual impaired driving after a Rocky Mount police officer discovered him impaired while astride his moped with the engine running. Ricks and his moped were on a dirt driveway in a vacant lot located at an intersection in the city’s business district. The driveway, or “cut through,” extended across the lot from the street on one side of the intersection to the street on the other side. The officer who arrested Ricks testified that he had seen people walk and ride bicycles across the lot by using this drive. He said it was wide enough to drive a motor vehicle through, explaining that he had driven his patrol car into the cut through to approach Ricks. The officer said he had seen other cars use the cut through to turn around.

At trial, Ricks moved to dismiss the charges on the basis that the State failed to prove that he was in a public vehicular area. The trial court denied defendant’s motion. The trial court instructed the jury that a public vehicular area was “any area within the State of North Carolina used by the public for vehicular traffic at any time including by way of illustration and not limitation any drive, driveway, road, roadway, street, alley or parking lot.” Defense counsel attempted to provide the full statutory definition of public vehicular area in closing arguments, but the State objected and was sustained.

The defendant appealed, arguing that the trial court erred in denying his motion to dismiss, in instructing the jury concerning the definition of a public vehicular area, and in sustaining the State’s objections to his closing argument.

Dirt drive NOT a public vehicular area. The court of appeals in *Ricks* concluded that the trial court erred in denying the defendant’s motion to dismiss as there was insufficient evidence that the cut through was a public vehicular area.

The State argued on appeal as it had below that it was required only to show that “the area [was] used by the public for vehicular traffic at any time,” and that its evidence was sufficient to meet that burden. [G.S. 20-4.01\(32\)\(a\)](#). The officer had seen people walk and ride bicycles across an area of the vacant lot. That traffic maintained a dirt path, or cut through, wide enough to drive on. The court of appeals disagreed.

Illustrative examples set the standard. Although the examples in [G.S. 20-4.01\(32\)\(a\)](#) of areas used by the public for vehicular traffic are listed “by way of illustration and not limitation[.]” the court of appeals characterized them as “a component of the relevant definition” that “cannot be ignored.” *Id.* at ___; 764 S.E.2d at 696.

Those examples are driveways, roads, alleys and parking lots on the premises of:

- a hospital, college, school, orphanage, or church,
- a park, institution, or facility maintained and supported by the State or any of its subdivisions,
- a business, office building, or residential or municipal establishment providing parking space whether the business is open or closed; or
- federal property under the State's jurisdiction.

The examples reveal that the definition contemplates “areas generally open to and used by the public for vehicular traffic as a matter of right or areas used for vehicular traffic that are associated with places generally open to and used by the public, such as driveways and parking lots to institutions and businesses open to the public.” *Id.* at ___; 764 S.E.2d at 696. Furthermore, the court noted that a separate subsection of the public vehicular area definition incorporates “private property used by vehicular traffic and designated by the private property owner as a public vehicular area.” *Id.* (quoting G.S. 20-4.01(32)(d)). If every area used by the public for vehicular traffic at any time is a public vehicular area, this separate subsection would be superfluous, reasoned the court.

As to the particular area at issue, the court noted that the State presented no evidence as to its ownership or that it had been designated as a public vehicular area pursuant to G.S. 20-4.01(32)(d). The court explained that a vacant lot was dissimilar to any of the examples provided in G.S. 20-4.01(32)(a) and rejected the idea that foot and bicycle traffic across the area was enough to turn it into a public vehicular area. The court held that to meet the definition of a public vehicular area in G.S. 20-4.01(32)(a), there must be evidence demonstrating that the property is similar in nature to the illustrative examples in the statute. The State failed to produce any such evidence in *Ricks*.

Finally, the court noted that even though it was reversing the defendant's conviction for insufficient evidence, the trial court erred in abbreviating the definition of public vehicular area in the instructions to the jury and by preventing the defendant from arguing his position based on the remaining language in G.S. 20-4.01(32)(a).

What's the significance? Before the amendments in 2006, G.S. 20-4.01(32)(a), defined as a public vehicular area “an area **generally open to** and used by the public for vehicular traffic” G.S. 20-4.01(32)(a) (2005) (emphasis added). *Ricks* in some measure restores that definition notwithstanding the amendment of the statute. Thus, driveways and parking areas on private property that is not the premises of a business, institution, or residential establishment are *not* public vehicular areas unless they have been formally designated as such.