

When Reasonable Suspicion Is Dispelled

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

Tagged as : [de minimis](#), [investigative detention](#), [investigative stops](#), [reasonable suspicion](#), [Terry stops](#), [traffic stops](#)

Date : January 26, 2015

A traffic stop is valid if it is supported by reasonable suspicion. During a valid traffic stop, an officer may demand the driver's license and registration, may run a computer check based on those documents, and so on. But what if the reasonable suspicion supporting the stop dissipates soon after the stop is made?

[*Editor's note: the North Carolina Court of Appeals decided a case on point after this post was written. For a discussion of that case, see [this](#) blog post.*]

A scenario to illustrate the issue. Suppose that an officer stops a vehicle because it is registered to a person with a revoked license. That's a valid stop under *State v. Hess*, 185 N.C. App. 530 (2007) (“[W]hen a police officer becomes aware that a vehicle being operated is registered to an owner with a suspended or revoked driver's license, and there is no evidence appearing to the officer that the owner is not the individual driving the automobile, reasonable suspicion exists to warrant an investigatory stop.”). As the officer approaches the vehicle, the officer is able to see that the driver is a female, while the registered owner is a male. May the officer nonetheless conduct a license and registration check? Or must the officer immediately allow the driver to depart?

As a general rule, the officer must let the driver depart immediately. Most courts have ruled that the officer must let the driver go right away. See 4 Wayne R. LaFave, *Search and Seizure* § 9.3(c) at 510 n. 162 (5th ed. 2012) (collecting cases); *United States v. de la Cruz*, 703 F.3d 1193 (10th Cir. 2013) (considering a case of this kind and concluding that “[o]nce reasonable suspicion has been dispelled, even a very brief extension of the detention without consent or reasonable suspicion violates the Fourth Amendment”). As far as I know, there is not a case on point in North Carolina. The issue was raised but not decided in *State v. Hernandez*, ___ N.C. App. ___, 742 S.E.2d 825 (2013) (not considering the issue on appeal because it was not preserved below).

Exceptions to the rule. There are two caveats to this general rule.

- First, the officer probably may approach the driver to explain the officer's mistake and send the driver on his or her way. See LaFave, *supra* (citing several cases so holding).
- Second, if reasonable suspicion does not dissipate immediately (for example, before the officer approaches the driver), it is less clear that the officer must truncate his or her usual traffic stop routine. See *State v. Bonacker*, 825 N.W.2d 916 (S.D. 2013) (distinguishing cases in which reasonable suspicion dissipated immediately and ruling that an officer did not violate the Fourth Amendment by asking to see a driver's license after investigating a suspected headlight violation by talking to the vehicle occupants and determining that the driver had not committed the violation).

Relationship between the rule and the *de minimis* doctrine. The general rule seems to be somewhat at odds with the rule that a brief extension of a traffic stop to allow a drug dog to sniff the car, or to allow an officer to ask a driver a few questions about drug activity, are *de minimis* intrusions that don't implicate the Fourth Amendment. (This rule is, at least for now, fairly well established across the country, although there are some questions about its scope in North

Carolina, and the United States Supreme Court just heard oral argument in a case in which the scope of the *de minimis* doctrine is at issue.) Why is a brief extension of a valid stop *de minimis* in one case but problematic in the other?

There are several possible answers.

- Perhaps courts believe that a license check, registration check, and other typical traffic stop activities can't be completed quickly enough to be *de minimis*.
- Perhaps courts view *de minimis* as a relative term, with an extra minute or two tacked onto a ten-minute speeding stop being less concerning than a minute or two added to a stop where reasonable suspicion dissipates after a few seconds.
- Finally, courts may be influenced by the fact that additional investigation at the end of a stop is often based on something that piqued an officer's interest, such as the driver's unusual nervousness or the presence of a large number of air fresheners in the car. Such facts may not rise to the level of reasonable suspicion and so may not support a full investigative detention, but a court might still believe that they are enough to make a short extension of an existing stop reasonable.

The cases don't really explore these possibilities, and perhaps the answer is only of academic interest. But as always, I'm interested in readers' thoughts about any of the issues discussed in this post, and in input from those who have practical experience with the type of stop under consideration.