

Investigative Stops Law Bulletin

in this issue:

Traffic Stop

Despite defendant's contentions, officer had multiple grounds to justify vehicle stop 1

Officer stops suspected drug vehicle for following too closely 3

Reasonable Suspicion

Court finds enough evidence of defendant violating left-lane-for-passing-only law to justify stop 4

In Brief

5

News Stop

7

Traffic Stop

Despite defendant's contentions, officer had multiple grounds to justify vehicle stop

Citation: *United States v. Green*, 946 F.3d 433 (8th Cir. 2019)

The Eighth U.S. Circuit has jurisdiction over Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota.

At approximately 1:00 a.m. on January 13, 2018, Jordan Ehlers, a police officer in Waterloo, Iowa, saw a black Nissan Rogue SUV that, based on his visual estimation, was speeding. Ehlers ran a search of the license plate number on the SUV, which returned a record for a different vehicle. While following the vehicle, he also noticed that a license plate frame on the SUV covered a portion of the license plate and registration. Based on these three facts, Officer Ehlers initiated a traffic stop.

Once the SUV stopped, Ehlers shined his spotlight on the back of the vehicle, and he saw passengers making what he perceived as suspicious movements. Ehlers exited his patrol car and approached the front passenger side of the vehicle. As the front passenger opened his window, Ehlers immediately smelled alcohol. He also saw open liquor bottles in the car and noticed that

the floorboard appeared wet. Ehlers requested identification from the driver and from each of the three passengers. The front seat passenger did not have identification but identified himself as Tereall Green. Officer Ehlers recognized Green's name from a prior intelligence report indicating that Green was seen in a Facebook video possessing a weapon. Ehlers then turned to the back-seat passengers, requesting identification from each of them. When one of them rolled down his window, Ehlers smelled marijuana. This passenger identified himself as Deshawn Marks. The other backseat passenger said his name was "Spencer Green." Ehlers noticed that "Spencer Green" appeared nervous, and he recognized "Green" as Javonta Herbert from prior contact with him.

After Officers Randy Girsch and Kenneth Schaaf arrived on the scene, Officer Ehlers asked Tereall Green to exit the SUV. He conducted a brief frisk of Green—quicker than normal due to the cold temperature. He did not find anything. Ehlers then frisked Marks, finding clear plastic baggies of marijuana. Because both Green and Marks were shivering, Officer Girsch offered to let them sit in his patrol car, an offer both men eventually accepted.

Back at the SUV, Ehlers asked "Spencer Green" to step out of the car. Ehlers asked if he was Javonta Herbert, and Herbert conceded that was his real name. Ehlers then con-

Contributors

Alex D. Ruskell, J.D.

Carrie Petersen J.D.

For authorization to photocopy, please contact the **Copyright Clearance Center** at 222 Rosewood Drive, Danvers, MA 01923, USA (978) 750-8400, <http://www.copyright.com> or **West's Copyright Services** at 610 Opperman Drive, Eagan, MN 55123, copyright.west@thomsonreuters.com. Please outline the specific material involved, the number of copies you wish to distribute and the purpose or format of the use.

This publication was created to provide you with accurate and authoritative information concerning the subject matter covered; however, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. The publisher is not engaged in rendering legal or other professional advice and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

Investigative Stops Law Bulletin is published and copyrighted by Thomson Reuters, 610 Opperman Drive, P.O. Box 64526, St. Paul, MN 55164-0526. For subscription information: call (800) 229-2084, or write to West, Credit Order Processing, 620 Opperman Drive, P.O. Box 64833, St. Paul, MN 55164-9753.

POSTMASTER: Send address changes to, Investigative Stops Law Bulletin, 610 Opperman Drive, P.O. Box 64526, St. Paul, MN 55164-0526.



THOMSON REUTERS®

610 Opperman Drive
P.O. Box 64526
St. Paul, MN 55164-0526
1-800-229-2084

email: west.customerservice@thomsonreuters.com

ISSN 1544-6409

©2020 Thomson Reuters

All Rights Reserved

Quinlan™ is a Thomson Reuters
brand

ducted a patdown of Herbert. As Ehlers frisked Herbert, Officer Schaaf used his flashlight to look into the backseat floorboard of the SUV. He saw a handgun where Herbert had been sitting and immediately yelled “ten thirty-two”—a police code that indicated he had discovered a firearm in the vehicle. Ehlers placed Herbert under arrest.

Officer Girsch, who was standing beside the patrol car in which Tereall Green and Marks were sitting, heard Officer Schaaf call out the “ten thirty-two.” Girsch decided to handcuff Green while another officer handcuffed Marks. Although he had observed Ehlers frisk Green earlier in the stop, Officer Girsch frisked him again, this time conducting a more thorough patdown. Girsch discovered a loaded firearm hidden in Green’s pants. Green subsequently fled on foot. Officers pursued and captured him within minutes.

Both Green was indicted on charges of being a felon in possession of a firearm. In pre-trial matters, the district court denied Green’s motion to suppress evidence gathered during the traffic stop, finding that Ehlers had probable cause to stop the SUV and that neither patdown of Green constituted an unreasonable search in violation of the Fourth Amendment. Green entered a conditional guilty plea.

DECISION: Affirmed.

Green appealed the denial of his motion to suppress, arguing that the traffic stop was unlawful and that the officers lacked reasonable suspicion to frisk him.

Under the Fourth Amendment, a traffic stop is reasonable if it is supported by either probable cause or an articulable and reasonable suspicion that a traffic violation has occurred. Even a minor traffic violation provides probable cause for a traffic stop.

In this case, the district court found that Officer Ehlers had probable cause to believe the SUV was

in violation of three different Iowa traffic laws. First, the district court credited Officer Ehlers’ testimony that he observed the SUV speeding. Though the Eighth Circuit has cautioned that there must be sufficient indicia of reliability for a court to credit as reasonable an officer’s visual estimate of speed, it found the district court’s determination that the SUV was speeding, based on Ehlers’ credibility, training, and video evidence, was not clearly erroneous, and therefore Ehlers had probable cause to stop the vehicle.

Furthermore, Ehlers also saw two other infractions that provided grounds to stop the SUV. First, Ehlers noticed that the license plate frame on the SUV covered the letters on the plate and the registration sticker. Second, prior to initiating the stop, Officer Ehlers also ran an inquiry of the license plate which returned a record showing that the registration belonged on a silver 2004 Mercedes-Benz ML 500, but the plate was on a black 2011 Nissan Rogue. Because the license plate frame obscured the plate, Ehlers had probable cause to make a stop and because the plates were registered to a different vehicle, Ehlers at least had a reasonable suspicion that the SUV may not be properly registered at all. Therefore, initiating a traffic stop was not a violation of the Fourth Amendment.

The court next turned Green’s argument that the officers lacked a reasonable, articulable suspicion to frisk him during the stop. The court was unsure if Green intended to challenge the reasonableness of the initial frisk as well as the second.

Officers may conduct a protective patdown search for weapons during a valid stop when they have objectively reasonable suspicion that a person with whom they are dealing might be armed and presently dangerous. In determining whether reasonable suspicion exists, the court considers the totality of the circumstances in light of the officers’ experience and specialized training. A patdown is permissible

if a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.

The first patdown was justified by reasonable, articulable suspicion. Officer Ehlers recognized Green's name from a prior intelligence report indicating that Green possessed a weapon in a Facebook video. Before he conducted a frisk, Officer Ehlers told Officer Schaaf that he had "recent intel for a [ten] thirty-two"—the Waterloo Police Department's code for a weapon—for the "front seat passenger." Officer Ehlers also smelled marijuana in the vehicle, and he had seen movement prior to the stop that he considered suspicious. Given the presence of illegal narcotics, Ehlers could have suspected that drugs were being transported in the car. A suspicion on the part of police that a person is involved in a drug transaction supports a reasonable belief that the person may be armed and dangerous because weapons and violence are frequently associated with drug transactions. Viewing the totality of the circumstances, the circuit court concluded that Ehlers had reasonable suspicion that Green was armed and dangerous. Therefore, the first frisk was reasonable.

Officer Girsch's second frisk of Green was also reasonable. Although Girsch had observed Ehlers's frisk of Green, it was not unreasonable for him to conduct a second, more thorough patdown in light of new information that Schaaf had discovered a firearm, which heightened the risk that other passengers in the vehicle were armed. Although the presence of a gun in possession of one individual does not necessarily justify a patdown of a companion of that individual, it is a fact to be considered in determining the overall reasonableness of the officer's actions. Moreover, given that the first patdown was quick and cursory due to the frigid temperatures, it was reasonable in light of the discovery of one weapon

for Girsch to conduct a more thorough patdown.

Because Officer Ehlers had probable cause to conduct the traffic stop and both patdowns were supported by reasonable suspicion, the district court did not err in denying Green's motion to suppress evidence seized during the stop.

See also: *U.S. v. Harris*, 617 F.3d 977 (8th Cir. 2010).

See also: *U.S. v. Gaffney*, 789 F.3d 866 (8th Cir. 2015).

Officer stops suspected drug vehicle for following too closely

Citation: *United States v. Radford*, 2019 WL 6682172 (S.D. Ind. 2019)

Officer Maples, a 15-year veteran of the Brownsburg (Indiana) Police Department ("Brownsburg PD") worked narcotics investigations for approximately 12 years. Officer Maples was a supervisor of Brownsburg PD's street crimes unit—a unit that enforced traffic laws in pursuit of criminal activity while in transit. A part of his assignment was to conduct traffic stops to investigate drug trafficking on major routes that passed through Brownsburg, Indiana. During his career with Brownsburg PD, Officer Maples estimated that he conducted "hundreds, if not thousands" of traffic stops. Officer Maples also assisted the Drug Enforcement Administration ("DEA") and Task Force Officers in the vicinity. One day, Officer Maples was informed by DEA surveillance units that a white Audi had just departed a suspected drug house where DEA and other investigators were conducting surveillance.

At approximately 2:15 p.m., Officer Maples observed the Audi pass his location traveling at approximately 40 to 45 miles per hour and following the car in front of it by less than one car length. Upon observing what he believed to be a

traffic infraction of following too closely, Officer Maples decided to make a traffic stop.

The Audi was stopped at a red light. Officer Maples approached the vehicle in his marked squad car and located himself behind the Audi. As the Audi began to turn, Officer Maples activated his overhead lights. The Audi pulled into a parking space and Officer Maples positioned his vehicle behind the Audi so the vehicle could not leave. The driver of the vehicle, who was later determined to be Radford, had not observed the activated lights and was unaware that he was being stopped by a police officer. As Radford began to open the door of the Audi, he was surprised when Officer Maples pulled the door open.

Radford had a cellular telephone in his hand and Officer Maples instructed him to put the phone on the dashboard and exit the vehicle. Radford hesitated and did not initially comply. Radford then attempted to hold onto a second cellular telephone. A second command was given and Radford complied. As Radford exited the Audi, he responded to Officer Maples' questions and denied having any firearms. Radford was moving around and appeared nervous. Officer Maples, concerned for officer safety, instructed Radford to "stop moving around" and "stop reaching" because "you make me nervous." Officer Maples began to conduct a pat down and advised Radford multiple times to relax and loosen up his arms. Officer Maples then placed a grip on the back of Radford's left arm to prevent him from being able to retrieve any items from his belt line or pocket. When Officer Maples pulled Radford toward him, he observed a clear vacuum-sealed package containing what Officer Maples believed to be heroin. Radford was placed in handcuffs for his safety and officer safety.

After Radford was secured, a search of his person and vehicle revealed a firearm in the driver side

door pocket. The suspected heroin tested positive for Fentanyl.

At trial, Radford argued that the traffic stop was pretextual and too subjective to be lawful.

STOP: Lawful.

Officer Maples had probable cause to stop Radford's car.

Although the following-too-closely statute was subjective, Officer Maples—a 15-year veteran of the Brownsburg PD and member of the narcotics-trafficking drug unit—presented sufficient evidence that he had probable cause to stop Radford. Under Indiana law, a person who drove a motor vehicle more closely than was reasonable and prudent, having due regard for the speed of both vehicles, the time interval between vehicles, and the condition of the highway. Officer Maples presented evidence that he had years of experience in conducting over 1,000 traffic stops, including narcotics traffic stops. Although the reason for this stop was not captured by Officer Maples' dashboard camera, he explained that the dashboard camera was a brand new system and this was the first traffic stop that he'd made with it. The system was set up so that "once the lights are activated, it would go back approximately one minute, and then that's when it would begin recording." Because of the timing of his observation, the overhead lights were not yet activated, and the camera did not record the actual traffic infraction. This explanation of why the infraction was not videotaped was credible.

In judging the credibility of Radford's assertions that he did not commit any traffic infraction, there was evidence that Radford has been pulled over 15 times between December 22, 2003 and June 30, 2012, and, in each of those instances, he was charged with a criminal traffic offense. Moreover, it was not uncommon that motorists followed the car ahead of them less than a full car length, and it was reasonable to

believe that an officer with experience in making narcotics traffic stops would wait until he or she observed a traffic violation to initiate the stop.

See also: *U.S. v. Tinnie*, 629 F.3d 749 (7th Cir. 2011).

See also: *Litchfield v. State*, 824 N.E.2d 356 (Ind. 2005).

Editor's Note:

The court also noted that the DEA alert and the suspect's nervousness made the pat-down reasonable.

Reasonable Suspicion

Court finds enough evidence of defendant violating left-lane-for-passing-only law to justify stop

Citation: *United States v. Rodriguez*, 2020 WL 521373 (5th Cir. 2020)

The Fifth U.S. Circuit has jurisdiction over Louisiana, Mississippi, and Texas.

Erika Rodriguez and a passenger were driving southbound on U.S. Highway 281 in Hidalgo County, Texas as their vehicle overtook state trooper Julio Trevino Vivero's patrol car, which was traveling below the speed limit in the right-hand lane. At the suppression hearing, Vivero testified that Rodriguez followed behind his vehicle for two to three minutes and was "hesitant to pass." Eventually, Vivero reduced his speed, and Rodriguez passed his patrol car. A sign about 11 miles earlier instructed motorists that the left-hand lane is for passing only. As depicted in the officer's dashcam video, Rodriguez remained in the left lane after she overtook Vivero, passing a second patrol car that was

"on the right side of the highway with [its] emergency lights on, attending to another traffic stop." She then passed a truck in the right-hand lane that was moving at a slower rate of speed. Rodriguez remained in the left-hand lane for about 13 seconds after passing the truck, at which point Vivero began to accelerate to pull her over.

The trooper explained to Rodriguez that he stopped her for driving in the left lane without passing and asked Rodriguez for her license and insurance documentation. A passenger was also present in the car, who Vivero said was "breathing abnormally," and "just looking straight." Vivero then separated Rodriguez from the passenger by ordering Rodriguez out the car. Vivero testified that he thought "it was a different traffic stop in [his] eyes." Based on his "training [and] experience," he "felt something was going on" that justified separating them and investigating further.

Vivero spoke with the passenger first. He asked her about the parties' itinerary. The passenger hesitated before answering that they were coming from Houston, had stayed overnight in a house, and did not have any luggage.

Vivero next questioned Rodriguez in his patrol car. Rodriguez's answer to at least one question contradicted that of the passenger. Whereas the passenger had told Vivero that she and Rodriguez had met on Facebook, Rodriguez told Vivero that their husbands were in prison together and that she and the passenger became friends after running into each other during visitations. This inconsistency raised Vivero's suspicion, and he continued to investigate. Vivero verified Rodriguez's information on the patrol car's computer and learned that she was a felon. He asked her if she had anything illegal in the vehicle, and Rodriguez eventually told him that the trunk contained firearms. A subsequent search of the vehicle revealed that Rodriguez had approximately nine firearms in her vehicle's trunk.

After being indicted, Rodriguez moved to suppress her statement made during the stop and the firearms found during the search of her vehicle, contending that the initial stop of her car was not supported by reasonable suspicion and that Vivero unconstitutionally extended the stop. During the suppression hearing, the district court opined that the 12 to 14 seconds that elapsed between when Rodriguez passed the truck and when Vivero initiated the traffic stop “was really quick.” Nevertheless, the court stated that the test for reasonable suspicion was whether there was evidence “that [Rodriguez] was in the left[-]hand lane, she had clear traffic, and a few seconds had passed” before Vivero pulled her over. The court found that the dashcam video was “conclusive on some evidence . . . to support reasonable suspicion” and stated that the only open question was whether Rodriguez had driven past a sign warning her that the left-hand lane was for passing only.

Rodriguez’s counsel argued that there was no evidence that Rodriguez had passed a sign at mile marker 744 alerting drivers to this regulation. The court rejected that argument, finding that it was “reasonable to believe that [Rodriguez] would have seen th[e] sign heading southbound.” The court reiterated that “there was some evidence that [Vivero] had reasonable suspicion to believe that [Rodriguez] had engaged in a traffic violation for staying in the passing lane longer than she should have” and also found that “the length of the detention was reasonable.” The court denied the motions to suppress, and Rodriguez lodged an objection. The district court then conducted a bench trial and found Rodriguez guilty of being a felon in possession of a firearm. Rodriguez appealed.

DECISION: Affirmed.

The Government argued that Rodriguez was stopped for driving in the left-hand lane without passing in violation of the Texas Transportation Code.

Here the court needed to determine whether the officer had reasonable suspicion that Rodriguez committed the traffic violation of driving in the left lane without passing when a sign prohibited such action, considering the totality of the circumstances giving rise to the traffic stop.

Here, Vivero testified that there was a sign at mile marker 744 instructing motorists that the left-hand lane was for passing only. An officer can develop a reasonable suspicion that an individual is driving in the left lane without passing in a brief period of time. A traffic stop is justified if the officer had an objectively reasonable suspicion that a traffic violation, *occurred, or is about to occur*, before stopping the vehicle. The 12 to 14 seconds that elapsed between Rodriguez’s clearance of the truck and Vivero’s acceleration made the traffic stop provided Vivero with reasonable suspicion that a traffic violation had occurred or was about to occur and, certainly, it provided him with more than a “mere hunch.” The standards to apply in enforcing the left-lane-for-passing-only provision are explicit. If it is in the left lane, the vehicle should be in the process of passing other vehicles. If it is not passing other vehicles, the vehicle should not be in the left lane.

Based on the totality of the circumstances, and viewing the evidence in the light most favorable to the Government, the court concluded that trooper Vivero had reasonable suspicion to stop Rodriguez.

Editor’s Note:

Rodriguez also argued that the length of her detention was not reasonable. Here, when Vivero initially asked Rodriguez for her documentation, he noticed that the passenger was “breathing abnormally,” and was “looking straight” ahead. Based on his training and experience, Vivero concluded that “something [was] going on.” When he

asked the passenger questions at the outset of the stop, she was uncertain and hesitant. In seeking to dispel his reasonable suspicion through further investigation and questioning, Vivero discovered that Rodriguez’s answer to the question of how she knew the passenger conflicted with the passenger’s answer. Thereafter, Vivero stated “[i]t’s just not making any sense to me” and asked Rodriguez whether there was anything illegal in the car. Rodriguez admitted to possessing firearms in the trunk. Viewing the evidence in the light most favorable to the Government, Rodriguez failed to establish that Vivero lacked reasonable suspicion to prolong the duration of the traffic stop.

In Brief

South Dakota

Reasonable suspicion

Officer McKeon noticed what he believed to be Tenold’s vehicle leaving the Deadwood Mountain Grand. He decided to follow the vehicle because he had previously received information from Officer Olson that Tenold and Gravatt were suspected of dealing methamphetamine out of their hotel room at the Deadwood Mountain Grand. Officer McKeon did not immediately initiate a traffic stop because, according to Officer McKeon’s later testimony, the claim of methamphetamine dealing “had not been substantiated enough” to seek out Tenold and Gravatt on those allegations. While following Tenold’s vehicle, Officer McKeon believed he had reasonable suspicion to initiate a traffic stop when he observed what he later described as “one” taillight “emitting a white light when the brakes were applied.” Officer McKeon acknowledged that a vehicle needed only two working brake lights, but he believed that Tenold was commit-

ting a traffic violation nonetheless because his third brake light emitted white light. After stopping the vehicle, Officer McKeon explained to Tenold that he had a broken taillight and would receive a warning ticket for the light. Officer McKeon also asked for and obtained consent from Tenold to search the vehicle. Another officer arrived at the scene, so Officer McKeon had Tenold's passenger, Gravatt, sit in that officer's vehicle during the search. Tenold sat in the front passenger seat of Officer McKeon's patrol vehicle. The search produced no evidence of illegal drug activity. Officer McKeon told Tenold and Gravatt that they were free to leave, and Tenold drove away. After Officer McKeon returned to the police department, he performed a routine search of his vehicle for items that may have been left by the last occupant. The search revealed a small foil ball under the front passenger seat where Tenold had been sitting during the stop. Officer McKeon believed the ball contained a white crystalline substance. His field test of the substance produced a presumptive positive result for methamphetamine. Concluding that the foil ball belonged to Tenold, Officer McKeon located Tenold at a nearby casino and placed him under arrest. At trial, Tenold argued that the stop lacked reasonable suspicion.

STOP: Unlawful.

Officer McKeon was mistaken regarding South Dakota taillight law, so the issue was whether he had another basis to support the stop. The Fourth Amendment permitted brief investigative stops when a law enforcement officer had a particularized and objective basis for suspecting the particular person stopped of criminal activity. The stop could not be the product of mere whim, caprice or idle curiosity. However, it was enough that the stop was based upon specific and articulable facts which, taken together with rational inferences from those facts, reasonably

warranted the intrusion. Here, the facts available to Officer McKeon at the time of the stop (minus the mistaken belief that a traffic violation occurred) included: (1) Tenold was suspected of dealing drugs out of his hotel room at the Deadwood Mountain Grand, and (2) Tenold left the hotel parking garage in his vehicle at 2:39 a.m. Based on these two facts, Officer McKeon lacked a particularized and objective basis for believing that Tenold and Gravatt were currently engaging in drug activity. First, at the time of the stop, Officer McKeon did not have specific or articulable facts related to Tenold's suspected drug activity. Rather, the only information Officer McKeon had at that time was a vehicle description and photos of Tenold and Gravatt who "were identified as possible dealers of methamphetamine out of rented rooms at the Deadwood Mountain Grand." Moreover, this information came from Officer Olson, and lacked any details about the underlying source of the information. In fact, Officer McKeon explained in his narrative report that Officer Olson had informed the other officers that they should "develop [their] own [r]easonable [s]uspicion for a stop and investigate." Second, the reported drug activity was alleged to have occurred at the hotel, not in Tenold's vehicle. Finally, and most importantly, because there was no time-frame associated with the reported drug activity, Officer McKeon had no information alleging that Tenold or Gravatt were—as they drove from the Deadwood Mountain Grand at 2:39 a.m.—committing a crime. Ultimately, the purported basis for the stop could be summarized as a general suspicion, accompanied by otherwise innocuous behavior. When Officer McKeon stopped Tenold's vehicle, he had no information alleging that criminal wrongdoing was afoot. Other than observing the vehicle described as belonging to Tenold leave the Deadwood Mountain Grand at 2:39 a.m., Officer McKeon did not personally

observe any additional specific or articulable behavior that would allow him to conclude that a crime was presently occurring or about to occur. Because Officer McKeon did not have reasonable suspicion or probable cause to stop Tenold's vehicle, the stop was unjustified at its inception.

Citation: *State v. Tenold*, 2019 SD 66, 937 N.W.2d 6 (S.D. 2019)

Virginia

Search and seizure

On November 19, 2016, around 8:30 p.m., Sergeant Jonathan Nathanson, with the City of Richmond Police Department, conducted a traffic stop of the Roy Williams' vehicle. He stopped the car after seeing it traveling faster than the posted speed limit and swerving "in and out of the lane."

During the encounter, the sergeant asked the Williams whether he had any firearms in the car. Williams replied that he had a concealed weapons permit. Sergeant Nathanson asked at least four times where the firearm was located. Each time, the appellant responded vaguely that it was concealed. As they conversed, a large unrestrained dog "rov[ed] the vehicle freely."

The sergeant returned to his police car to write two summonses. It took him approximately 17 minutes to complete them. While he was processing the summonses, he called for assistance, and two other police officers responded to his location. One of the responding officers recognized Williams from a previous "assault issue" and told Nathanson that Williams had "some type of firearms violation prior."

Sergeant Nathanson went back to the Williams' car and asked him to get out of the vehicle. The reason for the request was to avoid the dog in the car and to observe Williams' motor skills. After Nathanson repeated the request multiple times, Williams complied. As soon as he got out of the car, Sergeant Na-

thanson saw a handgun inside Williams's open jacket. The gun was "one of the bigger revolvers [Nathanson had] ever seen."

Immediately, Nathanson placed Williams in investigative detention. Williams said that the gun belonged to him. The sergeant seized it for safety purposes.

Within moments of seizing the firearm, Sergeant Nathanson noticed the odor of unburned marijuana coming from Williams. He asked Williams whether he had marijuana, and Williams said that he did not. The sergeant found a small bag of "green leaf like substance" on Williams' person that he believed to be marijuana.

Nathanson ran a search in the state firearms database for the gun's serial number. In the course of doing so, he learned that it had been stolen from an individual's home on July 8, 2015. When Nathanson informed Williams that the gun was stolen, Williams did not seem surprised, yet he said that he did not know that it was stolen. Nathanson asked where he had gotten the gun, and all Williams would say was that he had bought it from "a person." In addition, when Nathanson told Williams that he was under arrest, he said that the case "would get lost in court, and that he had been stopped for a stolen firearm before and [had] not [been] arrested at that time."

A field test of the leafy material tested positive for THC.

Nathanson explained that the traffic stop may have taken 10 minutes longer than normal because he had to "deal with a dog . . . [and a] firearm." He estimated that the entire encounter lasted about 30 minutes.

Before trial, Williams filed a motion to suppress the evidence obtained from the search of his person and the firearm. The trial court denied the motion.

Ultimately, a jury found Williams guilty of receiving a stolen firearm and possession of marijuana, subsequent offense. He appealed.

SEIZURE AND SEARCH: Lawful.

Williams argued that Nathanson's seizure of the firearm violated his Fourth Amendment rights and that the examination of the firearm for its serial number was an unconstitutional search.

Williams contended the seizure of the firearm was not supported by probable cause.

The warrantless seizure of firearms in plain view is generally upheld when those firearms posed a potential threat to officer safety. Such a seizure during the course of a traffic stop is permissible under the Fourth Amendment if the officer has a reasonable belief that the weapon poses a danger to police. The issue is whether a reasonably prudent officer in the circumstances would be warranted in the belief that his safety or that of others was in danger.

During the instant stop, which occurred at night, Sergeant Nathanson asked Williams whether he had any firearms in the vehicle. Although Williams admitted that he did, he was evasive about where the firearm was located. Nathanson asked at least four times about the location of the gun. Each time, Williams responded only that it was concealed.

After writing the summonses, Sergeant Nathanson approached Williams again, in order to issue the documents, and asked him to get out of the car. Nathanson explained that this was necessary due to the dog in the passenger compartment and in order to observe Williams' motor skills. Williams initially refused to comply but eventually acquiesced. When Williams got out of the car, Nathanson immediately saw the butt of the large revolver inside his open jacket. Under these circumstances, once Nathanson saw the firearm in plain view protruding from Williams' jacket, the objective circumstances provided him a reason to believe that his safety or that of another officer on the scene was

in danger. Consequently, his seizure of the firearm during the lawful traffic stop was permissible under the Fourth Amendment.

Williams also contended that Sergeant Nathanson's examination of the firearm's serial number violated the Fourth Amendment.

Nathanson took control of the firearm in order to ensure officer safety during the traffic stop. Once the sergeant lawfully possessed the gun, he entered its serial number into a database. Williams did not allege, nor did the evidence indicate, that Nathanson did anything other than look at the firearm in order to see its serial number, which was visible on the gun.

Assuming without deciding that Williams established that he had a subjective expectation of privacy in the firearm's serial number, the court considered whether his subjective expectation of privacy is one that society is prepared to recognize as objectively reasonable.

Once Sergeant Nathanson had lawfully seized the firearm to ensure safety during the stop, Williams' expectation of privacy in its serial number was not objectively reasonable. Consequently, Nathanson was permitted to read the visible serial number and search for it in the firearms database.

The court concluded that viewing and recording a serial number from a firearm lawfully seized by an officer does not violate the Fourth Amendment.

Citation: *Williams v. Commonwealth*, 71 Va. App. 462, 837 S.E.2d 91 (2020)

News Stop

Police impersonator conducts traffic stops, demands to know why COVID-19 law was violated

At least two people who thought they were being pulled over by a

police officer in the Greeley, Colorado, area were actually victims of an impersonator, according to a release from the Greeley Police Department (GPD).

The first incident happened around 7:00 a.m. on March 24. At that time, GPD received a call from someone who thought they were stopped by a Greeley officer. The driver explained they were stopped by a silver or white SUV with no markings.

The witness described the person they interacted with a white man about 5'10" inches tall and weighing about 190 pounds. He was wearing a dark-colored uniform with no

markings or patches and a black stocking cap, according to GPD.

On March 27 around 4:50 a.m., GPD received reports of another police impersonator who was conducting traffic stops and asking drivers to pull into an area that was blocked off by yellow traffic cones.

The impersonator was described as a white man about 6'3" tall and weighing 280 pounds. He had no facial hair and no visible tattoos and was reported to be wearing a dark uniform with a traffic vest, a baseball cap with no emblem, dark-rimmed glasses and he had a baton and pepper spray.

The man demanded to see a driv-

er's license, insurance and registration, according to GPD.

He also demanded an explanation as to why the victim was violating the COVID-19 law, GPD said.

GPD said it confirmed there were no Greeley officers, Weld County's sheriff's deputies or Colorado State Troopers (CSP) conducting these traffic stops.

The reports have all described unmarked type vehicles with dashboard-mounted red and blue lights; black uniforms with no markings or badge and duty belts with little equipment.

Source: [9news.com](https://www.9news.com)