

## Criminal Interdiction Through Traffic Enforcement

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A 1996 United States Supreme Court decision reinforced an officer's ability to effectively utilize a legal traffic stop for the investigation of other criminal activity. In Whren v. United States, 116S.Ct.1769 (1996) the court ruled, "If a police officer has probable cause to believe that a vehicle has violated the traffic code, the stop of the vehicle is reasonable under the 4th Amendment notwithstanding whether a reasonable officer would have been motivated to stop the automobile and regardless of the actual motivations of the officer."

In other words, the U.S. Supreme Court ruled that a legal traffic stop, based on a violation of the law, which then lead to the discovery of other criminal activity, could not be dismissed under the pretext defense.

Nine years later, in Muehler v. Mena, 544 U.S. 93 (2005), the U.S. Supreme Court allowed questioning completely unrelated to the purpose of a detention. As long as the unrelated questioning did not measurably extend the detention, the subject matter of the questioning was not relevant to the constitutional analysis of the detention.

More recently, in Arizona v. Johnson, 555 U.S. 323 (2009), the U.S. Supreme Court clarified that the Muehler holding applied to traffic stops. The Court held that "an officer's inquiries into matters unrelated to the justification for the traffic stop ... do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop."

Considering the clear direction from the Supreme Court on the open scope of questioning that does not significantly extend an otherwise lawful detention, defendants naturally turn to challenging whether the ancillary questioning adds significant time to the detention.

Finally, in United States v. Guijon-Ortiz, --- F.3d ----, 2011 WL 5438974 (4th Cir. November 10, 2011), the court held that checking the immigration status of a passenger in a vehicle – whose driver was stopped for suspicion of impaired driving was appropriate – despite

the fact that the passenger had presented the officer with a Lawful Permanent Resident Identification Card. Upon checking with U.S. Immigration and Customs Enforcement (ICE) the officer learned that the alien registration number on the card did not match the name listed for the card. After identification through fingerprints, Guijon-Ortiz was convicted of aggravated re-entry after deportation.

Although state and federal courts have not agreed on the precise contours of permissible unrelated questioning at a traffic stop, most courts focus on whether the detention was completed within the time generally required for a typical traffic stop. In this case, the court considered whether the officer was, "diligent in accomplishing the purposes of the stop, that is, investigating whether a traffic infraction occurred and issuing a ticket."

"If the totality of the circumstances, viewed objectively, establishes that the officer, without reasonable suspicion, definitively abandoned the prosecution of the traffic stop and embarked on another sustained course of investigation, this would surely bespeak a lack of diligence," and suppression of the evidence could be appropriate.

The court held that the immigration status check was proper and that the officer diligently pursued the traffic stop investigation. The court noted that a single phone call to ICE to check the resident alien status was similar to routinely checking driver license and registration documents to verify their validity. Moreover, the officer had not dispelled his suspicions of impaired driving at the point that he took a brief detour to check with ICE. Finally, the added time was brief, lasting only a few minutes. Therefore, the questioning unrelated to the initial stop did not impermissibly expand the scope of the detention and the trial court properly denied Guijon-Ortiz's request to suppress the identification evidence.

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