

# The Local Government LIABILITY BEAT



PRESENTED BY LOCAL GOVERNMENT RISK MANAGEMENT SERVICES INC - A SERVICE ORGANIZATION OF  
THE ASSOCIATION COUNTY COMMISSIONERS OF GEORGIA AND THE GEORGIA MUNICIPAL ASSOCIATION RISK MANAGEMENT PROGRAMS

## FOURTH CIRCUIT EXPLAINS REASONABLE SUSPICION TO DETAIN MOTORIST DURING TRAFFIC STOP

By Brian S. Batterton, Attorney, PATC LLRMI

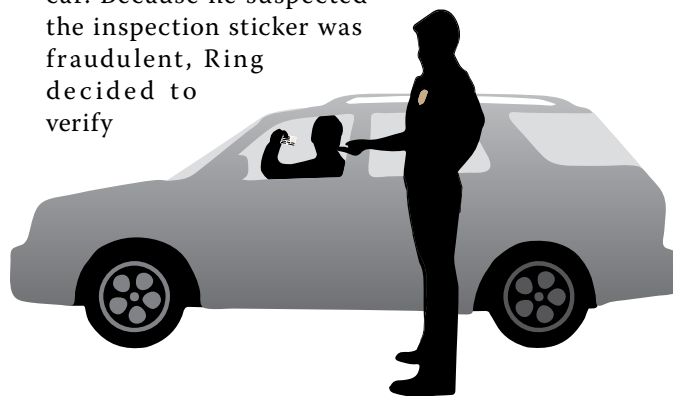
On April 21, 2016, the Fourth Circuit Court of Appeals decided *the United States v. Palmer*,<sup>1</sup> which serves as an excellent review of the law pertaining to traffic stops and reasonable suspicion required to expand the scope of a traffic stop. The relevant facts of *Palmer*, taken directly from the case, are as follows:

On October 15, 2013, Officer Ring of the Chesapeake police was patrolling that city's Ipswich neighborhood. During his patrol, Ring stopped Palmer, who was driving a silver Nissan Altima, on Paramount Avenue. When Ring exited his patrol car and greeted Palmer through the driver-side window of the Nissan, he smelled an overwhelming odor of air freshener. He saw at least five air fresheners inside the car, some hanging in the passenger compartment and others plugged into the air-conditioning vents. Ring advised Palmer that he had been stopped because the Nissan's windows were too darkly tinted, in violation of state law, and also because the inspection sticker on the vehicle's front windshield appeared fraudulent. Ring then obtained Palmer's driver's license and the vehicle's registration card, and returned to his patrol car to make a database check.

From the driver's license and registration Officer Ring learned that Palmer listed a P.O. box as his address and that the Nissan was registered to a woman who was not present. Within minutes of beginning the database check, Ring also learned that Palmer was a suspected member of a gang called the Bounty Hunter Bloods, according to a "caution" notice issued by the nearby Norfolk Police Department. See Opinion 2. Ring advised his colleague, Officer Blount – who was also on the scene – of Palmer's purported gang affiliation, and asked Blount about the availability of a drug dog.

Officer Ring also sought information on Palmer from another database called LInX. Ring could not initially log into the LInX system because his former partner had changed the password. He eventually accessed LInX, however – about seven minutes into the traffic stop – by utilizing Officer Blount's login credentials. As Ring was logging into LInX and searching its database, he called about a drug dog. Ring relayed by radio the information that he had gathered: Palmer was nervous; there was an overwhelming odor of air freshener from the Nissan; there were at least five air fresheners in the car; Palmer's driver's license address was a P.O. box, as opposed to a street address; the Nissan was registered to someone other than the driver; and Palmer was a suspected member of the Bounty Hunter Bloods.

About eleven minutes into the traffic stop, Officer Ring identified Palmer in LInX. Ring learned that Palmer had a criminal record that included four arrests on drug charges plus an arrest for illegal possession of a firearm by a convicted felon. As a result, Ring radioed again about a drug dog, but was unable to confirm its availability. After completing his LInX search, Ring returned to the Nissan from his patrol car. Because he suspected the inspection sticker was fraudulent, Ring decided to verify



the sticker's authenticity by looking at the back of it, which would enable him to determine whether it was legitimate. After asking Palmer to exit the Nissan, Ring leaned through the open driver-side door and examined the back of the inspection sticker. While reading the sticker – which he concluded was legitimate – Ring smelled marijuana.

Officer Ring immediately advised Palmer that he had grounds to search the Nissan. Because Ring wanted to be “110% sure” that the Nissan contained drugs before searching the vehicle, however, he again checked on the drug dog's availability. See Opinion 3. At that point – approximately seventeen minutes after the traffic stop had been initiated – Ring called Officer Duncan, who had a drug dog. About ten minutes later, Duncan arrived with the drug dog Boomer. Duncan walked Boomer around the Nissan, and the dog alerted twice.

Officers Ring and Duncan thereafter entered and searched the Nissan. They discovered a clear plastic bag containing crack cocaine in the center front console and a 40-caliber Smith & Wesson pistol wedged between the driver's seat and the console. As a result, Palmer was arrested. After the search and arrest, Ring measured the Nissan's window tint. Those measurements confirmed Ring's initial suspicion that the Nissan's windows were illegally tinted.<sup>ii</sup>

Ultimately, Palmer was charged with federal drug and weapons offenses. He filed a motion to suppress the evidence and argued that his stop was illegal (not based on reasonable suspicion) and his continued detention during stop to check his criminal history and registration sticker exceeded the scope of the traffic stop and as such, the fruit of that detention (the drugs and gun) should be suppressed. The district court denied the motion to suppress and Palmer pled guilty with the right to appeal the denial of the motion to suppress. He then filed a timely appeal with the Fourth Circuit Court of Appeals.

The court of appeals first noted several important legal principles that apply in Palmer's case. The principals were as follows:

- In order for a traffic stop to be legal under the Fourth Amendment, we first assess whether the articulated bases for the traffic stop were legitimate. See *United States v. Rusher*, 966 F.2d 868, 875 (4th Cir. 1992). Second, we examine whether the actions of the authorities during the traffic stop were “reasonably related in scope” to the bases for the seizure. *Id.* (internal quotation marks omitted).<sup>iii</sup>
- The first prong (described above) is satisfied “whenever it is lawful for police to detain an automobile and its occupants pending inquiry into

a vehicular violation.” See *Johnson*, 555 U.S. at 327. Without question, such a violation may include failure to comply with traffic laws. See, e.g., *United States v. Green*, 740 F.3d 275, 279 n.1 (4th Cir. 2014) (concluding that windows “illegally tinted” under Virginia law “justif[ied] the stop”).<sup>iv</sup>

- Terry's second prong restricts the range of permissible actions that a police officer may take after initiating a traffic stop. An officer is entitled to conduct safety-related checks that do not bear directly on the reasons for the stop, such as requesting a driver's license and vehicle registration, or checking for criminal records and outstanding arrest warrants. See *Rodriguez v. United States*, 135 S. Ct. 1609, 1615-16 (2015).<sup>v</sup>
- When following up on the initial reasons for a traffic stop, the officer must employ “the least intrusive means reasonably available to verify or dispel [his] suspicion in a short period of time.” See *Digiovanni*, 650 F.3d at 507.<sup>vi</sup>
- A legitimate traffic stop may “become unlawful if it is prolonged beyond the time reasonably required” to complete its initial objectives. See *Illinois v. Caballes*, 543 U.S. 405, 407 (2005). Put differently, an officer cannot investigate “a matter outside the scope of the initial stop” unless he receives the motorist's consent or develops reasonable, articulable suspicion of ongoing criminal activity. See *Digiovanni*, 650 F.3d at 507.<sup>vii</sup>
- Reasonable suspicion is a “commonsense, nontechnical” standard that relies on the judgment of experienced law enforcement officers, “not legal technicians.” See *Ornelas v. United States*, 517 U.S. 690, 695 (1996) (internal quotation marks omitted). As we recently explained in *United States v. Williams*, the articulated factors supporting reasonable suspicion during a traffic stop “must in their totality serve to eliminate a substantial portion of innocent travelers,” and also demonstrate a connection to criminal activity. See 808 F.3d 238, 246 (4th Cir. 2015) (internal quotation marks omitted).<sup>viii</sup>
- Although an officer may extend a traffic stop when he possesses reasonable suspicion, he cannot search the stopped vehicle unless he obtains consent, secures a warrant, or develops probable cause to believe the vehicle contains evidence of criminal activity. See *United States v. Baker*, 719 F.3d 313, 319 (4th Cir. 2013). An officer's detection of marijuana odor is sufficient to establish such probable cause, see *United States v. Carter*, 300 F.3d 415, 422 (4th Cir. 2002), as is a trained drug dog's alert on the vehicle, see *United States v. Kelly*, 592 F.3d 586, 592 (4th Cir. 2010).<sup>ix</sup>

The court of appeals then set out to examine the issues and apply the above legal principals to those issues. The first issue was whether the stop of Palmer’s vehicle was lawful. The district court credited the officer’s testimony that the windows appeared tinted in violation of the state window tint statute. There was no evidence the district court cleared erred in crediting the officer’s testimony and window tint violations do provide an objectively reasonable basis for making a traffic stop. As such, the court of appeals held the stop was legal.

The next issue before the court of appeals was whether the officer unreasonably detained Palmer, outside of the permissible scope of the traffic stop, prior to his smelling the odor of marijuana inside Palmer’s car. If the detention that led to the officer smelling marijuana was unreasonable, then the evidence must be suppressed as fruit of the unreasonable detention. The court noted that reasonable suspicion is based on the totality of the circumstance and can be based on behavior that may have an alternate, innocent explanation. They then looked at the facts that the officer relied upon for reasonable suspicion. The court stated:

Officer Ring’s detention of Palmer prior to smelling marijuana [did not] unreasonably expand the scope or duration of the traffic stop. We are satisfied that, after accessing Palmer’s criminal record in LInX, Ring possessed a reasonable, articulable suspicion that Palmer was engaged in criminal activity. In other words, the information on which Ring relied eliminated a substantial portion of innocent travelers and logically demonstrated a connection to unlawful conduct. The Opinion identified eight factors in that regard: Palmer was in a high crime area where citizens were complaining about drug dealing; Ring believed that the Nissan’s windows were illegally tinted; Palmer was nervous; the Nissan emitted an “overwhelming” scent of air freshener from multiple air fresheners; Palmer was a suspected member of the Bounty Hunter Bloods; Palmer’s driver’s license listed a P.O. box address, rather than a residence; Palmer was driving a vehicle registered in another person’s name; and Palmer had “a criminal record that included four previous arrests for narcotics charges as well as a charge of possession of a firearm by a convicted felon.”<sup>x</sup>

The court noted that any one of these factors, in isolation, may not provide reasonable suspicion of criminal activity; however, viewed in totality, in light of the officer’s training and experience, the sum on the above facts do establish reasonable suspicion to expand the scope of the stop.

The final issue concerns the investigation of the inspection sticker in Palmer’s window. The court first noted that the officer, based on his experience and observations of the sticker being lighter in color than normal and the perforated portion of the sticker not

being visible from outside the car, did have sufficient reasonable suspicion to investigate the authenticity of the sticker.

The primary issue then, is whether it was reasonable for the officer to quickly enter Palmer’s vehicle, with his head, to inspect the back of the sticker. It was during this entry that the officer smelled marijuana. In order for the officer’s quick entry into the vehicle to be legal, it must be reasonable and the scope of such an intrusion will vary on a case by case basis. Here, Palmer argued that the officer could have checked the validity of the sticker through a state database or asked Palmer for the inspection certificate. However, the court noted that the officer was not familiar with a state database in which he could have checked the sticker and there was no evidence that Palmer possessed an inspection certificate in his car. The court then stated:

We cannot doubt Officer Ring’s statement that he was not familiar with any state database such as Palmer describes. Nor are we persuaded that the presence or absence of the inspection certificate has any significance. Ring was entitled to ask Palmer to step out of the vehicle, see *Pennsylvania v. Mimms*, 434 U.S. 106, 111 (1977) (per curiam), and it does not give us pause – in light of Palmer’s affiliation with a violent gang, his prior criminal charges, and his apparent felony conviction – that Ring would request that Palmer exit the Nissan rather than have him reach for something out of sight in the passenger compartment. Finally, neither of Palmer’s proposals would have been more expeditious, because Ring – in examining the back of the inspection sticker – was promptly in and out of the Nissan. The government has therefore satisfied its burden, readily showing that Ring’s means of investigating the inspection sticker were appropriate and not unreasonably intrusive.<sup>xi</sup>

As such, the court of appeals affirmed the denial of the motion to suppress.

*Note: Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal adviser regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.*

© 2016 Brian S. Batterton, Attorney, PATC Legal & Liability Risk Management Institute. [www.llrmi.com](http://www.llrmi.com).

## Citations

- |   |                  |
|---|------------------|
| i. No. 14-4736 (4th Cir. Decided April 21, 2016). | vi. Id. at 15.   |
| ii. Id. at 3-5.                                   | vii. Id.         |
| iii. Id. at 13.                                   | viii. Id. at 16. |
| iv. Id.   | ix. Id.          |
| v. Id. at 14.                                     | x. Id. at 20.    |
|   | xi. Id. at 28.   |



**LGRMS**  
**RISK CONTROL**  
**ACCG | GMA**

**Local Government**  
**Risk Management Services**

3500 Parkway Lane • Suite 110  
Norcross, Georgia 30092

A Service Organization of the Association County Commissioners of Georgia and the Georgia Municipal Association

---

*This Month:*

**REASONABLE SUSPICION AND TRAFFIC STOPS**



**GEORGIA**  
**MUNICIPAL**  
**ASSOCIATION**



Advancing Georgia's Counties.

---