



A T T O R N E Y S

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Recent Court of Appeals Decision on VEHICLE CONSENT SEARCHES

By Ralph B Strickland, Jr.

Case:

State v. Johnson decided April 4, 2006.

Today there appeared in many newspapers a discussion of *State v. Johnson*, a North Carolina Court of Appeals case handed down on April 4th. I assume that there was a similar article in your hometown or regional newspaper.

The article states rather emphatically that when a driver gives an officer permission to search his car, the search can be thorough, but it is unreasonable for that search to include taking apart the car.

When you actually read the case, you discover that there is (as our “nautical” friends would say) another “tack” you may take.

The facts are that Robeson County deputies stopped a van because its license plate was partially obscured. That is a good stop, by the way.

After writing a warning ticket, and returning to the operator his license and registration, one deputy asked Johnson if he would submit to questioning, which he did. Johnson denied any association with controlled substances, but gave officers consent to search the van.

During the search, one deputy found an extra piece of rubber molding where the sliding van door locks into the rear frame of the van. He pulled that rubber away (it had been glued in place), looked between the gray plastic interior wall and the outer metal wall where they join at the door frame, and discovered 10 kilograms of cocaine hidden between the two walls. That's right, Dorothy, we are *not* in Kansas anymore, we are in the middle of ten kilograms of cocaine. Now that's a honking bunch of cocaine, as they say where I come from.

The Court of Appeals, overriding the trial court judge, held that the *scope* of the search exceeded the *limit of the consent* given by Johnson.

Well, I do not believe it is as bad as it first appears.

In this case, it does appear that the deputies had no suspicion that these men were drug couriers. That is, the men did not tell different stories about destination, where they were coming from, or the reason for their trip together. Neither man was exceedingly nervous. There were no car deodorizers hanging all over the interior of the van. The deputies did not smell or see anything that made them especially suspicious of the men. They initially found no money, drug paraphernalia or weapons on the men or in the van. The men were not known to them as users,

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abusers or sellers of drugs. In other words, this was what some officers refer to as a “cold” consent search.

I believe that had the officers possessed some articulable suspicion that these guys were drug dealers or couriers, the Court of Appeals would have held differently.

Therefore:

RULE 1. If you have not received specialized training as a drug interdiction officer, avoid the temptation to turn every routine traffic stop into an attempted drug interdiction encounter. Recent cases suggest that our courts are nervous about officers routinely “expanding the scope” of traffic stops by converting them into drug investigations (yes, the courts let us do this, they're just nervous about it-*and that makes me nervous about them!*). We don't want to “mess up” and invite the court to begin imposing greater legal restrictions on officers.

RULE 2. The scope of a consent search of a vehicle is more restrictive where the officers are making a “cold” consensual search, as compared to a “warm” consensual search. “Cold” searches do not allow for ANY dismantling of the vehicle; “warm” searches may (or perhaps probably) do. And the “warmer” or more specific the suspicion, the more you may dismantle.

[OK OK OK! YES, I DO KNOW THAT REASONABLE SUSPICION IS NOT NEEDED TO ASK A PERSON FOR CONSENT TO SEARCH A VEHICLE. WHAT I AM SAYING IS THAT THE SCOPE OF A CONSENSUAL SEARCH OF A VEHICLE IS BROADER IF YOU CAN ARTICULATE TO A JUDGE AT A SUPPRESSION HEARING THAT YOU ASKED AND RECEIVED CONSENT TO SEARCH BECAUSE YOU HAD A REASONABLE SUSPICION THAT CONTROLLED SUBSTANCES WERE IN THE VEHICLE. THERE IS A SUBTLE THOUGH REAL DIFFERENCE BETWEEN SEARCHING WITH CONSENT AND NO SPECIAL REASON (A “COLD” SEARCH) THAN ONE WHERE YOU ONLY ASKED FOR CONSENT BECAUSE YOU HAD REASONABLE SUSPICION (A “WARM” SEARCH).]

RULE 3. Review Rule 1 again.

RULE 4. To do a consent search where you look for hidden compartments in a vehicle, have at least reasonable suspicion that controlled substances are hidden there, the “warm” search. Never search for hidden compartments with a “cold” consent search unless the person gives you specific consent to do so.

RULE 5. If you have reasonable suspicion that controlled substances are in a vehicle and you ask for and receive consent, call for a K9 unit if one is available. You may, in fact, hold the operator and passengers for a reasonable time for the dog to arrive IF AND ONLY IF you have reasonable suspicion.

RULE 6. Even given your best efforts, some bad guys get away. If it does not feel right to you, for any reason, let them go, or call your lawyers at SR&S. You ask in real time, we answer in real time. But always, your instincts are most important to you here, especially when they tell you that what you are doing is beginning to smell rather badly.

Over and out.

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