

**THE RALPH PAGE  
SMITH RODGERS & STRICKLAND  
Ralph B. "Butch" Strickland, Jr.  
Of Counsel**

**May 21, 2009**

**SKIPPY'S LAWS**

**REVISED IN LIGHT OF – Arizona v. Gant**

**YOU CHASE THE CAR. YOU CATCH THE  
CAR. THEN ... WHAT?**

***A General Discourse on Searching Vehicles***

[And thanks to S/Sgt. Kim Gagnon of the Major Crimes Investigative Unit, Cumberland County Sheriff's Office, whose idea for such a bulletin got me to thinking about it, and who assisted me in the research behind it. An "Atta Girl!" to you, Madam.]

***When I was a little boy I had a dog named Skippy, my constant and faithful companion, whose one specific goal in life, besides "sticking" with me, apparently was to chase cars and catch one. [I also had a cousin whose only purpose in life appeared to be the exploration of his nasal cavities with his index finger, but he is not the inspiration of this legal bulletin.]***

***When I was 5 or 6 years old my Dad and I would sit on our front porch of a summer afternoon and watch Skippy chase cars that went by. You see, in 1950 we didn't own a TV and car chasing dogs were a real entertainment here in the South. Since we lived on a residential street cars drove slowly and Skippy went for***

**every car, right at the front wheel, ran along side of the car barking like mad, and stayed with it down the block for several houses. Then he would trot back and set himself for the next chase.**

**My Dad kept a bucket of fresh water next to the porch so Skippy could replenish his motor when he ran out of gas.**

**One day my Dad, ever the philosopher, asked me, “Butch, what do you think Skippy’ll do with a car if he ever catches one?” I laughed, of course, but I didn’t have the heart to tell Dad that the big muddy spot in our backyard was where Skippy had buried a 1950 Ford Coupe.**

**Which leads me to my point – “What will you do with the cars (& SUVs & pickup trucks & passenger vans, etc.) that you stop?” Let me say right here that burying them in someone’s backyard is not an option.**

**However, I intend to provide you all the viable options.**



**Above is a slightly modified 1950 Ford coupe for your consideration. A Classic! In high school (1960 – 1963 – Durham**

**High School - and also for two years of college - UNC) I owned a classic, as well - a 1956 Chevy. See page 11.**

**Before we begin let me make something clear.**

- 1. You do not need reasonable suspicion or probable cause to run a computer check on a vehicle registration plate, what we generally call, "Running a tag."**
- 2. The State of North Carolina requires such an identifying tag on the rear of all vehicles using the streets and highways of the state (except for some farm vehicles), the tags are therefore exposed to the public and anyone can see them.**
- 3. Tags are thus not protected by the Fourth Amendment. Reading one and "running it" is not a search and requires no suspicion on your part.**
- 4. You may run it simply because you want to, because you have a mere hunch or simply because you have nothing else to do at the moment.**
- 5. As always, racial or gender profiling is not permitted, but you already knew that, now didn't you?**

- ✓ **Also included at no extra charge and a once-in-lifetime offer are two pages of my tips and a page of exceptions to the Fourth Amendment designed to be carried in a patrol vehicle. You'll find them as the last three pages of this bulletin.**

**OK. Here we go. You constitutionally stop a moving vehicle based on reasonable suspicion that the driver or a passenger has committed, is committing or is about to commit a crime or an infraction.**

**UNCLE RALPH'S TIP #1: You may approach the driver's side or the passenger's side as your judgment dictates. If it is a felony stop, you may use your PA system and follow your training on the appropriate conduct for such an incident.**

- **You may always and every time order the operator to get out of his vehicle even though you have no suspicion that he is a danger to you. You may also have the operator stand in a place at or near his vehicle or yours that you consider safe for him (from the flow of traffic and safe for you (officer safety; officer survival.)** [In 1977, the United States Supreme Court held in *Pennsylvania v. Mimms* that when an officer properly stopped a car to issue a citation because it was being operated with an expired license plate, the officer had the right, for his safety, to order the driver out of the car, even though he had no grounds to suspect that the driver was a threat to him.]
  
- **You may always and every time order a passenger or passengers to get out of the vehicle even though you have no suspicion that either is a danger to you. You may also have that person or persons stand in a place at or near the vehicle from which they exited or yours that you consider safe for him (from the flow of traffic and safe for you (officer safety; officer survival.)** [In 1997, the United States Supreme Court held in *Maryland v. Wilson* that when an officer has lawfully stopped a car he may order the passengers out of the car, even though he has no grounds to suspect that they were a threat to him.]

**UNCLE RALPH TIP # 2: If a person, operator or passenger refuses to get out of the vehicle upon your command, then you may arrest that person for a violation of GS 14-223, resisting officers (what you call RDO or resist, delay or obstruct.)**

**UNCLE RALPH TIP #3: Your right to order a person from the car for your safety also confers upon you the authority to order them to stay within the confines of**

**that vehicle's passenger compartment as well. If they refuse, see GS 14-223 in TIP#1.**

- **When you have a reasonable suspicion that the driver or a passenger is armed and dangerous you may then frisk that person for a weapon. [In 1968 the United States Supreme Court held as follows in Terry v. Ohio: "We merely hold today that where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him." This describes what has become known as "a Terry stop and frisk." It is important to remember that you must have reasonable suspicion for a stop and seizure, and also a reasonable suspicion that the person is armed and dangerous before you frisk him. YOU MAY NOT AUTOMATICALLY FRISK EVERY PERSON YOU STOP WITHOUT ARTICULABLE AND REASONABLE SUSPICION THAT THEY ARE ARMED AND A DANGER TO YOU.]**
- **If you wish to frisk the driver or passenger and do not have a reasonable suspicion that either is armed and dangerous, you may certainly ask consent to "pat them down for a weapon." If either refuses, you may not then frisk that person. Sorry, but there you are.**
- **When you have a reasonable suspicion that there is within a constitutionally stopped vehicle a weapon, you may make a limited search of the passenger compartment for a weapon. The limitation is that you may only search those areas and items**

**capable of containing a weapon.** [The case authorizing this form of search is *Michigan v. Long*, a Supreme Court of the United States decision from 1983. The Court ruled that when you reasonably suspect that a subject (passenger or operator) is dangerous and may gain immediate control of weapons, you may search a car's passenger in areas where such a weapon may have been placed or hidden. Now, you should remember that there must be sufficient articulable reasons to establish that the suspect is dangerous (his current behavior or language or past criminal history showing assault on officers or drug sales or possession) and reasonable suspicion that there may a weapon in the car.]

**UNCLE RALPH'S TIP #4: When executing a search under Long treat it as if you were frisking a person for a weapon. Look only in areas where a weapon might be located: over the visors, under the front seats, inside the console and glove box, down in the door panels and within packages in the front seats or floorboard. Do not search as if you are searching for drugs. It is a quick search for a weapon that could be used to hurt you; it is an officer survival search and nothing more.** [An aside: in Durham in the old days bad guys often placed small "pocket" handguns or derringers in the A/C and heater vents. Shine your flashlight down those in the front dash during a Long search; there may be a surprise waiting there for you.]

**Now, we move on.**

- **Let's suppose you are standing next to a constitutionally stopped vehicle or any vehicle parked in a public place (street or roadside, parking lot available to the general public at a store or mall). You have probable cause to search the vehicle (confidential or other known informant; plain view or plain smell as you stand next to the vehicle; dispatch report that this specific car was used in a crime or is stolen.) If so, you may**

**make a warrantless search of the vehicle.** [In *Carroll v. United States*, 1925, *United States v. Ross*, 1982 and in *Maryland v. Dyson*, 1999), the United States Supreme Court held that a search warrant is not needed for a motor vehicle stopped by law enforcement or parked in a public place because of its mobility, location in a public place and the fact that the government (usually the state) pervasively regulates it (registration, insurance and the need for an operator's license to drive it. The North Carolina case directly on point is *State v. Isleib*, decided by our Supreme Court in 1987. Searching a vehicle under the authority of these cases is known as a search under the "Carroll Doctrine," named after the first case that so authorized it.]

**UNCLE RALPH'S TIP #5: When performing a "Carroll Doctrine" search you are still limited to searching in places within the vehicle where the object of the search could be found. So, if you are searching for a 50 inch plasma TV, stay out of the glove compartment. Common sense particularly applies here.**

- **Moving on: You constitutionally stop a moving vehicle and either had probable cause for the arrest before the stop or develop it after the stop. You arrest the operator or a passenger. You cuff him, search him and place him in the cage of your car. You may no longer automatically return to the stopped vehicle and search the passenger compartment of the car under the search-incident-to-arrest exception to the Fourth Amendment. From now on, an officer may NOT search a vehicle incident to the arrest of an occupant UNLESS:**

- 1. The arrestee is unsecured and within reaching distance of the passenger compartment at the time the search is conducted or**

**2. The officer reasonably believes that he/she will find evidence in the vehicle which is relevant to the crime for which the occupant is being arrested.**

**As a result of *Arizona v. Gant*, United States Supreme Court, April 2009, the search-incident-to-arrest of the passenger compartment of a motor vehicle based on the arrest of an occupant thereof has been greatly curtailed.**

- **Again, you constitutionally stop a moving vehicle. You neither have nor develop any legal authority for a search. Still, you want to. If a K9 unit is available, and you do not extend the length of your stop beyond that normally taken for a stop of like nature, the K9 handler may walk his properly trained canine around the vehicle and allow the dog to sniff. If the dog gives a positive alert, you may search the vehicle under the Carroll Doctrine.**  
*[A canine sniff of the exterior of the vehicle in a public place does not constitute a search under the Fourth Amendment. See *United States v. Place*, 1983, United States Supreme Court.]*

**UNCLE RALPH'S TIP #6: The canine sniffs not what is in the vehicle, but what was in the vehicle and is now outside – the particles of molecules wafting from the illegal drugs. Smells, and you will regret to learn this, are particulate. When you smell an odor you actually smell a piece (a small, tiny piece) of real matter – a particle of real matter or a particulate being sucked into your nasal cavities by your respiration as you breathe in and firing off electrical impulses to your**

**brain from your olfactory receptors. [Olfactory receptors expressed in the cell membranes of olfactory neurons are responsible for the detection of odor molecules.] Think about that when you enter a public toilet, or find a decomposing corpse or inhale any smell that sickens you. As your lawyer, I would advise you NOT to therefore begin breathing through your mouth in such a situation to avoid the sickening odor. Think about it, darlin'.**

- **Once again, you constitutionally stop a moving vehicle. You neither have nor develop any legal authority for a search. Still, you want to. But no K9 unit is available. You ask the operator for consent to search the vehicle. He agrees. You may then search to the extent that he authorizes – the passenger compartment, the trunk, under the hood. A consent search would also include container searches where it is reasonable to conclude that the consent extends to containers. It is especially reasonable if you add either “full” or “container” when you ask for the search. [The most famous case on point is *Schneckloth v. Bustamonte*, a U.S. Supreme Court decision from 1973. It is especially famous because if asked to spell it on a test, no law enforcement officer can. I, of course, will never ask you to do so.]**

**UNCLE RALPH'S TIP #7: Remember that when a person gives consent he may also withdraw it – at any time. If he tells you to stop then you must. And you cannot use his assertion of his constitutional rights against him to develop probable cause. However, when you ask for consent you need not warn him of his right to refuse nor**

**do you need to get the consent in writing – an oral consent will do, especially if preserved on your car video recorder.**

**UNCLE RALPH'S TIP #9: There is a North Carolina statute on consent searches and you should know it. GS 15A-222. Person from whom effective consent may be obtained.**

**The consent needed to justify a search and seizure under G.S. 15A-221 must be given:**

- (1) By the person to be searched;**
- (2) By the registered owner of a vehicle to be searched or by the person in apparent control of its operation and contents at the time the consent is given;**
- (3) By a person who by ownership or otherwise is reasonably apparently entitled to give or withhold consent to a search of premises. (1973, c. 1286, s. 1.)**

**Note paragraph (2). If the operator of the vehicle is not the owner, but is in apparent control of its operation and contents (he's driving) he may consent. But if the owner is present as a passenger, he may withdraw the driver's consent. Where the owner is present, his decision is superior to the operator's. Just like that.**

- On occasion, you may need to have a vehicle towed. If you are involved in such a tow, you must follow the Sheriff's inventory policy (see 07-16, Towing and Storage.) You may do an inventory search the car depending on the circumstances, of course, but only where the policy so authorizes.**

**Read and study our inventory policy, and pay particular attention to pages 7 & 8.**

- **Once in a blue moon (a second full moon in a calendar month), you find an abandoned vehicle, with or without registration tags. In such a case, you may do an “administrative” search of the vehicle to determine ownership. This allows you to open the door to look in the glove compartment for registration information or to see the VIN number on the dash. That’s about it for the search unless what you see gives you probable cause to search further. [The case on point is U.S. v Class, a 1986 U.S. Supreme Court case.]**



**This is an exact version of my 1956 Chevy, down to the almost exact color. My Dad was a beer wholesaler for Anheuser Busch in Durham and he had it painted Busch Bavarian blue and white for me. I was with it, pal! I had it down, girl! [Please note the hood and fender ornaments – extra cool, don’t you think?] I put a**

***bumper sticker on the rear bumper that said, “This may not be the Mayflower, but my girl came across in it.” My father saw it immediately and proceeded to tear it off - the bumper, I mean.***

***In 1968, the year I graduated from undergraduate school at UNC and married the girl of my dreams, Drusylla Ann Murray, I owned a 1966 Chevy Impala Super Sport.***



***This is a 1966 Chevrolet Super Sport - except mine was a hardtop and was painted dark blue. My wife and new bride, Mrs. Drusylla Ann Strickland, didn't like the car because it had no air conditioning and she never appreciated getting from one stoplight to another in 2 seconds (or from Durham to Raleigh in 5 minutes.) She found it way too much car to handle and said the***

**only woman who would drive one would be a stripper. Well, I got her a couple of auditions at some tawdry (aren't they all?) strip club in Raleigh, but naturally she refused to attend. So, I sold it.**

**To a stripper.**

*[A personal note from my lovely wife, Drusylla: Ralph makes up stories which are not always true! The one about his dog, Skippy, is mostly true. PART of the Super Sport story is true. I appreciated the car certainly; however, I am a person who VERY much appreciates air conditioning as well—even back in the 60s.]*

**When I was attending law school at UNC Drusylla and I owned a four-door Chevrolet family sedan given us by my Mom and Dad when they purchased a new car. I was back from Vietnam, had a daughter, was a student again now living in UNC married student housing and was ... well ... a family man. So we've had family cars since then. Even now.**

**I never did get that Corvette. Black. With red leather upholstery, big white wall tires, driving with the wind in my ... scalp. Sigh.**

**See next page for my tips to you.**

**UNCLE RALPH'S TIP PAGES**

**UNCLE RALPH'S TIP #1: You may approach the driver's side or the passenger's side as your judgment dictates. If it is a felony stop, you may use your PA system and follow your training on the appropriate conduct for such an incident.**

**UNCLE RALPH TIP # 2: If a person, operator or passenger refuses to get out of the vehicle upon your command, then you may arrest that person for a violation of GS 14-223, resisting officers (what you call RDO or resist, delay or obstruct.)**

**UNCLE RALPH TIP #3: Your right to order a person from the car for your safety also confers upon you the authority to order them to stay within the confines of that vehicle's passenger compartment as well. If they refuse, see GS 14-223 in TIP#1.**

**UNCLE RALPH'S TIP #4: When executing a search under Long treat it as if you were frisking a person for a weapon. Look only in areas where a weapon might be located: over the visors, under the front seats, inside the console and glove box, down in the door panels and within packages in the front seats or floorboard. Do not search as if you are searching for drugs. It is a quick search for a weapon that could be used to hurt you; it is an officer survival search and nothing more. [An aside: in Durham bad guys often placed small "pocket" handguns or derringers in the A/C and heater vents. Shine your flashlight down those in the front dash during a Long search; there may be a surprise waiting there for you.]**

**UNCLE RALPH'S TIP #5: When performing a "Carroll Doctrine" search you are still limited to searching in places within the vehicle where the object of the search could be found. So, if you are searching for a 50 inch plasma TV, stay out of the glove compartment. Common sense particularly applies here.**

**UNCLE RALPH'S TIP #6: The canine sniffs not what is in the vehicle, but what was in the vehicle and is now outside – the particles of molecules wafting from the illegal drugs. Smells, and you will regret to learn this, are particulate. When you smell an odor you actually smell a piece (a small, tiny piece) of real matter – a particle of real matter or a particulate being sucked into your nasal cavities by your respiration as you breathe in and firing off electrical impulses to your brain from your olfactory receptors. [Olfactory receptors expressed in the cell membranes of olfactory neurons are responsible for the detection of odor molecules.] Think about that when you enter a public toilet, or find a decomposing corpse or inhale any smell that sickens you. As your lawyer, I would advise you NOT to therefore begin breathing through your mouth in such a situation to avoid the sickening odor. Think about it.**

**UNCLE RALPH'S TIP #7: Remember that when a person gives consent he may also withdraw it – at any time. If he tells you to stop then you must. And you cannot use his assertion of his constitutional rights against him to develop probable cause. However, when you ask for consent you need not warn him of his right to refuse nor do you need to get the consent in writing – an oral consent will do, especially if preserved on you car video recorder.**

**UNCLE RALPH'S TIP #8: There is a North Carolina statute on consent searches and you should know it. GS 15A-222. Person from whom effective consent may be obtained.**

**The consent needed to justify a search and seizure under G.S. 15A-221 must be given:**

**(1) By the person to be searched;**

**(2) By the registered owner of a vehicle to be searched or by the person in apparent control of its operation and contents at the time the consent is given;**

**(3) By a person who by ownership or otherwise is reasonably apparently entitled to give or withhold consent to a search of premises. (1973, c. 1286, s. 1.)**

**Note paragraph (2). If the operator of the vehicle is not the owner, but is in apparent control of its operation and contents (he's driving) he may consent. But if the owner is present as a passenger, he may withdraw the driver's consent. Where the owner is present, his decision is superior to the operator's. Just like that**

**See next page for my list of exceptions to the warrant requirement of the 4<sup>th</sup> Amendment.**

**UNCLE RALPH'S VEHICLE SEARCH  
EXCEPTIONS TO THE WARRANT  
REQUIREMENT OF THE FOURTH  
AMENDMENT**

- 1. Frisk Search**
- 2. Ordering Occupants Out**
- 3. Inventory Search**
- 4. Administrative Search**
- 5. Consent Search**
- 6. Probable Cause Search**
- 7. Not a Search: K9 Sniff of Exterior of Vehicle**