

Kansas v. Glover

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Applying Common Sense to Reasonable Suspicion

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Way back in 2007, a simpler time when you could leave your house without fear of contracting a deadly disease and never worried about the stores running out of toilet paper,¹ the N.C. Court of Appeals decided State v. Hess.² The Hess case was one of those cases that would quickly become popular with law enforcement officers, because the court ruled that if officers knew that the owner of a particular vehicle had a revoked license, they could stop that vehicle based on the assumption that the vehicle was likely being driven by the owner. Since that time, North Carolina officers have used this justification to make numerous traffic stops.

The fine officer responsible for the Hess case was Officer Jarrett Doty³ of the Granite Quarry Police Department.⁴ At about 9:30 p.m. one night, Officer Doty was behind a Pontiac and ran the license plate number through his computer. The response indicated that the Pontiac belonged to a Bryan Keith Hess. When Officer Doty ran Mr. Hess' name, the computer indicated that Mr. Hess had a revoked driver's license. Although he could not discern the current driver's "sex, race, or ethnicity," Officer Doty decided to perform a traffic stop on the reasonable suspicion that Hess would be the driver.

It turned out upon stopping the vehicle that Mr. Hess was indeed the driver. After some investigation, the officer arrested Mr. Hess and charged him with Driving While Impaired and Driving While His License was Revoked. When the defendant appealed his subsequent conviction to the N.C. Court of Appeals, he argued that the officer did not have reasonable suspicion for the stop based simply on the fact that the vehicle was registered to a person with a revoked license. The court ultimately disagreed and upheld his convictions.

This was the first time a North Carolina court had addressed this particular question, so the court in Hess looked to decisions from other jurisdictions for guidance. One of those cases was Village of Lake in the Hills v. Lloyd⁵ out of Illinois which said, "common sense dictates"⁶ that police knowledge that a vehicle is owned by a person with a revoked license is enough by itself to provide a constitutional basis to stop the vehicle. The N.C. court noted that a majority of other jurisdictions had reached the same conclusion. Therefore, the Hess rule was

¹ Beasley Quarantine Journal Day 30: "The natives are growing restless. However, we have been able to stabilize our food gathering process now which has boosted morale. We now order our foodstuffs through our phone and pick them up on site. However, the procedures are tedious as we must order well in advance, which requires us to predict what we might want a week from now. Then before the items can be brought into the house, they must be wiped down to make sure no germs are present. I find myself envious of Robinson Crusoe's relative ease of daily life compared to our current situation."

² 185 N.C. App 530 (2007).

³ This, of course, is a great name. It appears to be the officer's real name and not an alias, although I have my doubts. I have determined that the letters in "Officer Jarrett Doty" can be rearranged to say "Oft Fired Trajectory." In related news, studies show that spending too much time at home can have deleterious effects on one's mental state.

⁴ Granite Quarry, NC is a town in Rowan County. When incorporated, the name of the town was Woodsides but there was another Woodsides, NC already. As you might guess, that caused problems with mail delivery, so they changed the name of the town to Granite Quarry.

⁵ 591 N.E. 2d 524 (Ill. App. Ct. 1992). Lake in the Hills is a suburb of Chicago and does indeed feature a lake (Woods Creek Lake) in the hills.

⁶ "Philosophy is common sense with big words." James Madison.

that absent any evidence to the contrary, an officer could stop a vehicle based on the reasonable suspicion that the owner with a revoked license was currently the driver.

The N.C. Court of Appeals took this another step in 2018 in State v. Myers McNeil.⁷ In that case, officers ran a license tag which came back to a male with a revoked license. After they stopped the car on that justification and were approaching the vehicle, they observed what was “immediately apparent” to them to be a female in the driver’s seat. Despite now having at least some evidence that the owner was not the driver, the officer continued the stop and asked the driver for her driver’s license. During their conversation, the officer developed reasonable suspicion that she was impaired and after a short investigation, she was placed under arrest for that offense. The N.C. Court of Appeals upheld the continuation of the stop in part based on the conclusion that until the officer looked at the driver’s license, he could not be sure that the female-looking driver was not the male owner because “not all men wear stereotypical ‘male’ hairstyles nor do they all wear ‘male’ clothing.”⁸ Since the officer started to develop reasonable suspicion of impairment during his attempt to get the license, the extension of the stop was held to be valid.

Last week, the U.S. Supreme Court finally weighed in on the original “Hess” scenario when they issued an opinion in Kansas v. Glover.⁹ In Glover, Douglas County (Kansas) Sheriff’s Deputy Mark Mehrer¹⁰ was on routine patrol when he observed a 1995 Chevy pickup truck. Upon running the license tag, he determined that the registered owner was Charles Glover, Jr. and then was able to determine that Mr. Glover had a revoked Kansas driver’s license. Based solely on that information, Deputy Mehrer stopped the vehicle. Glover, in fact, was the driver and was charged with “driving as a habitual violator.”¹¹

The Kansas trial court granted the defendant’s motion to suppress the stop. The Kansas Court of Appeals reversed stating that the information known to the deputy amounted to “specific and articulable facts from which the officer’s common-sense inference gave rise to a reasonable suspicion.” The Kansas Supreme Court swung back the other way and ruled in favor of the defendant. What the lower court had called a common-sense inference, the Kansas Supreme Court called “only a hunch” that involved “applying and stacking unstated assumptions that are unreasonable without further factual basis.”

The U.S. Supreme Court, however, found that the inference that the registered owner is likely the current driver of a vehicle was a “commonsense” one¹² and provided more than reasonable suspicion to stop the car. Simply because the owner might not be the current driver did not negate the reasonableness of the assumption. The Court reiterated that the reasonable suspicion level is much less than 51% certainty and that “to be reasonable is not to be perfect.” The Court did hold that this inference may be made unless there is evidence to the contrary.

The defendant made the argument that it was less likely that a person with a revoked license would continue to drive because of the possibility of criminal sanctions, but the Court pointed to empirical data that 75% of drivers with suspended or revoked licenses continue to drive and 19% of motor vehicle fatalities from 2008 to 2012 involved drivers with invalid licenses. In Kansas, unlike here in North Carolina, there is a difference between a license that is “suspended” and a license that is “revoked.” Kansas only “revokes” licenses for repeated or for very serious violations which also gave additional reason to believe the owner was likely the driver since he already had a history of violating the traffic laws.

⁷ 822 S.E. 2d 317 (2018).

⁸ The phrase “common sense” does not appear anywhere in the Myers McNeil opinion. That fact is presented here without further comment.

⁹ 18-556 (April 6, 2020). Beasley Quarantine Journal Day 31: “Our middle child, home from school because of the pandemic, has brought a rabbit with her to join our family. The rabbit stays in her barracks and I do not see it often, but I sometimes hear snippets of conversation from my fellow inmates that lead me to believe that this animal may be causing destruction to our habitation structure. In the spirit of family harmony, I am choosing to ignore these whispered rumors. However, the other day I could have sworn I heard Elmer Fudd’s voice in my head declaring it to be ‘wabbit season.’”

¹⁰ Douglas County contains Lawrence, Kansas and is home to the University of Kansas. Deputy Mark Mehrer’s name can be rearranged to spell “Hyper Marketed Rum.”

¹¹ I love the idea of a charge called “habitual violator” and hope that N.C. passes a similar law one day. As a prosecutor, I would have loved to point to a defendant and say, “You, sir, are a habitual violator!”

¹² “Common sense is the collection of prejudices acquired by age eighteen.” Albert Einstein

I believe the concurring opinion written by Justice Kagan summed this ruling up nicely: “When you see a car coming down the street, your common sense tells you that the registered owner may well be behind the wheel. Not always, of course. Families share cars; friends borrow them. Still, a person often buys a vehicle to drive it himself. So your suspicion that the owner is driving would be perfectly reasonable.” To Justice Kagan’s remarks, I add a hearty “ah, yes” – in a world that is increasingly strange and unsettling, let us strive to be “perfectly reasonable.” Let us seek to be people of common sense.¹³

So, if the day comes where people can once again drive around for non-essential reasons, rest assured that you may still make a stop based on the owner’s driver’s license being revoked. Until that day, stay safe and healthy!

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ABOUT THE AUTHOR: Brian Beasley is the Legal Advisor for the High Point Police Department. This legal update is provided free of charge to the SR Webpage in the hopes that officers across the state would be able to benefit from it. Brian is not an attorney with Smith Rodgers, PLLC but he thinks they’re pretty cool guys.



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¹³ “Common sense in an uncommon degree is what the world calls wisdom.” Samuel Taylor Coleridge