Police Can Stop You for Having a License Plate Bracket on Your Car

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LSU and Southern University fans, proud parents of United States Air Force Academy students and passionate Dodge owners have cause for concern: their license plate brackets. The license plate bracket is a common automotive accessory that frames front or rear license plates. Dealerships place them on their vehicles as a form of advertisement and many people use them to show support for their local school or cause: Geaux Tigers!

Recently, police officers have made use of these brackets as well, using them as independent justification to execute a traffic stop. Technically, a bracket that covers any portion of the license plate is illegal under La. R.S. 47:507, which states: “Every permanent registration license plate shall at all times be securely fastened ... in a place and position to be clearly visible, and shall be maintained free from foreign materials and in a condition to be clearly legible.” Although Louisiana courts have not upheld stops based solely upon license plate violations, they have indicated, in dicta, that they would do so if presented with such a case. This future is not far-fetched or unrealistic; the federal district courts in Kansas already routinely uphold traffic stops based solely on partially obstructed license plates.

Due to the compelling need to interdict illegal trafficking of narcotics, United States courts have allowed this sort of hyper-technical regulatory violation as a judicially adequate rationale for the predicate to stop and then search a vehicle for drugs. This, in turn, has cascaded into the elimination of the deterrence of police misconduct, the raison d’être for the exclusionary rule, and police officers have been given carte blanche to pull motorists over based on the most minor of traffic infractions, including having a license plate bracket on your car. This unfettered power has given rise to a police sub-culture that encourages unnecessary traffic stops in hopes of uncovering huge quantities of illegal narcotics. These stops are de facto shake downs in the worst sense.

In Whren v. United States, the United States Supreme Court ruled that subjective intentions play no role in ordinary probable cause analysis. For these stops to pass constitutional muster, the officer need only have probable cause to believe that a traffic violation, of any level of
severity, did occur.

Before we go much further, it should be noted that judges are not beyond public scrutiny. Sandra Day O’Connor herself said in a recent article, “I should note what judicial independence is not: It is not immunity from criticism. Indeed, criticism of courts can be a good thing when it is evidence that the public is engaged with the work of the courts and following legal developments.” So with the blessing of the first female Supreme Court justice, we continue our critique of a recent judicial trend. As Patrick Henry said, if this be treason, make the most of it.5

Do judges decline to suppress evidence in narcotics cases simply because “it’s just too much dope?” If so, to whom can citizens turn for a check on the abuses of power that inevitably arise from granting the police unlimited discretion? Do these stops square with the plain words or spirit of our Constitution? We maintain that stops like these are unreasonable and founded upon fictitious subterfuges conjured up by drug-interdiction-task-forces to justify what, in actuality, are fishing expeditions.

The case law is clear that although a police officer may stop a vehicle for a traffic violation when his true motive is to conduct a narcotics investigation, the officer still must have probable cause to make the initial stop. He is not permitted to abuse the Whren principle, using it to justify the recovery of contraband after what was in fact an illegal stop and search.

Additionally, a stop based solely on a license plate bracket “violation” is indicative of operational “overkill.” This selective enforcement of traffic regulations is improper. In Baton Rouge courts, officers have actually testified, “It’s against the law to have a foreign object bolted to the license plate, as far as I was trained.” Officers are not pulling over every car with this “violation;” instead, they are using this benign offense to justify pulling over profiled vehicles after a search of the vehicle has turned up illegal narcotics. This interpretation of the law cannot be accurate as it would subject millions of Louisiana citizens to traffic stops and citations. Police misconduct and improper officer training must be called to an end by Louisiana courts.

How many people are needlessly stopped by drug-interdiction-task-force members every night? We know from in-court testimony that officers are looking for vehicles with certain “indicators.”6 They are trained to stop these “suspicious” vehicles until they find one carrying drugs. “Occasionally” officers write tickets to the owners of vehicles they stop. We take this to mean that officers rarely issue a ticket if no drugs are found. These stops only serve to interfere with and harass innocent motorists who happen to conform to the profiles police learned in their training. The Court in United States v. Freedman7 succinctly highlights the problem with this procedure:

Although it is true that illegal narcotics were obtained as a result of each of the searches in the above-referenced cases, we must remain mindful of our duty to ensure that traffic stops and subsequent searches are conducted in accordance with Fourth Amendment guarantees, and that

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we do not succumb to the temptation of allowing the end to justify the means: “It is not difficult to imagine . . . that innocent persons traveling along [the interstate] . . . have been stopped and subsequently searched simply because they were traveling in a ‘target’ vehicle.”

We all agree that the Fourth Amendment should apply to all citizens, regardless of their race, creed or color. Should it not apply equally regardless of travel route, license plate or vehicle color as well? The Fourth Amendment should not be discounted in order to “justify results.” In United States v. Mesa, the court explained:

Although there is always temptation in cases of this nature when a substantial quantity of drug and firearms are found to let the end justify the means, it must be remembered that the courts only see cases in which the conduct of the officer resulted in contraband being found. If the officers had found no drugs in the defendant’s car, obviously we would not even know that this traffic stop had ever occurred. Therefore, we must accept that courts will always be “thwarting” what some may view as a good piece of police work when a motion to suppress is granted in cases of this nature. Notwithstanding the importance of drug interdiction, however, we are still charged with the responsibility of seeing that the interdiction occurs without the Constitution being violated.

Continuing, the Mesa decision outlined other pressing concerns, warning against “fishing expeditions” designed to locate contraband. The Court cautioned:

[W]e gave the green light to police officers to stop vehicles for any infraction, no matter how slight, even if the officer’s real purpose was to hope that that narcotics or other contraband would be found as a result of the stop. . . . [S]ince we have extended this authority to the broadest extent possible, . . . we have a duty to see that the authority is not abused.

Prosecutors must diligently screen cases, ferreting out those in which police may have utilized improper tactics. Defense attorney must zealously argue on behalf of their clients, creating a record of questionable police tactics. And, most importantly, judges must protect the Fourth Amendment for all citizens.

It seems all too easy to quick-kick to the next level of review instead of making these difficult decisions. Resolving suppression problems is made more difficult when taking into account the societal evils drugs can spawn. However, it is a mistake for law enforcement to think: “I’ll let the prosecutor deal with it now, that’s why he went to law school.” The buck then passes to the prosecutor, who may choose to thinly review the file and charge the defendant. All too often those prosecutors operate under the assumption that it’s the defense attorney’s job to worry about violations of the Fourth Amendment. What, then, if defense attorneys fail to challenge factually incredulous interdictions, surrendering to the belief that this judge “just doesn’t suppress dope?” No district court judge relishes the opportunity to suppress stops which yield large quantities of dope. But, if they too surrender the Constitution to improper police tactics they are falling victim to the same flawed logic that spawned the problem in the first place.

In the criminal justice system, we must hold every offender accountable for his or her actions. They have chosen to violate our community’s code of conduct. Nevertheless, we are obligated to choose rightly and do our part to protect the Fourth Amendment. And if it appears to judges and the bar at large to have been reduced to the 4th Amendment, we must aver to each, individually, preserve and protect it. For us, it is the oath we live every day and cannot rely upon others to do it for us. Large drug busts can put us in morally challenging third and long situations. But no attorney or judge should ever quick-kick; instead we should break our huddle and do everything we can to reach another first down for justice.

1 U.S. v. Martin, 679 F. Supp. 2d 723 (W.D. La. 2009) (suppressing evidence on other grounds but stating that a violation of La. R.S. 47:507 gave reasonable suspicion for an initial stop); State v. Penza, 43,323 (La. App. 2d Cir. 7/30/08), 988 So.2d 841 (holding a stop based on license plate obstruction, illegal window tint and seatbelt violations was warranted); State v. Shaprio, 98-1949 (La. App. 4th Cir. 12/29/99) (holding a stop based on “tailing” or following too closely was valid).
5 This is taken from Patrick Henry’s famous May 30, 1765, maiden speech at the House of Burgesses in Virginia in protest against the Stamp Act. He expanded the scope of his criticism to include not only Parliament, but the King as well. Speaking of George III, he stated that, “Caesar had his Brutus, Charles the First his Cromwell and George the Third —.” At that point he was interrupted by cries of “Treason!” from delegates who easily recognized the reference to assassinated leaders. Henry paused briefly, then calmly finished his sentence: “...may profit by their example. If this be treason, make the most of it.”
6 In-court testimony establishes that white SUVs or pickup trucks with out of state license plates are particular suspicious in the eyes of drug-interdiction-task-force officers.
7 209 F. 3d 464, 470 (6th Cir. 2000).
8 Id.
9 United States v. Mesa, 62 F.3d 159, 163 (6th Cir. 1995) (footnote omitted).
10 Id. at 161.
11 A phrase borrowed from the Hon. Judge Don Johnson, 19th Judicial District Court.