

TACKLING TRAFFIC STOPS

(1) Was the Stop Valid?

- a. Was there a stop in the first place?
- b. What was the basis for the stop?
 - i. Generally, reasonable suspicion is all that is required for stop¹
 - ii. Traffic violation → PC for the stop, regardless of intent²
- c. Who made the stop?
 - i. If the stop was made for a traffic violation by a municipal or campus security officer outside their jurisdiction, stop is illegal.³

(2) What is the Stop's Purpose?

- a. What does the officer say is the reason for the stop?
- b. Traffic Stop's Mission → address the reason for the stop and attend to "related safety concerns"⁴
 - i. Related safety concerns → License checks, warrant checks, inspecting car registration and proof of insurance, etc.⁵
 - ii. Test is whether the "safety concerns" involve the same objective as the traffic stop: Enforcement of the traffic laws⁶

(3) Was the Stop prolonged?

- a. Two types of prolonged stops:⁷
 - i. Officers keep suspect detained after the traffic stop mission's concluded without reasonable suspicion of criminal activity justifying the detour
 - ii. Officers do not keep suspect detained, but take unreasonably long time because of unrelated questioning
 - iii. Regardless of which type, the requirement's the same: Must have reasonable suspicion; no *de minimis* continuation allowed without it⁸
 - 1. Four-minute extension held unreasonable⁹

¹ See Navarette v. California, 572 U.S. 393, 396-97 (2014).

² Whren v. United States, 517 U.S. 806 (1996).

³ See Zilke v. State, 299 Ga. 232 (2016); see also Bacon v. State, 347 Ga. App. 689 (2018). But see Zilke, 299 Ga. at 237 (Nahmias, J., concurring) (suggesting exclusion should not apply to illegal stop by municipal officer outside their jurisdiction).

⁴ Rodriguez v. United States, 575 U.S. 348, 354 (2015).

⁵ Rodriguez, 575 U.S. at 355.

⁶ Rodriguez, 575 U.S. at 355.

⁷ Rodriguez v. State, 295 Ga. 362, 369-70 (2014).

⁸ Rodriguez, 575 U.S. at 356 (rejecting *de minimis* rule); State v. Allen, 298 Ga. 1, 11 (2015) ("[A]ctivities unrelated to the mission of the [traffic] stop must not extend the time of the stop at all, and such a prolongation of the stop is not permissible even if those activities are done in the middle of the stop.")

⁹ Watts v. State, 334 Ga. App. 770, 778 (2015); Heard v. State, 325 Ga. App. 135, 139 (2013). But see Lewis v. State, 332 Ga. App. 466, 470 (2015) (holding where dog sniff initiated "within six minutes of the moment the officers first made contact with [the defendant] on the roadside," and "completed fewer than ninety seconds later," prolongation

2. Federal courts have taken the “no de minimis rule” to heart, holding extensions as small as 20 seconds unreasonable¹⁰
 3. Questions regarding any illegal items in the vehicle – i.e., “Any illegal alcohol? Any marijuana? Any cocaine? Methamphetamine? Any heroin? Any ecstasy?” – were found to prolong the traffic stop impermissibly, even though only by twenty-five seconds.¹¹
- b. What doesn’t constitute reasonable suspicion:
- i. Nervousness alone is insufficient;¹² Even when other factors present, nervousness from one stopped by police not strong support for reasonable suspicion¹³
 - ii. Fitting a pattern of criminal behavior in high-crime area insufficient¹⁴
 - iii. Smoking a cigarette is not reasonable suspicion of drug activity¹⁵
 - iv. Basically, if normal people do it without committing crimes, then it’s likely not reasonable suspicion

(4) Impound/Inventory

- a. Impoundment → Before inventory search can occur, vehicle must first be lawfully impounded.¹⁶
- i. Impoundment valid only if some necessity for the police to take charge of property; fishing expeditions not permitted¹⁷
 - ii. Problem is, “necessity” isn’t actually necessity, it’s “reasonably necessary under the circumstances”¹⁸
 - iii. Factors to consider on impoundment include:
 1. Whether the vehicle is parked in a manner that might present a hazard to traffic¹⁹
 2. Whether the vehicle’s on private property²⁰

not unreasonable because “the written warning had not been completed, and police dispatch had not returned its check of [the driver’s] license information, which [the officer] had requested earlier via radio.”)

¹⁰ See United States v. Clark, 902 F.3d 404, 410-11 (3d Cir. 2018); see also United States v. Stewart, 902 F.3d 664, 674 (7th Cir. 2018) (suggesting that 75 seconds used to call for backup might unlawfully prolong the stop, but the record was inadequate to determine if the officer’s purpose was for safety or a dog sniff).

¹¹ United States v. Campbell, 970 F.3d 1342, 1356 (11th Cir.), vacated pending reh’g, 981 F.3d 1014 (11th Cir. 2020).

¹² Heard v. State, 325 Ga. App. 135, 139 (2013).

¹³ McNeil v. State, ___ Ga. App. ___, 866 S.E.2d 249, 255 (2021).

¹⁴ Runnells v. State, 357 Ga. App. 572, 576 (2020).

¹⁵ Neely v. State, ___ Ga. App. ___, 2021 WL 5577779, *3 (Nov. 30, 2021).

¹⁶ Bowler v. State, 355 Ga. App. 77, 81 (2020).

¹⁷ State v. Loechinger, 357 Ga. App. 852, 854 (2020).

¹⁸ Bowler, 355 Ga. App. at 81; Loechinger, 357 Ga. App. at 855.

¹⁹ Scott v. State, 316 Ga. App. 341, 343 (2012).

²⁰ Scott v. State, 232 Ga. App. 337, 339 (1998) (impoundment of vehicle after driver’s arrest was reasonably necessary even though it was not a hazard to other drivers because it was parked on private property; the vehicle and its contents would be exposed to risk of theft or damage if it was not impounded).

3. Whether the vehicle is able to be driven away²¹
 4. Whether there is a passenger who can drive it away²²
 5. How far away someone would be when coming to get it²³
- b. Inventory Search
- i. Inventory searches designed “to protect the property of the owner, protect the officers against claims for lost or stolen property, and protect the police from potential danger” in vehicle²⁴
 - ii. Must be pursuant to standard police procedures,²⁵ but State not required to prove procedures’ existence; Officer’s testimony sufficient

²¹ See Dover v. State, 307 Ga. App. 126, 128 (1)(a) (2010) (Reasonable to impound vehicle without insurance); Duvall v. State, 194 Ga. App. 420, 421 (1990) (no proof of insurance); compare Reed v. State, 195 Ga. App. 821, 823 (1990) (impoundment invalid where licensed passenger was on scene to drive vehicle).

²² See Evans v. State, 216 Ga. App. 21, 24 (2) (1995) (when all three occupants arrested, reasonable to impound vehicle); Wiley v. State, 274 Ga. App. 60, 61 (1) (2005) (impoundment reasonable when “only authorized driver of the [U-Haul] truck had a suspended driver’s license”).

²³ Shaw v. State, 324 Ga. App. 670, 672 (2013) (finding unreasonable the officer’s inventory seventeen minutes after being informed defendant’s mother was en route); compare Carlisle v. State, 278 Ga. App. 528, 530 (2006) (impoundment after twenty minutes reasonable when person available for pickup an hour and a half away); Gooden v. State, 196 Ga. App. 295, 295-96 (1990) (full panel) (impoundment after fifteen minutes reasonable when pickup thirty to forty-five minutes away).

²⁴ Davis v. State, 331 Ga. App. 171, 174 (2015).

²⁵ Loechinger, 357 Ga. App. at 856.