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When and How Visual Speed Estimates Provide Probable Cause to Make a Traffic Stop

QUESTION: Do visual speed estimates alone establish probable cause for a traffic stop?

ANSWER: Generally, yes. However, a visual speed estimate will not always suffice as a basis for probable cause. Factors that courts consider include the officer's training in making visual speed estimates; the radar or pacing methods corroborate an officer's visual estimate, and the speed differential (how far above the legal speed limit was the vehicle traveling).

CASE: *United States v. Manel Delance Mubdi*, U.S. Court. of Appeals-4th Circuit
Decided August 10, 2012

In this recent case from our federal appeals court (Fourth Circuit), the issue of speed estimates and traffic stops was considered. The facts showed that on the morning of September 30, 2008, Manel Delance Mubdi was driving a gray Dodge Magnum northbound on Interstate 77 near Statesville, North Carolina. In the car with Mubdi was Markus Parham. Two Statesville Police Department Officers, Jason York (who is a canine officer in the Department's criminal interdiction unit) and Phillip Wolfe (also a member of the criminal interdiction unit), were parked in marked police cruisers perpendicular to the highway about ten yards from the right-hand side of the northbound lanes near exit 50. As Mubdi approached the officers, they visually determined that he was driving above the posted speed limit of fifty-five miles per hour. Officer York observed a group of cars in front of Mubdi's car traveling the speed limit, and he noticed that Mubdi was closing on the group. He tracked Mubdi's car for about a hundred yards to estimate its speed at sixty-three or sixty-four miles per hour. Officer Wolfe made similar observations and also estimated the speed of Mubdi's car at sixty-five miles per hour. Because of the angle at which the officers were parked, they were unable to verify their estimates with radar equipment. However, both officers had passed a radar certification class that, among other things provided training on how to visually estimate the speed of vehicles within a narrow margin of error.

Based on their observations, both officers followed Mubdi for a few miles as he merged from Interstate 77 onto Interstate 40, heading west. At one point, Officer Wolfe passed Mubdi to determine if the occupants were wearing seatbelts. They were. Mubdi then merged behind Officer Wolfe's car to pass a truck in the right lane. Mubdi followed Officer Wolfe's car at a distance of no more than two or three car lengths, a distance too close according to the Highway Patrol's recommended following distance intervals. Officer York activated his blue lights to make the traffic stop. Mubdi did not immediately pull over but eventually did so.

Officer York approached and asked Mubdi for his license and registration. Mubdi kept his foot on the brake pedal, instead of shifting the vehicle into park. Mubdi handed Officer York a plastic pouch containing his license and a vehicle rental contract. Officer York observed that Mubdi's hands were shaking more than one would expect in a normal traffic stop and that he looked "scared." Officer York asked Mubdi if he had just rented the car, and Mubdi said that he had. When the officer asked Mubdi about where he was going, Mubdi said that he was going to his grandfather's funeral in Statesville and to his aunt's house. Mubdi could not recall his aunt's name or her street address. Officer York then returned to his car to review the driver's license, insurance, and rental contract. It was his intention to issue Mubdi a warning ticket for speeding and following too closely. The rental contract showed that: the car had been rented to Latonya Brathwaite, other drivers were forbidden from driving it, and the car was not permitted to travel outside Georgia. It took Officer York no more than fifteen (15) minutes to review the paperwork and issue the warning ticket. During this time, Officer Wolfe and his drug-sniffing canine arrived on the scene.

After completing the warning ticket, Officer York returned to Mubdi's vehicle. He asked Mubdi to roll up the windows, turn off the engine, and step out of the car. Mubdi complied but did not shift the car into park. As a result, the car began rolling away before Parham, the passenger, reached over and stopped it. Officer York then explained the warning ticket to Mubdi and told him that the canine was going to conduct an open-air-sniff around the car.

Captain Jacob Dyson, the third officer now on the scene, asked the passenger to exit the car. Parham didn't move. The officer tried the door but it was locked. Parham rolled down the window and the officer again told him to get out of the car. Parham said, "What for? I don't have a gun." When Parham started to reach between his legs to the floorboard, Captain Dyson unsnapped his holster. However, Parham got out without incident and both he and Mubdi consented to a pat-down for weapons. No weapons were found. The canine conducted the open-air-sniff and alerted. A search of the car uncovered crack and powder cocaine and two loaded firearms.

Mubdi was charged with multiple drug and weapons offenses. He moved to suppress the evidence but his motion was denied. Mubdi was convicted and sentenced to 300 months' imprisonment. He appealed.

On appeal, the federal appeals court considered three issues: (1) Did the officers have probable cause to make the traffic stop? (2) Did the officers have reasonable suspicion to prolong the traffic stop to allow the canine sniff? (3) Was the warrantless search of the car legal? The federal appeals court answered all three questions in the affirmative and upheld the convictions. As to the first question, the officers were trained in visually estimating vehicle speed and their testimony at the suppression hearing regarding Mubdi's rate of speed and his following too closely was credible. Next, the duration of the stop was reasonable, particularly given the objective facts (the time it took the driver to pull over, the excessive fear and nervousness, the driver keeping his foot on the brake, the sketchy travel plans, and the rental agreement and the prohibitions in it) made the officers suspicious. Finally, as to the vehicle search, neither Mubdi nor Parham had a reasonable expectation of privacy in the car as neither of them was authorized to drive it. Even if they had, the search was based on the canine alert and the occupants' behavior and was, therefore, justified.

NOTE: Please take note that the Fourth Amendment does not allow blanket approval for the proposition that an officer's visual speed estimate, in and of itself, will always suffice as a basis for probable cause to initiate a traffic stop. So, when making a stop based on visual estimates alone, be certain to recount any specialized training you've had in making visual estimates and be certain of

your distances and measurements when testifying. Believe it or not, common lines of attack are to quiz officers on how many feet are in a yard and how many inches on a yardstick. Significant excesses of the legal speed limit (the speed differential –i.e., the percentage difference between the estimated speed and the legal speed limit) let’s say 85 in a 55 as opposed to 60 in a 55, are more likely to support probable cause when standing alone. Again, it is, as always, the “reasonableness” of the officer’s visual speed estimate that is critical.

By John F. Breads, Jr., Director of Legal Services, Local Government Insurance Trust

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