

N.C.G.S. 20-29:
Drivers Who Think They Are Smarter Than You
Vol. 1, Number 11
September 5, 2008

Brian Beasley
A Smart Driver and
Legal Adviser, HPPD

In honor of the start of another NFL season, the HPPD Legal Office presents:
“YOU MAKE THE CALL”¹

Scenario: You are conducting stationary radar on the side of a street or highway here in the great city of High Point. You clock a vehicle traveling fifty-seven miles per hour in a thirty-five zone and fire up your blue lights and siren. The vehicle does not pull over immediately but travels on for a mile and a half before finally stopping.

You approach the car and see that it is occupied one time (only civilians say “there was one person in the car.”) You request the driver’s license and registration but in response, the driver simply opens his window just a crack and slides a laminated card through said crack into your waiting hand. The card reads as follows:

Dear public servant:

With all due respect to you, and no offense intended, I desire to inform you of the following: I am now exercising my Fifth Amendment right to “not” answer any questions that may incriminate me, and neither will I present any material evidence that may be used against me in a Court of Law. I do not “consent” to converse with you. Unless you are placing me under arrest, or can state specific facts which warrant your detaining me further, I now ask that you allow me to go about my business, as is my right as a United States’ citizen.

WHAT DO YOU DO?
YOU MAKE THE CALL!

¹ For those who are too young to remember, in the days before the NFL season began with a rock concert, there were commercials that would present a real game scenario where something really crazy happened such as a running back fumbling the ball to a defensive lineman who then makes a lateral pass to a cornerback which is deflected by the quarterback into the hands of a linebacker who runs the wrong way into the end zone. A referee would then challenge you to “make the call.” After a brief pause for a Miller Lite “less filling, tastes great” commercial, the referee would come back on and tell you what the correct call was. For some reason, I lived for these – I think this was probably the beginning of my legal career as a 12 year old Redskins fan. But I digress...

If your answer involves a baton, asp, TASER, mag-light, flashlight, or firearm, or the words beat, strike, pummel, zap, shock, break, or the equivalent, report directly to Captain Williams' office. Do not pass go, do not collect \$200.

This scenario actually comes from a real case that went to the North Carolina Court of Appeals out of Winston-Salem. Officer Enned Gaylor (at least I think that's his real name) of the Winston-Salem PD was the lucky officer who stopped this particular loon. After reading the laminated card, Officer Gaylor properly told the driver, Mr. Phillips, to step from the car. Phillips did not immediately step from the car, and so the officer tried the door but found it to be locked.

Phillips then asked Officer Gaylor if he was under arrest, and was disappointed to learn that he was indeed under arrest, his laminated card notwithstanding.²

Officer Gaylor rightly arrested Mr. Phillips for a violation of N.C.G.S. 20-29. Here is the pertinent language of that statute: "Any person operating or in charge of a motor vehicle, when requested by an officer in uniform, ... who shall refuse, on demand of such officer ... to produce his license and exhibit same, shall be guilty of a Class 2 misdemeanor." This is also an appropriate time to remind you that you may require a driver to exit his vehicle during a proper traffic stop (Pennsylvania v. Mimms, U.S. Supreme Ct., 1977). Passengers may be ordered out as well (Maryland v. Wilson, 1997).

Mr. Phillips represented himself in District Court, appealed his conviction to Superior Court, represented himself in a jury trial, was convicted, and appealed to the N.C. Court of Appeals, where he (you guessed it) represented himself on appeal. You will be pleased to learn that the Court of Appeals ruled that Phillips was properly arrested by Officer Gaylor and was properly convicted by a jury.

By the way, as a footnote, I knew a lawyer once who was giving cards like this away. This same lawyer once purchased (for his use at trial) his very own Intoxilyzer 5000. This same lawyer also occasionally wore a cape. I am not making any of this up.

Thanks for playing.

Brian T. Beasley

Police Attorney

High Point Police Department

² Perhaps Mr. Phillips should not have been disappointed. After all, "placing me under arrest" was one of the options set forth on his card.