

Pretextual traffic stops: The mixed-motive traffic stop

Wailing sirens and flashing lights can make any motorist edgy. No one enjoys being pulled over by a police officer, but the situation can be much more unnerving if the officer suspects the motorist of driving while under the influence. Being convicted of DUI changes a person's life, from the monetary costs to the social stigma to the possibility of losing one's driver's license.

There are times when police pull over a motorist for what is termed probable cause, which is a necessity for a traffic stop to be constitutional. However, there are times when the stop is based on what is known as pretext.

Pretextual stops in driving while under the influence cases, once considered unconstitutional, are now acceptable in certain circumstances.

Pretext for a traffic stop

A pretextual traffic stop occurs when a police officer stops a vehicle in order to conduct a speculative criminal investigation unrelated to the motorist's driving, and not for the purpose of enforcing the traffic code. The U.S. Supreme Court

ruled in 1996 that a pretextual traffic stop does not violate the Fourth Amendment prohibition against unreasonable search and seizure.

Three years later, in *State v. Ladson*, the Supreme Court of Washington held that these stops are unconstitutional under Article I, Section 7 of the Washington Constitution, which states that a person must not be disturbed in his or her private affairs, nor his or her home invaded, without authority of law. The Court found that pretextual stops represent an abuse of a police officer's wide discretion in determining the reasonable necessity of a traffic stop in a given case.

In December 2012, the state's highest court issued an opinion, *State v. Arreola*, narrowing the scope of *Ladson*. The traffic stop at issue in the case was instigated by a report of a possible DUI, but as the officer followed the car, he did not observe any signs of impaired driving. However, he pulled over the driver for an altered exhaust, which is a violation of the traffic code. Once the officer approached the defendant, he smelled alcohol and noticed the passengers had open containers of alcohol. The officer issued a citation for the exhaust and the defendant was also charged with DUI.

The trial court found that the officer's stop of the vehicle was primarily motivated by the report of a possible DUI, but that the muffler was also a valid reason for pulling over the driver. The trial court found the stop to be

constitutional, but the appellate court decided the muffler infraction was a secondary reason which did not provide the necessary authority. The state sought review.

The high court reversed the appellate court's decision, ruling that the stop was acceptable. A mixed-motive traffic stop, one with both legitimate and illegitimate grounds, is not pretextual so long as investigation of either criminal activity or a traffic infraction, for which the officer has a reasonable articulable suspicion, is an actual, conscious, and independent cause of the traffic stop. Ultimately, the ruling gives a police officer more authority to stop a motorist if he or she suspects the driver is driving while under the influence.

Although the Arreola decision limits the defendant's arguments about pretextual stops, there will be cases where the courts find that the officer did not exercise discretion. If you have been stopped for DUI, contact an experienced criminal defense attorney to discuss the circumstances of your arrest. A lawyer will be able to explain your rights under the law.