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Racial Profiling in North Carolina: Racial Disparities in Traffic Stops, 2000 to 2011

by Ian A. Mance

“Racial profiling”—the use of race as a factor in deciding whether to take law enforcement action—first came to the forefront of public consciousness in the late 1990s. While *The New York Times* published articles using the phrase as early as the 1960s, only three such pieces appeared over the ensuing three and a half decades. By 1999, however, the *Times* was reporting an average of three such articles per week, often concerning the efforts of plaintiffs’ attorneys and federal civil rights authorities to buttress increasingly vocal and credible allegations of profiling with hard statistical evidence. In both North Carolina and the nation more generally, there was little debate that the phenomenon, to the extent it existed, represented an improper exercise of law enforcement authority. President George W. Bush, known for his tough-on-crime policies as a governor, explicitly rebuked the practice as “wrong” before a Joint Session of Congress in February 2001,¹ vowed to end it, and directed the Attorney General “to develop methods or mechanisms . . . in cooperation with State and local law enforcement . . . to assess the extent” of the problem.²

In North Carolina, after a series of news reports detailed disparities in stop-and-search practices across the state, the legislature passed N.C. Gen. Stat. § 114-10.01 in 1999, the first statute in the country to mandate that police record racial and ethnic data from all traffic stops (with the exception of those conducted by very small police forces). By its very nature, the data collection statute would take time to bear fruit. The statistics it was designed to generate would only be useful insofar as people were satisfied they represented the larger picture—as opposed to just a snapshot—of enforcement activity. But as time passed, the campaign against profiling lost much of its momentum. More than a decade later, the Attorney General’s office appears to have never produced the statistical analysis and oversight envisioned by the statutes.³ While many agree with President Obama that it’s “just a fact”⁴ minorities

suffer disparate treatment at the hands of police, many Americans—and North Carolinians—remain skeptical in the absence of hard evidence.⁵

13,397,573 traffic stops and more than a decade later, the time for such skepticism has passed in North Carolina. The extent of the problem has been laid bare in a new study of the traffic stop data by UNC political science professor Frank Baumgartner, *Racial Disparities in North Carolina Traffic Stops, 2000 to 2011*.⁶ Not only do Baumgartner’s numbers show black drivers are more likely to be stopped by police than white drivers, they show significant disparities in *treatment* once these motorists are in police control. The numbers are even worse for Hispanics. Statewide, blacks are 77 percent more likely than whites to be searched for identical offenses, while Hispanics are 96 percent more likely to be searched. Representing not just a *sample* of police stop-and-search activity in North Carolina, but *all* stop-and-search activity statewide over more than 3,800 consecutive days, the report provides powerful evidence of profiling and differential treatment of minority drivers.

The data reveal alarming pockets of heightened race-based policing in a number of counties, as well as a broader trend of disproportionately punitive treatment towards black and Hispanic motorists statewide.⁷ In Hoke County, for example, black motorists are more than four times as likely as whites to be searched in the course of speeding-related stops. In Caldwell County, the same is true of Hispanics. Statewide, black motorists are two and a half times more likely to be searched than white motorists in the course of a stop for a regulatory violation. Hispanic motorists are searched at a higher rate than any other racial or ethnic group during stops for speeding and safe movement violations.

Mecklenburg, one of the two most populous counties in the state, exhibits some of the strongest racial disparities in almost all the most common stop-and-search scenarios involving black motorists.⁸ The three-county Triangle region

shows large disparities in the treatment of black and Hispanic drivers. Blacks in Durham County, for example, are 162 percent more likely than whites to be searched during stops for seat belt violations. Hispanics in Wake are 107 percent more likely to be searched if stopped for a stop sign violation. Orange County shows alarming treatment towards both blacks and Hispanics.⁹

Cabarrus County is another stand out. With respect to black motorists, Cabarrus ranks first out of 100 counties on four of ten racial profiling indicators, and among the top five in several other categories. For Hispanic drivers, Cabarrus ranks among the top ten counties in eight of ten statistical categories. This is no statistical artifact: with 641,959 combined stops between its various agencies, Cabarrus County posted some of the highest stop numbers in the state.

In Cabarrus and elsewhere, the greatest racial disparities relate to minor offenses for which officers are afforded the most enforcement discretion—a pattern highly suggestive of pretext. This statistical evidence strongly indicates the sort of “racial profiling” that so concerned Justice O’Connor in *Atwater v. City of Lago Vista*—that in which an allegation of “a relatively minor traffic infraction . . . serve[s] as an excuse for stopping and harassing an individual.”¹⁰

Because vehicular searches are typically only litigated in criminal cases where contraband has already been discovered, it is easy to lose sight of the fact that most people who are searched are not guilty of anything (beyond, perhaps, the alleged traffic infraction for which they were pulled). But Baumgartner’s study also demonstrates that even when vehicle searches *do* turn up contraband, blacks are more likely to be arrested, regardless of whether the evidence involves guns, drugs, or money. In fact, statewide, whites are twice as likely as blacks to be let off with a warning instead of being arrested when a vehicle search uncovers suspicious amounts of currency.

Of course, most searches turn up no such evidence. Nevertheless, tens of thousands of innocent people have been forced to experience the natural fear and uncer-

tainty attendant upon any involuntary encounter with law enforcement. Many have been asked to bear the humiliation and sometimes physical consequences of invasive and unwarranted police conduct. Baumgartner’s study shows that this burden falls disproportionately on minorities in North Carolina.

Lelynd Aytch Darkes has lived this disparity. The 19-year-old Raleigh native, a gregarious and friendly college student, has been the subject of four suspicious traffic stops by Wake County law enforcement officers in the last year and a half. In each stop, he says, he was forced to endure degrading public searches of both his person and car—sometimes while handcuffed or otherwise restrained, a number of them involving dogs. None of the stops and searches resulted in arrest or criminal conviction. “It’s pretty common,” says Lelynd,¹¹ who doubts his experiences would surprise “any black male living in downtown, south-side Raleigh.” He insists he knows the difference between fair and biased policing. Since moving to Greensboro for college, he’s been stopped twice and received citations, one for a broken head light and one for not wearing his seat belt. “But those were justified stops,” he says. The officers in Greensboro, unlike those in Wake County, treated him with the same respect he showed them.

One afternoon in 2011, while driving in southern Wake County, Lelynd was stopped, restrained, and locked in the back of a police cruiser as officers conducted a warrantless search of his car. Finding nothing, the officers issued him a citation for an oversized license plate frame, the only reason they offered for pulling him over. Lelynd knew there was nothing wrong with his frame. When he arrived at his mother’s house, she took a picture of it, which she later used to confront the district attorney handling the charge. “The guy looked at me,” says Lelynd’s mother,¹² Dr. Lynette Aytch, a former researcher at UNC-Chapel Hill and now a director at the National Center for Infants, Toddlers, and Families. “He said, ‘I’m dismissing this, and I’d advise you to file an internal affairs complaint, because this is egregious.’” Aytch says she worries for Le-

lynd’s safety each time he leaves the family house, located just a few blocks southeast of the State Capitol building, and fears that his simple presence in the neighborhood will draw the attention of police. “Living in southeast Raleigh, there’s a lot of transition in the community. The police presence has significantly increased. . . . And that’s a good thing. But I also sense that there’s some real harassment going on.”

The numbers support her suspicions. In Wake County, statistics are not available for license-plate frame-related offenses but do exist for the similarly minor offense of driving without a seat belt. These numbers, which include nearly 50,000 stops for seat belt offenses in Wake County alone, show black motorists like Lelynd are nearly three times as likely to be searched during such a stop as white drivers. This disparity is significantly higher than the known disparities in 1999 that helped prompt passage of the data collection bill.¹³

That Lelynd is a successful college student has done little, in his mother’s view, to spare him from the indignities that appear to be a fact of life for many black men in the capital city. “This is happening to kids, young people, every day in our community,” says Aytch. “I don’t want my son to feel like he can’t move around in his own community—in his own city—and feel safe. And I also don’t want him to turn into some young angry black man that feels like everybody’s out to get him.”

For Lelynd, the prospect of police harassment has grown to loom large in day-to-day life. In another incident in 2011, he was driving alone and was pulled over a few minutes after leaving his family’s home in downtown Raleigh. He’d spent the entire day with his mother before heading out that evening to a local skating rink. He made it only a few blocks before being pulled. An officer approached the vehicle quickly. “It happened really fast,” says Lelynd. “He’s yelling these commands at me. He grabs my arm, pulls me out of the car as if I was resisting. He was like, ‘Show me your hands! Show me your hands!’ He gets me in handcuffs, spreads my legs wide [so much that] I’m almost doing a split—patting me down all through my groin area, my butt. I said, ‘Why did you pull me

over?’ He said, ‘I smelled marijuana.’ I said, ‘My windows are up.’” The officer didn’t explain himself.

Lelynd’s mother, Dr. Aytch, finds the officers’ story incredible. “Lelynd had *just* left,” she says. “He wasn’t smoking marijuana. We’d been [together] all afternoon.” Before long, says Lelynd, “there [were] like 5 or 6 cop cars behind my car, lights going. I’m sitting on the curb. I’m telling them, ‘This is ridiculous.’ After this, they call in . . . a dog. They let the dog get in my car and go crazy in my car, jumping over the seats, tearing my car apart.” Lelynd complained about his treatment to the nearest officer: “He says, ‘If you don’t cooperate and shut up, we have enough to take you to jail.’ I just couldn’t believe it, because I knew they didn’t.” The officer then claimed he’d recovered a speck of marijuana in the car but declined to produce it. Lelynd was then uncuffed and told he was free to go. When he went to court, prosecutors dismissed the charge.

Lelynd never made it to the skating rink that night. “After that, I just went back home,” he says. “I was shaken up pretty bad. I just felt like—I can’t think of a word to describe it—I just felt like . . . *nothing*. I felt like a piece of [trash]. They were treating me like a criminal from the start and then making *jokes* [about it]. Every time a

police gets behind me now, I almost have a heart attack.” Aytch says the incident also left her shaken. “It’s the kind of thing that just scares the life out of me,” she says. She encountered Lelynd, curled up on the family couch, moments after the encounter. “He said, mom, ‘It was just the most humiliating, frightening thing that has ever happened to me in my entire life.’”

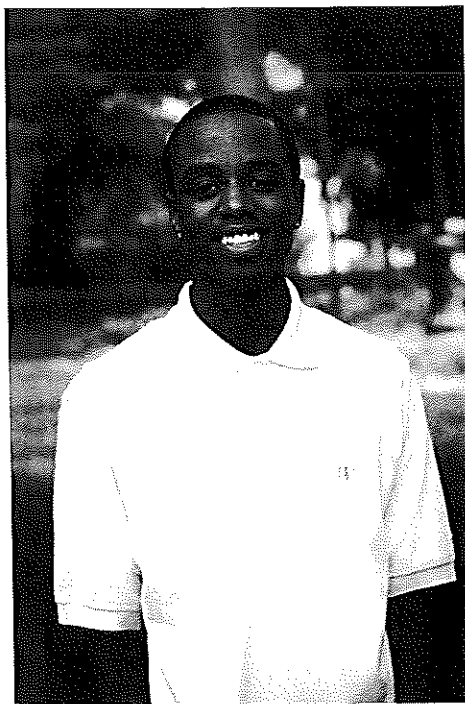
“It was just devastating,” says Aytch. “They gave him no [rational] explanation for *why* he was stopped. They put handcuffs on him and . . . pulled out all the seats in his car. And my sense is that the more Lelynd . . . gets stopped, the more the probability that it escalates. Because I’m sure it comes up. He’s a kid that’s been stopped by the police a bunch of times. So automatically, that puts into a police officer’s mind this is potentially a dangerous kid, a dangerous person.” As his mother, however, she says, she *knows* what the police refuse to accept: “Lelynd is a good kid. He’s doing what he’s supposed to be doing, and he was not engaged in any illegal activity.”

Nevertheless, the problem persists. In fact, in the brief period between the time Lelynd agreed to speak about his experiences for this article in March 2012 and the time he sat down with this writer a week later, he was stopped once more by the Raleigh police. Pulled over as they left

the drive-thru of a Burger King, he and his friends were ordered out of their car and subjected to full body and vehicular searches before being told they were free to go. This was not the first time. As Lelynd puts it, he’s now twice been detained and searched under suspicion of having “five black boys in a Nissan.” As had happened on the previous occasion, numerous police cars responded to the scene. “The cops were just coming and coming and coming,” he says. “The police officer who pulled me out of the car, he told me he pulled me over for the tint [on my windows], but he wanted to *search* me. So they searched. They didn’t ask [my] permission. They didn’t find anything in the car.” The tint on the car, like his license plate frame before, was legal, and this time no citation was issued. Once again, after much delay and a very public search, he and his friends were free to go.

Reginald Woods, formerly of Durham, is another person who says he has endured the indignity of racial profiling and police misconduct. The 39-year-old former city employee was so traumatized by the experience of being pulled over by officers near Duke Hospital a few years ago that he packed his bags and moved to Burlington that very day, opting to commute to work rather than live in a city where he no longer felt safe. On the day of the incident, Mr. Woods says he was abiding by all traffic laws when he was blue-lighted near a gas station on Erwin Road in broad daylight. He says that from the moment he was approached, the officer seemed “aggressive.” After running his license and discovering no issues, the officer returned to Woods’ window, still appearing agitated. Woods started to reach for a cigarette to calm his nerves. He says he was particularly frustrated by the officer’s repeated refusal to tell him *why* he had been pulled. “I go out and work every day. I pay my taxes. . . . I wanted to know why I was stopped.”¹⁴

As he went to light his cigarette, Woods says the officer ordered him not to smoke. When he replied that smoking wasn’t against any law, he says the officer “grabbed my left arm, which I had my lighter in, . . . and twisted my elbow through the window. I asked him what’s his badge num-



Lelynd Darkes and his allegedly “obscured” license plate, as it was on the day of his stop.

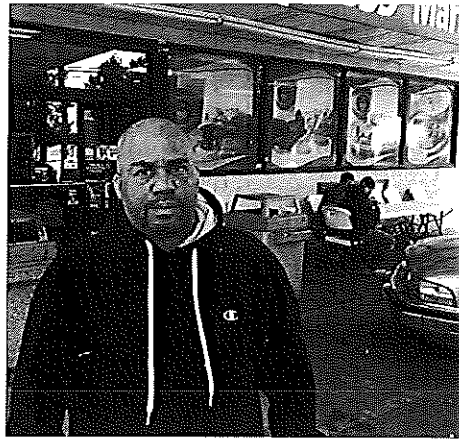


ber . . . and [that's when] he hit me with the taser." Woods says the officer never warned him he would use force against him and that the sudden jolt of electricity caught him entirely by surprise, as he was still seated, trying to understand why he'd been stopped.

"When he tased me . . . I urinated all over myself," says Mr. Woods. He adds that his problems extended far beyond the embarrassing nature of the situation and the pain of the taser. "My whole left hand was numb, and for . . . a week or two after, the three fingers stayed numb on my left hand. I went and saw a nerve doctor because I was concerned about not being able to use my three fingers. I couldn't sleep. I've never had a problem with sleeping. I had to be put on sleeping pills and anti-depressants."

Mr. Woods says that after the officer tased him, "He took me out the truck and told me I was under arrest. I said, 'For what?' He said, 'Resisting arrest.'" The officers took him downtown before a skeptical magistrate, who released him on an unsecured \$500 bond. Woods showed up in court repeatedly to defend the charge, but each time, the officers would fail to show. When the court finally issued a subpoena, the officers appeared and claimed Woods had aroused their suspicion after emerging from a supposed "high crime area" on Crest Street, where he had just left his grandmother's home. Judge James T. Hill dismissed the case, finding the officers "had no reasonable suspicion"¹⁵ to have stopped Woods in the first place.

Asked why he thinks this happened to him, Mr. Woods says, "I think I was being stereotyped because I was a black male." While the Durham Police Department refused to concede the stop was racially based, it ultimately did admit that Mr. Woods had been "stopped without cause"¹⁶ and found the officer's decision to arrest him had been "improper."¹⁷ Woods insists his treatment was consistent with what he perceives to be a pattern of harsh treatment towards African Americans by police in Durham. Professor Baumgartner's numbers, as well as others compiled by the NCAJ Task Force on Racial and Ethnic Bias in the Criminal Justice System, support his contention. "In Durham



Reginald Woods, standing in the spot where he was pulled over and assaulted by Durham police. (Photo: March 2012)

County, African Americans are nearly nine times more likely to be incarcerated . . . [as] Caucasians"¹⁸—the highest racial disparity among any of North Carolina's 100 counties.

The circumstances surrounding their encounters with police, when considered alongside Professor Baumgartner's statistics, strongly suggest that Lelynd Darkes and Reginald Woods would not have had to endure these indignities if their skin were a different color. While "the Constitution prohibits selective enforcement of the law based on considerations such as race,"¹⁹ nothing affirmatively prohibits law enforcement practices that disparately impact minority drivers. Racial profiling has long remained largely invulnerable to legal challenges due to the difficulty of establishing the requisite discriminatory *intent* for an Equal Protection challenge.²⁰ The oft-proposed End Racial Profiling Act, if passed, would provide that "[p]roof that the routine . . . activities of law enforcement agents in a jurisdiction have had a disparate impact on racial . . . minorities shall constitute prima facie evidence of a violation[.]"²¹ Its legislative prospects, however, have always been poor—although they may have been boosted a bit recently in the wake of the controversial Trayvon Martin case in Florida, which prompted Congress to hold its first hearing on racial profiling in years.²²

As the law currently stands, "statistical proof normally must present a 'stark'

pattern to be accepted as the sole proof of discriminatory intent[.]"²³ To surmount this high and ill-defined threshold, statistical evidence is usually combined with other evidence, such as the "absence [of] any legitimate justification for [a] stop,"²⁴ to make out a case for profiling.²⁵ This strategy has had some success in both civil and criminal contexts, including here in North Carolina.²⁶ As a number of courts have now observed: "Just because [an] official policy is to decry racial profiling . . . does not automatically mean that [police] are free from reproach: . . . 'What really matters, ultimately, is how official policies are interpreted and translated into actual practices . . . across the state and out on the road.'"²⁷ Until now, however, attorneys in North Carolina have not had access to the kind of extensive statistical evidence of profiling as is presented in the Baumgartner study.

The newly available data may provide some prospect of relief for people like Lelynd Darkes and Reginald Woods, neither of whom brought suit against the officers who mistreated them. But Baumgartner's study reveals a problem that is simply too big to leave to the plaintiffs' bar. Addressing a problem of this magnitude will require action from the legislature and the attention of the governor. We now have incontrovertible evidence of severe race-based disparities in vehicular law enforcement. While the disparities are particularly pronounced in some counties, racial profiling continues unabated throughout North Carolina more than a decade after the legislature first brought attention to the problem. It is time for the state to move from study to action. ♦

1. United States Department of Justice, *Fact Sheet: Racial Profiling*, June 17, 2003, http://www.justice.gov/opa/pr/2003/June/racial_profiling_fact_sheet.pdf.

2. United States Department of Justice, Attorney General Racial Profiling News Conference (Transcript), March 1, 2001, available at <http://www.justice.gov/archive/ag/speeches/2001/030101racialrofconf.htm>.

3. N.C.G.S. § 114-10(3) (2011) provides that the North Carolina Attorney General is to conduct "scientific study [and] analysis . . . from the information so collected . . . and to provide the Governor and the General Assembly with the information . . . biennially[.]"

4. The White House, Office of the Press Secretary, News Conference of President Obama, July 22, 2009, [http://www.whitehouse.gov/the_press_office/News-Conference-by-the-President-2009-07-22-2009](http://www.whitehouse.gov/the_press_office/News-Conference-by-the-President-2009-07-22).

5. See, e.g., Gallup, *Minority Rights and Relations Poll*, July 20, 2004, <http://www.gallup.com/poll/12406/racial-profiling-seen-pervasive-unjust.aspx> (finding that, while “a majority of black Americans (67%) feel racial profiling is widespread in traffic stops, a sentiment shared by nearly the same percentage of Hispanic Americans (63%), . . . only half (50%) of non-Hispanic whites [agree]”).

6. Professor Baumgartner’s study was produced at the request of, and on the behalf of, the NCAJ and its Task Force on Racial and Ethnic Bias in the Criminal Justice System. The study’s formal publication is forthcoming. Professor Baumgartner was assisted in his work by UNC graduate student Derek Epp.

7. Courts that have conducted inquiries into the relevant evidence have concluded that black motorists commit traffic offenses at a rate consistent with their representation in the overall driving population. See, e.g., *State v. Soto*, 324 N.J. Super. 66, 70 & 74, 734 A.2d 350, 353 & 355 (Ch. Div. 1996) (noting that “the difference between the percentage of black violators and the percentage of black travelers from the surveys is statistically insignificant” and that “there is nothing in the literature . . . to support the theory that blacks drive differently from whites”).

8. Mecklenburg County has among the state’s ten highest racial disparities in seven of the ten most common stop-search scenarios studied.

9. Blacks in Orange County are 193 percent more likely than whites to be searched when pulled for vehicle regulatory violations. Hispanics are 219 percent more likely to be searched during such stops.

10. 532 U.S. 318, 372 (2001) (O’Connor, dissenting).

11. Interview with Lelynd Aytch Darkes, March 8, 2012, in Raleigh, NC. All quotes are from this interview.

12. Interview with Dr. Lynette Aytch, March 2, 2012, in Durham, NC. All quotes are from this interview.

13. See, e.g., Lynn Bonner, “Bill Probes Traffic Stops for Driving While Black,” *News and Observer*, February 18, 1999 (discussing near 2-to-1 disparity against black motorists for drug-related vehicular searches).

14. See Anne Blythe, “Tasered Man Asks for Review: Concerns Emerge About Officers’ Use,” *News & Observer*, January 30, 2009 (quoting Reginald Woods). All of the other Woods’ quotes in this article are from a March 6, 2012 interview with the author in Durham, NC.

15. *Id.*

16. See Letter from Lieutenant P.B. Daye, Professional Standards Division, Durham Police Department, to Reginald Woods, September 9, 2009 (on file with author).

17. *Id.*

18. North Carolina Advocates for Justice Task Force on Racial and Ethnic Bias in the Criminal Justice System, Baumgartner Study, Executive Summary at 2 (summarizing data from the North Carolina Department of Corrections’ Research and Planning Division).

19. *Whren v. United States*, 517 U.S. 806, 813 (1996).

20. *Washington v. Davis*, 426 U.S. 229, 242 (1976).

21. End Racial Profiling Act, S. 1670, 112th Cong. § 102(c) (2011).

22. See Kathleen Hunter, “Senator Targets Racial Profiling Amid Fla. Shooting Backlash,” *Pittsburgh Post-Gazette*, March 28, 2012, <http://www.post-gazette.com/stories/news/us/senator-targets-racial-profiling-amid-fla-shooting-backlash-628334>.

23. *McCleskey v. Kemp*, 481 U.S. 279, 293 (1987) (quoting *Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 266 (1977)).

24. *Maryland State Conference of NAACP Branches v. Maryland State Police*, 454 F. Supp. 2d 339, 349 (D. Md. 2006).

25. See e.g., *id.* at 350.

26. See, e.g., *State v. Villeda*, 599 S.E.2d 62, 65–7 (N.C. App. 2004) (affirming dismissal of criminal case where defendant proffered “sufficient evidence to support a prima facie showing that Trooper . . . engaged in racial profiling”).

27. *Chavez v. Illinois State Police*, 251 F.3d 612, 647 (7th Cir. 2001) (quoting *State v. Ballard*, 331 N.J. Super. 529, 752 A.2d 735, 744 (2000)).



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