



# Police Law Bulletin



City Attorneys' Office

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## NORTH CAROLINA SUPREME COURT



### North Carolina Supreme Court Reverses Court of Appeals and Concludes that Traffic Stop Was Not Unduly Prolonged

*State v. Bullock*, \_\_\_ N.C. \_\_\_, \_\_\_ S.E.2d \_\_\_ (Nov. 3, 2017).

On November 27, 2012, defendant was traveling south through Durham on I-85, a major thoroughfare for drug trafficking. A Durham police officer was stationary on the side of the interstate when defendant drove past him in the far left lane, traveling approximately 70 mph in a 60 mph zone. The officer observed defendant change lanes to the middle lane even though there was no car in front of him. The officer began following defendant and observed him following a truck too closely, coming within approximately one and a half car lengths of it. The officer initiated a traffic stop and approached defendant's vehicle. Defendant already had his driver's license out when the officer approached and his hand was trembling. The officer observed two cell phones in the center console of defendant's vehicle although defendant was the sole occupant of the vehicle – a fact that the officer, based upon his experience, associated with drug trafficking. Defendant stated that he was going to Century Oaks Drive to meet a girl, but that he had missed his exit. The officer knew, however, that the defendant was well past the exit for that location, having already passed three exits that would have taken him there. The officer asked defendant for the rental agreement for the vehicle once defendant indicated that the car was a rental. The agreement specified that the car was rented by "Alicia Bullock," and she was the only authorized user on the agreement.

The officer asked defendant to step back to his patrol car while he ran defendant's driver's license, indicating that he would give him a warning for the traffic violation. The officer then asked if he could search defendant for weapons before he got into his patrol car. Defendant agreed. When the officer found \$372 cash on him, defendant explained that he was about to go shopping.

While defendant was seated in the patrol car, the officer ran defendant's driver's license through three law enforcement databases (one local, one state, and one national). In the interim, the officer continued to talk with the defendant. Defendant claimed that he had just moved down from Washington. However, the database checks revealed that defendant was issued a North Carolina driver's license in 2000 and that

he had been arrested in North Carolina in 2001, facts contradicting his claim of just having moved to the state. Defendant later admitted he had been in the area for a while and claimed he was going to meet a girl he met on Facebook for the first time. However, defendant also mentioned that the same woman would sometimes come up to Henderson to meet him. The officer thought defendant looked nervous while in the police car, noting that he was “breathing in and out in his stomach” and was not making much eye contact. The officer then asked defendant if there were any weapons or drugs in the car and if he could search the vehicle. Defendant gave consent to search the car, but not his personal belongings in the car which included a bag, clothes, and some condoms. The officer called for backup.

Once backup arrived, the officer began searching the front passenger area of the car. When the officer got to the trunk, defendant yelled out, “it’s not my bag” and “those are not my hoodies...,” contradicting earlier statements that such items were part of his personal belongings. Defendant now indicated that the bag was his sister’s and that he couldn’t give permission to search it. The backup officer removed the bag and put it on the grass. A K-9, which was already on-scene, was walked around the car but did not alert. However, when the K-9 sniffed the bag, the dog immediately alerted. The officer opened the bag and found 100 bindles of heroin in it.

Defendant was indicted for trafficking in heroin by possession, trafficking in heroin by transportation, and possession with the intent to sell or deliver a Schedule I controlled substance. Defendant filed a motion to suppress, arguing that the officer had unduly prolonged the stop in violation of *Rodriguez*. A superior court judge denied the motion, and the defendant pled guilty, but then appealed. A divided court of appeals found that the trial court had erred by not granting the defendant’s motion to suppress. The majority of the court concluded that the officer unlawfully prolonged the detention by conducting a frisk, ordering defendant out of his vehicle and requiring him to sit in the officer’s patrol car, searching law enforcement databases that exceeded routine checks authorized by *Rodriguez*, and asking questions of the defendant that were unrelated to the mission of the stop while searching the databases (*For a more detailed review of the Court of Appeal’s holding and analysis, see the July-August 2016 Police Law Bulletin.*) The State appealed to the North Carolina Supreme Court. In a unanimous opinion, the supreme court reversed the court of appeals.

This case is controlled by *Rodriguez* in which the United States Supreme Court, in addressing the reasonableness of the duration of a traffic stop, explained: A seizure for a traffic violation justifies a police investigation of that violation. The extent of police inquiries during the traffic stop is determined by the seizure’s mission – inquiries are allowed to address the traffic violation that warranted the stop, and attend to related safety concerns. Because addressing the infraction is the purpose of the stop, the stop may last no longer than is necessary to effectuate that purpose. Authority for the seizure ends when tasks tied to the traffic infraction are, or reasonably should have been, completed. While an officer may conduct certain unrelated checks during an otherwise lawful traffic stop, he may *not* do so in a way that prolongs the stop, unless there is reasonable suspicion to justify further delay.

Since *Rodriguez*, trial and appellate courts have struggled with how to appropriately apply the ruling to various factual scenarios. This is the first North Carolina case on this issue to make its way to the state supreme court, and it appears that the North Carolina Supreme Court’s understanding of *Rodriguez* differs considerably from the view adopted by the court of appeals.

*Ordering the driver out of the vehicle.* Citing the United States Supreme Court decision of *Maryland v. Wilson*, 519 U.S. 408, 410 (1997), the North Carolina Supreme Court found that the officer could and did lawfully ask the defendant to exit his vehicle. The court dismissed the suggestion by the court of appeals that taking the time to ask a defendant to exit his vehicle may itself unduly prolonged the stop. The supreme court reasoned that ordering a driver out of his or her vehicle enhances officer safety, which is

part of the mission of a stop according to *Rodriguez*. Therefore, in the case at hand, “any amount of time that the request to exit the rental car added to the stop was simply time spent pursuing the mission of the stop.”

*Frisking the driver.* The North Carolina Supreme Court found that the officer lawfully frisked the defendant. It is well established that during a lawful stop, an officer may conduct a pat down search, for the purpose of determining whether the person is carrying a weapon, when the officer has reasonable suspicion that the individual is armed and dangerous. However, in the case at hand, there were no findings to suggest that the defendant might be armed and dangerous.

The Court of Appeals declined to consider the fact that the defendant consented to the frisk (thus making reasonable suspicion unnecessary) because, the court concluded, the moment the officer asked if he could search defendant’s person, the time in which it took to pose that inquiry caused the stop to be unlawfully prolonged. The North Carolina Supreme Court disagreed with this analysis and specifically held that the frisk did not unconstitutionally prolong the stop for two reasons. First, frisking the defendant enhanced officer safety. Again, the court noted that negligibly burdensome measures taken in the interest of officer safety are part of the mission of the stop according to *Rodriguez*. Second, the court noted that *Rodriguez* states that officers may not depart from the mission of a stop in a way that “measurably extends the duration of the stop.” The court reasoned that there are some inquiries that extend a stop’s duration, but do not extend it *measurably*. In the case at hand, the frisk lasted 8-9 seconds which was short enough that it does not constitute a measurable extension of the stop.

The North Carolina’s Supreme Court’s first basis for upholding the frisk seems well reasoned based upon the language of *Rodriguez*. The court’s second basis, however, may be more problematic and officers are, therefore, cautioned against relaying upon its rationale for justifying inquiries and actions that do not fall within the mission of a stop. The idea that an 8-9 second frisk is too brief to be measurable and therefore, requires no justification seems very similar to the “de minimus” rule that the United States Supreme Court specifically rejected in *Rodriguez*. Admittedly, the delay in *Rodriguez* was measured in minutes, not seconds, and perhaps there is a point at which a delay is too minor to be calculable. However, it is not self-evident that 8-9 seconds is too brief to count, especially in light of the fact that it is long enough to conduct a somewhat intrusive procedure like a frisk.

*Moving the driver into the patrol car.* The North Carolina Supreme Court disagreed with the court of appeals’ conclusion that having the defendant move from the roadside into the patrol car improperly extended the stop. It takes no longer for one person to walk to a patrol car than it does two. Once in the patrol car, checks through law enforcement databases take a few minutes, and it takes no more time to run the checks when the defendant is in the patrol car than when he is elsewhere.

*Running computer checks on the driver.* In its opinion, the North Carolina Supreme Court stated that permissible safety precautions that may be taken during a stop “appear to include conducting criminal history checks.” This is significant because some courts have read *Rodriguez* as allowing only checks for outstanding warrants and motor vehicle violations. In accordance with the latter rationale, the North Carolina Court of Appeals had found that the officer, in the case at hand, had unlawfully prolonged the stop of defendant by running his name through databases which went beyond a routine check of a driver’s license and checking for warrants. The North Carolina Supreme Court clearly does not share such a view, and noted that in *Rodriguez* the United States Supreme Court favorably cited a Tenth Circuit case that allows officers to conduct criminal history checks to protect officer safety.

*Asking questions of the driver while waiting for the computer checks to come back.* Assuming that the computer checks were permissible, the North Carolina Supreme Court concluded that it was permissible

for the officer to ask questions of the driver while waiting for the results of the checks, because doing so did not prolong the stop. The fact that the checks were running enabled the officer to talk with the defendant at least until the moment that all three databases queried had been completed.

*Reasonable suspicion had developed by the time stop was extended for the canine sniff.* The North Carolina Supreme Court concluded that the conversation between the officer and the defendant while defendant was in the patrol car, in conjunction with the officer's observations from earlier in the traffic stop, provided reasonable suspicion to prolong the stop. The court noted that I-85 is a major drug trafficking corridor, the defendant had two cell phones even though he was the sole vehicle occupant (a fact the officer through his training and experience associated with trafficking), the rental vehicle was in another person's name, the defendant gave an illogical account of where he was going, the defendant appeared nervous, and a large amount of cash was discovered during the frisk. Once in the patrol vehicle, the defendant gave inconsistent statements about the girl he was allegedly on the way to visit, and the database check revealed that the defendant had been untruthful about recently moving to North Carolina. These factors provided reasonable suspicion for the officer to extend the stop for the canine sniff.