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Police Law Bulletin

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NORTH CAROLINA APPELLATE COURT DECISIONS

Court Held That Officer Had Reasonable Suspicion to Extend Traffic Stop to Allow Dog to Perform a Drug Sniff

State v Warren, ____N.C. ____, _____S.E.2d_____ (Mar. 18, 2016).

Defendant was indicted for various drug offenses in connection with the discovery of illegal drugs and drug paraphernalia in his car during a traffic stop and for attaining the status of habitual felon. Defendant filed a motion to suppress the evidence. After a hearing, the trial court denied the motion. Defendant was found guilty of felonious possession of cocaine and possession of drug paraphernalia. Defendant pleaded guilty to attaining the status of habitual felon. Defendant appealed.

On appeal, Defendant did not contest the validity of the stop itself. Rather, Defendant argued that the court erred in concluding that the officer had reasonable suspicion *to extend* the routine traffic stop in order to allow a police dog to perform a drug sniff outside his vehicle, which led to the discovery of contraband in the car.

A traffic stop is a seizure under the Fourth Amendment. An officer may stop a vehicle on the basis of reasonable, articulable suspicion of criminal activity. During the course of the stop, an officer may - in addition to writing out a traffic citation - perform checks which "serve the same objective as enforcement of the traffic code." *Rodriguez v. United States*, ___ U.S. ___, ___, 191 L.Ed. 2d 492, 499 (2015). These checks typically include checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance. Beyond the time reasonably necessary to perform these tasks, an officer may not further prolong the stop, absent additional reasonable suspicion. Prior to *Rodriguez*, many jurisdictions – including North Carolina – applied a *de minimis* rule, which allowed police officers to prolong a traffic stop for a very short period of time to investigate for other criminal activity unrelated to the traffic stop – for example, to execute a dog sniff – though the officer had no reasonable suspicion of other criminal activity. However, these

cases have been overruled by *Rodriguez*. (*For a refresher on Rodriguez, see emails to All Sworn from Police Attorney Toni Smith on April 22, 2015 "Rodriguez v. United States" and June 3, 2015 "July August 2015 Police Law Bulletin"*)

In the present case, the court found that Defendant was observed and stopped in an area the officer knew to be a high crime/high drug activity area; that while writing the warning citation, the officer observed that Defendant appeared to have something in his mouth which he was not chewing and which affected his speech; that during his six years of experience, the officer, who has specific training in narcotics detection, had made numerous drug stops and had observed individuals attempt to hide drugs in their mouths and swallow drugs to destroy evidence; and that during their conversation, Defendant denied being involved in drug activity *any longer*. The Court of Appeals acknowledged that while the lack of any evidence that the officer specifically inquired about the object in defendant's mouth makes the question of reasonable suspicion closer, the court believed that defendant's act of speaking with the officer for a period of time without removing or chewing on an object which was affecting his speech – when coupled with the other factors cited above – was sufficient to establish reasonable suspicion.

Accordingly, in a divided decision, the Court of Appeals held that the trial court did not err in denying Defendant's motion to suppress. For the reasons stated by the Court of Appeals, the North Carolina Supreme Court affirmed the ruling.

Reasonable Suspicion Supported Officer's Extension of Traffic Stop; Defendant's Consent to Search His Car, Given During Lawful Extension of Stop, Was Clear and Unequivocal

State v. Castillo, No. COA15-855 (May 3, 2016).

On September 26, 2014, Officer Green, a veteran Durham Police Department officer assigned to the highway interdiction division of the special operations division was parked on an exit ramp monitoring the southbound lanes of I-85 near the Durham-Orange county border. Officer Green testified that he patrols the I-85 corridor looking for people who might be using that route to move contraband, money, or engage in human trafficking while also stopping and citing routine traffic violators. Officer Green further testified that he has had specialized interdiction training beginning in 2006. The interdiction training teaches him how to look for verbal and non-verbal indicators that the person stopped for a traffic violation might also be engaged in other criminal activity.

During his shift, Officer Green positioned his vehicle on the exit ramp of Highway 70 which provided him with a clear view of the I-85 South traffic lanes. He noticed a green car traveling at what he estimated as a high rate of speed, so he began to follow the car to determine how fast it was travelling. After calculating defendant's speed as 72 mph in a 60 mph zone, Officer Green activated his emergency lights and stopped defendant's vehicle. When defendant observed the officer's lights he abruptly pulled over to the shoulder of the road, startling Officer Green and requiring him to brake to avoid collision.

Officer Green approached defendant's vehicle from the passenger side and asked for his license and registration. Officer Green noticed defendant's hand was shaking uncontrollably as he handed the license to him. Officer Green also smelled a mild odor of air freshener emanating from the interior of the vehicle and observed that defendant was operating the vehicle with a single key, which indicated to Officer Green that defendant might not be the owner of the car. Officer Green explained that people who loan someone a car will often not give out all of their keys. Upon noticing defendant's extreme nervousness, Officer Green asked defendant where he was going and where was he coming from. Instead of answering, defendant responded with "huh," requiring Officer Green to re-ask the question. Officer Green testified that he believed this indicated defendant was stalling so that he could think of what to

say. Officer Green testified he knew that defendant clearly heard the question as he had asked defendant to roll up the driver side window to screen the traffic noise from I-85. After the question was asked again, defendant informed Officer Green that he was coming from Queens, New York. Officer Green then asked defendant again about his destination and received another "huh" as his answer. Upon the second or third time defendant was asked about his destination, defendant claimed he did not know where he was going but had an address in the GPS of his phone. Defendant could not even provide the city where that address was located. Officer Green then asked if defendant had been to North Carolina before, to which defendant replied that this was his first trip. Officer Green again asked where he was going and defendant could not, or would not, tell Officer Green his destination. At that point Officer Green concluded that defendant clearly did not want to tell him where he was going. Officer Green testified that in 15 years of stopping people, they always knew where they were coming from and where they were going. Given the fact that defendant had answered his questions with "huh" repeatedly and could not, or would not, disclose his destination, Officer Green began to believe that there was criminal activity involved. This belief arose before Officer Green asked defendant to exit his vehicle, submit to a pat down for weapons, and sit in his patrol vehicle.

The in-car camera video showed that while in the process of entering defendant's information and that of the registered owner, Officer Green asked defendant about the odor of marijuana that he now detected. Defendant answered that he had smoked about three days ago and that some of his friends smoked, and that is what Officer Green might have smelled. While the officer was still processing the defendant's information, defendant volunteered that he had been arrested for DUI in New York due to his driving while under the influence of marijuana, an experience defendant said he had learned from. While in the patrol vehicle, Officer Green also had defendant repeat his story about not knowing the city of his destination. Officer Green then asked who defendant was going to see and defendant said "Eric." But when asked Eric's last name, defendant said he did not know. Defendant explained that he was going to see Eric, hang out for a few days, and go back to New York in the car he had borrowed from another friend. All of this occurred well before Officer Green learned from dispatch that there were no warrants for defendant.

As Officer Green handed defendant a warning ticket, Officer Green asked defendant if he had any marijuana in the car, noting that he had smelled marijuana on defendant and defendant had admitted to the marijuana-based DUI. Defendant denied there was any marijuana in the car and said, "you can search, if you want to search." The ensuing search discovered a quantity of heroin and cocaine in a trap door under the center console. As the officers are locating the drugs, defendant is heard muttering "they found it" on the video recording.

After his arrest, defendant was indicted. At a subsequent suppression hearing, the trial court entered an order allowing defendant's motion, ruling that Officer Green unnecessarily extended the traffic stop without reasonable suspicion and that defendant had not given clear and unequivocal consent to search his vehicle. The State appealed.

The Court of Appeals found that defendant was properly stopped based upon reasonable suspicion that he was speeding in violation of N.C. Gen. Stat. § 20-141. The validity of the initial traffic stop was never an issue in the case.

Rather, the issue in the case stems from application of the United States Supreme Court's recent decision in *Rodriguez v. United States*, __ U.S. __, 191 L. Ed. 2d 492 (2015), which held that even a *de minimis* extension of a valid traffic stop is a violation of the Fourth Amendment's prohibition against unreasonable searches and seizures absent reasonable suspicion. Understanding exactly what *Rodriguez* permits and what *Rodriguez* prohibits is important.

In *Rodriguez,* Justice Ginsburg explained: A seizure for a traffic violation justifies a police investigation of that violation. The tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's "mission" – 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, it may last no longer than is necessary to effectuate that purpose. Authority for the seizure thus ends when tasks tied to the traffic infraction are – or reasonably should have been – completed. An officer may conduct certain unrelated checks during an otherwise lawful traffic stop, but he may not do so in a way that prolongs the stop, *absent the reasonable suspicion ordinarily demanded to justify detaining an individual*.

The Court first noted that all of the initial questions asked of the defendant related to the traffic stop such as route information and vehicle ownership. By the time defendant was asked to exit his vehicle and join the officer in the patrol car, a number of relevant factors were present and known to Officer Green – an unusual story regarding his travel as he did not know his destination or was concealing it; a masking odor; third-party registration; and nervousness. Then, while running defendant's name for warrants in the patrol vehicle, an action permitted in *Rodriguez*, the officer smelled marijuana on defendant's person and learned from defendant that he had a previous DUI based on his own marijuana usage.
Reasonable suspicion is a common sense determination made by a reasonable officer, giving the officer credit for his training and experience and viewing the totality of the circumstances. The Court stated, "While there might be someone who would borrow a car, drive eleven hours to "hang out" with a friend named Eric at an unknown location, spend a few days and return, it is a rather bizarre story. Reasonable suspicion does not depend on a proven lie, but is based on the totality of the circumstances. Based on defendant's bizarre travel plans, his extreme nervousness, the use of masking odors, the smell of marijuana on his person, and the third-party registration of the vehicle, it is reasonable that even an untrained person would doubt defendant's story, much less a fifteen-year veteran with interdiction training." Thus, the Court of Appeals held that Officer Green had reasonable suspicion to extend the stop and could run such ancillary records checks as he believed reasonable until his investigation was complete. The time it took for him to complete what is described in his testimony as a "pipeline" check and an EPIC check were both done relatively quickly and, when the warning ticket was issued, there had been no unreasonable extension of the stop.

The Court of Appeals went on to address the trial court's conclusion that defendant's consent was not freely given, finding that the trial judge did not have the sequence of events in the right order, and must have misunderstood the law.

The trial court made the following relevant findings:
Finding 32. Approximately thirty-seven minutes into the stop, Green printed out a warning ticket for speeding.
Finding 33. At that point, Green told defendant to sit tight or otherwise indicated he wished him to remain in the vehicle. Green did not seek or gain consent for the extension of this stop. There was no point throughout the encounter in which Green indicated, verbally or otherwise, that defendant was not required to remain with the officer. At no point did Green let defendant know he was free to leave.
Finding 34. Green asked defendant if there was any marijuana in the car, but did not specifically seek permission to search the vehicle. The defendant responded negatively, and told the officer, 'you can search if you want to search.'

In making these findings, the trial judge had the sequence of events out of order. In fact, it was after defendant informed Officer Green that the officer could search if he wanted to that Officer Green told defendant to "sit tight". If the officer had in fact detained defendant without reasonable suspicion and

ordered him to "sit tight" perhaps one could conclude that consent was not freely and unequivocally given.

Furthermore, it appears the trial judge incorrectly believed that Officer Green lacked reasonable suspicion to extend the stop and the unlawful extension impinged on defendant's ability to consent.

As a result, the Court of Appeals found that the trial court's factual findings did not support its conclusion that defendant did not give lawful consent for the search. The Court went on to note that the entire encounter between Officer Green and defendant in this case was recorded on video. On the video, defendant can be clearly heard telling Officer Green he can search. There was no evidence to suggest defendant's consent was anything but voluntary. Therefore, the Court of Appeals held the trial court's conclusion that "defendant did not give lawful consent" to be clearly erroneous.

Consequently, the Court of Appeals reversed the trial court's order suppressing the evidence in this case and remanded the case to Durham County Superior Court for trial.

No Reasonable Suspicion Existed to Prolong Defendant's Detention Once Purpose of Initial Traffic Stop Concluded; Consent to Search Vehicle Invalid Because It Was Obtained During Unlawful Detention

State v. Bedient, No. COA15-1011 (May 3, 2016).

At around 11:30 p.m. on February 28, 2013, Sergeant Parker of the Jackson County Sheriff's Office observed defendant driving with her high beam lights on. Sergeant Parker consequently initiated a traffic stop. Defendant immediately acknowledged she was driving with her high beams on and was doing so in response to a prior stop that evening, which resulted in a written warning for a nonworking headlight. She produced this warning for Sergeant Parker. Sergeant Parker explained to defendant that he pulled her over because high beam lights are an indicator of a drunk driver. Defendant replied she was not drunk and that the prior officer instructed her to use her high beams in lieu of the nonworking headlight. Sergeant Parker then asked the passenger of the car to identify herself. Defendant stated it was her daughter, Tabitha Henry. After reviewing the written warning defendant had received earlier, Sergeant Parker asked defendant for her license, which took her approximately 20 seconds to locate. According to Sergeant Parker, defendant seemed nervous because she was fidgety and was reaching all over the car and in odd places such as the sun visor. While reviewing defendant's license, Sergeant Parker realized he recognized defendant and asked where he had seen her before. She responded that they had seen each other the night before at the home of Greg Coggins, where Sergeant Parker responded to a fire. Sergeant Parker testified that he knew Mr. Coggins as the "main man" for methamphetamine in Cashiers and believed that "anybody that hangs out with Greg Coggins is on drugs." Sergeant Parker returned to his patrol car to check on defendant's license and for any outstanding warrants on defendant or Ms. Henry. While seated in his patrol car, Sergeant Parker observed defendant moving around her car and reaching for her sun visor again. Meanwhile, the warrant checks for defendant and Ms. Henry turned up negative. Upon returning to defendant's car, Sergeant Parker requested that she join him at the rear of the car. Sergeant Parker first cautioned defendant about driving with her high beams on and gave her a verbal warning since she had already received a written warning for her nonworking headlight. Sergeant Parker then changed the subject of his questioning. He asked defendant if she had "ever been in trouble for anything." Defendant replied she had not. Sergeant Parker then asked defendant if she had anything in the car, to which she replied, "No, you can look." Sergeant Parker then handed defendant's license back to her and told defendant he was going to talk to Ms. Henry. As defendant attempted to reenter the vehicle, Sergeant Parker asked her to return to the rear of the car while he searched it. He then asked Ms. Henry to exit the car and stand by defendant. As Sergeant Parker began searching the car he noticed an

open beer bottle lodged in between the passenger seat and the center console. As he continued to search the car, he discovered "crystal matter," pills, baggies, and "a folded dollar bill with some type of powdery residue in it" in a pocketbook that defendant admitted belonged to her. Sergeant Parker then placed defendant under arrest.

Defendant was indicted on one count of felony possession of a schedule II controlled substance and one count of possession of drug paraphernalia. Defendant filed a motion to suppress. In denying defendant's motion, the trial court concluded that reasonable suspicion supported Sergeant Parker's continued questioning of defendant after he had verbally warned her about the use of her high beams. The court further concluded that defendant voluntarily consented to additional questioning and the search of her car once the purpose of the stop was over. Reserving her right to appeal the denial of the motion, Defendant pled guilty to possession of a schedule II controlled substance and received a suspended sentence of five to 15 months conditioned on the completion of 12 months of supervised probation. Defendant then appealed.

Defendant contended that the trial court erred in denying her motion to suppress, arguing that Sergeant Parker unlawfully prolonged the traffic stop without having reasonable articulable suspicion to do so and, further, that her consent was invalid because it was given during this unlawful detention.

The permissible duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission.' Beyond determining whether to issue a traffic ticket, an officer's mission includes ordinary inquiries incident to the traffic stop. Typically such inquiries involve checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance. Apart from these inquiries, an officer may conduct certain unrelated checks during an otherwise lawful traffic stop *but he may not do so in a way that prolongs the stop*, absent the reasonable suspicion ordinarily demanded to justify detaining an individual. Thus, absent reasonable suspicion, authority for the seizure ends when tasks tied to the traffic infraction are -- or reasonably should have been -- completed.

Here, defendant does not dispute that Sergeant Parker had a legitimate basis for performing a traffic stop for the purpose of addressing defendant's failure to dim her high beam lights. Addressing this infraction was the original mission of the traffic stop. Defendant also does not contest that Sergeant Parker could then legitimately run a computerized license and warrant check of defendant. These two checks, considered to be ordinary inquiries incident to the stop, did not unlawfully prolong the stop. Once at the rear of the car, Sergeant Parker first "provided defendant a second warning on the use of high beams. At this point in time, the original purpose, or mission, of the traffic stop -- addressing defendant's failure to dim her high beam lights – had concluded because Sergeant Parker gave defendant a verbal warning, deciding not to issue a traffic ticket. Sergeant Parker had also completed the related inquiries because he determined defendant's license was valid, and she had no outstanding warrants for her arrest. At that point, Sergeant Parker needed reasonable, articulable suspicion that criminal activity was afoot before he prolonged the detention by asking additional questions.

The only evidence that Sergeant Parker had reasonable suspicion to further question defendant are defendant's nervous behavior during the traffic stop, evidenced by her stuttering, rapid movements, and fixation with her sun visor, and her association with a drug dealer, evidenced by her presence at Greg Coggins' house the prior evening. Thus, the court considered whether these two factors established reasonable articulable suspicion of criminal activity under the totality of the circumstances.

First, it is well settled that a defendant's nervous behavior during a traffic stop, although relevant in the context of all circumstances, is insufficient by itself to establish reasonable suspicion that criminal

activity is afoot. Moreover, the Court has recognized that nervousness needs to be "extreme" in order to be taken into account in determining whether reasonable suspicion exists. Although defendant stuttered her words, moved around the car rapidly, and touched the sun visor repeatedly, this nervous behavior is a common response to a traffic stop. Furthermore, the court noted that the sun visor is not an uncommon location to keep a motorist's driver's license or registration. Thus, defendant's fixation on the sun visor could have been in response to an attempt to locate either one of these things and does not necessarily indicate suspicious movements. Thus, defendant's nervousness in this case did not establish reasonable suspicion.

Furthermore, a person's mere association with or proximity to a suspected criminal does not support a conclusion of particularized reasonable suspicion that the person is involved in criminal activity.

Considering the totality of the circumstances -- defendant's nervous behavior and association with Greg Coggins – the Court found these two factors together insufficient to amount to the reasonable suspicion necessary for Sergeant Parker to further detain defendant. Therefore, the Court held that when Sergeant Parker further questioned defendant about the contents of her vehicle, he unlawfully prolonged the duration of the traffic stop.

Since Sergeant Parker lacked reasonable suspicion to prolong the stop, defendant's consent to a search of her car was valid only if the extended encounter between Sergeant Parker and defendant became consensual. Generally, an initial traffic stop concludes and the encounter becomes consensual only after an officer returns the detainee's driver's license and registration. Sergeant Parker continued to possess defendant's driver's license up until the moment he received consent to search her car. He only returned defendant's driver's license upon commencing the search. Therefore, because defendant's license had not been returned at the time defendant gave her consent and because, at that time, the stop had been unlawfully extended, defendant's consent was not voluntary.

Accordingly, the Court reversed the trial court's denial of defendant's motion to suppress, and remanded the case for further proceedings consistent with its opinion.

Court Holds, Over Dissent, That Officer Unlawfully Extended Traffic Stop

State v. Bullock, No. COA15-731 (May 10, 2016).

On November 27, 2012, defendant was traveling south on I-85 through Durham. 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 a little. The officer observed two cell phones in the center console of defendant's vehicle although defendant was the sole occupant of the vehicle. Defendant stated that he was going to Century Oaks Drive to meet a girl, but that he had missed his exit. 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 said that he was about to go shopping.

While defendant was seated in the patrol car, the officer ran defendant's driver's license through his mobile computer. Defendant claimed that he had just moved down from Washington, but the officer learned by running his license that the license was issued back in 2000 and that defendant had been arrested in North Carolina in 2001. 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. In addition, when the officer misidentified the street that defendant had claimed he was traveling to, defendant did not correct 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, clarifying that his personal belongings included a bag, some 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..." Defendant explained that it was his sister's bag and that he couldn't give permission to search her bag. 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. After a hearing, the trial court entered an order denying defendant's motion. Defendant pled guilty to the charged offenses, but then timely appealed the denial of his motion.

This case is controlled by *Rodriguez* in which the 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.

Applying *Rodriguez* to this case, the mission of the stop was to issue a warning ticket to defendant for speeding and following too closely. The stop of defendant could, therefore, last only as long as necessary to complete that mission and certain permissible "checks," including checking defendant's driver's license, determining whether there were outstanding warrants against defendant, and inspecting the automobile's registration and proof of insurance.

It is well established that an officer may require an occupant of a vehicle to exit the vehicle during the course of a traffic stop.

It is also 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. In the case at hand, the Court of Appeals noted that

there were no findings to suggest that defendant might be armed and dangerous. The court declined to consider that defendant consented to the frisk, because the court concluded that 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 court went on to conclude that the officer then extended the stop further when he had defendant get into his patrol vehicle and ran defendant's name through numerous databases while being questioned, which went beyond an authorized, routine check of a driver's license or for warrants.

Having concluded that the stop of defendant was extended beyond its original mission by the officer asking the defendant if he could search him for weapons, and by asking that the defendant be seated in his patrol car and then conducting checks beyond routine license and warrant checks, the court then considered whether the officer had reasonable articulable suspicion to extend defendant's detention.

The court found that the factors the officer had to raise suspicion prior to the pat down were: (1) defendant was driving on I-85, an interstate used for the transport of drugs; (2) defendant was operating a rental vehicle that he was not authorized to drive; (3) defendant possessed two cellphones; (4) defendant's hand trembled when he handed the officer his license; (5) defendant told the officer he was going to Century Oaks Drive, but had missed his exit, when in fact he had passed three major exits that would have allowed defendant to reach his claimed destination; and (6) defendant, when first observed, was traveling in the far left hand lane and did not appear to be intending to exit off of I-85. The court concluded that these circumstances, considered together, give rise to only a hunch and not the particularized suspicion necessary to justify detaining defendant.

Defendant was driving a rental car, was stopped on I-85, and his hand trembled. The court described the issue with defendant's travel itinerary - missing multiple exits for his supposed destination while talking on the phone – as being less than unusual. In addition, defendant had two cell phones. The court decided that these circumstances considered together, without more, simply do not eliminate a substantial portion of innocent travelers and, therefore, do not give rise to reasonable, articulable suspicion. The trial court's finding of reasonable suspicion depended substantially on circumstances that arose after the officer had extended the stop, including the discovery that defendant had $372.00 in cash, defendant's elevated breathing and lack of eye contact, and his multiple inconsistent statements regarding his destination, who he was going to meet, and how long he had lived in North Carolina.

The court distinguished *Castillo (discussed on pages 2-5 above)*, by noting that in that case the officer had reasonable suspicion to extend the traffic stop based on "defendant's bizarre travel plans, his extreme nervousness, the use of masking odors, the smell of marijuana on his person, and the third-party registration of the vehicle . . . ." The court found that the evidence in this case does not rise to the same level.

Having concluded that the officer did not have reasonable suspicion to extend the stop, the court found the issue of whether defendant later consented to the search irrelevant, as consent obtained during an unlawful extension of a stop is not voluntary.

The court held that the trial court's order denying defendant's motion to suppress reversed and remanded the case to the trial court for further proceedings consistent with its opinion.

Note: The opinion in this case was issued by a divided Court of Appeals. The State is appealing the decision to the North Carolina Supreme Court. However, unless and until the ruling is reversed, officers are bound to follow the reasoning and conclusions of the court's majority opinion. Therefore, officers

are again reminded that any inquiries or actions during a traffic stop should only be for the purpose of addressing the traffic violation that warranted the stop, and attending to related safety concerns. Authority for the seizure ends when tasks tied to the traffic infraction are - or reasonably should have been - completed. If an officer does make unrelated inquiries or checks during an otherwise lawful traffic stop, he may not do so in a way that prolongs the stop for any period of time, unless there is reasonable suspicion to justify further delay. This means that officers should not request consent to conduct any type of search, including a frisk, until the stop has been completed or reasonable suspicion has developed. The court has reasoned that the mere act of asking consent creates a delay (slight as it may be) in the detention. Further, absent reasonable suspicion, officers may not take the time to run checks of the detained motorist through law enforcement databases unless the checks are related to the validity of the driver's license, registration and insurance, or are to check for outstanding warrants.

FOURTH CIRCUIT COURT OF APPEALS

Officers Lacked Reasonable Suspicion to Detain Defendant for Dog Sniff of Vehicle After Traffic Stop Had Been Completed

United States v. Williams, ___F.3d ___, 2015 (4th Cir. Dec. 14, 2015).

While traveling through central North Carolina in the early hours of February 13, 2012, Williams and his girlfriend Elisabeth MacMullen were stopped for speeding. After stopping the vehicle, the deputy requested Williams' driver's license and vehicle registration. In response, Williams provided a New York license and a rental agreement for the vehicle. The agreement reflected that MacMullen had rented the vehicle in New Jersey on February 10 and the car was to be returned there by 2:30 p.m. on February 13(that afternoon).

The deputy requested that Williams exit the vehicle and be seated in his patrol car while he checked Williams' documents. Inside the patrol car, the deputy engaged Williams in conversation as the license check was conducted. Williams related that he and MacMullen had stopped at his mother's home in Virginia Beach and were traveling to Charlotte to visit his brother for a couple of days and that he would extend the vehicle's rental agreement after he arrived.

The deputy advised Williams that he would be issued a written warning for speeding. When the deputy requested an address from Williams to complete the written warning, Williams gave the post office box address of his place of employment in New York, which differed from the New York post office box address on his driver's license.

The deputy completed the written warning and gave it to Williams at 12:54:59 a.m. Seconds later, as Williams was exiting the patrol car, the deputy asked if he could pose a question. After Williams responded affirmatively, the deputy asked, "Nothing illegal in the car?" Williams responded that there was not. As the deputy and Williams exited the patrol car, the deputy asked if he could search the vehicle

and Williams initially equivocated. When asked for a clear yes-or-no answer on whether he was consenting to a search, Williams replied, "No."

Immediately thereafter, at 12:56:22 a.m. — a minute and twenty-three seconds after the deputy had issued the written warning — Williams was advised to "hold on" and that a dog sniff would be conducted on the vehicle. Another deputy, along with his drug dog Dakota, had already arrived on the scene. The dog was then walked around the vehicle and alerted to the trunk. A search of the vehicle ensued and crack cocaine was found. Williams and MacMullen were then arrested.

A federal grand jury indicted the Defendants for possessing with intent to distribute crack cocaine. The Defendants moved to suppress the seized evidence. The motions to suppress were denied. A jury convicted Williams of the offense charged, but acquitted MacMullen. Arguing that the district court erred by denying his motion to suppress, he appealed to the 4th Circuit Court of Appeals maintaining that his Fourth Amendment rights were violated when the police extended the traffic stop in order to conduct a canine sniff of his vehicle.

In the United States Supreme Court decision of *Rodriguez v. United States*, 135 S. Ct.15 1609 (2015), the Court held that to extend the detention of a motorist beyond the time necessary to accomplish a traffic stop's purpose, the authorities must either possess reasonable suspicion or receive the driver's consent.

In the case at hand, it is undisputed that the deputy had accomplished the purpose of the stop before the dog sniff was conducted. Williams did not consent to a search of the vehicle. Thus, the propriety of extending Williams' detention beyond the completion of the traffic stop turns on whether reasonable, articulable suspicion existed when the dog sniff was conducted.

The first factor relied upon by the deputy was that the defendants were traveling in a rental car. The court noted, however, that defendants' use of a rental car is of minimal value to the reasonable suspicion evaluation. The court accepted that, as a general proposition, some drug traffickers use rental cars but nonetheless noted that the overwhelming majority of rental car drivers on our nation's highways are innocent travelers with entirely legitimate purposes.

The second factor relied upon by the deputy was that the defendants were traveling on a known drug corridor at 12:37 a.m. Similar to traveling in a rental car, however, the number of persons using the interstate highways as drug corridors pales in comparison to the number of innocent travelers on those roads. Furthermore, the court was not persuaded by the proposition that traveling south on I-85 late at night helps narrow the identification of travelers to those involved in drug activity. The deputy never asserted that drug traffickers have some disproportionate tendency to travel on the interstate highways late at night. Thus, although law enforcement are entitled to consider a motorist's use of an interstate highway as a factor in determining reasonable suspicion, the court found that such an observation is entitled to very little weight.

The third factor relied upon by the deputy was that Williams' stated travel plans were inconsistent with, and would likely exceed, the due date for return of the rental car. Innocent travelers frequently extend rental agreements. When the deputy mentioned to Williams that the car was due in New Jersey later that day, Williams replied without hesitation that he and MacMullen would renew the rental agreement in Charlotte. The deputy knew that the vehicle had been rented through Hertz, a well-known car rental business with locations most everywhere. No reasonable, articulable suspicion of criminality arises from the mere fact that Williams's travel plans were likely to exceed the initial duration of the rental agreement.

The fourth factor relied upon by the deputy was that Williams was unable to provide a permanent home address in New York even though he claimed to live there at least part-time and had a New York driver's license. However, the record does not indicate that the deputy ever asked for a home address.

The court concluded that these four factors — separately or cumulatively — did not reasonably point to criminal activity. Therefore, the court vacated Williams's conviction and sentence.