



Police Law Bulletin



City Attorneys' Office

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North Carolina Court of Appeals



Officer's Show of Authority by Blocking Defendant's Vehicle in a Driveway and Activating Blue Lights Constituted a Seizure Under the Fourth Amendment; Seizure Not Supported By Reasonable Suspicion

State v. Eagle, 2022-NCCOA-680, ___ N.C. App. ___ (Oct. 18, 2022).

On November 14, 2019, Deputy Belk of the Orange County Sheriff's Department was performing nightly business checks along Dairyland Road while driving her marked police car. At 3:19 A.M., she observed a white sedan pull into the driveway of the Maple View Agriculture Center. The business was not open at the time and the entrance was blocked by a locked gate. Deputy Belk began to drive slowly past the driveway waiting to see if the vehicle was just turning around, but she never completely went past the entrance. Instead, she put her car in reverse, slowly backed down Dairyland Road, and then activated her blue lights as she pulled into the driveway, coming to a stop at an angle approximately 10 feet behind the white sedan. Deputy Belk testified that she had observed no criminal violations prior to turning her blue lights on and pulling in behind Defendant's vehicle. Deputy Belk testified that because the road was dark and a portion of her police cruiser jetted into Dairyland Road, she turned on her blue lights for safety reasons, warning any approaching vehicles of her presence. Deputy Belk did not immediately exit her vehicle to check on the occupants as one might in a welfare check. Instead, she sat in her car and ran the plate. Both the driver and the passenger of the white sedan remained in the vehicle. After approximately one minute, she exited her police cruiser and approached the driver's side door of the white sedan. As Deputy Belk asked the Defendant driver what she was doing, she noticed a strong odor of alcohol coming from inside the vehicle. She also observed that Defendant had red, glassy eyes and slurred speech. Deputy Belk asked Defendant and her passenger for their identification cards, which they produced. Defendant was subsequently arrested and charged with impaired driving.

At a later suppression hearing, the trial court determined that the encounter between Defendant and Deputy Belk was not a traffic stop, but was a voluntary encounter up until the point where

Deputy Belk took possession of Defendant's identification card. By that point, Deputy Belk had reasonable suspicion to detain Defendant, therefore, the trial court denied Defendant's motion. Defendant pled guilty but preserved her right to appeal. On appeal, Defendant argued that she was seized the moment that Deputy Belk pulled in behind her and activated her blue lights and that there was no reasonable suspicion at that time to support such a seizure.

A seizure occurs when an officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen. A show of authority constitutes a seizure when, under the totality of the circumstances, a reasonable person would feel that he was not free to leave. When a sufficient show of authority is made, it is possible for an officer to seize a person without ever laying hands on that person. In determining whether a show of authority has occurred, relevant circumstances include the number of officers present, whether the officer displayed a weapon, the officer's words and tone of voice, any physical contact between the officer and the individual, whether the officer retained the individual's identification or property, the location of the encounter, and whether the officer blocked the individual's path.

In the case at hand, Deputy Belk activated her blue lights as she pulled in behind Defendant and also positioned her cruiser in such a manner that it blocked Defendant's exit path. There was no dispute that Defendant was stopped facing and close to a locked gate. Defendant would have had to narrowly skirt around Deputy Belk's police cruiser while backing up in order to avoid either hitting the cruiser or running off the road. Moreover, a reasonable motorist would surely feel less at liberty to "ignore the police presence and go about his business" when a police officer in a marked police cruiser pulls in behind her while activating the blue lights and blocks her exit. In fact, in such a situation, most people would feel compelled to remain in their car and wait to speak with the officer, knowing that attempting to leave would only end in trouble and/or danger.

Therefore, the Court of Appeals affirmed the trial court's denial of Defendant's motion to suppress.

Stop Was Not Unreasonably Extended Where Officer Had Not Yet Determined Whether to Charge the Defendant and, Consent Was Freely and Voluntarily Given

State v. Jordan, ___ N.C. App. ___ (April 5, 2022).

In July 2018, a confidential informant reported to the Greensboro Police Department that Defendant was selling heroin and crack cocaine out of his girlfriend's apartment. In August 2018, the lead investigator, Officer Garrison, arranged for a controlled buy at the apartment with the assistance of the confidential informant. The informant identified the Defendant as the individual who sold him heroin.

A few weeks later, officers were surveilling the apartment when the Defendant left, riding in the front passenger seat of a Lexus sedan driven by his girlfriend. Officer Fisher caught up with the vehicle and followed it for approximately a quarter of a mile. The vehicle was stopped for speeding 12 mph over the limit. Upon approach, Officer Fisher saw the Defendant reach for the center console and smelled a strong odor of marijuana. The occupants were removed from the

vehicle and a search of its interior revealed two partially burned blunts in the front passenger compartment ashtray, and a small bag of marijuana in the center console.

Officer Fisher contacted Officer Garrison to inquire into whether he should inform Defendant and his girlfriend about the wider drug investigation. This took approximately five to seven minutes. The on-scene officers then informed the pair of the ongoing drug investigation of the Defendant and sought consent to search the apartment. Officer Fisher explained that he believed the police had probable cause to apply for a search warrant. And, they could apply for a search warrant or they could search if the girlfriend was willing to provide consent. After learning of the scope of the investigation, the girlfriend consented to a search of the apartment. The Defendant and his girlfriend were transported back to the apartment where she signed a written consent form. A gun and cocaine were discovered there, and the Defendant was charged with firearm by felon and possession of cocaine.

Defendant moved to suppress, arguing that the traffic stop was unreasonably extended and that any consent was invalid. The trial court denied the motion, and the Defendant entered a guilty plea, preserving his right to appeal the denial of the motion. On appeal, the Court of Appeal unanimously affirmed the ruling of the trial court.

First, the Defendant argued since the police never acted on the speeding or marijuana offenses discovered during the traffic stop, the mission of the stop was complete, and the officer deviated from the mission of the stop by delving into an unrelated drug investigation and seeking consent to search the apartment. The court disagreed. At the time Officer Fisher asked for consent to search the apartment, there is no evidence to suggest Officer Fisher had already made a determination to refrain from charging Defendant for the traffic violation or marijuana possession. Instead, the record seems to indicate that at the time of Officer Fisher's request for consent to search the apartment, the stop had not been 'otherwise-completed' as he had not yet made a decision on whether to charge Defendant for the marijuana possession. The act of asking for consent to search the apartment therefore occurred during the lawful course of the stop. Further, even if the original mission of the stop was complete, officers had reasonable suspicion that the Defendant was selling drugs, justifying extension of the stop at the time of the request for consent. In fact, given the tip, the controlled purchase, law enforcement surveillance of the residence (which included observing a high volume of guests visiting the home), law enforcement likely had probable cause to arrest the defendant or obtain a warrant to search the apartment. Consequently, officers were justified in extending the seizure to question Defendant about the sale of heroin and crack-cocaine even though it was unrelated to the traffic violation.

In addition, officers had informed the pair that police would seek a search warrant, or that the girlfriend could consent to a search of the apartment. The defendant argued that this was improper coercion and that any consent was therefore involuntary and invalid. The court disagreed. The Defendant and his girlfriend were informed of the right to refuse consent, the girlfriend signed a written consent form, and neither person objected or attempted to revoke consent during the search. Further, the officers did not use any threats or other "inherently coercive tactics" in obtaining consent. Thus, the trial court properly determined that consent was freely and voluntarily given.



Fourth Circuit Court of Appeals



No Reasonable Suspicion Existed to Extend Traffic Stop for a Canine Sniff

U.S. v. Miller, ___ F.4th ___, 2022 WL 17259018 (Nov. 29, 2022).

On July 3, 2018, Officer Helms stopped a vehicle driven by Jessica Phillips for having an inoperable taillight. Teresa Miller was a passenger in the back seat. A dashboard camera captured the stop which showed that after the officer activated his patrol lights, the driver braked within four seconds, turned on her blinker within three more seconds, and was completely stopped within seventeen seconds. Shortly after Officer Helms approached the vehicle, Phillips began searching for her license. While Officer Helms testified that her hands were shaking during the encounter, her hands did not appear to be shaking on the body worn camera footage while she was handing Officer Helms her license or insurance information. When Phillips began searching for the vehicle's registration card, she noted that the vehicle was not very organized and, as a result, she was having difficulty locating the card. She stated that she had seen the card earlier that day because she used it at the DMV. Officer Helms asked Phillips if "everything [was] good with her license," to which she replied, "yeah," and then noted that she had renewed her license at the DMV earlier that day and had to wait three hours to do so. While continuing to search for the registration card, Phillips continued the conversation expounding on how long she had waited at the DMV while trying to supervise her three grandchildren.

When a backup officer arrived, Officer Helms told him that he was suspicious of the vehicle's occupants because Phillips was shaking and tapping on the car door. At approximately the same time, Officer Helms printed a warning ticket. Soon thereafter, Officer Helms approached Phillip's vehicle, asked the occupants to exit, and told Phillips he would be leading his canine around the vehicle to sniff for illegal drugs. After the canine alerted, officers performed a full search. During the search they located two handguns in Miller's backpack.

Miller was indicted for possession of a firearm by felon and moved to suppress, arguing that the stop was improperly extended. The district court denied the motion. While the court agreed that the video of the encounter did not show the driver's hands shaking, it nonetheless determined the driver displayed excessive nervousness by oversharing the details of her day with the officer, tapping her fingers, and that her nervousness continued even after being told she would only receive a warning. It also found that she was slow to stop her car in response to the patrol lights and could have safely stopped sooner. Based on these factors and the fact that the highway was a "known drug corridor," the district court held that the officer had reasonable suspicion to extend the stop for the canine sniff. Miller was convicted of one count of unlawfully possessing a firearm. On appeal, Miller argued that the district court erred in denying her motion. A unanimous panel of the Fourth Circuit reversed.

A traffic stop that is reasonable at its inception can violate the Fourth Amendment when an officer extends the stop beyond the time reasonably required to complete the mission of the stop. Even a de minimus extension violates the Fourth Amendment. In order to extend a traffic stop beyond what is necessary to effectuate its original purpose, the officer must possess additional, different reasonable suspicion. Thus, a canine sniff unrelated to the original purpose of the stop is lawful only if it does not extend the traffic stop or is based on additional reasonable suspicion.

One relevant factor in the reasonable suspicion inquiry is whether a driver was excessively nervous during the stop. In analyzing this factor, the court will consider whether the driver was fidgeting, shaking, or talking nervously. But, the court has recognized on multiple occasions, a driver's nervousness is not a particularly good indicator of criminal activity because most everyone is nervous when interacting with the police. The suspects' nervousness must therefore be unusual, beyond the norm, or evasive.

Other relevant factors include the road the driver was traveling on and the length of time it took the driver to pull over. But, the mere fact that a person is traveling on a route commonly used to transport drugs, standing alone, is entitled to very little weight because the number of persons using interstate highways as drug corridors pales in comparison to the number of innocent travelers on those roads.

Finally, when an officer's testimony is clearly contradicted by video evidence, the court will normally discount the testimonial statements.

Here, the bodycam video largely contradicted the officer's justifications to extend the stop, and the district court erred in crediting his version of events. For one, the driver was not slow to stop in response to the patrol lights. According to the court:

Just as officers are not required to complete a traffic stop as quickly as humanly possible, drivers should not be required to pull over as quickly as humanly possible—especially when a driver may need to continue driving for a slightly longer period of time to reach a safer stopping point—as long as the time it took to stop was reasonable. Such a rule deters the Government from transforming innocuous behavior—or, as found here, behavior that enhances the safety of the driver, the officer, and others on the road—into evidence of criminality.

Similarly, the video did not show that the driver was unusually nervous during the encounter. The driver's hands could be seen multiple times during the recording, and they were never shaking. While the driver indicated her car was messy, that was an explanation for her trouble locating her registration card. Her sharing details of her experience at DMV with the officer was in response to the officer's request for her registration card and his inquiry as to the status of her license. "It is hard to imagine why this exchange would arouse suspicions of criminal behavior." The defendant's demeanor remained the same throughout the encounter and did not evidence extreme nervousness. While the driver was tapping her fingers on the car door, this was not enough to establish unusual nervousness. In the court's words:

Although fidgeting may certainly be a sign of nervousness, tapping one's fingers may just as likely be a sign of annoyance, impatience, or even boredom—any of which may be expected when a person is stopped by a police officer and is awaiting the results of a license check. By itself, tapping one's fingers is a very weak indicator of nervousness.

With those factors discounted, all that remained was the fact that the car was travelling on a known drug route. This alone “does not serve to eliminate a substantial portion of innocent travelers” and could not support reasonable suspicion to extend the stop.