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## North Carolina Court of Appeals



### **Officer's Actions During Traffic Stop Represented Unlawful Seizure Negating Defendant's Consent to the Search of His Vehicle**

**[State v. Moua](#), COA22-839, \_\_\_ N.C. App. \_\_\_ (July 18, 2023).**

At 12:59 a.m. on December 5, 2019, Sgt. Tryon and Officer Housa, with the Charlotte-Mecklenburg County Police Department, initiated a traffic stop of Mr. Wang Moua for speeding. Sgt. Tryon told Moua that he had paced him at fifty miles per hour in a thirty-five mile per hour zone. Sgt. Tryon asked Moua for his license and registration, and he also asked the passenger to provide his license. Both Moua and his passenger cooperated and provided their identification. Sgt. Tryon went back to his vehicle and ran the information through different law enforcement databases while Officer Housa stood by the passenger door of Moua's car, shining his flashlight into the vehicle. After about two minutes of checking, Sgt. Tryon learned that Moua was on active probation and had prior charges; however, Moua did not have any active warrants. Sgt. Tryon then returned to Moua's car and said, "Sir come out and talk to me real quick." As he was speaking to Moua, Sgt. Tryon reached through the open window, unlocked and opened the door. As soon as Moua walked to the back of the vehicle, Sgt. Tryon handed back Moua's license and registration. Sgt. Tryon then proceeded to briefly talk to Moua about his speeding and the fact that he was on probation. He then asked if Moua had anything in his vehicle that he [Sgt. Tryon] should be worried about. When Moua replied "no," Sgt. Tryon asked for consent to search the vehicle and Moua consented. Within fifteen seconds of initiating the search, Sgt. Tryon located a bag containing a white powdery substance.

Moua was indicted on two trafficking charges and keeping or maintaining a vehicle for keeping or selling methamphetamine. Moua moved to suppress the evidence obtained during the search. The trial court denied the motion finding that Moua had freely and voluntarily given consent for Sgt. Tryon to search his car. Moua subsequently pleaded guilty to all charges. Moua appealed arguing that at the time he gave consent to search his car, he was unlawfully seized, and therefore, his consent was invalid.

After review, the Court of Appeals agreed that Moua was unlawfully seized when the police asked for consent to search his car. Based upon the totality of the circumstances, a reasonable person would not have felt free to terminate this encounter and a search of the car was not within the scope of the original stop. The court noted that return of his documents was not a bright line that automatically and inarguably turned a seizure into a consensual encounter. Rather, the court considered the return of the documents in the context of the entire encounter. Moua had just been separated from his vehicle through a show of force by Sgt. Tryon, where Sgt. Tryon had reached through the car window, unlocked and opened the car door. Sgt. Tryon was questioning Moua behind the car about his probation status with the State while his partner was shining his flashlight in the car. Sgt. Tryon presented the questions in a rapid-fire manner which quickly transitioned into a request to search the car. Therefore, the court concluded his consent was not voluntary and the motion to suppress was erroneously denied.

**Reasonable Suspicion Justified Stop and Frisk of Defendant;  
Search of Backpack Was Not Supported by Valid Consent or Probable Cause**

[State v. Wright](#), COA22-996, \_\_\_ N.C. App. \_\_\_ (Sept. 12, 2023).

On January 29, 2020, around 11:30 p.m., Officers Martin and Krause of the Charlotte-Mecklenburg Police Department were on routine patrol. Officer Martin received a tip from a known informant that there was an individual carrying an illegal firearm on Phifer Avenue. The informant described the individual, who was traveling on a bicycle, as a Black male with dreadlocks wearing a dark jacket, bright orange tennis shoes and blue jeans. Shortly after receiving this tip, the officers located an individual on Phifer Avenue who matched this description and was later identified as Mr. Wright.

The officers followed Wright as he walked with his bicycle down North Tryon Street. Officer Slauter followed Wright on foot as he turned onto a dirt path. Officers Martin and Krause exited their vehicle and approached Wright as he emerged from the path. The officers asked Wright for his name and identification, and also asked whether he was homeless. Wright provided his identification, told the officers he was homeless, and said that he was headed to a storage unit on College Street. Officer Martin asked Wright to step off his bicycle and remove his backpack and Wright complied. Officer Martin asked if he could perform a pat-down of Wright's person and Wright consented. No weapons were located during the frisk. Officer Martin then asked if he could search Wright's backpack to make sure that he did not have a weapon. At this point in the encounter, Officers Martin and Slauter were standing on either side of Wright and Officer Krause was in the police vehicle with Wright's identification. Initially, Wright agreed to let Officer Martin search his backpack, but then quickly, before the search began, said that he did not want the officers to look in the backpack. Officers Martin and Slauter asked Wright four more times for permission to search his backpack, and each time, Wright said no. Even though Wright said that he was cold and scared of the police, Officer Slauter indicated that they were "looking for somebody" and could not take Wright "off the list" because he was being "deceptive." Finally, Wright put the backpack on the ground and showed Officer Slauter some of the items inside the backpack. Officer Slauter saw a pistol grip in the backpack and placed Wright in handcuffs. Officer Slauter conducted a thorough search incident to arrest and found cocaine and marijuana in Wright's pockets. The officers ran the serial number of

the gun and found that it was a stolen firearm.

Wright was indicted for unlawfully carrying a concealed weapon, possession with intent to sell cocaine, possession of a stolen firearm, possession of a firearm by a felon, and obtaining habitual felon status. Wright filed a motion to suppress the evidence obtained from the search and seizure. The trial court denied Wright's motion. Wright appealed arguing that the trial court erred in denying his motion to suppress because he did not freely consent to the search of his backpack and the officers did not have probable cause for the search.

When a law enforcement officer has a reasonable suspicion that a suspect has committed or is about to commit a crime, they may briefly seize the suspect and make reasonable inquiries aimed at confirming or dispelling the suspicion. An informant's tip may provide reasonable suspicion for an investigatory stop. Reasonable suspicion, like probable cause, is dependent upon both the content of the information possessed by police and its degree of reliability. In evaluating whether an informant's tip sufficiently provides indicia of reliability, a court considers the totality-of-the-circumstances. Therefore, to determine whether the officers had the requisite reasonable suspicion to stop Wright, the Court of Appeals evaluated the reliability of the tip.

Officer Martin testified that he had known the informant for about a year and had been able to corroborate information from the informant in the past. Further, according to Officer Martin, the informant described the individual as a Black male with dreads wearing a dark jacket, bright orange tennis shoes, and blue jeans traveling on a bicycle, and that Wright matched that description. Of particular importance, the court noted that reasonable suspicion does not arise from the mere fact that an individual encountered meets the description given to an officer. In this case, the officer's history with the informant, and the testimony about his ability to corroborate prior information from this informant, together with his ability to corroborate the description of the suspect with Wright's appearance provided reasonable suspicion for the stop and frisk.

Because the officers had reasonable suspicion to believe Wright was armed, they were authorized to perform a protective frisk for weapons. However, the scope of a frisk is strictly limited to that which is necessary to determine whether an individual has a weapon on their person, and therefore consists of a pat-down of the individual's outer layer of clothing. In this case, the pat-down did not reveal any weapons. Thus, once the frisk was complete, the officers could have made inquiries of Wright to confirm or dispel their suspicions without fear of harm. The search of the backpack was beyond the scope of a lawful frisk.

Additionally, the court found that Wright did not consent to the search of his backpack. Consent must be voluntary. To be voluntary, consent must be free from coercion, express or implied. A court must consider the possibility of subtly coercive questions, as well as the possibly vulnerable subjective state of the person who consents. Here, the officers asked Wright five times within a period of about one and a half minutes for permission to search the backpack, even though Wright continued to say no. Officer Slauter told Wright they were "specifically looking for somebody" and they could not take Wright "off the list" because he was being "deceptive." Further, the interaction occurred in the middle of the night, and Wright, an older homeless man, told the officers he was cold and afraid of the police. Throughout the

conversation, Officers Martin and Slaughter were standing on either side of Wright and Officer Krause had Wright's identification in the police vehicle. "The combination of multiple uniformed police officers surrounding an older homeless man and making repeated requests to search his backpack on a cold, dark night after he repeatedly asserted his right not to be searched" lead the Court of Appeals to conclude that Wright's consent was the result of coercion and duress and not freely given.

After establishing that the officers did not obtain valid consent, the court also established that the officers did not have probable cause to search the backpack. The court explained that while the tip was sufficient to create reasonable suspicion for a frisk of defendant, it did not create sufficient probable cause for a search of the backpack. The informant did not provide any basis for his knowledge about the criminal activity, and did not predict any future behavior, elements that would have demonstrated sufficient reliability for probable cause.

The Court of Appeals held that while the officers had reasonable suspicion to stop, question, and perform a protective search of Wright based on the informant's tip, Wright did not voluntarily consent to the search of his backpack, and the officers did not have probable cause to search it, and thus, the search of the backpack was unlawful. The Court of Appeals, therefore, held that the trial court erred in denying Wright's motion to suppress and the case was sent back to the trial court for further proceedings.



## Fourth Circuit Court of Appeals



### **Deputies' Reliance on Apparent Authority of Estranged Wife to Consent Was Reasonable Under the Totality of the Circumstances**

**[Armstrong v. Hutcheson](#), 80 F.4th 508 (Sept. 13, 2023).**

Early in the morning of June 9, 2017, Kristy Roadcap (whose last name at the time was Armstrong) called 911 to request police assistance in obtaining some of her personal belongings from inside Adam Armstrong's home. She said that her husband refused to allow her to enter the home. The 911 dispatcher asked whether there was "any kind of paperwork in place." Roadcap denied the existence of any paperwork and told the dispatcher, "I live here, I left last night to get ice cream and he won't let me back in the house." A "domestic in progress" was then dispatched.

It turns out Roadcap was lying. Prior to their marriage, Armstrong and Roadcap entered into a Premarital Agreement which listed the residence at issue as separate property to which Roadcap had no rights. On January 11, 2017, after Armstrong and Roadcap separated, Roadcap entered

into a one-year lease agreement for a residence located in Rockingham, Virginia. Armstrong and Roadcap entered into a Separation and Property Settlement Agreement on January 20, 2017, affirming that the residence at issue belonged to Armstrong. On January 8, 2019, the Circuit Court of Rockingham County entered a Final Decree of Divorce which provided that the parties lived separate and apart continually and without cohabitation from January 20, 2017, forward. The deputies, however, did not know this information.

Deputies Conley and Smith responded to the scene. Smith asked Roadcap for “her side of the story.” She advised that her husband had locked her out of the home and would not allow her to get in, and she wanted to collect her belongings. Smith requested that dispatch run a check on Roadcap’s driver’s license to see if there were any outstanding warrants or protective orders. The dispatcher did not report any, but the address on Roadcap’s driver’s license did not match the address of Armstrong’s residence.

Conley arrived shortly thereafter. This was not his first encounter with Roadcap and Armstrong. Two years earlier, Conley had provided Armstrong with trespass notices to serve on Roadcap so that she could not come back on the property. Roadcap told Conley and Smith that, although she and Armstrong had separated, they had recently reconciled, and she had moved back into the residence. She also told the deputies that she had multiple vehicles at the residence.

Conley and Smith testified that they knocked on the door but received no response. Roadcap then used a key hidden by the back door to cut a hole in its screen and unlock the door. Conley and Smith followed Roadcap into the residence. Once inside, Conley observed several pictures of Roadcap on the walls. Roadcap went upstairs to pack her belongings. The deputies followed her and discovered Armstrong in his bedroom upstairs. Seeing the deputies and Roadcap, Armstrong asked, “can I help you?” The deputies stated that they were helping Roadcap gather her belongings. Armstrong repeatedly told the deputies “you all have no right to be in here.” Armstrong insisted that Roadcap did not live in the residence and that they were separated and had filed for divorce. He asked the deputies to check Roadcap’s ID to prove she did not live there. One of the deputies responded that “she lives here, the ID is meaningless.” The deputies asked why Roadcap would store all her belongings at Armstrong’s residence if she did not live there. Conley then directed Smith to “hold” Armstrong at the bottom of the stairs while Roadcap continued gathering her belongings. They then escorted Roadcap out of the residence.

Armstrong sued the deputies in the Western District of Virginia for the warrantless entry into his home and the seizure of his person, arguing that those acts violated the Fourth Amendment. He also brought related state claims against the deputies and the Sheriff. The defendants moved for summary judgment on all claims. The district court granted the motion, finding that the deputies’ actions were reasonable based on the information known to them at the time of the incident and did not violate the Fourth Amendment.

Under *Georgia v. Randolph*, 547 U.S. 103, 109 (2006), a reasonable but mistaken belief by police that an apparent co-occupant possesses the authority to consent to entry and search of a home does not violate the Fourth Amendment. The determinative question is whether the objective

facts known to the officers at the time would support the belief that the consenting person had the authority to consent. *Illinois v. Rodriguez*, 497 U.S. 177, 189 (1990).

Here, the court determined that the totality of the circumstances supported an objectively reasonable belief that the wife had authority to consent to the police entry. The woman told officers she was married to the plaintiff. She acknowledged a former separation but stated that the parties had resumed their relationship and that she lived in the home. She indicated she had been living in the home the evening before and that she had personal property inside the home. She also stated that some of the cars at the home belonged to her. While none of this was true, the deputies had no reason to doubt her information at the moment. The woman's license showed the same last name as the plaintiff and there were multiple cars on the grounds. While one of the deputies was involved in the trespassing allegations from within the last two years, the passage of time and the representation from the woman that the couple had reconciled undercut the significance of that history. Though the woman's license showed a different address than the plaintiff's home, this was consistent with her story that the couple had separated and later reconciled. That the woman cut a hole in the screen to access the door lock likewise cut both ways—it was consistent with her story of being locked out and showed that she had access to the house key. This was not enough to overcome the other evidence that the deputies' conduct was reasonable. As with their entry into the home, the temporary detention of the plaintiff by the deputy was reasonable. While the deputy did seize the man, it was justified by the circumstances and the limited nature of the detention.

Therefore, the Fourth Circuit concluded that the district court properly granted summary judgment to the deputies and the Sheriff, and its judgment was affirmed in all respects.