

Traffic Stops:

Roadside Rodriguez Delays in North Carolina

“Where are we now?”

The Rowan County Bar

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This will be my third presentation before the Rowan County Bar Association on the United States Supreme Court decision in Rodriguez v. United States, 575 U.S. 348 (2015) and its legal impact on roadside encounters with North Carolina law enforcement officers. Since the Rodriguez decision was filed in the U.S. Supreme Court on April 21, 2015, the case has been cited 2,317 times across the entire United States. In 4th Circuit jurisprudence, you will find 129 cites to Rodriguez at the United States District Court level and 34 cities in the 4th Circuit Court of Appeals. In our State Courts, Rodriguez has been touched by the N.C. Supreme Court on 5 occasions although we only have two actual opinions, one for the State in State v. Bullock, 370 N.C. 256 (2018) and one for the Defendant in State v. Reed, 373 N.C. 498 (2020). The North Carolina Court of Appeals has cited the Rodriguez decision on 36 separate occasions. The vast majority of the Court of Appeals decisions have been rendered against the Defendant.

The purpose of this manuscript is to threefold. First, to discuss a selected number of cases from the N.C. Court of Appeals where Rodriguez claims have been litigated. Second, to discuss the cases that have come before the N.C. Supreme Court where a roadside Rodriguez delay was the primary issue and the Court actually rendered an opinion. And finally, to provide trial lawyers with some practical tips on how to discover, articulate and preserve a 4th Amendment Rodriguez violations at the trial court level.

Who is Dennys Rodriguez and why is his story important to you?¹

Facts of the Case from the Petitioner’s Brief: (Please read these facts, because they will sound all too familiar. In addition, if you are going to make a motion to suppress under Rodriguez, you must be intimately familiar with the facts of Rodriguez).

¹ In 2011, more than 17 million people were reportedly pulled over in the United States for a traffic violation. As result, Mr. Rodriguez became a statistic for citizen/police encounters. Your clients are part of the statistical analysis as well. Christine Eith & Matthew R. Durose, Bureau of Justice Statistics, Contacts Between Police and the Public, 2008 7 (Oct. 2011), available at <http://www.bjs.gov/content/pub/pdf/cpp08.pdf> (reporting on survey conducted by the Department of Justice’s Bureau of Justice Statistics about face-to-face contacts between citizens and police).

Just after midnight on March 27, 2012, petitioner Dennys Rodriguez and his passenger, Scott Pollman, were driving westward from Omaha, Nebraska, to Norfolk, Nebraska, on Nebraska State Highway 275. About twenty miles into their trip, just outside the small community of Valley, Nebraska, Mr. Rodriguez drove past Officer Morgan Struble of the Valley Police Department. Officer Struble was positioned in a turnaround median watching for "speeders and intoxicated drivers and so on". Although Mr. Rodriguez was not speeding or driving erratically, Officer Struble immediately pulled onto the highway and began traveling west bound behind Mr. Rodriguez's Mercury Mountaineer.

Officer Struble pursued Mr. Rodriguez's vehicle until he was approximately three to four car-lengths behind, with Mr. Rodriguez traveling in the right lane of the four-lane divided highway and Officer Struble staying in the left lane. From this vantage point, Officer Struble saw the passenger-side tires of Mr. Rodriguez's vehicle cross for about two seconds over the line separating the right lane of traffic from the shoulder of the highway. Mr. Rodriguez then quickly corrected back into his lane of traffic. Officer Struble decided to stop Mr. Rodriguez for driving on the shoulder of the road. He pulled over Mr. Rodriguez's vehicle at approximately 12:06 a.m.

As Officer Struble approached Mr. Rodriguez's Mountaineer from the passenger's side, he noticed a strong odor of air freshener. At the vehicle, he spoke with Mr. Rodriguez, obtained Mr. Rodriguez's license, registration, and proof of insurance, and asked why he had driven onto the shoulder. Mr. Rodriguez said he had swerved to avoid a pothole and was agitated when Officer Struble informed him that momentarily crossing onto the shoulder was a traffic violation.

While Officer Struble was speaking with Mr. Rodriguez from the passenger side of the vehicle, he noticed that the passenger, Mr. Pollman, seemed nervous. Mr. Pollman pulled his cap low over his eyes, smoked a cigarette, and did not look at Officer Struble.

Officer Struble asked Mr. Rodriguez to step out of the vehicle. Mr. Rodriguez complied and met Officer Struble at the back of the Mountaineer. Officer Struble then asked Mr. Rodriguez to accompany him to his patrol car so that the officer could complete some paperwork. Mr. Rodriguez asked if he was obligated to do so. When Officer Struble said "no," Mr. Rodriguez demurred, saying he would rather just sit in his own vehicle.

Officer Struble was taken aback by Mr. Rodriguez's response. Although he had never before had anyone refuse to come back to his patrol car, he claimed that, "in [his] experience," doing so was a "subconscious behavior that people concealing contraband will exhibit".

Officer Struble returned to his cruiser and called in a request for a records check on Mr. Rodriguez. He then returned to Mr. Rodriguez's vehicle to talk with Mr. Pollman. Officer Struble asked Mr. Pollman for his identification and then began inquiring about "where he was coming from and where they were going." Mr. Pollman explained that he and Mr. Rodriguez had made the two-hour trip from Norfolk to Omaha to investigate the possibility of purchasing an older-model Ford Mustang. They had decided against buying the car when the owner could not produce the title. Officer Struble asked whether they had viewed any pictures of the Ford Mustang before driving to Omaha to see the car in person, and Mr. Pollman replied that they had not.

Officer Struble had specifically noted Mr. Pollman's nervousness during the officer's first exchange with Mr. Rodriguez at the vehicle. When he was speaking to Mr. Pollman directly, however, Officer Struble did not testify that he observed any signs of nervousness. Nonetheless, Officer Struble found the plan to purchase the car strange because Officer Struble himself would not have made such a drive without first seeing photos of the vehicle he was thinking about purchasing. He also found their decision to drive from Norfolk to Omaha late on a Tuesday night

“abnormal.” It was “common knowledge,” he said, that people do not drive a long distance to look at a vehicle and come back at midnight. But, during the traffic stop, Officer Struble did not ask how long Mr. Pollman and Mr. Rodriguez had been in Omaha, when they had actually looked at the Mustang, or whether they had attended to any other business before or after looking at the car.

After obtaining Mr. Pollman’s driver’s license, Officer Struble again returned to his cruiser. It was 12:19 a.m. — about thirteen minutes into the traffic stop. Officer Struble had a drug-detection dog in his car, and decided that he was “going to walk [his] dog around the vehicle regardless whether [Mr. Rodriguez] gave [him] permission or not.” However, Officer Struble wanted a second officer to act as a backup because there were two persons involved in the stop.

Officer Struble requested a records check on Mr. Pollman’s license and then contacted a second officer. Officer Struble then began writing a warning ticket for Mr. Rodriguez.

Officer Struble returned to Mr. Rodriguez’s vehicle for a third time, where he returned all of the documents he had collected to Mr. Rodriguez and Mr. Pollman. Officer Struble then issued a written warning to Mr. Rodriguez for driving on the shoulder of the road. Officer Struble completed the warning at 12:25 a.m. and said he gave it to Mr. Rodriguez no more than a minute or two later.

By the time Officer Struble had returned Mr. Rodriguez’s documents and issued the warning, Officer Struble had “[taken] care of all the business” of the traffic stop. In his words, he had “got[ten] all the reason for the stop out of the way.” Nevertheless, because of his plan to conduct the sniff regardless of what else happened, Officer Struble did not allow Mr. Rodriguez to leave.

Instead, Officer Struble asked Mr. Rodriguez if “he had an issue with [Officer Struble] walking [his] police service dog around the outside of [the] vehicle.” When Mr. Rodriguez replied that he did, in fact, have an issue with that, Officer Struble directed Mr. Rodriguez to turn off the ignition, get out of his vehicle, and stand in front of the cruiser until the second officer arrived.

Officer Struble acknowledged that at this point Mr. Rodriguez “was not free to leave.” Officer Struble’s backup officer, Deputy Duchelus of the Douglas County Sheriff’s Office, arrived at 12:33. About one minute later, or approximately seven to eight minutes after Officer Struble had issued the warning for driving on the shoulder, Officer Struble walked his dog around Mr. Rodriguez’s Mountaineer. The dog alerted.

During a search of the vehicle, officers discovered a bag of methamphetamine. Mr. Rodriguez was later charged with possession with intent to distribute 50 grams or more of methamphetamine in violation of 21 U.S.C. § 841(a)(1) and (b)(1).

Procedural History of Rodriguez from the Brief of the Petitioner: (Bear with me, keep reading, this is important stuff.)

Mr. Rodriguez moved to suppress the evidence seized from his car, arguing that Officer Struble had violated his Fourth Amendment rights by detaining him for a dog sniff without reasonable suspicion of criminal activity.

After hearing evidence, the United States Magistrate Judge recommended that the motion be denied. The Magistrate Judge acknowledged that the sniff occurred about eight minutes after the traffic stop had concluded. He also agreed that Officer Struble had nothing but

a “big hunch” that Mr. Rodriguez was hiding something in the vehicle and no reasonable suspicion to independently support the detention. Nonetheless, the Magistrate Judge recommended that the district court deny Mr. Rodriguez’s motion. The Magistrate Judge believed that Eighth Circuit precedent he was bound to apply would consider the delay an acceptable “de minimis [sic] intrusion on the defendant’s Fourth Amendment rights.”

The Magistrate Judge cited United States v. \$404,905.00 in U.S. Currency, 182 F.3d 643 (8th Cir. 1999), to support his conclusion. There, the Eighth Circuit held that, “when a police officer makes a traffic stop and has at his immediate disposal the canine resources to employ [what is a] uniquely limited investigative procedure, it does not violate the Fourth Amendment to require that the offending motorist’s detention be momentarily extended for a canine sniff of the vehicle’s exterior.” \$404,905.00 in U.S. Currency, 182 F.3d at 649 (footnote omitted).

The Magistrate Judge asserted that, under this “de minimis” rule, the Eighth Circuit allows for up to ten minutes of suspicionless detention for officers to accomplish a dog sniff. Because the detention in Mr. Rodriguez’s case was less than ten minutes, the Magistrate Judge recommended denying his motion to suppress.

The District Court adopted the Magistrate Judge’s factual findings and legal conclusions in their entirety. Mr. Rodriguez entered a conditional guilty plea to the Indictment, reserving his right to appeal the denial of his motion to suppress. He was sentenced to the mandatory minimum sentence of five years in prison.

The Appellate Proceedings in Rodriguez:

The Eighth Circuit affirmed. It began with the proposition that a dog sniff conducted in a reasonable manner during a lawful traffic stop “does not infringe upon a constitutionally protected interest in privacy.” (quoting United States v. Martin, 411 F.3d 998, 1002 (8th Cir. 2005) (quoting Illinois v. Caballes, 543 U.S. 405, 408 (2005))). A canine sniff “may be the product of an unconstitutional seizure,” however, “if the traffic stop is unreasonably prolonged before the dog is employed.” Id. (quoting Martin, 411 F.3d at 1002). The Eighth Circuit held that such was not the case in the Rodriguez stop. “A brief delay to employ a dog does not unreasonably prolong the stop,” the Court of Appeals asserted. In fact, the Eighth Circuit had “repeatedly upheld dog sniffs that were conducted minutes after the traffic stop concluded.” Id. (citing United States v. Alexander, 448 F.3d 1014, 1017 (8th Cir. 2006); Martin, 411 F.3d at 1002; United States v. Morgan, 270 F.3d 625, 632 (8th Cir. 2001); and \$404,905.00 in U.S. Currency, 182 F.3d at 649). The Court of Appeals surveyed detentions it had upheld under this rule, noting that they ranged from two minutes to close to ten minutes. Id. The seven or eight-minute delay in Mr. Rodriguez’s case fell within these limits. The court therefore held that Mr. Rodriguez’s detention was “a de minimis intrusion on [Mr.] Rodriguez’s personal liberty” and not an unreasonable seizure. In light of this conclusion, the Court of Appeals expressly declined to decide whether Officer Struble had reasonable suspicion to continue Mr. Rodriguez’s detention. Thus, the “de minimis” exception was the sole basis for the Court of Appeals’ decision.

The Question Presented in Rodriguez:

Here is the question presented to the United States Supreme Court in Rodriguez as framed by the fabulous Federal Public Defenders that took this case to the top:

After a law enforcement officer has completed a stop for a traffic infraction, does the continued detention of the driver to conduct a dog sniff, without probable cause or reasonable suspicion to believe that the vehicle

contains contraband, violate the Fourth Amendment's prohibition against unreasonable seizures?

Notice the question framed by the Petitioner involves the legality of extending a traffic stop for the purpose of conducting a dog sniff. The great thing about Rodriguez is the Court did not limit the holding to an extension of the stop solely for purposes of conducting a dog sniff. The Rodriguez decision goes much further. After Rodriguez, Officers can risk an unfavorable ruling on a motion to suppress when their inquiries and their investigation begin to shift from the primary mission of the stop. Absent reasonable suspicion to believe that criminal activity is afoot, an officer cannot engage on a fishing expedition on the side of the road. It is the fishing expedition on the side of the road that I have been fighting against for years. In other words, in a post Rodriguez world, it is clear that officers involved in a traffic stop should fish or cut bait with regard to the mission of the stop, which is almost always limited to enforcement of the traffic violation in question and related safety concerns.²

Digging Deeper into the Rodriguez Holding.

The Rodriguez opinion is filled with golden nuggets for a criminal defense lawyer who is trying to suppress evidence seized during a vehicle stop. Here's the overview.

1. "A police stop exceeding the time needed to handle the matter for which the stop was made violated the United States Constitution's shield against unreasonable seizures".
2. "A seizure justified only by a police-observed traffic violation became unlawful if it was prolonged beyond the time reasonably necessary to complete the mission of issuing a ticket for the violation."
3. "Lacking the same connection to roadway safety as the ordinary inquiries, a dog sniff was not fairly characterized as part of the officer's traffic mission.

The headnotes from the opinion are equally golden:

1. "A police stop exceeding the time needed to handle the matter for which the stop was made violates the United States Constitution's shield against unreasonable seizures. A seizure justified only by a police-observed traffic violation, therefore, becomes unlawful if it is prolonged beyond the time reasonably required to complete the mission of issuing a ticket for the violation".
2. "A seizure for a traffic violation justifies a police investigation of that violation. A relatively brief encounter, a routine traffic stop is more analogous to a so-called Terry stop than to a formal arrest. Like a Terry stop, 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."
3. "The Fourth Amendment tolerates certain unrelated investigations that do not lengthen the roadside detention. However, judicial precedent cautions that a traffic stop can become

² Fish or cut bait: "stop vacillating and act on something or disengage from it." "Do something, or get out of the way." "Something you say to someone when you want them to make a decision and take action without any further delay". Cambridge Dictionary of American Idioms and McGraw Hill Dictionary of American Idioms.

unlawful if it is prolonged beyond the time reasonably required to complete the mission of issuing a warning ticket. The seizure remains lawful only so long as unrelated inquiries do not measurably extend the duration of the stop. An officer, in other words, 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.”

4. “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. These checks serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly.”

5. “A dog sniff, by contrast to a traffic stop, is a measure aimed at detecting evidence of ordinary criminal wrongdoing.”

6. “Lacking the same close connection to roadway safety as the ordinary inquiries, a dog sniff is not fairly characterized as part of the officer’s traffic mission.”

7. “The reasonableness of a seizure depends on what the police in fact do”.

8. “If an officer can complete traffic-based inquiries expeditiously, then that is the amount of time reasonably required to complete the stop’s mission. A traffic stop prolonged beyond that point is unlawful.”

9. “Absent reasonable suspicion, police extension of traffic stop in order to conduct canine drug-detection sniff violates the Federal Constitution’s Fourth Amendment shield against unreasonable seizures.”

Justice Ginsberg wrote the majority opinion in Rodriguez. Justice Roberts, along with the late Justice Scalia, accompanied by Justice Breyer, Justice Sotomayor and Justice Kagan all joined in the Ginsburg opinion. Dissenting opinions were filed and/or joined by Justice Thomas, Justice Alito and Justice Kennedy. If you spend some time reading the opinion, you will find that is a breath of fresh air from the Supreme Court and it may provide you with powerful ammunition to defend against what happens to your client when he or she is pulled over for a traffic violation and the search for other criminal activity ensues.

So, what does Rodriguez really mean in North Carolina?

The de minimis delay exception is toast.

As Professor Jeff Welty from the UNC School of Government points out, “at a minimum, Rodriguez effectively overrules State v. Brimmer, 187 N.C. App. 451 (2007) (Courts...have held...that if detention is prolonged for only a very short period of time, the intrusion is considered de minimus. As a result, even if the traffic stop has been effectively completed, the sniff is not considered to have prolonged the detention beyond the time reasonably necessary for the stop.”), see also State v. Sellars, 222 N.C.App 245 (2012), for similar treatment.³ In the old

³ Supreme Court Rejects De Minimus Extension of a Traffic Stop to Deploy a Drug Dog, posted on UNC School of Government, Criminal Law Blog, April 22, 2015). Professor Welty was correct in his April, 2015 prediction as to the status of Brimmer and Sellars after Rodriguez as both cases were overruled in part by State v. Warren, 775 S.E. 2d 362, 2015 N.C. App. 674 (N.C. Ct. App. 2015).

days, I was consistently hurt by Brimmer and Sellars during suppression hearings. I am pleased these cases have been overruled by Rodriguez.

I am even more pleased professor Welty provides us with further ammunition about the impact of Rodriguez on traffic stops in North Carolina, as he rightly points out in the same blog referenced above that ...“the impact of Rodriguez extends beyond dog sniffs. If an officer can’t extend a stop to deploy a dog, he or she can’t extend the stop to ask drug-related questions or seek consent to search, either.”, *id.* Professor Welty cites an article by Professor Orrin Kerr entitled “Police can’t delay traffic stops to investigate crimes, absent suspicion, for the proposition that Rodriguez is more important for its impact on police asking questions than [for its impact on the] the use of drug-sniffing dogs’, because dog sniffs are uncommon but questions about matters unrelated to the basis for the stop are asked “all the time”.⁴ Welty further observes that North Carolina law tended not to support delays for additional questioning even before Rodriguez, but the case certainly draws a line in the sand.”, *id.*

So, what Rodriguez lines have been drawn in the sand by our appellate courts thus far.
Let’s start with the N.C. Court of Appeals:

1. State v. Leak, 773 S.E. 2d 340, 2015 N.C. App. Lexis 445 (N.C. Ct. App. 2015), filed June 2, 2015, vacated and remanded by the N.C. Supreme Court at 780 S.E. 2d 553, 2015 Lexis 1258, filed December 18, 2015.

The first North Carolina response to United States vs. Rodriguez came from Anson County in the case of State v. Leak, 773 S.E. 2d 340, 2015 N.C. App. Lexis 445 (N.C. Ct. App. 2015), filed June 2, 2015, vacated and remanded by the N.C. Supreme Court at 780 S.E. 2d 553, 2015 Lexis 1258, filed December 18, 2015.

Facts in Leak:

On April 30, 2012, at approximately 11:30 p.m., Lilesville City Police Chief Bobby Gallimore was on patrol. He noticed a parked car in a gravel area near Highway 74. Chief Gallimore decided to stop and see if the driver needed assistance. Before approaching the car, Chief Gallimore ran the vehicle’s license plate, which came back to the defendant, Keith Leak. Chief Gallimore approached the Defendant to see if he needed anything. The Defendant replied that he did not need assistance and that he had simply pulled off the road to return a text message. Chief Gallimore then asked Mr. Leak for his driver’s license and the identification matched the registered owner of the car.

Chief Gallimore decided to check the status of the defendant’s driver’s license, so he took the license to his patrol car. It is uncontroverted that Chief Gallimore had zero suspicion that Mr. Leak was involved in criminal activity.

Mr. Leak remained in his vehicle while Chief Gallimore checked on the status of the driver’s license. Chief Gallimore confirmed that Mr. Leak’s driver’s license was valid, however, during a computer search of Mr. Leak’s name, he learned that Mr. Leak had an outstanding arrest warrant from 2007.

⁴ Orrin Kerr is a distinguished Fred C. Stevenson Research Professor at The George Washington University Law School where he has taught since 2001. His Washington Post article on the impact of Rodriguez can be found here. https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/04/21/police-cant-delay-traffic-stops-to-investigate-crimes-absent-suspicion-supreme-court-rules/?utm_term=.b727c695739f

Chief Gallimore returned to the vehicle and asked Mr. Leak to get out of his car, at which time Mr. Leak informed the Chief that he had a .22 pistol in his pocket. Mr. Leak was subsequently arrested for possession of a firearm by a convicted felon.

Procedural History of Leak:

The Defendant was indicted for felonious possession of a firearm by a convicted felon and misdemeanor of carrying a concealed weapon. On August 5, 2013, Mr. Leak's attorney filed a motion to suppress evidence obtained at the time of his arrest alleging that his seizure was unlawful and the evidence seized as a result of the unlawful seizure should be suppressed under the Fourth Amendment to the United States Constitution and applicable provisions of the North Carolina constitution.

Superior Court Judge Tonya Wallace heard the motion to suppress. Chief Gallimore testified for the State. The Defendant did not present evidence. On August 7, 2013, Judge Wallace entered an order denying the Defendant's motion to suppress. On November 14, 2013, Mr. Leak entered a conditional guilty plea to possession of a firearm by a convicted felon, reserving his right to appeal the denial of his motion to suppress. Mr. Leak received a suspended sentence of not less than nine and not more than twenty months in prison with supervised probation for a period of twelve months.

The Issue on Appeal in Leak:

The sole issue on appeal in State v. Leak was, whether Judge Wallace erred by denying the defendant's motion to suppress the gun that was seized from him as he exited his vehicle at the direction of Chief Gallimore.

Defendant's Argument in Leak:

Defense counsel argued that Mr. Leak was illegally seized when Chief Gallimore took Mr. Leak's driver's license to the patrol vehicle in order to conduct a computer search. The seizure was unlawful according to Mr. Leak's lawyer, because Chief Gallimore had no reasonable suspicion to believe that Mr. Leak was engaged in unlawful activity. In a 2-1 decision, the N.C. Court of Appeals agreed with Mr. Leak's trial lawyer.

The Court of Appeals Decision in Leak:

In Leak, the Court of Appeals agreed with Judge Wallace that the evidence supported a finding that Chief Gallimore's initial encounter was consensual, but there was a legitimate purpose to approach the vehicle; ie., to check on the driver's safety. The encounter was deemed consensual in part because there was no evidence that Chief Gallimore activated his blue lights, and while Chief Gallimore had a service revolver, the revolver was not pointed or displayed. The Court observed that prior appellate cases in North Carolina have made it clear that a seizure does not occur simply because a police officer approaches an individual and asks a few questions. So long as a reasonable person would feel free to disregard the police and go about his business, the encounter is consensual, and no reasonable suspicion is required. The encounter will not trigger Fourth Amendment scrutiny unless it loses its consensual nature, citing State v. Campbell, 359 N.C. 644, 617 S.E. 2d 1, (2005), quoting Florida v. Bostick, 501 U.S. 429, (1991), internal quotation omitted)). The court further observed that Chief Gallimore required no particular justification to ask Mr. Leak to "voluntarily" consent to an examination of the driver's license and registration.

In denying Mr. Leak's motion, Judge Wallace gave two alternative conclusions of law to support her ruling. First, Judge Wallace found that there was no seizure in this instance. Second,

if there was a seizure, Chief Gallimore's decision to take the driver's license to his patrol car for investigation constituted a "de minimus delay".

The Court of Appeals analysis in State v. Leak:

The Court of Appeals held that the taking and carrying away of a driver's license from an otherwise consensual encounter in order to conduct further investigation, with nothing else appearing insofar as criminal activity is concerned constituted a seizure for Fourth Amendment purposes. In reaching the decision, the Court cited the following language from State v. Icard, 363 N.C. 303, 677 S.E. 2d 822 (2009), quoting Bostick, 501 U.S. at 437 and INS v. Degaldo, 466 U.S. 210, (1984).

"An individual is seized by a police officer and is thus within the protection of the Fourth Amendment when the officer's conduct "would have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business." . . . Moreover, "an initially consensual encounter between a police officer and a citizen can be transformed into a seizure or detention within the meaning of the Fourth Amendment if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave" or otherwise terminate the encounter".

Clearly in Mr. Leak's situation, he was not free to go about his business when Chief Gallimore took possession of his license to investigate the status of the license in his patrol car. In fact, Chief Gallimore testified that Mr. Leak was not free to leave when he took the license back to his patrol car. Here is the exchange between the prosecutor and the Chief.

PROSECUTOR: "And when you asked him for his driver's license and registration, why did you do that"?

CHIEF GALLIMORE: "I asked for his driver's license to -- I asked him if he had a valid license, and he said he did. And I said, "Well, may I see your license?" And he handed me his license. And then that's when I ran them to make sure that they were valid".

PROSECUTOR: "And why is that"?

CHIEF GALLIMORE: "Because we seem to have a lot of people that drive while license revoked. And I felt obligated -- If I would have released - you know, if I told him he's free to leave from there and he's okay to drive from there, and he got in a wreck, then I'd be liable for it because he didn't have a license".

It is important to note, for the majority of the Leak panel, that Chief Gallimore's decision to hold on to the driver's license converted an otherwise consensual encounter into a seizure with Fourth Amendment implications. This conclusion was consistent with the Court's prior ruling in State v. Jackson, 199 N.C. App. 236, 681 S.E. 2d (2009) where the court held that the continued interrogation of the driver of a motor vehicle and his passenger about the presence of drugs or weapons in the car was indeed an extension of an otherwise lawful detention once the officer dispelled his suspicion that the driver had a valid license. To extend the encounter beyond the original purpose of a traffic stop, there must be reasonable suspicion of criminal activity to change the mission of the investigation from traffic law enforcement to some other violation of the law.

The Leak panel majority provided ample case law for the proposition that continuing to deprive an individual of identification or vehicle registration documents constitutes a seizure and it is only after those documents are returned that the seizure can be eligible for a subsequent “consensual encounter” analysis.

The alternative conclusion of law in State v. Leak:

In the event the taking of the license to the patrol car constituted a seizure, Judge Wallace provided an alternative conclusion of law to further justify her denial of the Defendant’s motion to suppress. She determined that the amount of time in which Chief Gallimore was in possession of the defendant’s license constituted a “de minimis delay”. The Court of Appeals took issue with Judge Wallace’s conclusion of law that the delay was de minimus, citing United States v. Rodriguez, which was decided after Mr. Leak’s suppression hearing, but handed down while Mr. Leak’s case was pending in the Court of Appeals. Accordingly, the Court held that Mr. Leak received the benefit of Rodriguez, citing State v. Morgan, 359 N.C. 331, 604 S.E. 2d 886) and Griffith v. Kentucky, 479 U.S. 314 (1987).

The Holding in State v. Leak:

Here’s the bottom line in Leak. The Court held that Chief Gallimore’s seizure of Mr. Leak for the purpose of conducting an investigation into the status of his driver’s license was illegal, and the illegal detention led to the discovery of a firearm that resulted in the Defendant’s arrest. But for the illegal seizure, the firearm would not have been discovered. Accordingly, the Court held that Judge Wallace erred in denying the Defendant’s motion to suppress.

The dissent in State v. Leak:

Judge Mcullough dissented in State v. Leak. Judge Mcullough took issue with majority’s conclusion that an officer conducts an impermissible seizure under the Rodriguez rationale when he conducts a computer search of the driver’s license of an individual that the officer has approached to determine if the individual needs assistance. Judge Mcullough contends in his dissent that the majority panel was reading Rodriguez too narrowly. Judge Mcullough would hold that an officer has the latitude during a consensual encounter, to perform routine functions that are almost always associated with traffic stops. Judge Mcullough asserts in his dissent that the majority panel leaves officers with two different standards for investigative activity, one for a traffic stop based on reasonable suspicion, and one for a consensual encounter. Judge Mcullough states in his dissent as follows:

“Thus, I believe that the act of checking a driver’s license is permissible, so long as the approach is for a valid purpose such as offering assistance. The majority concedes that an officer can ask the driver to identify himself. I maintain an officer has the right to ask the driver to identify himself to ensure the driver is the owner and the right to check the driver’s record for insurance or warrants. In other words, I believe in the area of traffic enforcement and management, the reduced expectations of privacy in the operation of vehicles, that the police have in any such encounter do not run afoul of the Fourth Amendment when they take the actions Chief Gallimore took here.”

Judge Mcullough is essentially of the view that a police officer should be allowed to conduct routine identity checks of individuals that are lawfully sitting in a vehicle under circumstances where it may reasonably appear that the individual needs assistance. He would

further hold that an officer in this circumstance can conduct an investigation to make sure the individual's papers are in order and there are no outstanding warrants for arrest.

Mr. Leak Ultimately Prevailed:

The North Carolina Supreme Court vacated the Court of Appeals opinion in Leak and remanded the case to the Court of Appeals with further instructions to remand the case to the trial court for further consideration in light of Rodriguez. This means the Leak opinion has no precedential value, but the opinion is chocked full of good case law on what constitutes a seizure. The good news for Mr. Leak is; the State ultimately dismissed the case in an apparent strategic decision to avoid unfavorable Rodriguez jurisprudence in the appellate courts. Congratulations to trial counsel Sophia Gatewood Crawford of Wadesboro, N.C. ; now Judge Crawford and appellate counsel Nahendra K. Ghosh of Chapel Hill, N.C.; for their excellent work on behalf of Mr. Leak.

2. State v. Warren, 776 S.E. 2d 861, 2015 N.C. Lexis 1013 (2015); affirmed by N.C. Supreme Court at 368 N.C. 756, 782 S.E. 2d 509 (Mar. 2016).

Facts in Warren:

In State v. Warren, the Defendant was stopped for an uncontested moving violation. During the course of the routine traffic stop, a dog was called to conduct an exterior sniff of the vehicle that led to the discovery of cocaine and drug paraphernalia. Mr. Warren was a habitual felon.

The issue in Warren: The issue in Warren was whether law enforcement had reasonable articulable suspicion to extend the scope of the initial stop for a moving violation and subject the Defendant's vehicle to a canine search.

The Holding: The majority of the court of appeals held the following factors constituted sufficient reasonable articulable suspicion of drug activity so as to legally permit the extension of an otherwise routine traffic stop to conduct a drug investigation: (1). Presence in a high crime area, (2). Defendant appeared to have something in his mouth that he was not chewing and affected his speech; (3). Based on the officers six years of experience, he had made numerous drug stops involving individuals that hide drugs in their mouths and will swallow drugs to destroy evidence, all of which was consistent with his training as a narcotics officer; and; 4. During conversation with the defendant, he denied being involved with drugs "any longer".

Although Judge Elmore issued a strong dissenting opinion and would have reversed the trial court's denial of the defendant's motion to suppress, Judge Dillon and Judge Geer ruled for the State and the North Carolina Supreme Court ultimately affirmed the decision so Mr. Warren was required to serve his habitual sentence of not less than 38 and not more than 58 months in the Department of Corrections for felony possession of cocaine.

3. State v. Johnson, 783 S.E. 2d 753, 2016 N.C. App. Lexis 341, (filed April 5, 2016).

Next up in the North Carolina line of cases responding to Rodriguez is State v. Johnson, decided less than 30 days after the N.C. Supreme Court affirmed the Court of Appeals decision in Warren. Johnson is a Brunswick County case where the Defendant unanimously lost in the Court of Appeals after being convicted of trafficking in opium or heroin and other drug offenses. As was the case with Warren, I will not discuss the facts of Johnson in detail because the Defendant lost and the trial judge's findings of fact were unchallenged on appeal.

The gist of the facts in Johnson involve a defendant named Taseen Tyrece Johnson who was a passenger in an automobile that was driven by Todd Waters. DMV Officer Matthew Ward stopped the vehicle for an expired plate. The validity of the stop was not questioned. It is difficult to argue with the Johnson Court's conclusion that Officer Ward developed, "in a timely manner", reasonable articulable suspicion to believe that criminal activity was afoot inside the vehicle.

Reasonable Suspicion Factors that doomed Mr. Johnson:

Remember, the Rodriguez opinion requires officers to remain focused on the primary mission of a traffic stop, unless and until there is a timely observation of sufficient factors that justify a shift to extend the stop beyond that which is normally attendant to traffic enforcement and safety issues. In Johnson, the following totality of circumstances worked against the defendant/passenger, Mr. Johnson: (1) When Officer Ward initially scanned the vehicle, both the driver and Mr. Johnson appeared nervous and could not provide answers to basic questions regarding their travel destination and origin. (2) As Officer Ward talked with the occupants of the vehicle, he believed there were more than two cell phones in the truck, which was odd to him as there were only two occupants. (3) Officer Ward noticed a box shaped "PCM" computer system device that controls a vehicle. Officer Ward was familiar with such a device and testified that such a device would normally be located in the engine compartment as opposed to the passenger compartment. The location of the device in the passenger compartment was certainly not illegal, but was nevertheless "unusual", according to Officer Ward. (4) The Defendant's chest rose and fell rapidly as he breathed, and he mumbled vague responses to Officer's Ward's Questions. (5) Even when Officer Ward asked the Defendant to speak up, the defendant continued to mumble "incoherently". (6) When Officer Ward asked the driver, Mr. Waters produce a driver's license and registration, he could produce a vehicle registration, but not a driver's license.

Things continued to go downhill for Mr. Johnson when a second officer arrived on the scene in the form of Brunswick County Deputy Sheriff Peter Arnold. Deputy Arnold was patrolling in the area and stopped to assist Officer Waters. Deputy Arnold approached the passenger's side of the vehicle. Deputy Arnold noticed that the defendant was acting "extremely nervous. The Defendant's neck veins were pulsing and he was breathing heavily. Officer Ward informed Deputy Arnold that both Waters and Johnson displayed erratic behavior, and they were unable to state where they were going.

Officer Ward returned to his patrol car and checked the status of Waters' vehicle and license. He learned the truck was properly registered to Waters, but the license was and inspection had expired. Ward cited Waters for the traffic violations and notified Waters of his court date. Although Ward completed the original purpose of the stop, he asked Waters to step out of the vehicle and answer additional questions. Meanwhile, Deputy Arnold again approached the passenger side of the vehicle. He spoke to the Defendant, Mr. Johnson who continued to give non-committal answers to his questions. He then noticed a rectangular bulge measuring approximately 5 to 7 inches in the crotch of Mr. Johnson's loose-fitting basketball shorts. Deputy Arnold asked Mr. Johnson what the bulge was all about and Mr. Johnson replied, "that's my balls". Deputy Arnold asked Mr. Johnson to exit the vehicle for a safety frisk at which time a package of heroin fell from the Defendant's crotch to the ground. Johnson is a pretty clear case for the State and it stands for the following position which is entirely consistent with Rodriguez, "when there are sufficient facts to warrant reasonable articulable suspicion to believe that criminal activity may be afoot, an officer may shift from the initial mission of a traffic enforcement stop for the purpose of conducting an investigation to confirm or dispel reasonable suspicion of additional illegal activity.

3. **State v. Castillo:** Strike Three for the Defendant in the Rodriguez line of cases in the State of North Carolina is State v. Castillo, 787 S.E.2d 48, 2016 N.C. App. Lexis 502, (filed May 3, 2016, just 30 days after Johnson. Castillo is a Durham County case where the Defendant won at the trial level, but he lost on appeal in a unanimous opinion authored by Judge Mcullough.

Facts of Castillo: On September 26, 2014, Officer Roy Green, a 15-year veteran of the Durham Police Department was assigned to the highway interdiction special operations team and he was monitoring the southbound lanes of I-85 near the Durham-Orange County border looking for people who might be using that route to move contraband, money, or engage in human trafficking. Officer Green also routinely stopped and cited people for traffic violations. Officer Green has interdiction training, which purportedly aids him in recognizing verbal and non-verbal indicators that the person stopped for a traffic violation might also be engaged in other criminal activity.

Officer Green positioned his vehicle on the exit ramp of Highway 70 so he had a clear view of the southbound lanes of I-85. He observed a green car traveling at a high rate of speed, so he began to follow the car to see how fast it was traveling. The stop was never questioned at the trial level.

The trial court granted the defendant's motion to suppress ruling that Officer Green unnecessarily extended the traffic stop without reasonable suspicion. The trial court also found that the defendant had not given clear and unequivocal consent to search his vehicle. Because I am typically biased toward the Defendant in 4th amendment cases, I would like to take issue with the Castillo opinion, but it is a difficult case for the defense. The case was handled on appeal by two lawyers that I know and respect. However, after reading the opinion, I can see where the Castillo panel is coming from. Here are the apparently unchallenged facts that worked against Mr. Castillo, (1) The defendant's hand was shaking uncontrollably (2) the mild odor of air freshener, (3) The Defendant's repeated unwillingness to answer the officer's question as to his destination, (4) The Defendant's statement that he did not know where he was going, because he was using his GPS, (5) Officer Green's significant training in recognizing drug interdiction indicators. (6) There was an odor of marijuana and (7), the Defendant admitted to smoking marijuana three days ago.

Even though the Defendant lost in Castillo, you should read the opinion very closely as the opinion is well-reasoned and it contains an excellent review of the Rodriguez decision. Writing for the unanimous court, Judge Mcullough states as follows:

"The problem with the trial court's order stems from a misunderstanding of the United States Supreme Court recent decision in Rodriguez. Understanding exactly what Rodriguez permits and what Rodriguez does not permit is important."

Judge Mcullough then cites Justice Ginsberg's majority opinion in Rodriguez with the following language that boils Rodriguez down into a couple of important paragraphs:

"A seizure for a traffic violation justifies a police investigation of that violation. A relatively brief encounter, a routine traffic stop is more analogous to a so-called "Terry stop" than to a formal arrest. Like a *Terry* stop, 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.

Our decisions in *Caballes* and *Johnson* heed these constraints. In both cases, we concluded that the Fourth Amendment tolerated certain unrelated investigations that did not lengthen the roadside detention. In *Caballes*, however, we cautioned that a traffic stop can become unlawful if it is prolonged beyond the time reasonably required to complete the mission of issuing a warning ticket. And we repeated that admonition in *Johnson*: The seizure remains lawful only so long as unrelated inquiries do not measurably extend the duration of the stop. An officer, in other words, 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*. *Id. at* , 191 L. Ed. 2d at 499 (internal quotation marks, citations, brackets, and ellipses omitted) (emphasis added).

- You should also read Castillo because the State certainly has access to the opinion, just like you do. Accordingly, you better be able to distinguish the facts of your case from the facts in Castillo. Finally, Castillo drives home the point of the importance of a video. It appears in this case that one or more of the Court of Appeals Judges actually watched the video. While the video ultimately hurt Mr. Castillo in his case, I have some great victories under my belt that can be attributed almost exclusively to the review and careful analysis of a video.

4. **And the Defendant Finally Wins a Rodriguez Case: State v. Bedient**, 786 S.E. 2d 319, 2016 N.C. App. Lexis 506, (filed May 3, 2016. Bedient was decided on the same day as Castillo, albeit with a different panel of Judges. The trial judge ruled against Constance Bedient on her motion to suppress the discovery of a schedule II controlled substance and drug paraphernalia in connection with a valid vehicle stop. Ms. Bedient subsequently entered a conditional guilty to the felony drug charge, but reserved her right to appeal contending that the trial court erred in failing to find that the officer unlawfully prolonged the traffic stop without reasonable articulable suspicion to do so. Ms. Bedient was represented by Attorney Jay Pavey of Sylva, N.C.

The Facts in State v. Bedient:

At around 11:30 p.m. on 28 February 2013, Sergeant Andy Parker of the Jackson County Sheriff's Office observed defendant driving a silver Mitsubishi Gallant on Highway 107 with her high beam lights on. She failed to dim her high beams as she passed Sergeant Parker going in the opposite direction. Sergeant Parker initiated a traffic stop, and defendant pulled to the side of the road. A dashboard video camera in Sergeant Parker's patrol car recorded the subsequent stop.

When Sergeant Parker approached the driver side door, 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 non-working 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 non-working headlight.

Sergeant Parker then asked the passenger of the car to identify herself. Defendant claimed it was her daughter, and the passenger identified herself as Tabitha. Sergeant Parker later determined that her full name was Tabitha Henry, a resident of South Carolina.

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 also testified that defendant's husband, Todd Bedient, regularly called the Sheriff's Office complaining that defendant was taking up residence with Mr. Coggins.

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 non-working headlight. They discussed the problems with defendant's headlights for 15 to 20 seconds longer. Then, Sergeant Parker changed the subject, asking defendant when she planned to change the address on her license. Defendant claimed that she was not going to change her address. Sergeant Parker informed her that if she was not going to live at the address listed on her license, she would need to change it within 30 days or she would be guilty of a misdemeanor.

Only a few seconds later, Sergeant Parker changed the subject of his questioning again. 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. He confirmed that both defendant and Ms. Henry had been drinking the beer. 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.

Constance Bedient's argument on appeal:

On appeal, the defendant contended that the trial court erred in denying her motion to suppress, arguing Sergeant Parker unlawfully prolonged the traffic stop without having reasonable articulable suspicion to do so and further, that her consent to search her vehicle was invalid because it was given during an unlawful detention. If you litigate 4th amendment issues in connection with traffic stops, Ms. Bedient's predicament should sound familiar to you as you

have likely encountered very similar fact patterns with a number of different clients.

The Court's analysis in State v. Bedient:

The subheading of the court's analysis in State v. Bedient is entitled, "The Mission of the Traffic Stop". This subheading is entirely appropriate because the Rodriguez decision is all about the mission of the stop and the point at which officers can often abandon the mission of the stop in favor of a search for other criminal activity. Rodriguez and its progeny allows for a shift in the initial mission of the stop, provided the evidence in support of the shift is gathered simultaneously with the performance of the duties associated with traffic enforcement and safety issues that may be attendant to traffic enforcement. However, the Bedient Court heeds Justice Ginsburg's admonition that:

"The tolerable duration of police inquires in the traffic-stop context is determined by the seizure's mission—to address the traffic violation and attend to related safety concerns. Beyond determining whether to issue a traffic ticket, an officer's mission includes 'ordinary inquiries incident to the traffic stop. Typically such inquiries involve (1) checking the driver's license, determining whether there are outstanding warrants against the driver, and (3) 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, unless of course, the officer has reasonable articulable suspicion to do so. Thus, as the Court held in Rodriguez, "absent reasonable suspicion of other criminal activity, "authority for the seizure...ends when tasks tied to the traffic infraction, are—or reasonably should have been completed."

The stop in Bedient was uncontested. The high beams were on and Sergeant Parker had the right to pull Ms. Bedient over for the purpose of addressing her failure to dim her high beam lights. Sergeant Parker conceded that the high beam infraction was the original mission of the stop.

Likewise, Ms. Bedient conceded that Sergeant Parker could legitimately run her name for a computerized license and warrant check. These two checks came back clean as to Ms. Bedient and the North Carolina Court of Appeals held that the inquiries were ordinary inquiries incident to the stop under Rodriguez and Cabbales.

The Officer's Request to exit the vehicle:

Even though Sergeant Parker had essentially decided to issue a verbal warning to Ms. Bedient, he asked her to exit her vehicle and join him at the rear of her vehicle. This was OK in the eyes of the Bedient court because (a) the Defendant did not challenge the finding on appeal and (b) the request to exit the car to receive the verbal warning was consistent with "officer safety and to address Sergeant Parker's second mission developed during the course of his conversation with the Defendant; to speak further with the Defendant about her license and whether she needed to change her address.

After the Defendant joined Sergeant Parker and she was given a warning about the high beams, and after the issue of the correct address was cleared up, there was no additional legal basis to continue to detain Ms. Bedient.

The following questions asked of Ms. Bedient after the primary and secondary mission of the stop was concluded got Sergeant Parker in trouble with the Court of Appeals:

“Have you ever been in any trouble? Do you have anything in the vehicle”?, to which the defendant replied, “No. You can look.”

This very question is asked of my clients on a regular basis. It is the timing of the question and the length of time it takes the officer to get around to asking the question that can result in a suppression order in favor of the Defendant. The trial court made the following findings of fact in Bedient that would certainly seem, at least on the surface, to survive a challenge under Rodriguez:

48. “Sgt. Parker had reasonable articulable suspicion under the totality of the circumstances to further detain defendant. These factors consisted of observing defendant for eight minutes, finding her speech to be stuttering, defendant exhibiting fidgety actions which is consistent with use of methamphetamine, repeated fixation on the driver's side sun visor, failure to initially provide the last name of the passenger or explain the passenger was her daughter, continued operation of the same vehicle with the same lack of headlights on the same day after receiving a warning ticket for the same failure to dim headlights and having been at a residence known by law enforcement in Jackson County to be a location of drug use and drug transactions”.

55. “Additionally, at the same time consent was given there did exist reasonable articulable suspicion based upon the totality of the circumstances presented to Sgt. Parker which supported further investigation and detention of defendant”.

56. “In addition to the specific and articulable factors that defendant was observed for eight minutes, the speech stuttered, defendant exhibiting fidgety actions which is consistent with use of methamphetamine, [**15] defendant repeatedly manipulated the driver's side sun visor, defendant failed to initially provide the last name of the passenger or explain the passenger was her daughter, defendant continued to drive the same vehicle with the same lack of headlights on the same day after receiving a warning ticket for the same failure to dim headlights issue and was at a residence known by law enforcement in Jackson County to be a location of drug use and drug transactions, after getting consent to search the vehicle defendant then attempted to return to the vehicle thereby impeding the search of Sgt. Parker.”

However, the Defendant challenged these findings of fact by asserting that the findings were not supported by competent evidence. The Court of Appeals agreed with the Defendant. Once again, it appears from the opinion that one or more of the members of the Bedient panel actually reviewed the video to see if the video was consistent with the findings. With respect to multiple findings of fact made by the trial court, the Court of Appeals found the findings to be unsupported by competent evidence.

In the final analysis, the Court of Appeals found only two factors that could possibly justify the prolonged detention of Ms. Bedient after the mission of the stop was concluded (1) the defendant's nervous behavior during the stop as evidenced by her stuttering, rapid movements and fixation with her sun visor, and (2) her association with a drug dealer as evidenced by her presence at Greg Coggins' house the prior evening. The Court of appeals held in Bedient, that these two factors considered in totality did not justify a prolonged detention.

Nervousness during the stop: It seems to be a universal view among law enforcement officers and a number of prosecutors that nervousness during a traffic stop constitutes proof that your client is up to no good. However, the good news for Ms. Bedient and for your client is the Court of Appeals has once again reminded us of the North Carolina Supreme Court case of State v. Pearson, 348 N.C. 272 673 S.E. 2d 599 (1998) (suggesting that the nervousness of the defendant was not significant to the determination of reasonable suspicion because many people become nervous when stopped by a State Trooper, see also State v. Blackstock, 165 N.C. App. 50, 598 S.E. 2d 412 (2004), (holding that nervousness, by itself, is not sufficient to establish reasonable suspicion. In addition, the Court of Appeals has further held that “nervousness needs to be *extreme, (emphasis added)*, in order to be taken into account in determining whether reasonable suspicion exists. State v. Myles 188 N.C. App. 42, 654 S.E. 2d 752, (2008). Here again, the video will often tell the tale as to the nature and extent of your client’s nervousness. A tremble here and a shake there may not even count for the “nervousness” factor.

Look for innocent explanations of conduct: The following quote from Bedient is also helpful.

“Although those findings of the trial court supported by the evidence show that 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, we note 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”.

It appears the Court of Appeals judges seemed sympathetic to Ms. Bedient’s plight. The Court summarily dispensed with the notion that 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 with criminal activity, absent more competent evidence to support such a conclusion, citing State v. Washington, 193 N.C. App. 670, 668 S.E. 2d 622 (2008), holding that a trial court’s conclusion that the officer had a right to make a brief investigatory stop of defendant because he was transporting a person wanted for various felony offenses was clearly erroneous.

How the NC Supreme Court views Rodriguez Delays

Bullock and Reed

1. State v. Bullock; 370 N.C. 256, (2017).

When I first presented on Rodriguez to this group six years ago, Bullock was still percolating in our appellate courts. Mr. Bullock had lost his Rodriguez argument at trial but won the argument with a divided panel in the Court of Appeals. By the time my second presentation rolled around in November of 2019, the N.C. Supreme Court reversed the Court of Appeals decision and remanded the case back to the Court of Appeals to consider additional defense arguments that were not previously addressed. Ultimately, Mr. Bullock lost at the N.C. Supreme Court and his petition to the United States Supreme Court was denied. Bullock is an important case for defense lawyers to read because it sets forth an example of a chain of facts that our Supreme Court determined was sufficient to justify the extension of an otherwise routine traffic stop.

The factors the court cited in support of and investigative delay that did not violate Rodriguez included the following: (1). The officer had significant experience in drug interdiction,

(2). In the officer's experience, I-85 is a major thoroughfare for drug trafficking between Georgia and Virginia, (3). The Defendant had two cell phones in his vehicle, consistent with drug traffickers according to the officer, (4) The Defendant said he missed his girlfriend's exit, but he missed two more exits where he could have turned around (5) Contradictory and inconsistent statements about his girlfriend, (6) a wad of cash in his pocket after a terry frisk for weapons. (7). The information gathered during the encounter with Mr. Bullock was gathered while the officer was checking several databases for warrants.

In reversing the Court of Appeals decision, the Supreme Court reinforced the holding in Rodriguez that a traffic stop cannot be extended beyond the ordinary mission of the stop. In Bullock, the stop was based upon multiple traffic violations observed by the officer. When an officer makes a traffic stop for a violation of a safety statute, the Court held that the officer may pose routine questions and engage in a routine investigation that does not measurably extend the stop. For example, the officer may check the license status of the driver and the registration and insurance status for the vehicle. The Court went on to hold that the officer may also engage in certain other negligently burdensome inquires such as checking for any outstanding warrants. Finally, the Court held that the officer may conduct a Terry frisk for officer safety. In this particular case, the Court held that the inquiries of the officer and the investigative methods used during the course of the encounter all occurred while the officer was in the process of completing the mission of the stop. In other words, the initial mission of the stop was never completed, and during the course of completing the initial mission, the Officer gathered additional information that allowed him to continue to detain Mr. Bullock on the side of the road.

If you shepardize Bullock, you will see a number of decisions where Defendants who attempt to make claims of a Rodriguez delay wind up sharing the same fate as Mr. Bullock. In State v. Cox, 813 S.E.2d 482, (2018) the Court of Appeals used Bullock as authority for the proposition that the officer's observations of a number of red flags "before" the issuance of a warning ticket justified an extended detention on the side of the road. Some of the factors working against Mr. Cox included (1) Evasive body language from the driver and the passenger, (2) Extreme and continued nervousness, (3) an open sore on the defendant's face consistent with methamphetamine use (4) an experienced interdiction officer familiar with the fact that the highway in question was a major corridor for drug trafficking (5) an initial stop that was necessary based upon erratic driving that required the officer to take evasive measures to avoid a collision.

In State v. Jackson, 821 S.E. 2d 656 (2018), the Defendant's Rodriguez claim met a similar fate when the Court of Appeals ruled that the officer did not need additional facts to develop reasonable suspicion to extend a stop because there was an open container of alcohol in the vehicle and the Defendant did not have a driver's license. Since the officer had probable cause to arrest, there was no need to engage in a Rodriguez analysis.

The most intriguing case that was still percolating in our appellate courts when I last presented to this group on Rodriguez claims was the case of State v. Reed, . Based on the state of the Rodriguez jurisprudence at the time, I predicted Reed would win in the N.C. Supreme Court. Three months after my 2019 presentation before this group; Reed did, in fact prevail, but the 4-3 decision was very splintered and generated some rather acidic back and forth language between the majority and dissenting justices. Reed won twice in the Court of Appeals and he ultimately prevailed in the N.C. Supreme Court.

2. State v. Reed, 373 N.C. 498, (2020).

The Facts in State v. Reed:

In State v. Reed, Trooper John Lamm stopped the Defendant for speeding on Interstate 95 in Johnston County. The Defendant was operating a rented Nissan automobile. The Defendant's

fiance', Usha Peart was riding in the front passenger seat along with a pit bulldog who was sitting in Usha's lap. Upon approaching the passenger side of the vehicle, the Trooper inquired as to the friendliness of the pit bull, reached in and patted him on the head and asked the Defendant to join him in his patrol car. The trooper observed energy drinks, air freshener, dog food and trash scattered throughout the vehicle. The trooper obtained the Defendant's New York driver's license as well as the rental agreement for the car. The trooper patted down the defendant for weapons and discovered a pocket-knife. The trooper directed the defendant to sit in his patrol car that was also occupied by a K9 in the back seat. The Defendant got inside the patrol car, but did not close the door and left one foot outside of the door. The Trooper was annoyed by this and demanded that the Defendant close the door, even though the defendant indicated that he was afraid of the K9. The trooper ultimately decided to write a warning ticket after concluding that the rental agreement and the license of the Defendant were all in order. The trooper informed the Defendant that they were done, returned his license and rental agreement, but indicated that he wanted to ask additional questions.

Another trooper had arrived on scene at that point and stood outside the passenger door of Trooper Lamm's vehicle, while Trooper Lamm sought permission to search the vehicle. When the Defendant was asked, he basically said, you better ask Usha. Usha decided to decline the officer's request to search the vehicle. Ultimately, Usha consented to the search and even signed a consent form. During the course of the search, Trooper Lamm found cocaine under the back-passenger seat.

The trial judge ruled against the Defendant's Motion to Suppress. However, on appeal, the Court of Appeals reversed the trial court citing a Rodriguez delay once the mission of the stop, ie, the writing of the warning ticket was complete. The State appealed to the N.C. Supreme Court and the Supreme Court vacated and remanded the case back to the Court of Appeals for re-consideration in light of the Supreme Court's decision in State v. Bullock. Upon re-consideration, the Court of Appeals again ruled for the Defendant. However, there was a dissenting opinion and Reed headed back to the North Carolina Supreme Court.

The gist of the holding in Reed is this. The mission of the stop was completed when Mr. Reed issued a citation and his documents were returned. Despite the return of his documents and the issuance of the citation, Mr. Reed was told to sit tight while the Trooper engaged the passenger in additional questioning as well as a request to search which was initially declined. With a second trooper on scene standing outside the passenger door of Trooper Lamm's vehicle directly in front of where Mr. Reed was sitting, a reasonable person would not feel free to leave. The items in the vehicle, such as the dog food, the air freshener and trash scattered throughout did not give rise to reasonable suspicion of criminal activity. As a result, there were insufficient facts that would give reasonable suspicion to believe that criminal activity was afoot. Absent such facts or circumstances, Mr. Reed, Miss Usha and the friendly pit bull in Miss Usha's lap should have been allowed to continue on with their travels unencumbered by additional questions or investigation. Here are some nice quotes from the majority opinion in Reed:

1. "Defendant was entitled to suppress suppress the evidence because the law enforcement officer who arrested defendant disregarded the basic tenets of US Const. Amendment IV by prolonging the traffic stop after the lawful duration of the traffic stop had concluded upon the completion of the mission of the traffic stop without defendant's voluntary consent or a reasonable, articulable suspicion of criminal activity to justify doing so.
2. "Although the scope of the intrusion permitted will vary to some extent with the particular facts and circumstances of each case, the investigative methods employed

should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time".

3. "A stop may become unlawful if it is prolonged beyond the time reasonably necessary to complete its mission."
4. "General nervousness is not significant to reasonable suspicion analysis because many people become nervous when stopped by a state trooper. Indeed, it is common for most people to exhibit signs of nervousness when confronted by a law enforcement officer whether or not the person is engaged in criminal activity. Thus, absent signs of nervousness beyond the norm, a court will discount a detaining officer's reliance on the detainee's nervousness as a basis for reasonable suspicion."

When Mr. Reed lost his motion to suppress; he entered a guilty plea to trafficking for which he received a sentence of not less than 70 and not more than 93 months in the Department of Corrections. As a condition of his plea, his co-defendant, the passenger's case was dismissed; so Mr. Reed took it on the chin for his girlfriend, Usha. Unfortunately for Mr. Reed, as a result of the back and forth procedural history where he won twice in the Court of Appeals before prevailing with a final victory in the N.C. Supreme Court, he had already served most of his sentence. He did get the benefit of being released however in February of 2020, right before the once in a one hundred year pandemic hit the United States in full force.

CONCLUSION:

I will briefly summarize my thoughts about the impact of Rodriguez in North Carolina as follows:

1. Checking warrants for occupants of a vehicle other than the driver would appear to constitute an unreasonable extension of a traffic stop. I see this a lot, and I do not believe it is authorized by Rodriguez and its progeny.
2. If a search from a vehicle stop turns up incriminating evidence, even if your client purportedly consents to the search, get the video and the CAD reports and study them for issues of timing, sequence of events and comparison of the officer notes to what actually happened.
3. Spend some time reading Rodriguez and all of the North Carolina cases cited in this paper. Even though our appellate courts seem to be taking a narrow view of Rodriguez, every case is driven by the facts and your case could be closer to the facts in Bedient.
4. Did I mention how important it is to get the video? The Court of Appeals thinks it is important. They are watching them. The time it takes or reasonably should take to complete the traffic enforcement mission is critically important.
5. Nervousness in a traffic stop is normal. Don't let the prosecutor get away with placing too much emphasis on this factor. There is some good case law on this point. Remember Pearson, Blackstock and Myles.
6. Get the officer to concede during your cross examination that the mission of the stop was enforcement of the traffic stop. Tie the officer to that mission again and again and point your trial judge or your appellate court to areas where the officer abandoned the initial traffic enforcement mission.

7. Remember the limits that Rodriguez and our courts are placing on the primary questions and actions associated with a traffic stop.

- a. asking for identification
- b. asking for vehicle registration documents.
- c. asking for insurance information
- d. writing a warning ticket citation
- e. giving a verbal warning
- f. checking warrants on the driver

Questions or actions that deviate from the above list can run afoul of the Fourth Amendment and can trigger a Fourth Amendment Rodriguez delay analysis which may result in a favorable ruling on your motion to suppress.

8. Courts have recognized a totality of factors that an officer can use to convert the mission of a traffic stop from the enforcement of a traffic violation to a drug or contraband investigation. Some of those factors include:

- a. "extreme nervousness"
- b. failure to make eye contact
- c. odor of air freshener, i.e., masking
- d. odor of marijuana
- e. vague answers
- f. inconsistent answers
- g. mumbled or stuttered speech
- h. evasive behavior
- i. furtive movements
- j. bizarre travel plans

However, the absence of factors such as the factors listed above should be pointed out to your Judge to assert your claim of an unlawful Rodriguez delay.

9. Read the N.C. Institute of Government blogs on [Rodriguez](#). Many judges and prosecutors consult with Professors from the IOG, and you need to know what the people that are in charge of your client's freedom are being told. Go to the blog, type "Rodriguez" in the search bar and you will learn more than you ever want to know about how the Rodriguez decision is treated by our courts in North Carolina.

10. **Don't ever give up.** You will lose more suppression motions than you will win. But, a favorable ruling on a 4th Amendment claim is a sweet victory, indeed. In fact, when you win one of these claims, it means your voice in the wilderness was heard. When you are victorious on 4th Amendment claims, you are fulfilling your responsibility to protect the citizens from their Government. You become a Patriot. And for the patriotic duty that each and every one of you shoulder in the Courts of this State day in and day out, I salute you!

This paper is updated from the 2016 and 2019 versions. For the December, 2021 edition, I have decided to include some documents from the record in [State v. Bedient](#) and [State v. Reed](#). These decisions were favorable to the defendant, so you should read them. However, you should also read [State v. Bullock](#) which was not decided in the Defendant's favor. You need to be able to distinguish your facts from [Bullock](#) and the other cases that cite [Bullock](#) for the proposition that law enforcement can develop reasonable suspicion to extend an otherwise routine traffic stop. However, when law enforcement starts to stray from the primary mission of the stop and otherwise

fail to diligently pursue the primary mission of the stop, a trial court or a reviewing court can find a Rodriguez violation as was the case in State v. Bedient and State v. Reed. I appreciate all the hard work that you do in representing your clients. I believe our profession is truly a noble profession. I enjoy giving presentations to trial lawyers. I also enjoy brainstorming with trial lawyers on a local and statewide level. My contact information is at the top of this paper, including my cell phone. If you want to bounce some stuff around on one of your cases, do not hesitate to call me; even if it is after hours or on the weekends. Trial lawyers do not work Monday through Friday from 8 to 5. Over the last 33 years, my family has become keenly aware of this fact.

EXHIBITS

State v. Bedient,

1. Motion to Suppress filed by Attorney Jay Pavey of Sylva, N.C.
2. Order Denying Motion to Suppress Issued by Judge Bradley Letts
3. Appellant's Brief in State v. Bedient filed by Appellate Defender Emily Davis
4. Court of Appeals Decision in State v. Bedient

State v. Reed,

1. Motion to Suppress filed by Attorney Brian Knott of Clayton, N.C.
2. Order Denying Motion to Suppress Issued by Judge Gayle Adams
3. Appellant's Brief in State v. Reed filed by Attorney Paul Smith
4. N.C. Supreme Court's Decision in State v. Reed

STATE V. BEDIENT

1.

STATE V. BEDIENT:

**MOTION TO SUPPRESS:
JAY PAVEY, ATTORNEY AT LAW
SYLVA, N.C.**

FILED

STATE OF NORTH CAROLINA
COUNTY OF JACKSON

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
13 CRS 050269

JAN 10 2011, C.S.C.

STATE OF NORTH CAROLINA)
)
)
v.)
)
)
CONSTANCE RENEA BEDIENT)
)
)
_____)

MOTION TO SUPPRESS

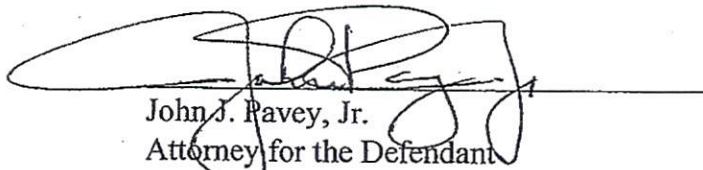
NOW COMES the Defendant, by and through her undersigned counsel, and moves the court to suppress all evidence obtained during the search of her vehicle based upon the following:

1. Stopping the vehicle that the defendant was driving was unreasonable and the subsequent search violated the defendant's Fourth Amendment right to an unreasonable search and seizure. In the police officer's report he states, "I conducted a vehicle stop on this vehicle at Conner Road due to the fact people who are impaired sometimes drive around at night with their high beams on." The National Highway Traffic Safety Administration (NHTSA) has identified 24 cues that would lead an investigating officer to believe someone is driving while impaired. The reason stated by the police officer in this instance is not one of them. The police officer provided no other reason within his report for stopping the defendant. Further, a review of the police officer's video of the investigation shows that the defendant was driving safely and legally, and exhibited no other reasons to be stopped. In *State v. Bonds*, 139 N.C. App. 627 (2000), our Court of Appeals in quoting *Terry v. Ohio*, 392 U.S. 1 (1968), state that, "Before a police officer may stop a vehicle and detain its occupants without a warrant, the officer must have a reasonable suspicion that criminal activity may be afoot." In this instance, there was an insufficient basis for the police officer to form an articulable suspicion to suspect the defendant of impaired driving as stated in his report and to stop the vehicle and detain the driver to conduct an investigatory stop. The police officer's belief was unreasonable based upon the totalilty of the circumstances. Therefore, all evidence obtained during the subsequent search of the vehicle should be suppressed.
2. After the police officer stopped the defendant, he requested the defendant to produce her driver's license, which she did. The police officer returned to his vehicle to ascertain whether or not the license was valid, as well as to determine if there were any outstanding

warrants on her. Upon determining that the defendant's license was valid and that there were no outstanding warrants on her, the police officer returned to the defendant's vehicle where he further unreasonably seized her by asking her to exit her vehicle and step to its rear. The officer did not express to the defendant why he asked her to exit her vehicle, nor did the officer include in his report any reason for doing so. In asking the defendant to exit her vehicle the police officer violated the defendant's Fourth Amendment right against an unreasonable search and seizure. The officer states in his report, "While speaking with Mrs. Bedient I observed she was nervous and was fidgeting with everything in the vehicle." When one views the video tape of the stop, none of this appears to be accurate. Again, before an officer can detain an individual he or she must have a reasonable belief that criminal activity is afoot. *State v. Bonds*, 139 N.C. App. 627 (2000). The defendant does not appear to be doing anything that would lead a reasonable police officer to conclude that criminal activity was afoot. When the officer brought the defendant to the rear of the vehicle he stated he was not going to give her a ticket since she had received a warning ticket earlier. The officer then states in his report, "After handing Mrs. Bedient her license she was free to leave." Despite this statement in the police officer's report, this did not occur. The police officer spoke to the defendant about the need to update her address, but when the defendant attempted to get in her vehicle to leave, the police officer stopped her and told her to remain at the rear of the vehicle while he went and spoke to the passenger. This was an unreasonable seizure of the defendant and the subsequent illegal search of the defendant's vehicle was unreasonable as well. Therefore, all evidence collected by the illegal search and seizure should be suppressed.

This the 9th day of January, 2015.

PAVEY LAW FIRM, P.A.



John J. Pavey, Jr.
Attorney for the Defendant
33 Dillsboro Road
Sylva, NC 28779
828-586-8987
828-631-0309 (facsimile)
j.pavey@pdlawnc.com

CERTIFICATE OF SERVICE

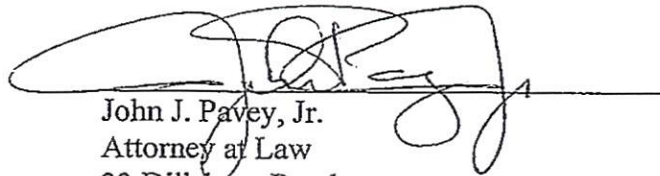
This is to certify that I have this date served all of the other parties to this action with a copy of the foregoing Motion to Suppress:

- () Transmitting a copy of same via tele-facsimile to the last listed fax number of said party or attorney.
- () Depositing a copy of it in the U.S. Mail in a properly addressed envelope with adequate first class postage addressed to each party or their attorney of record
- () Hand delivering a copy of it to the attorney of record for the opposing party
- () Sending it to the attorney of record for the opposing party at her office by a confirmed telefacsimile transmittal for receipt by 5:00 P.M. Eastern time on a regular business day, as evidence by a telefacsimile confirmation.

Chris Matheson
Assistant District Attorney for Jackson County
401 Grindstaff Cove Road
Sylva, NC 28779

This the 9th day of January, 2015.

PAVEY LAW FIRM, P.A.



John J. Pavey, Jr.
Attorney at Law
33 Dillsboro Road
Sylva, NC 28779
828-586-8987
828-631-0309 (Facsimile)
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STATE OF NORTH CAROLINA
COUNTY OF JACKSON

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE #: 13 CRS 050269

FILED
JAN 14 2015
PM 11:46
CLERK, C.S.C.

STATE OF NORTH CAROLINA)
Plaintiff,)
Vs.)
CONSTANCE RENEA BEDIENT)
Defendant.)

AFFIDAVIT IN SUPPORT OF MOTION
TO SUPPRESS EVIDENCE OBTAINED
BY VIRTUE OF A SEARCH WITHOUT
A SEARCH WARRANT

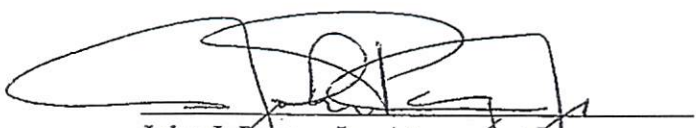
FILED
JAN 14 2015
PM 11:49
CLERK, C.S.C.

The undersigned, being first duly sworn, deposes and says:

1. The Affiant is over the age of 18;
2. That the Affiant is duly licensed and authorized to practice law in the State of North Carolina and is the court-appointed counsel for the above-named Defendant in the above-captioned case.
3. That upon information and belief, the State of North Carolina intends to use at trial evidence illegally seized from the Defendant and/or her vehicle.
4. That upon information and belief, Sergeant Andrew Parker of the Jackson County Sheriff's Department prolonged the traffic stop in order to ask questions of the Defendant regarding unrelated matters.
5. That the prolonging of the traffic stop was unsupported by reasonable articulable suspicion, which violated the Defendant's Fourth Amendment Rights.

This the 20th day of January, 2015.

PAVEY LAW FIRM, P.A.


John J. Pavey, Jr., Attorney at Law
Affiant

STATE OF NORTH CAROLINA

COUNTY OF JACKSON

I, L. Daneen Hollingsworth, a Notary Public of the State of North Carolina, County of Haywood, do certify that before me personally appeared **JOHN J. PAVEY, JR.**, Affiant, personally known to me, or who proved to me by satisfactory evidence (_____), to be the person who signed the preceding or attached record and acknowledged to me that she signed it voluntarily for its stated purpose.

Witness my hand and official seal, this the 20th day of January, 2015.

(Official Seal)



L. Daneen Hollingsworth
(Signature of Notary Public)

My Commission Expires: 10/19/16

2.

STATE V. BEDIENT:

**ORDER DENYING DEFENDANT'S
MOTION TO SUPPRESS**

JUDGE BRADLEY B. LETTS

FILED

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
COUNTY OF JACKSON 2015 MAR 23 PM 4:26 SUPERIOR COURT DIVISION
13 CRS 50269

STATE OF NORTH CAROLINA)
JACKSON CO. C.S.C.)
BY)

v.)
)
CONSTANCE RENE A BEDIENT,)
DEFENDANT.)
_____)

**ORDER ON MOTION
TO SUPPRESS**

THIS MATTER came on for hearing based upon a motion to suppress. Present at the hearing was the assistant district attorney, Ms. Christina Matheson, Mr. Jay Pavey, Esq. on behalf of the defendant and the defendant, Ms. Bedient. The hearing was held on March 16, 2015. After reviewing the court file, reviewing the documents in the file, hearing testimony, reading the indictment, review of relevant case law and hearing arguments of counsel the Court makes the following

FINDINGS OF FACT:

1. The defendant's motion to suppress was filed in this matter on January 19, 2015. This motion challenged the legality of (1) the stop of the vehicle, (2) the scope of the stop and seizure of the defendant, and (3) the search of the defendant's vehicle.
2. The defendant's motion to suppress was filed pursuant to N.C. Gen. Stat. §15A-997. As required by statute, the motion was served on the State in writing and set forth specific grounds for the Court to consider.
3. The affidavit in support of the motion was delayed in filing but the Court finds justifiable excuse existed and, in its discretion, allows the late filing to cure any defect.
4. The motion was timely filed as required by N.C. Gen. Stat. Chapter 15A.
5. A hearing on the motion to suppress was held on March 16, 2015.
6. The motion to suppress was held outside the presence of the jury.
7. During the hearing the Court received evidence both through testimony and documents. Both parties were given an opportunity to present evidence, submit case law, and to make arguments.

8. The Court heard evidence from the State and defendant. The Court reviewed the court files and case law presented on behalf of the State and the defendant and the Court heard arguments from the State and the defendant's counsel.
9. The burden is on the State to establish the challenged evidence is admissible by the preponderance of the evidence. *State v. Barnes*, 158 N.C. App. 606 (2003).
10. The defendant was indicted by the Jackson County Grand Jury on May 12, 2014.
11. Service of the indictment was made on the defendant by and through her attorney on May 13, 2014.
12. The State gave written notice of intent to use evidence found from the search on December 4, 2014.

I. STOP

13. The court received testimony from Sergeant Andy Parker (hereinafter "Sgt. Parker") of the Jackson County Sheriff's Department.
14. The court finds that Sgt. Parker is employed with the Jackson County Sheriff's Department and has been since 2003. That he was on regular patrol February 28, 2013, in Jackson County operating a marked Ford Expedition patrol vehicle.
15. Both the Ford Expedition and Sgt. Parker were configured to record interactions with the public. The Ford has both audio and video recording capabilities while Sgt. Parker was wired to record audio.
16. The stop and subsequent encounter with the defendant was recorded in its entirety and is contained in defendant's exhibit #2.
17. Sgt. Parker was returning from the southern area of Jackson County on Highway 107. Highway 107 is a highway in Jackson County, North Carolina. Sgt. Parker had entered the Sylva city limits and was proceeding north. The vehicle driven by the defendant, Ms. Bedient, was proceeding south.
18. Sgt. Parker observed the high beams of the vehicle were engaged. Based upon a violation of N.C. Gen. Stat. §20-131(a), that being the failure to dim headlights, Sgt. Parker effected a stop. Sgt. Parker did activate his blue lights when he stopped the vehicle.
19. The vehicle stopped was a silver 2003 Mitsubishi Galant.
20. Defendant admitted Exhibits #1 and #2. Defendant's exhibit #2 was a video recording the entire encounter Sgt. Parker had with the defendant. The video was

played in open court where all parties were present and the court had an opportunity to see and hear the contents of the video.

21. Through the admission of Defendant's Exhibit #2, the court was able to determine from the timestamps embedded in the media that the encounter between Sgt. Parker and the defendant began at approximately 11:30 p.m. when the vehicle stop occurred.
22. Sgt. Parker approached the silver Mitsubishi vehicle after making the stop and identified the driver to be Ms. Bedient.
23. Sgt. Parker subsequently identified the defendant in court as Ms. Bedient. This being the same person Sgt. Parker encountered on February 28, 2013.
24. Sgt. Parker had limited knowledge of and prior interaction with defendant but had previously met Ms. Bedient the day before at a house fire of Greg Coggins in the Cashiers Community of Jackson County.
25. Sgt. Parker found the fact that defendant was recently at the residence of Greg Coggins both informative and indicative that possible criminal activity was afoot in that the residence of Greg Coggins is known to local law enforcement as a home were suspected, regular drug activity, drug use and drug transactions occur.
26. In conversing and talking with Ms. Bedient, Sgt. Parker found her to be fidgety in that she was moving about the driver's area, and to a lesser extent the front passenger area of the vehicle, in an unusual manner showing extreme rapidity in her movements and repeated physical actions for no apparent purpose or objective.
27. There was one other person in the vehicle that being a female in the front passenger seat. The front passenger was initially identified as "Tabitha." Ms. Bedient did not identify "Tabitha" any further and did not identify "Tabitha" by providing her last name.
28. Subsequently, additional law enforcement arrived to assist and provide backup to Sgt. Parker. Officer Brooks assisting in the stop ascertained that the last name of "Tabitha", the passenger, was Henry. Tabitha Henry was determined to be the daughter of defendant.
29. Sgt. Parker sought from and the defendant produced her driver's license. It was a North Carolina driver's license. Sgt. Parker returned to his patrol vehicle and conducted a computerized license check. The driver's license was found to be valid for the defendant.
30. Sgt. Parker also conducted a computerized criminal background examination of defendant and determined there were no warrants for her arrest.

31. Throughout the entire time of the computerized license examination, Sgt. Parker was seated in his vehicle and was able to clearly see and observe defendant. This same view is recorded in the video of the entire stop as contained in defendant's exhibit #2. During this time Sgt. Parker clearly observed defendant continue to move about the front area of the car repeatedly, rapidly and seemingly without purpose.
32. During this same time defendant continued to fidget with the sun visor on the driver's side. Defendant repeatedly reached for the sun visor, continued to move the sun visor up and down. These actions were unusual based on the number of times the sun visor was manipulated by defendant coupled with the fact that the encounter occurred at 11:30pm when there was no sunshine, a time not normally associated with the use of the driver's side sun visor.
33. All actions of defendant are accurately documented in Defendant's Exhibit #2.
34. Upon completing the review of the defendant's driver's license and criminal background through his computer, Sgt. Parker returned to the vehicle and defendant. Sgt. Parker asked the defendant to exit the car.
35. The defendant's vehicle continued to run during the stop as is shown in the video. Asking defendant to exit the vehicle was warranted in this case for purposes of officer's safety and to address the issues Sgt. Parker determined were related to the driver's license. Furthermore, as a general practice in Sgt. Parker's approximately 12 years in law enforcement when there are more than two people together in an interaction with law enforcement, he attempts to and has over time found that investigations are more productive if conversations are done separately and apart. Having defendant exit the car and speak to Sgt. Parker was reasonable and warranted under the circumstances.
36. Sgt. Parker inquired regarding the address on the defendant's driver's license. Inquiry was also made about Mr. Greg Coggins and the address of his residence. This was done in an effort to determine whether the address was correct on the driver's license since at the time there existed in the mind of Sgt. Parker a valid, articulable issue regarding whether her residence was with Todd Bedient or Greg Coggins. Such further inquiry by Sgt. Parker was reasonable since failure to change an address on a driver's license after a fixed number of days is a violation of N.C. Gen. Stat. §20-7.1. Sgt. Parker further explained that any delay in changing your address after a fixed number of days when there has been a change of address would be grounds for a criminal offense of having an improper driver's license¹.
37. The interaction and conversation between Sgt. Parker and the defendant was done entirely consistent with and part of the basis for the stop, an inspection of the

¹ The undersigned notes that a violation of N.C. Gen. Stat. §20-7.1 was a Class 2 misdemeanor until 12/1/2013. The date of the offense in this case is 2/28/2013. Violations occurring after 12/1/2013 are now punished as Infractions.

defendant's driver's license and investigation to determine whether the driver's license information was correct, accurate and current.

38. The stop of defendant was lawful and supported by reasonable and articulable facts.
39. The court finds the stop of defendant was not a pretextual stop done simply because Sgt. Parker associated defendant with Greg Coggins and his residence which is a known location of drug activity in Jackson County.

II. UNLAWFULLY EXTENDED AND DELAYED SEARCH

40. The defendant next challenges the length of time and scope of the detention of the defendant after the license check and traffic stop was completed. Defendant asserts that to detain defendant for any period of time after Sgt. Parker advised he was only issuing a verbal warning for the failure to dim headlights was unreasonable and violated her federal and state constitutional rights to be free from unreasonable searches and seizures.
41. Defendant cites as authority for her position *State v. Jackson*, 199 N.C. App. 236 (2009) and *State v. Myles*, 188 N.C. App. 42 (2008).
42. The entire encounter was approximately seven minutes based upon the timestamp in Defendant's Exhibit #2. The stop occurred at approximately 11:30pm. Sgt. Parker returned back and talked to the defendant and advised that she would not receive a ticket at approximately 11:37pm. The entire time from stop to conclusion of traffic and license investigation lasted in total seven minutes.
43. At the conclusion of the interaction with defendant, Sgt. Parker explained to her the concerns over the change in address on the driver's license and further explained the basis for the stop, that being the operation of a vehicle with high beams while failing to dim the high beams for oncoming traffic in violation of N.C. Gen. Stat. §20-131(a).
44. Sgt. Parker provided defendant a second warning from law enforcement on the use of high beams for February 28, 2013, and gave an additional verbal warning about maintaining the proper address on her driver's license. Sgt. Parker further explained that since she had already received one written warning on failure to dim high beams, he would forego issuing a second warning ticket on the same day for the same violation. No ticket, citation or written warning was issued to defendant by Sgt. Parker.
45. Contemporaneously with Sergeant Parker advising her that she would not be charged or cited for any driving offense he returned her driver's license. These events occurred simultaneously at approximately 11:38pm. The court finds this to be a total of approximately 8 minutes after defendant was stopped by Sgt. Parker.
46. The court in *State v. Myles*, 188 N.C. App. 42 (2008) opined

Generally, the scope of the detention must be carefully tailored to its underlying justification. Once the original purpose of the stop has been addressed, there must be grounds which provide a reasonable and articulable suspicion in order to justify further delay." *State v. Falana*, 129 N.C. App. 813, 816, 501 S.E.2d 358, 360 (1998) (citations omitted). To determine whether the officer had reasonable suspicion, it is necessary to look at the totality of the circumstances. *State v. McClendon*, 350 N.C. 630, 636, 517 S.E.2d 128, 133 (1999). "After a lawful stop, an officer may ask the detainee questions in order to obtain information concerning or dispelling the officer's suspicions." *Id.*, 350 N.C. at 636, 517 S.E.2d at 132. "[T]he return of documentation would render a subsequent encounter consensual only if a reasonable person under the circumstances would believe he was free to leave or disregard the officer's request for information." *State v. Kincaid*, 147 N.C. App. 94, 99, 555 S.E.2d 294, 299 (quoting *United States v. Elliott*, 107 F.3d 810, 814 (10th Cir. 1997) (internal citation omitted)(internal quotation marks omitted)).

Myles at 45.

47. *Myles* further stated, "it is necessary to determine whether the "totality of the circumstances" gave rise "to a reasonable articulable suspicion that criminal activity was afoot" to justify Gilmore's further detention of defendant. *Id.* "To determine reasonable articulable suspicion, courts 'view the facts through the eyes of a reasonable, cautious officer, guided by his experience and training' at the time he determined to detain defendant." *State v. Bell*, 156 N.C. App. 350, 354, 576 S.E.2d 695, 698 (2003) (quoting *State v. Munoz*, 141 N.C. App. 675, 682, 541 S.E.2d 218, 222 (2001) (internal citations omitted)(internal quotation marks omitted))." *Id.* at 47.
48. In this case, Sgt. Parker had reasonable articulable suspicion under the totality of the circumstances to further detain defendant. These factors consisted of observing defendant for eight minutes, finding her speech to be stuttering, defendant exhibiting fidgety actions which is consistent with use of methamphetamine, repeated fixation on the driver's side sun visor, failure to initially provide the last name of the passenger or explain the passenger was her daughter, continued operation of the same vehicle with the same lack of headlights on the same day after receiving a warning ticket for the same failure to dim headlights and having been at a residence known by law enforcement in Jackson County to be a location of drug use and drug transactions.
49. The continued detention and investigation of defendant by Sgt. Parker was not unreasonable under the totality of the circumstances.

III. CONSENT TO SEARCH AND SCOPE OF CONSENT

50. At the conclusion of the interaction Sgt. Parker returned to the defendant the driver's license provided for inspection. Contemporaneous with the return of the license, Sgt. Parker asked the defendant "Do you have anything in the vehicle?"

51. The defendant responded, "No. You can look."
52. When analyzing whether further delay and interaction with a citizen is warranted, either consent or reasonable articulable suspicion must be present.
53. As explained in *State v. Jackson*, 199 N.C. App. 236 (2009)

A law enforcement officer may stop and briefly detain a vehicle and its occupants if the officer has reasonable, articulable suspicion that criminal activity may be afoot. *State v. Morocco*, 99 N.C. App. 421, 427, 393 S.E.2d 545, 548 (1990). "Generally, the scope of the detention must be carefully tailored to its underlying justification." *Falana*, 129 N.C. App. at 816, 501 S.E.2d at 360 (internal quotation marks and citation omitted). Once the original purpose of the stop has been addressed, in order to justify further delay, there must be grounds which provide the detaining officer with additional reasonable and articulable suspicion or the encounter must have become consensual. *State v. Myles*, 188 N.C. App. 42, 45, 654 S.E.2d 752, 755, *aff'd per curiam*, 362 N.C. 344, 661 S.E.2d 732 (2008). Where no grounds for a reasonable and articulable suspicion exist and where the encounter has not become consensual, a detainee's extended seizure is unconstitutional. *See id.*

Jackson at 241-42.

54. The defendant provided consent to search the vehicle.
55. Additionally, at the same time consent was given there did exist reasonable articulable suspicion based upon the totality of the circumstances presented to Sgt. Parker which supported further investigation and detention of defendant.
56. In addition to the specific and articulable factors that defendant was observed for eight minutes, the speech stuttered, defendant exhibiting fidgety actions which is consistent with use of methamphetamine, defendant repeatedly manipulated the driver's side sun visor, defendant failed to initially provide the last name of the passenger or explain the passenger was her daughter, defendant continued to drive the same vehicle with the same lack of headlights on the same day after receiving a warning ticket for the same failure to dim headlights issue and was at a residence known by law enforcement in Jackson County to be a location of drug use and drug transactions, after getting consent to search the vehicle defendant then attempted to return to the vehicle thereby impeding the search of Sgt. Parker.
57. After explaining to defendant that before a search could be conducted of the vehicle she would need to exit the car, defendant exited the car. The passenger, Ms. Henry, also exited the car at the request of law enforcement at the same time.
58. As soon as the passenger exited the vehicle, Sgt. Parker was able to see a Corona beer bottle. The beer bottle was open, and there was a small amount of yellow liquid in the beer bottle, which appeared to be alcohol.

59. The beer bottle was in the front compartment of the vehicle next to the console, placed between the console and the passenger's seat. The partially full beer bottle was in plain view before Sgt. Parker began his search and was seen by Sgt. Parker at the moment the passenger Ms. Henry exited the vehicle.
60. Inquiring of both defendant and Ms. Henry, the defendant admitted the beer was both the defendant's and her daughter's and defendant further confessed to Sgt. Parker she was drinking the beer while driving.
61. Sgt. Parker continued his search.
62. Sgt. Parker found nothing lying in either the driver's seat or the passenger's seat.
63. A pocketbook was on the front passenger's side within reach of the driver's seat. When asked about the pocketbook and the ownership, the defendant explained the pocketbook belonged to her.
64. The wallet and all the contents in the pocketbook belonged to defendant.
65. The State admitted into evidence State's exhibits #2, #3, #4, #7, #8, #9, and #10, for illustrative purposes to assist in explaining the testimony of Sgt. Parker.
66. Sgt. Parker search the open pocketbook. Found in the pocketbook of the defendant were multiple baggies which contained a white crystal substance believed by Sgt. Parker to be controlled substances.
67. Consent was given by defendant, the individual in control of the vehicle and the purse, to search the vehicle and purse pursuant to N.C. Gen. Stat. §15A-222(2).
68. At no time did defendant limit the scope of what Sgt. Parker could search in the car.
69. The search did not exceed the appropriate and proper scope of the consent to search given by defendant.
70. The search of the vehicle and purse was lawful.
71. Finally, the court finds that in addition to consent to search and reasonable articulable suspicion, the open beer was in plain view of Sgt. Parker and would have been discovered through observation even without consent to search.

IV. SEARCH NOT CONDUCTED INCIDENT TO ARREST

72. This search of defendant was not a search incident to arrest. Defendant had not been arrested prior to Sgt. Parker commencing the search.

73. Since the search was not conducted incident to arrest, the requirements of *Arizona v. Gant*, 556 U.S. 332 (2009) are not applicable to this case.
74. The issues which must exist as set forth in *Arizona vs. Gant*, officer's safety and potential destruction of evidence, therefore are inapplicable to this case.
75. In two recent North Carolina cases, *State v. Toledo*, 204 N.C. App. 170 (2010) and *State v. Galati*, 714 S.E.2d. 867 (2011), the critical distinction when consent is given allows for a clear, concise and informative distinction of the proper and applicable law and the correct analysis necessary for trial courts to apply.
76. As the court explained in *State v. Toledo*,

Here, Sergeant Memmelaar lawfully stopped defendant's vehicle for following too closely and received defendant's consent to search the vehicle. Consent to search a vehicle may be given by the person in apparent control of the vehicle and its contents. N.C. Gen. Stat. § 15A-222(2) (2009); *see also State v. Wilson*, 155 N.C. App. 89, 97, 574 S.E.2d 93, 99 (2002). Upon performing a ping test on a tire located inside the vehicle, Sergeant Memmelaar detected a strong odor of marijuana. As noted by the trial court, the search of the tire was within the scope of consent. After marijuana was detected, defendant was immediately arrested for possession of marijuana. Thereafter, it was lawful for Sergeant Memmelaar to search the entire vehicle incident to defendant arrest for possession of marijuana. The discovery of marijuana in the first tire also provided probable cause to believe the vehicle was being used to transport marijuana, and, therefore, Sergeant Memmelaar had probable cause to search every part of the vehicle that may have concealed marijuana. *See Ross*, 456 U.S. 798, 102 S. Ct. 2157, 72 L. Ed. 2d 572. We hold that the search of defendant's vehicle and seizure of marijuana in the second tire, after detecting the smell of marijuana in the first tire, did not violate defendant's Fourth Amendment right against unreasonable searches and seizures. Accordingly, we reverse the trial court's order to suppress the evidence discovered in the second tire and remand for further proceedings.

Toledo at 204.

77. As found in *Toledo* consent to search obviates the need to address the issues which must be considered in a search incident to arrest as delineated in *Arizona v. Gant*.

**BASED UPON THE FOREGOING FINDINGS OF FACT
THE COURT MAKES THE FOLLOWING CONCLUSIONS OF LAW:**

1. The Court has jurisdiction over the subject matter and persons.
2. The burden is on the State to establish the challenged evidence is admissible by the preponderance of the evidence. *State v. Barnes*, 158 N.C. App. 606 (2003).
3. The defendant's Motion to Suppress was in proper form.

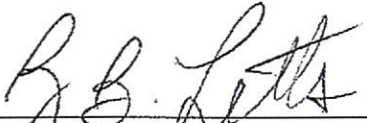
4. Sergeant Parker had reasonable suspicion to stop the defendant's vehicle for failing to properly dim her headlights which is a violation of N.C. Gen. Stat. §20-131(a).
5. Sgt. Parker had reasonable suspicion to further question the defendant in that under the totality of the circumstances there existed specific articulable facts to indicate that criminal activity was afoot.
6. The detention of the defendant was not an unreasonable delay and did not go beyond the scope of the stop.
7. The defendant voluntarily consented and agreed to additional questioning and the search of the car, its contents and her pocketbook once the purpose of the traffic stop was over.
8. The search was lawful based upon consent given by defendant and the evidence seen in plain view by law enforcement.
9. The results of the search of the defendant's vehicle and pocketbook are admissible.
10. The stop and search of defendant and her vehicle and pocketbook was not a pretextual stop and search done simply because Sgt. Parker associated defendant with Greg Coggins.

BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, THE COURT HEREBY ORDERS, ADJUDGES AND DECREES:

1. That the defendant's motion to suppress the stop shall be, and hereby is, **DENIED**.
2. That the defendant's motion to suppress the detention of the defendant and the fruits derived therefrom shall be, and hereby is, **DENIED**.
3. That the defendant's motion to suppress the search of the vehicle and pocketbook of defendant shall be, and hereby is, **DENIED**.

Entered this the 16th day of March, 2015.

Signed this the 23rd day of March, 2015.



Bradley B. Letts
Superior Court Judge Presiding

FILED

CERTIFICATE OF SERVICE

2015 MAR 23 PM 4:26
JACKSON CO. CLERK'S OFFICE

The undersigned certifies that the attached Order was served upon the party(s) to this action by depositing a copy of the same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record or pro se party(s), in a post office or official depository under the exclusive care and custody of the United States Postal Service, on this the 23 day of March, 2015.

Christina Matheson
Assistant District Attorney
(placed in box in Jackson Co. Clerk's Office)

Jay Pavey, Esq.
(placed in box in Jackson Co. Clerk's Office)


Superior Court Judicial Assistant

3.

STATE V. BEDIENT:

**DEFENDANT/APPELLANT'S BRIEF
FILED BY APPELLATE DEFENDER
EMILY H. DAVIS**

NORTH CAROLINA COURT OF APPEALS

STATE OF NORTH CAROLINA)	
)	
v.)	<u>From Jackson</u>
)	
CONSTANCE RENEA BEDIENT)	

DEFENDANT-APPELLANT'S BRIEF

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NORTH CAROLINA COURT OF APPEALS

STATE OF NORTH CAROLINA)	
)	
v.)	<u>From Jackson</u>
)	
CONSTANCE RENE A BEDIENT)	

DEFENDANT-APPELLANT’S BRIEF

ISSUES PRESENTED

- I. DID THE TRIAL COURT ERR BY MAKING UNSUPPORTED FACTUAL FINDINGS AND USING THE UNSUPPORTED FINDINGS TO MAKE DETERMINATIVE LEGAL CONCLUSIONS AND DENY THE MOTION TO SUPPRESS?

- II. DID THE TRIAL COURT ERR BY DENYING THE MOTION TO SUPPRESS WHEN MS. BEDIENT’S NERVOUS CONDUCT AND ASSOCIATION WITH GREG COGGINS FAILED TO PROVIDE SERGEANT PARKER WITH INDIVIDUALIZED ARTICULABLE SUSPICION MS. BEDIENT WAS ENGAGED IN CRIMINAL ACTIVITY?

STATEMENT OF THE CASE

On May 12, 2014, Ms. Bedient was indicted for possession of methamphetamine and possession of drug paraphernalia. (Rpp. 5-6)¹ At the March 16, 2015 session of Jackson County Superior Court, before the Honorable Bradley B. Letts, Ms. Bedient's suppression motion was heard and denied by written order. (Rpp. 10, 41; App. 1) On March 17, 2015, Ms. Bedient pled guilty to possession of methamphetamine, specifically reserving her right to appeal the suppression ruling. In exchange, the State dismissed the drug paraphernalia charge. Accepting Ms. Bedient's plea, the trial court imposed 5 to 15 months imprisonment, suspended for 12 months of probation. From judgment entered, Ms. Bedient gave oral notice of appeal in open court. (Tpp. 99-100; Rpp. 54-61)

STATEMENT OF GROUNDS FOR APPELLATE REVIEW

The ground for review is a final judgment in a criminal case in which the denial of a suppression motion was preserved for appeal pursuant to N.C. Gen. Stat. § 7A-27(b) and § 15A-979(b).

STATEMENT OF THE FACTS

At the March 16, 2015 suppression hearing, Jackson County Sheriff Sergeant Andy Parker testified about the February 28, 2013 traffic stop of Ms. Bedient. Ms. Bedient was driving a silver Mitsubishi Gallant. The encounter was

¹ The record on appeal is cited as "Rp." The transcript is cited as "Tp." The suppression order appended to this brief is cited as "App." (App. 1; Rp. 41)

recorded by Parker's patrol car camera. The video was admitted and published as Defense exhibit 2. (Defense Ex. 2; App. 1-10)² Evidence at the suppression hearing tended to show the following.

A. Events on Highway 107

At approximately 11:30 p.m. on February 28, 2013, Sergeant Parker was driving his marked patrol vehicle on highway 107 in Sylva when a silver Mitsubishi Gallant approached in the opposite lane of travel. The Mitsubishi's high beams were activated. Parker made a U-turn, followed the Mitsubishi for 29 seconds, and activated his blue lights to stop the car for failing to dim high beams in violation of N.C. Gen. Stat. § 20-131(a). When Parker's blue lights started, the Mitsubishi immediately activated its right turn signal, turned right, and pulled over on the side of Conner Road. (Defense Ex. 2 at 00:01-44; Tpp. 8-10) Parker testified he stopped the Mitsubishi for failing to dim high beams. The Mitsubishi did not violate any other law. Parker never suspected the driver was impaired. (Tpp. 38-39; Defense Ex. 1 at 2)

B. Events during the Initial Encounter

Positioning his patrol car behind the Mitsubishi, Parker approached the driver's door of the vehicle. There were two vehicle occupants: the female driver

² Exhibits are cited as "Defense Ex." Defense Ex. 2 (traffic stop video) was received by this Court on September 18, 2015, and placed in the permanent file. Defense Ex. 2 is cited pursuant to the video timestamp as "Defense Ex. 2 at mm:ss." Three copies of Defense Ex. 1 (report) were filed with the Court on October 6, 2015. Defense Ex. 1 is cited pursuant to its original handwritten pagination as "Defense Ex. 1 at x.

and female front seat passenger. The driver was Ms. Bedient. When Parker reached the driver's door, Ms. Bedient immediately advised she was driving with high beams. With "stuttered" speech, Ms. Bedient explained that just before Parker's traffic stop, a trooper stopped Ms. Bedient for driving with one headlight. (Tpp. 9-11, 20; Defense Ex 1 at 2) The trooper's stop happened as Ms. Bedient was driving to McDonalds. Parker's stop happened immediately or soon after Ms. Bedient left McDonalds. The trooper issued Ms. Bedient a written warning for driving with one headlight. Parker reviewed the written warning. The trooper advised Ms. Bedient she could use high beams to temporarily resolve the headlight problem. (Defense Ex. 2 at 00:54-1:55; Defense Ex 1 at 2; Tpp. 9-11, 20)

Leaning in the driver's window, Parker asked the front seat passenger to identify herself. Ms. Bedient advised the passenger was her daughter. The passenger identified herself as Tabitha. When Parker asked for Ms. Bedient's license, Ms. Bedient spent approximately 25 seconds locating and providing her license. (Defense Ex. 2 at 1:52-60, 2:00-25; Tp. 12) Reviewing Ms. Bedient's license, Parker asked: "Where have I seen you before?" (Defense Ex. 2 at 2:27) Ms. Bedient responded: "At the fire last night." (Defense Ex. 2 at 2:27) Parker returned to his patrol vehicle with Ms. Bedient's license. The initial encounter lasted approximately 2 minutes. (Defense Ex. 2 at 00:56-3:05)

At the suppression hearing, Parker testified Ms. Bedient was nervous during the initial encounter. Parker believed Ms. Bedient was nervous because she was stuttering and “fidgeting with things in the car.” (Tpp. 9-11, 21, 40; Defense Ex. 1 at 2) When asked what “fidgeting” meant, Parker testified Ms. Bedient was “just all over the place,” reaching for areas in the vehicle including the console and glove compartment. (Tp. 11) Parker believed the conduct was suspicious because Parker did not know what Ms. Bedient was looking for in the areas she was accessing. Parker testified Ms. Bedient looking for her license. Parker believed the conduct was suspicious because a console and glove compartment were odd locations for a driver to access. Parker testified Ms. Bedient located her license in the console, glove compartment, or sun visor. (Defense Ex. 2 at 2:00-25; Tpp. 11-12, 43)

Regarding his prior encounter with Ms. Bedient, Parker explained he saw Ms. Bedient at a house fire the night before the traffic stop. The house fire occurred in Cashiers on February 27, 2013. The traffic stop took place in Sylva on February 28, 2013. Greg Coggins resided in the house that burned. When Parker arrived at the Cashiers house fire on February 27, 2013, Coggins and Ms. Bedient were two of approximately 15 community members on scene. According to Parker, Greg Coggins’ name had “name ha[d] been all over the sheriff’s office for

methamphetamines” since 2003. (Tpp. 16-17, 44-45) Parker called Coggins a “drug user” and “main man.” (Tpp. 17, 44-45)

C. Events during License and Warrant Checks

While Ms. Bedient and Tabitha remained in the Mitsubishi, Parker returned to his patrol vehicle with Ms. Bedient’s license. For the next 3 minutes, Parker conducted record checks. During the record checks, Ms. Bedient “appeared to reach for the sun visor [] several” times, touched the steering wheel, obtained a document from the visor or visor area, and opened and closed the visor. (Defense Ex. 2 at 2:48-4:45; Tpp. 12-14) Based on computerized record checks, Parker determined Ms. Bedient had a valid license and no warrants. Parker determined Tabitha’s last name was Henry. Tabitha had a South Carolina license and no license problems or warrants in North Carolina. (Tpp. 12-15)

D. Subsequent Events at the Traffic Stop

After completing record checks, Parker returned to the driver’s door of the Mitsubishi and directed Ms. Bedient to exit the car. While Tabitha remained in the front passenger seat of the Mitsubishi, Parker and Ms. Bedient stood at the rear of the vehicle. Parker questioned Ms. Bedient about Tabitha’s identity, prior conduct, and license status. Returning to the driver’s door of the Mitsubishi, Parker examined Tabitha about her license status and voter registration. (Defense Ex. 2 at 6:14-7:07; Tpp. 14-15) After questioning Tabitha, Parker returned to the rear of

the Mitsubishi and advised Ms. Bedient he was not issuing a written warning or citation for any violation. After giving an oral warning for failure to dim high beams (Defense Ex. 2 at 6:14-7:13; Tpp. 14-15, 18-19), Parker questioned Ms. Bedient about the address on her license:

PARKER: When are you going to “change your address?”

MS. BEDIENT: I am not “going to change my address.”

PARKER: If you are “not going to live at this address, you [have] to.”

MS. BEDIENT: I am not “living there.” I am not going to “live there.”

PARKER: You only have “30 days to change it.”

MS. BEDIENT: “Ok.”

(Defense Ex. 2 at 7:38-50) *See* N.C. Gen. Stat. § 20-7.1 (providing 60 days after relocation to obtain duplicate license with new residential address). The address on Ms. Bedient’s license was Ms. Bedient’s address. Parker questioned Ms. Bedient about the address because Parker believed Ms. Bedient lived with Coggins. Parker believed Ms. Bedient lived with Coggins because Ms. Bedient was at Coggins’ house on February 27, 2013, and at some point in the past, Ms. Bedient’s husband told police Ms. Bedient was living with Coggins. The husband’s undated cohabitation claims were never investigated. (Tpp. 44-45)

After giving an oral warning about the license address, Parker -- still in possession of Ms. Bedient's license -- continued to examine Ms. Bedient:

PARKER: Have you "ever been in trouble with anything?"

MS. BEDIENT: "No, sir." I have never "been in trouble."

PARKER: "Never?"

MS. BEDIENT: "No, sir."

PARKER: Do you "have anything in that car?"

MS. BEDIENT: "No." You "can look."

(Defense Ex. 2 at 7:58-8:13; Tpp. 18-19, 49, 52) After Ms. Bedient said "no, you can look," Parker placed Ms. Bedient's license on the trunk lid for several seconds before retrieving the license and handing it to Ms. Bedient. (Defense Ex. 2 at 8:04-13; Tpp. 49, 52) When Parker said he was going to speak with Tabitha, Ms. Bedient returned to the driver's door of the Mitsubishi, opened the driver's door, and was seated or almost seated in the driver's seat when Parker confronted Ms. Bedient at the driver's door. Parker directed Ms. Bedient to exit the car and "stop[ped] [Ms. Bedient] from leaving" the encounter because Ms. Bedient had "already . . . g[iven] [Parker] consent to search the car." (Tp. 50) Parker did not want to search the car while Ms. Bedient was "sitting in it." (Tpp. 19, 50; Defense Ex. 2 at 8:14-32)

After Ms. Bedient exited the car, Parker opened the front passenger door and directed Tabitha to exit the vehicle. After Tabitha exited the car, Parker saw a partially empty beer bottle wedged between the console and front passenger seat. The bottle was not visible until Tabitha exited the vehicle. Parker did not observe the bottle until he started the search. When questioned about the bottle, Ms. Bedient “stutter[ed] like she was nervous” and advised she consumed some of the beer. (Tpp. 21, 23; Defense Ex. 2 at 8:37-59) Searching the car, Parker found 0.28 grams of methamphetamine in a handbag. When questioned, Ms. Bedient advised the handbag was hers. Parker arrested Ms. Bedient. (Defense Ex. 2 at 8:58-12:35; Tpp. 25-33)

Parker testified he continued to detain Ms. Bedient after the purpose of the stop ended based on (i) Ms. Bedient’s conduct when Parker first approached the vehicle, and (ii) Ms. Bedient’s association with Coggins. Ms. Bedient’s conduct was suspicious because when Parker asked for her license, Ms. Bedient reached “here and there,” accessing areas in the vehicle looking for her license. (Tp. 43) According to Parker, a “normal person” sits “perfectly still” in the car and provides her license to police “right off the bat.” (Tp. 43) Ms. Bedient’s association with Coggins was suspicious because anyone who “hangs out with [] Coggins is on drugs.” (Tp. 45) Parker did not believe Ms. Bedient was impaired by any substance. (Tpp. 9-11, 21, 40, 44-45, 52-53)

E. Denial of the Suppression Motion

Following the presentation of the evidence, the State asserted the vehicle search was lawful because Ms. Bedient gave consent to search the car during a consensual encounter or continued detention supported by reasonable suspicion. As the nonconsensual encounter was unsupported by reasonable suspicion, and any consent was invalid, defense counsel argued the detention and search were unlawful. (Tpp. 59-68) Denying Ms. Bedient's motion, the trial court concluded: (i) the extended detention was supported by reasonable suspicion, (ii) based on valid consent to search and a beer bottle in plain view, the vehicle search was lawful, and (iii) evidence derived from the detention and search was admissible. (App. 1-10)

STANDARD OF REVIEW

On appeal from the denial of a suppression motion, the trial court's findings of fact must be supported by competent evidence. Reviewed *de novo*, conclusions of law must be legally correct and supported by the factual findings. *State v. Barnhill*, 166 N.C. App. 228, 230-31, 601 S.E.2d 215, 217 (2004); see *In re Helms*, 127 N.C. App. 505, 510, 491 S.E.2d 672, 675 (1997) (regardless of label, a determination requiring judgment or application of law is a legal conclusion reviewed *de novo*). Under *de novo* review, this Court considers the matter anew

and substitutes its own judgment for that of the trial court. *State v. Williams*, 362 N.C. 628, 632-633, 669 S.E.2d 290, 294 (2008).

ARGUMENT

I. THE TRIAL COURT ERRED BY MAKING UNSUPPORTED FACTUAL FINDINGS AND USING THE UNSUPPORTED FINDINGS TO MAKE DETERMINATIVE LEGAL CONCLUSIONS AND DENY THE MOTION TO SUPPRESS.

Several factual findings were unsupported by the evidence. Because the trial court relied on the unsupported findings to make determinative legal conclusions and deny the suppression motion, the unsupported findings were erroneous. *E.g.*, *State v. Weaver*, ___ N.C. App. ___, 752 S.E.2d 240, 243-44 (2013). The unsupported findings cannot be used to support the suppression ruling. *Id.* at 244.

A. Findings that Ms. Bedient failed to explain the passenger was her daughter were unsupported.

In findings 48 and 56, the trial court stated: Ms. Bedient failed to explain the passenger was her daughter or initially provide the passenger's last name. (App. 6-7) In finding 27, the trial court stated: Ms. Bedient did not provide Tabitha's last name or identify Tabitha any further. (App. 3) During the initial encounter, Ms. Bedient told Parker the passenger was Ms. Bedient's daughter. After record checks, Ms. Bedient again advised Parker the passenger was her daughter Tabitha. (Defense Ex. 2 at 1:52-60, 6:27-31, Defense Ex. 1 at 2; Tp. 12; Rp. 25) Findings to the contrary were unsupported. If findings suggested Ms. Bedient failed to

provide requested information or was otherwise evasive, the findings were likewise unsupported. In response to direct questioning, Ms. Bedient advised the passenger was her daughter Tabitha. (Defense Ex. 2 at 6:27-31)

B. Findings that Ms. Bedient's fidgeting was consistent with methamphetamine use were unsupported.

In findings 48 and 56, the trial court stated: Ms. Bedient exhibited fidgeting consistent with methamphetamine use. (App. 6-7) Parker testified Ms. Bedient's fidgeting indicated nervousness, not methamphetamine use. (Tpp. 9-11, 21, 40; Defense Ex. 1 at 2) Parker never testified Ms. Bedient's conduct was consistent with methamphetamine use. Parker never testified he had experience with movements of methamphetamine users. While Parker believed anyone associated with Coggins was on drugs, Parker never testified Ms. Bedient appeared to be on methamphetamines or any other drugs. Parker believed Ms. Bedient was unimpaired by any substance. (Tpp. 9-11, 21, 38-40, 45) Testimony Ms. Bedient was unimpaired and fidgeted because she was nervous could not be reasonably construed to mean fidgeting consistent with methamphetamine use. The video likewise failed to support the trial court's findings. (Defense Ex. 2 at 0:58-8:15)

C. Findings that Ms. Bedient moved with extreme rapidity were unsupported.

In finding 26, the trial court stated: During the initial encounter, Ms. Bedient was fidgeting, showing "extreme rapidity in her movements[.]" (App. 3) Parker

testified Ms. Bedient's fidgeting -- accessing different areas inside the car -- was suspicious and indicated nervousness. (Tpp. 10-12, 40, 43) No testimony described any movement as rapid, fast, or extremely rapid. The video likewise failed to show extreme rapidity in movement. (Defense Ex. 2 at 00:56-3:05) Findings to the contrary were unsupported.

D. Findings that Coggins' residence was known for regular drug activity, drug use, and drug transactions were unsupported.

In finding 39, the trial court stated: Coggins' residence was known for "drug activity." (App. 5) In finding 44, the trial court stated: Parker found Ms. Bedient's presence at Coggins' residence indicative of criminal activity because Coggins' residence was known for "suspected, regular drug activity, drug use[,] and drug transactions[.]" (App. 5) In findings 48 and 56, the trial court stated: Ms. Bedient was at Coggins' residence, a location known for "drug use and drug transactions." (App. 6-7) While Parker testified Coggins was a drug user and "main man" whose "name ha[d] been all over the sheriff's office for methamphetamines" since 2003 (Tpp. 16-17, 44-45), Parker never testified the Cashiers house was known for drug deals, drug use, or drug activity on the night of the traffic stop, in February 2013, or at any other time. Parker's belief anyone associated with Coggins was on drugs did not support reasonable inferences the Cashiers residence was known for regular drug activity, drug use, or drug deals. (Tp. 45) Findings to the contrary were unsupported.

E. Findings that during record checks, Ms. Bedient continued to move repeatedly, rapidly, and seemingly without purpose were unsupported.

In finding 31, the trial court stated: During record checks, Parker observed Ms. Bedient continue to move “repeatedly, rapidly[,] and seemingly without purpose.” (App. 4) Parker’s testimony -- Ms. Bedient reached for the visor several times (Tp. 14) -- showed repeated movement for the purpose of accessing the visor. It did not support reasonable inferences of rapid movement seemingly without purpose. The video showed movement for purposes of touching the steering wheel, accessing the visor, and obtaining and reviewing a document. (Defense Ex. 2 at 2:48-4:44) Movement or repeated movement with apparent or actual purpose did not tend to show movement seemingly without purpose. Evidence of no movement for approximately 2.25 minutes of the 3-minute record checks failed to support reasonable inferences of continued rapid movement during the record checks. (Defense Ex. 2 at 4:44-6:18) *The Oxford English Reference Dictionary* 311 (2d ed. 1996) (continue means “persist in, maintain, not stop”). Findings to the contrary were unsupported.

F. Findings that Ms. Bedient continued to fidget with the visor, continued to move the visor up and down, and exhibited repeated fixation on the visor were unsupported.

In finding 32, the trial court stated: During record checks, Ms. Bedient continued to fidget with the visor and continued to move the visor up and down.

(App. 4) In findings 48 and 56, the trial court stated: Ms. Bedient exhibited “repeated fixation” on the visor. (App. 6-7) Parker’s testimony and the video established Ms. Bedient reached for the visor several times, opened and closed the visor one time, and touched the visor in a manner consistent with obtaining or returning a document and using the vanity mirror. (Defense Ex. 2 at 3:30, 4:02-15, 4:20, 4:44; Tp. 14) This evidence failed to support reasonable inferences of continued fidgeting with, continued up-and-down movement of, or repeated fixation on the visor. *The Oxford Dictionary* at 311 (continue means “persist in, maintain, not stop”); *id.* at 526 (fixation means “an abnormal attachment to persons or things”). Findings to the contrary were unsupported.

G. Findings that Ms. Bedient received two warnings for high beams and continued to drive a vehicle “lacking headlights” were unsupported.

In finding 44, the trial court recited: Parker gave Ms. Bedient a second warning for high beams on February 28, 2013, and Ms. Bedient “had already received one written warning” for failure to dim high beams. (App. 5) In findings 48 and 56, the trial court stated: Ms. Bedient continued to operate “the same vehicle with the same lack of headlights on the same day after receiving a warning ticket for the same failure to dim headlights.” (App. 6-7) The only warnings Ms. Bedient received on February 28, 2013, were (i) the trooper’s written warning for driving with one headlight, and (ii) Parker’s oral warnings for failure to dim high

beams and failure to change the address on a license. (Tpp. 10-11, 18, 40-41; Defense Ex. 2 at 00:54-1:55, 7:38-50; Rp. 25; Defense Ex. 1 at 2) Ms. Bedient did not receive two warnings for failure to dim high beams. Ms. Bedient did not receive any written warning, ticket, or citation for failure to dim high beams. No evidence suggested Ms. Bedient operated a vehicle “lack[ing] [] headlights” at any time. A written warning for driving with one headlight could not be reasonably construed to establish operation of a vehicle lacking headlights. Findings to the contrary were unsupported.

H. Findings regarding the sequence of material events were unsupported.

In finding 45, the trial court found these events occurred simultaneously and contemporaneously: (i) Parker advised Ms. Bedient he was not issuing a written warning or citation for any offense, and (ii) Parker returned Ms. Bedient’s license. (App. 5) In finding 50, the trial court found these events occurred contemporaneously: (i) Parker asked Ms. Bedient if she had anything in the car, and (ii) Parker returned Ms. Bedient’s license. (App. 6) The video established the following sequence of events: (i) Parker advised he was not issuing a written warning or citation (Defense Ex. 2 at 7:11-13), (ii) Parker asked if Ms. Bedient had anything in the vehicle (Defense Ex. 2 at 8:03-8:05), and (iii) Parker returned Ms. Bedient’s license. (Defense Ex. 2 at 8:10-11; Tpp. 48-52)

As the return of Ms. Bedient's license occurred after Parker advised no written warning or citation would be issued, the events did not occur simultaneously or contemporaneously. *The Oxford Dictionary* at 1352 (simultaneous means occurring "at the same time"); *id.* at 310 (contemporaneous means "existing or occurring at the same time"). As the return of the license occurred after Parker asked if there was anything in the car, the events were not contemporaneous. *See id.* Findings to the contrary were unsupported. If "simultaneous" or "contemporaneous" meant events occurred during the same general time period, the findings did not support determinative legal conclusions regarding the nature of the encounter or validity of consent to search. (App. 5-10) *See Rodriguez v. United States*, ___ U.S. ___, 191 L. Ed. 2d 492, 498-99 (2015); *State v. Myles*, 188 N.C. App. 42, 45, 654 S.E.2d 752, 754, *aff'd per curiam*, 362 N.C. 344, 661 S.E.2d 732 (2008).

I. Findings that Ms. Bedient only attempted to return to the Mitsubishi were unsupported.

In finding 56, the trial court stated: After giving consent to search the car, Ms. Bedient "attempted to return" to the Mitsubishi "thereby impeding the search[.]" (App. 7) If "attempted to return" suggested Ms. Bedient did not actually return to the vehicle, the findings were unsupported. After giving consent to search, Ms. Bedient actually returned to the vehicle and was seated or almost seated in the driver's seat when Parker ordered Ms. Bedient to exit the car.

(Defense Ex. 2 at 8:14-32; Tpp. 19, 47-50) Findings to the contrary were unsupported.

J. Findings that Ms. Bedient exited the car after Parker explained a car search, and Tabitha exited the car at the same time were unsupported by the evidence.

In finding 57, the trial court stated: After Parker explained Ms. Bedient needed to exit the car before a car search could be conducted, Ms. Bedient exited the car, and Tabitha exited the car “at the same time.” (App. 7) Evidence established the following sequence of events: (i) Ms. Bedient gave consent to search, (ii) Parker returned Ms. Bedient’s license, (iii) Ms. Bedient returned to the driver’s door of the Mitsubishi, opened the driver’s door, and was seated or almost seated in the car when Parker confronted Ms. Bedient and directed her to exit the car, (iv) Ms. Bedient exited the car, (v) Parker opened the front passenger door and directed Tabitha to exit the car, and (vi) Tabitha exited the car. (Defense Ex. 2 at 8:14-59; Tpp. 47-50)

No evidence suggested Ms. Bedient exited the car after Parker explained car search requirements. While Parker testified he would not conduct the car search with Ms. Bedient “sitting in” the vehicle (Tp. 19), no evidence suggested Parker relayed that information to Ms. Bedient. Findings to the contrary were unsupported. If findings suggested Ms. Bedient exited the car voluntarily, the findings were likewise unsupported as all evidence established Ms. Bedient exited

the car because Parker directed her to exit the car. Evidence that Tabitha exited the car after Ms. Bedient exited the car did not show the events occurred at the same time. Findings to the contrary were unsupported.

K. Findings regarding the sequence of material events were unsupported.

In finding 58, the trial court stated: Parker saw the beer bottle “as soon as” Tabitha exited the car. (App. 7) In finding 59, the trial court stated: Parker saw the beer bottle “at the moment” Tabitha exited the car, and the bottle was “in plain view before” Parker started the vehicle search. (App. 8) If findings suggested the beer bottle was visible before Tabitha was out of the car, the findings were unsupported. Parker testified the bottle was not visible until Tabitha “had stepped from the vehicle.” (Tp. 23) If findings suggested Parker observed the bottle or the bottle was visible before Parker started the search, the findings were unsupported. Parker testified he “had [] begun [the] search” when he observed the beer bottle. (Tp. 23; Defense Ex. 2 at 8:14-9:00)

II. THE TRIAL COURT ERRED BY DENYING MS. BEDIENT’S MOTION TO SUPPRESS AS MS. BEDIENT’S NERVOUS CONDUCT AND ASSOCIATION WITH GREG COGGINS FAILED TO PROVIDE SERGEANT PARKER WITH INDIVIDUALIZED ARTICULABLE SUSPICION MS. BEDIENT WAS ENGAGED IN CRIMINAL ACTIVITY.

After the original purpose of the stop ended, Sergeant Parker continued to detain Ms. Bedient based on Ms. Bedient’s nervous behavior and association with

Greg Coggins. As the continued detention was nonconsensual and unsupported by articulable suspicion of criminal activity, the additional detention was unlawful. *See Rodriguez v. United States*, ___ U.S. ___, 191 L. Ed. 2d 492, 498 (2015); *Florida v. Royer*, 460 U.S. 491, 500, 75 L. Ed. 2d 229, 238 (1983); U.S. Const. amends. IV, XIV; N.C. Const. art. I, § 20. Any consent to search the car was invalid. *Royer*, 460 U.S. at 507-508, 75 L. Ed. 2d at 243. As the vehicle search was unjustified, evidence derived from the unlawful seizure and search was inadmissible against Ms. Bedient. *Wong Sun v. United States*, 371 U.S. 471, 487-88, 9 L. Ed. 2d 441, 455 (1963). The trial court erred by denying the suppression motion. Ms. Bedient's conviction must be reversed.

When an officer stops a car for a traffic violation, the driver is seized under the Fourth Amendment. *Brendlin v. California*, 551 U.S. 249, 255-56, 168 L. Ed. 2d 132, 138-39 (2007); U.S. Const. amends. IV, XIV; N.C. Const. art. I, § 20. To be lawful, the scope of the seizure must be carefully tailored to the original purpose of the stop. *Rodriguez*, 191 L. Ed. 2d at 498-99 (when purpose of stop is a traffic violation, investigative action within scope of seizure may include license and warrant checks and determining whether to issue citation). When the original purpose of the stop ends, authority for the seizure ends, and the driver must be allowed to leave the encounter. Any additional detention of the driver, even a *de minimis* extension or delay, is unlawful unless the encounter is consensual or

supported by reasonable suspicion of criminal activity. *Id.* at 498-99; *State v. Myles*, 188 N.C. App. 42, 45, 654 S.E.2d 752, 755, *aff'd per curiam*, 362 N.C. 344, 661 S.E.2d 732 (2008).

To the extent any North Carolina case suggests there is an exception for *de minimis* detentions or delays, *see, e.g., State v. Sellars*, 222 N.C. App. 245, 249-50, 730 S.E.2d 208, 211 (2012); *State v. Brimmer*, 187 N.C. App. 451, 455, 653 S.E.2d 196, 198 (2007), those decisions are not controlling. *State v. Warren*, ___ N.C. App. ___, 775 S.E.2d 362, 365 (2015). *Rodriguez* is controlling and applicable as Ms. Bedient's appeal was "pending when [*Rodriguez*] was issued[.]" *State v. Morgan*, 359 N.C. 131, 154, 604 S.E.2d 886, 900 (2004). Under *Rodriguez*, 191 L. Ed. 2d at 498-99, there is no exception for *de minimis* detentions or delays.

A. After the original purpose of the stop ended, Parker continued to detain Ms. Bedient. The additional detention was nonconsensual and unsupported by reasonable suspicion.

If the original purpose of the stop is investigating a traffic violation, the purpose of the stop and authority for the seizure ends "when tasks tied to the traffic infraction" are completed or "should have been" completed. *Rodriguez*, 191 L. Ed. 2d at 498. If the purpose of the stop ends before the driver's license is returned, the officer's failure to return the license does not prolong the purpose of the stop or extend authority for the seizure. *State v. Cottrell*, ___ N.C. App. ___, 760 S.E.2d

274, 279-80 (2014) (officer cannot prolong original purpose of stop by “simply [] not returning the driver’s documentation”).

In *Cottrell*, 760 S.E.2d at 279-80, defendant was stopped for headlight and noise ordinance violations. Based on record checks, the officer determined defendant had a valid license and no warrants. The officer gave defendant an oral warning for the noise violation. Still in possession of defendant’s license, the officer asked defendant about a cover scent used to conceal drugs, asked if there was anything in the car, and obtained consent to search the car. Drugs were found during the vehicle search. *Id.* at 279-80. Analyzing the lawfulness of the detention and search, this Court first determined the original purpose of the stop ended when the officer gave the oral warning for the noise ordinance, not when the officer returned defendant’s license. The officer’s failure to return the license did not prolong the original purpose of the stop or extend authority for the seizure. *Id.* at 279-80; *see State v. Jackson*, 199 N.C. App. 236, 242-43, 681 S.E.2d 492, 496-97 (2009) (original purpose of stop ended when officer gave oral warnings about license, not when officer returned license).

Like *Cottrell*, the original purpose of the stop in Ms. Bedient’s case was investigating a traffic violation -- failure to dim high beams. Like *Cottrell*, Parker determined Ms. Bedient had a valid license and no warrants and issued the oral warning for failure to dim high beams. (App. 2-3, findings 18, 29-30) When

Parker gave the oral warning for high beams, the purpose of the stop ended as the “tasks tied” to the original purpose were completed. *Rodriguez*, 191 L. Ed. 2d at 498-99. Parker’s subsequent interrogation about prior conduct and contents of the vehicle constituted an “extension of the detention beyond the scope of the original traffic stop as the interrogation was [un]necessary to confirm or dispel [Parker]’s suspicion” of failure to dim high beams. *Jackson*, 199 N.C. App. at 242, 681 S.E.2d at 496-97. As in *Cottrell* and *Jackson*, the original purpose of the stop ended when Parker gave the oral warning for high beams. Contrary to the trial court’s findings, Parker failed to return Ms. Bedient’s license when the purpose of the stop ended. (App. 5, findings 40, 45) Like *Cottrell* and *Jackson*, Parker’s failure to return Ms. Bedient’s license did not extend authority for the seizure or prolong the original purpose of the stop. *Cottrell*, 760 S.E.2d at 279-80; *Jackson*, 199 N.C. App. at 242-43, 681 S.E.2d at 496-97.

After completing the purpose of the stop, Parker retained Ms. Bedient’s license. During the continued detention, Parker examined Ms. Bedient about prior conduct, examined her about contents of the vehicle, and obtained consent to search the car. (Defense Ex. 2 at 7:38-8:09; App. 6-7, findings 48-49, 55-56) As the additional detention was nonconsensual and unsupported by reasonable suspicion, the continued detention was unlawful. *Rodriguez*, 191 L. Ed. 2d at 498-

99 (even *de minimis* detention or delay is unlawful); *Myles*, 188 N.C. App. at 45, 654 S.E.2d at 755. Conclusions to the contrary were erroneous. (App. 4-10)

- i. The additional detention was nonconsensual because no reasonable person would have believed she was free to leave the encounter without her driver's license.*

Once the original purpose of the stop ends, the subsequent encounter is nonconsensual unless a reasonable person would believe she is free to leave the encounter or ignore the officer's questions. *Myles*, 188 N.C. App. at 45, 654 S.E.2d at 755. While the officer retains possession of defendant's license, the encounter remains nonconsensual as no reasonable person would believe she is free to leave a traffic stop without her license. *Jackson*, 199 N.C. App. at 243, 681 S.E.2d at 497 (encounter may become consensual "only after an officer return[s] the detainee's driver's license"). Even if the officer returns defendant's license, the encounter remains nonconsensual if no reasonable person would feel free to leave the scene or disregard the officer's investigation. *Myles*, 188 N.C. App. at 45-46, 654 S.E.2d at 755 (returning license did not render subsequent detention consensual when officer never told driver or defendant he was free to leave); *Cottrell*, 760 S.E.2d at 279-82 (additional detention was nonconsensual as officer still had defendant's license and never told defendant he was free to leave); *Jackson*, 199 N.C. App. at 243, 681 S.E.2d at 497 (additional detention was nonconsensual as officer retained defendant's license); *State v. Kincaid*, 147 N.C.

App. 94, 96-98, 555 S.E.2d 294, 297-98 (2001) (encounter was consensual as officer returned defendant's license allowed defendant to leave the scene, enter store, and purchase drink).

Contrary to the trial court's finding, Parker retained Ms. Bedient's license after the purpose of the stop ended. (Defense Ex. 2 at 6:14-7:50; Tpp. 14-15, 18-19; App. 5, finding 45) While in possession of Ms. Bedient's license, Parker examined Ms. Bedient about prior conduct and contents of the vehicle and obtained consent to search the car. Contrary to the trial court's finding, Parker still had Ms. Bedient's license when he obtained consent to search. (Defense Ex. 2 at 7:58-8:13; Tpp. 18-19, 49, 52; App. 6, finding 50) Parker never advised Ms. Bedient she was free to leave the encounter or ignore his questions. (Tp. 50) No reasonable person in Ms. Bedient's position would have believed she was free leave the encounter without her license. *Cottrell*, 760 S.E.2d at 282; *Jackson*, 199 N.C. App. at 243, 681 S.E.2d at 497. No reasonable person would have believed she was free to ignore Parker's examination while Parker retained her license. *Id.* Therefore, the additional detention was nonconsensual. *See id.* Any conclusion to the contrary was erroneous.

ii. The additional detention was unsupported by reasonable suspicion of criminal activity.

If nonconsensual, the additional detention is unlawful unless supported by reasonable suspicion. *Rodriguez*, 191 L. Ed. 2d at 498-99 (there is no *de minimis*

delay exception); *Myles*, 188 N.C. App. at 45, 654 S.E.2d at 754. Whether the detention is supported by reasonable suspicion is determined by the circumstances. *Myles*, 188 N.C. App. at 47, 654 S.E.2d at 756. While “specific and articulable facts” and “rational inferences [drawn] from those facts” may support reasonable suspicion, an officer’s “unparticularized suspicion or hunch” is never sufficient to justify the extended detention. *State v. Watkins*, 337 N.C. 437, 441-42, 446 S.E.2d 67, 70 (1994).

In *Myles*, 188 N.C. App. at 51-52, 654 S.E.2d at 758, the continued detention of defendant was unsupported by reasonable suspicion. In *Myles*, an officer saw a car weaving in its own lane and briefly run off the road. The officer stopped the car because weaving indicted impaired driving. When the officer approached, the driver and defendant provided licenses, registration, and the vehicle’s rental agreement. The rental agreement showed defendant rented the car, the car was past due, and the driver was unauthorized to operate the vehicle. The officer did not detect alcohol on the driver or defendant. The driver had a valid license. The officer advised he was issuing a written warning for weaving and directed the driver to the patrol car for purposes of issuing the ticket. On the way to the patrol car, the driver’s heart was beating unusually fast. Inside the patrol car, the driver sweated profusely and looked away when asked about travel plans. After the purpose of the stop ended, the officer continued to detain the driver and

defendant. During the continued detention, the officer examined defendant about travel plans and obtained consent to search the car. Drugs were found in the vehicle. *Id.* at 43-49, 654 S.E.2d at 753-57.

As the continued detention of the driver and defendant was nonconsensual, it had to be supported by reasonable suspicion. While the driver was “very nervous” and evasive when questioned, the nervous and evasive conduct failed to provide reasonable suspicion to justify the extended detention. *Id.* at 49, 654 S.E.2d at 757. The driver’s unauthorized operation of the overdue rental car likewise failed to show articulable suspicion of criminal activity. While defendant was “extremely nervous” and evasive when questioned about travel plans, defendant’s nervous and evasive conduct after completion of the stop could not provide reasonable suspicion to justify the stop. *Id.* at 51, 654 S.E.2d at 758. Unsupported by reasonable suspicion of criminal activity, the continued detention of the driver and defendant was unlawful. Since defendant gave consent to search the car during the unlawful detention, defendant’s consent to search was invalid. As evidence derived from the unlawful seizure and search was inadmissible against defendant, the trial court erred by denying the motion to suppress. *Id.* at 51-52, 654 S.E.2d at 758.

Like *Myles*, Parker continued to detain Ms. Bedient after completing the purpose of the stop. During the continued detention, Parker questioned Ms.

Bedient and obtained consent to search the car. (App. 6-10) The trial court concluded the continued detention was supported by reasonable suspicion based on: (i) Ms. Bedient's attempted return to the vehicle after giving consent to search, (ii) Ms. Bedient's failure to explain the passenger was her daughter or provide the passenger's last name, (iii) Ms. Bedient's continued operation of the Mitsubishi "lacking headlights" after "receiving a warning ticket for the same failure to dim headlights," (iv) Ms. Bedient's fidgeting consistent with methamphetamine use, Ms. Bedient's repeated fixation on the visor, Parker's 8-minute observation of Ms. Bedient, Ms. Bedient's stuttered speech, and (v) Ms. Bedient's presence at Coggins' residence known for drug use and drug transactions. (App. 6-7, findings 48-49, 55-56) Contrary to the trial court's conclusions, the circumstances did not provide Parker with reasonable suspicion to justify the continued detention of Ms. Bedient. Like *Myles*, the additional detention was unlawful.

First, contrary to the trial court's finding, Ms. Bedient did not attempt to return to the vehicle after giving consent to search. Ms. Bedient actually returned to the vehicle. (Tpp. 19, 42, 48-50; Defense Ex. 2 at 8:14-32) Evidence that Ms. Bedient actually returned to the vehicle after Parker determined the detention was over could not provide reasonable suspicion justifying the detention. *Myles*, 188 N.C. App. at 51, 654 S.E.2d at 758 (defendant's nervousness after officer determined detention was over could not provide reasonable suspicion justifying

the detention). Even if evidence only showed an attempted return to the car, as opposed to an actual return to the car, the post-detention circumstance failed to justify the detention. *See id.* Ms. Bedient's post-detention return to the vehicle did not provide Parker with reasonable suspicion of criminal activity to support the detention. Conclusions to the contrary were erroneous. *See id.*

Second, contrary to the trial court's findings, Ms. Bedient repeatedly advised Parker the passenger was her daughter Tabitha. (App. 3, 6-7, findings 27, 48, 56) Ms. Bedient's failure to provide Tabitha's last name did not provide reasonable suspicion of criminal activity to justify the continued detention. Parker, who obtained Tabitha's last name approximately 3 to 5 minutes into the stop, never asked Ms. Bedient for a last name. (Tpp. 13-14) Parker never suspected and nothing suggested anyone provided false or conflicting information about Tabitha's identity or her relationship to Ms. Bedient. *See State v. Williams*, 215 N.C. App. 1, 9-11, 714 S.E.2d 835, 840-42 (2011) (reasonable suspicion when driver and defendant provided conflicting information about their relationship), *aff'd*, 366 N.C. 110, 726 S.E.2d 161 (2012). Nothing suggested Ms. Bedient looked away or sweated profusely when questioned about Tabitha's identity. *See Myles*, 188 N.C. App. at 49, 654 S.E.2d at 757 (continued detention unlawful when driver's heart pounded, he sweated profusely, and looked away when questioned because "very nervous" and evasive conduct was insufficient to provide reasonable

articulable suspicion). Parker never testified and nothing suggested Ms. Bedient's failure to give Tabitha's last name provided articulable suspicion Ms. Bedient was engaged in criminal activity. The trial court's conclusions were erroneous.

Third, contrary to the trial court's findings, Ms. Bedient did not receive two warnings for failure to dim high beams. She did not receive a written warning or citation for failure to dim high beams. Ms. Bedient did not operate a car "lacking headlights." (App. 5-7, findings 44, 48, 56) Ms. Bedient's operation of the Mitsubishi after receiving a written warning for driving with one headlight did not provide reasonable suspicion to support the continued detention. Parker reviewed the written warning and questioned Ms. Bedient about circumstances surrounding the trooper's stop, including time, place, and travel route. (Tpp. 9-11, 20; Defense Ex 1 at 2; Defense Ex. 2 at 00:54-1:55) Parker was not suspicious of the written warning or information provided by Ms. Bedient. Parker never testified and nothing suggested Ms. Bedient's continued operation of the car provided reasonable suspicion. Conclusions to the contrary were erroneous.

Fourth, contrary to the trial court's findings, Ms. Bedient did not exhibit fidgeting consistent with methamphetamine use or repeated fixation on the visor. Ms. Bedient did not exhibit extreme rapidity, continued rapid movement without purpose, or continued fidgeting with the visor. (App. 3-7, findings 26, 31-32, 48, 56) While Parker observed Ms. Bedient for 8 minutes and testified Ms. Bedient's

stuttering and fidgeting indicated she was nervous (Tpp. 9-12, 21, 38-43), Ms. Bedient's nervous conduct did not provide particularized suspicion of criminal activity. *Myles*, 188 N.C. App. at 49, 654 S.E.2d at 757. Parker never testified Ms. Bedient or Tabitha was "very nervous" or exhibited extreme nervousness. *See id.* Unlike *Myles*, no hearts pounded, and no one sweated profusely. No one sighed deeply or breathed heavily. *Myles*, 188 N.C. App. at 46-47, 654 S.E.2d at 755-56. Ms. Bedient did not look away when Parker examined her about the trooper's stop, prior encounter with Parker, or Tabitha's license and prior conduct. *Id.* at 49, 654 S.E.2d at 757. If the driver's "very nervous" conduct -- pounding heart, profuse sweating, and evasiveness -- was insufficient to support the continued detention in *Myles*, Ms. Bedient's ordinary nervous conduct -- stuttering and fidgeting while searching for her license -- likewise failed to provide reasonable suspicion criminal activity was afoot. *See id.*

Fifth, contrary to the trial court's findings, Parker never testified and nothing showed Coggins' residence was known for drug using and drug dealing. (App. 5-7, findings 39, 44, 48, 56) Ms. Bedient's presence at Coggins' residence on February 27, 2013, failed to provide particularized suspicion Ms. Bedient was engaged in criminal activity 24 hours later. At most, circumstances showed an association with Coggins. *See State v. Washington*, 193 N.C. App. 670, 678, 668 S.E.2d 622, 627 (2008) (defendant's association with a person wanted by police on

felony warrants failed to provide reasonable suspicion defendant was engaged in criminal activity), *disc. review denied*, 363 N.C. 138, 674 S.E.2d 420 (2009). Ms. Bedient's association with a drug user or main man did not provide reasonable suspicion she was on drugs or engaged in drug dealing or any other criminal activity at the traffic stop. *See id.*; *Ybarra v. Illinois*, 444 U.S. 85, 91, 62 L. Ed. 2d 238, 245 (1979) (defendant's "mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search" defendant); *Sibron v. New York*, 392 U.S. 40, 62-63, 20 L. Ed. 2d 917, 934-35 (1968) (unreasonable for officer to infer anyone "who talk[s] to [a] narcotics addict[] [is] engaged in the criminal traffic in narcotics").

Ms. Bedient's association with Coggins also failed to justify Parker's interrogation about Ms. Bedient's license address. N.C. Gen. Stat. § 20-7.1 (providing 60 days after relocation to obtain duplicate license with new residential address). Ms. Bedient's presence at Coggins' house 24 hours earlier and the husband's undated allegations of cohabitation at some unknown time in the past did not provide articulable suspicion Ms. Bedient's license violated § 20-7.1, especially since Parker already determined Ms. Bedient's license was valid. (App. 3, finding 29) Circumstances related to Ms. Bedient's association with Coggins did not provide articulable suspicion Ms. Bedient was engaged in criminal activity. *Washington*, 193 N.C. App. at 678, 668 S.E.2d at 627; *see Ybarra*, 444 U.S. at 91,

62 L. Ed. 2d at 245; *Sibron*, 392 U.S. at 62-63, 20 L. Ed. 2d at 934-35. Conclusions to the contrary were erroneous. (App. 3-7, findings 25, 36-37, 48-49, 55-56)

Finally, circumstances otherwise failed to establish reasonable suspicion to support the continued detention of Ms. Bedient. While Parker alleged the car was registered to Coggins (Tp. 45), the trial court did not find the vehicle was registered to someone other than Ms. Bedient. (App. 1-10) Even if the car was registered to Coggins, the circumstance merely showed an association with Coggins. *See Washington*, 193 N.C. App. at 678, 668 S.E.2d at 627. It did not justify the continued detention, particularly since there were no conflicting statements about travel plans, the trooper's stop, or intended destination. There were no air fresheners, air freshener odors, cover scents, or drug odors. *See State v. Fisher*, 219 N.C. App. 498, 504, 725 S.E.2d 40, 45 (2012) (reasonable suspicion when defendant was nervous, car registered to someone other than defendant, defendant gave inconsistent statements about travel plans, and air freshener odor in vehicle), *cert. denied*, ___ U.S. ___, 187 L. Ed. 2d 279 (2013). The traffic stop did not occur in a drug or high crime area. The stop did not occur near a recent crime scene. There was no evidence of flight. *See State v. Willis*, 125 N.C. App. 537, 542, 481 S.E.2d 407, 411 (1997). Ms. Bedient and Tabitha were cooperative. Parker never suspected Ms. Bedient was impaired. Ms. Bedient had a valid license

and no warrants. Tabitha had no license problems or warrants in North Carolina. No evidence suggested Ms. Bedient or Tabitha had criminal records. *See Jackson*, 199 N.C. App. at 242-43, 681 S.E.2d at 497 (no reasonable suspicion when defendant had valid license and no warrants, and everyone was cooperative).

Ms. Bedient's nervous conduct and association with Coggins failed to provide articulable suspicion of criminal activity to justify Parker's continued detention of Ms. Bedient. *See Myles*, 188 N.C. App. at 49, 654 S.E.2d at 757; *Washington*, 193 N.C. App. at 678, 668 S.E.2d at 627. As the continued detention of Ms. Bedient was nonconsensual and unsupported by reasonable suspicion, the additional detention was unlawful. *Rodriguez*, 191 L. Ed. 2d at 498-99; *Myles*, 188 N.C. App. at 45, 654 S.E.2d at 754; U.S. Const. amends. IV, XIV; N.C. Const. art. I, § 20. The trial court's conclusions were erroneous. (App. 1-10)

B. Any consent to search was invalid. As the vehicle search was unjustified, evidence derived from the unlawful seizure and search was inadmissible against Ms. Bedient.

When Ms. Bedient gave consent to search the car, Parker still had Ms. Bedient's license. (Defense Ex. 2 at 7:58-8:13; Tpp. 18-19, 49, 52) As in *Myles*, Ms. Bedient gave consent to search during a nonconsensual detention unsupported by reasonable suspicion. *Myles*, 188 N.C. App. at 51, 654 S.E.2d at 758; *see Cottrell*, 760 S.E.2d at 279-82; *Jackson*, 199 N.C. App. at 243, 681 S.E.2d at 497. As the continued detention was unlawful, Ms. Bedient's consent to search was

invalid as a matter of law. *Myles*, 188 N.C. App. at 51, 654 S.E.2d at 758 (*citing Florida v. Royer*, 460 U.S. 491, 507-508, 75 L. Ed. 2d 229, 243 (1983)). Even if the record suggested valid consent to search the car, any consent was revoked or withdrawn. *E.g.*, *State v. Morocco*, 99 N.C. App. 421, 430, 393 S.E.2d 545, 550 (1990) (defendant's statement the "bag contained some nude photographs of his wife" was too ambiguous to constitute revocation of consent to search as no reasonable person in the situation would have believed defendant's actions constituted revocation of consent to search). As Parker testified and the video established, when Ms. Bedient returned to the car with her license and tried to leave the encounter, Parker prevented Ms. Bedient from leaving the scene. (Tpp. 19, 50; Defense Ex. 2 at 8:14-32) Unlike *Morocco*, every reasonable person would have believed Ms. Bedient's attempt to leave the encounter in the Mitsubishi constituted revocation of consent to search the Mitsubishi. *See id.* Conclusions to the contrary were erroneous. (App. 3-10)

As there was no beer bottle in plain view prior to the vehicle search (Tp. 23; Defense Ex. 2 at 8:14-9:00), and the vehicle search was otherwise unjustified, evidence derived from the unlawful seizure and search was inadmissible against Ms. Bedient. *Wong Sun v. United States*, 371 U.S. 471, 487-88, 9 L. Ed. 2d 441, 455 (1963); U.S. Const. amends. IV, XIV; N.C. Const. art. I, § 20. The trial court's conclusions to the contrary were erroneous. (App. 1-10) The trial court

erred by denying the suppression motion. Ms. Bedient's conviction must be reversed.

CONCLUSION

For the foregoing reasons and authorities, Ms. Bedient respectfully requests that judgment and conviction be reversed.

Respectfully submitted, this the 23d day of November, 2015.

By Electronic Submission:

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CERTIFICATE OF COMPLIANCE WITH N.C. R. APP. P. 28

I hereby certify that Defendant-Appellant's Brief is in compliance with Rule 28(j)(2) of the North Carolina Rules of Appellate Procedure as it is printed in fourteen point Times New Roman and the body of the brief, including footnotes and citations, contains no more than 8750 words as indicated by the word-processing program used to prepare the brief.

This the 23d day of November, 2015.

By Electronic Submission:

Emily H. Davis

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that the original Defendant-Appellant's Brief has been filed, pursuant to Rule 26 of the North Carolina Rules of Appellate Procedure, by electronic means with the Clerk of the North Carolina Court of Appeals.

I further certify that a copy of the above and foregoing Defendant-Appellant's Brief has been duly served upon Mr. Benjamin Kull, Assistant Attorney General, North Carolina Department of Justice, by electronic means by emailing it to bkull@ncdoj.gov.

This the 23d day of November, 2015.

By Electronic Submission:

Emily H. Davis

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4.

STATE V. BEDIENT:

**COURT OF APPEALS OPINION
FAVORABLE TO THE DEFENDANT
JUDGE GEER,
JUDGE McGee, Judge Davis concur**

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State v. Bedient, 247 N.C. App. 314

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State v. Bedient, 247 N.C. App. 314

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No. COA15-1011

Reporter

247 N.C. App. 314 * | 786 S.E.2d 319 ** | 2016 N.C. App. LEXIS 506 *** | 2016 WL 1742802

STATE OF NORTH CAROLINA, v. CONSTANCE RENEA **BEDIENT**, Defendant.

Prior History: [***1] Jackson County, No. 13 CRS 50269.

Disposition: REVERSED AND REMANDED.

Core Terms

reasonable suspicion, traffic stop, license, trial court, questions, high beam, detention, prolong, warning, headlights, mission, nervous, articulable suspicion, driver's license, passenger, criminal activity, sun visor, suppress, dim, totality of the circumstances, circumstances, nervousness, verbal warning, factors, consent to search, methamphetamine, suspicion, driving, driver, travel

Case Summary

Overview

HOLDINGS: [1]-The facts that defendant was engaging in nervous behavior and she had associated with a known drug dealer were insufficient to support the trial court's conclusion that the officer had reasonable suspicion to prolong defendant's detention after the purpose of the traffic stop had concluded; [2]-Because the officer continued to possess defendant's driver's license up until the moment he received her consent to search her car and only returned the license upon commencing the search, the stop was unlawfully extended and violated defendant's Fourth Amendment right and therefore defendant's consent was not voluntary.

Outcome

Judgment reversed and case remanded.

▼ LexisNexis® Headnotes

Criminal Law & Procedure > ... > [Standards of Review](#) ▼ > [Substantial Evidence](#) ▼ > [Findings of Fact](#) ▼

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HN1  **Substantial Evidence, Findings of Fact**

An appellate court reviews a trial court's denial of a motion to suppress by determining whether the trial judge's underlying findings of fact are supported by competent evidence, in which event they are conclusively binding on appeal, and whether those factual findings in turn support the judge's ultimate conclusions of law. The trial court's conclusions of law are fully reviewable on appeal. [More like this Headnote](#)

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HN2  **Stop & Frisk, Detention**

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. 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. [More like this Headnote](#)

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Criminal Law & Procedure > ... > [Warrantless Searches](#) ▼ >  [Stop & Frisk](#) ▼ >  [Detention](#) ▼

HN3  **Stop & Frisk, Detention**

Once the original purpose of the stop has been addressed, there must be grounds which provide a reasonable and articulable suspicion in order to justify further delay. [More like this Headnote](#)

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HN4  **Stop & Frisk, Reasonable Suspicion**

To determine reasonable articulable suspicion, courts view the facts through the eyes of a reasonable, cautious officer, guided by his experience and training at the time he determined to detain defendant. In addition, the requisite degree of suspicion must be high enough to assure that an individual's reasonable expectation of privacy is not subject to arbitrary invasions solely at the unfettered discretion of officers in the field. Thus, in determining whether the officer acted reasonably in such circumstances, due weight must be given, not to his inchoate and unparticularized suspicion or "hunch," but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience. [More like this Headnote](#)

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HN5  **Stop & Frisk, Reasonable Suspicion**

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 nervousness needs to be "extreme" in order to be taken into account in determining whether reasonable suspicion exists. [More like this](#)

[Headnote](#)

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Criminal Law & Procedure > ... > [Warrantless Searches](#) > [Stop & Frisk](#) > [Reasonable Suspicion](#)

HN6 Stop & Frisk, Reasonable Suspicion

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 without more competent evidence. This circumstance is analogous to the well settled principle that mere presence in a high-crime area, although relevant in the totality of the circumstances, is insufficient by itself to establish reasonable suspicion. [More like this Headnote](#)

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HN7 Warrantless Searches, Consent to Search

An officer must have reasonable suspicion or defendant's consent to prolong the stop by asking additional questions. [More like this Headnote](#)

[More like this Headnote](#)

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Criminal Law & Procedure > [Search & Seizure](#) > [Warrantless Searches](#) > [Investigative Stops](#)

HN8 Warrantless Searches, Investigative Stops

Generally, an initial traffic stop concludes and the encounter becomes consensual only after an officer returns the detainee's driver's license and registration. [More like this Headnote](#)

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Counsel: Attorney General Roy Cooper, by Assistant Attorney General [Benjamin J. Kull](#), for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender [Emily H. Davis](#), for defendant-appellant.

Judges: [GEER](#), Judge. Chief Judge [McGEE](#) and Judge [DAVIS](#) concur.

Opinion by: [GEER](#)

Opinion

[\[**320\]](#) **[*314]** Appeal by defendant from order entered 23 March 2015 by Judge [Bradley B. Letts](#) in Jackson County Superior Court. Heard in the Court of Appeals 22 February 2016.

[GEER](#), Judge.

Defendant Constance Renea **Bedient** pled guilty to possession of a schedule II controlled substance. On appeal, defendant argues that the trial court erred in denying her [\[**321\]](#) motion to suppress evidence uncovered after she gave consent to search her car. She contends that the trial court erred in concluding that the investigating officer had reasonable suspicion to continue questioning her after addressing the initial purposes of the stop and in concluding that she voluntarily consented to additional questioning after the conclusion of the stop. Upon our comparison of the record to the trial court's findings of fact regarding the circumstances that gave rise to reasonable suspicion, we find only two circumstances are [\[***2\]](#) supported by the officer's testimony: defendant was engaging in nervous behavior and she had associated with a known drug dealer.

[*315] We hold that these circumstances are insufficient to support the conclusion that the officer had reasonable suspicion to prolong defendant's detention once the purpose of the stop had concluded. Because defendant gave consent to a search during an unlawful detention, we reverse the denial of defendant's motion to suppress.

[Facts](#)

The State's evidence at the motion to suppress hearing tended to show the following facts. At around 11:30 p.m. on 28 February 2013, Sergeant Andy Parker of the Jackson County Sheriff's Office observed defendant driving a silver Mitsubishi Gallant on Highway 107 with her high beam lights on. She failed to dim her high beams as she passed Sergeant Parker going in the opposite direction. Sergeant Parker initiated a traffic stop, and defendant pulled to the side of the road. A dashboard video camera in Sergeant Parker's patrol car recorded the subsequent stop.

When Sergeant Parker approached the driver side door, defendant immediately acknowledged she was driving with her high beams on and was doing so in response to a prior stop that evening, [***3], 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 claimed it was her daughter, and the passenger identified herself as Tabitha. Sergeant Parker later determined that her full name was Tabitha Henry, a resident of South Carolina.

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 [***4] 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 also testified that [*316] defendant's husband, Todd **Bedient**, regularly called the Sheriff's Office complaining that defendant was taking up residence with Mr. Coggins.

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. They discussed the problems with defendant's headlights for 15 to 20 seconds longer. Then, Sergeant Parker changed the subject, asking defendant [***322] when she planned to change the address on her license. Defendant [***5] claimed that she was not going to change her address. Sergeant Parker informed her that if she was not going to live at the address listed on her license, she would need to change it within 30 days or be guilty of a misdemeanor.

Only a few seconds later, Sergeant Parker changed the subject of his questioning again. 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. He confirmed that both defendant and Ms. Henry had been drinking the beer. 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 [***6] that defendant admitted belonged to her. Sergeant Parker then placed defendant under arrest.

On 12 May 2014, 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 on 9 January 2015 that was heard on 16 March 2015 and denied in open court. The trial court later filed a written order on 23 March 2015 concluding [*317] that reasonable suspicion supported Sergeant Parker's continued questioning of defendant after he had verbally warned her about the use of her high beams and the invalid address on her license. The order further concluded that defendant voluntarily consented to additional questioning and the search of her car once the purpose of the stop was over.

Defendant reserved her right to appeal the denial of her motion to suppress. On 17 March 2015, the day after defendant's motion was denied, 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. The State dismissed the indictment for possession of drug paraphernalia in [***7] exchange for the guilty plea. Defendant timely appealed to this Court.

Discussion

On appeal, defendant contends 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. [HN1](#) We review a trial court's denial of a motion to suppress by "determining whether the trial judge's underlying findings of fact are supported by competent evidence, in which event they are conclusively binding on appeal, and whether those factual findings in turn support the judge's ultimate conclusions of law." [State v. Cooke, 306 N.C. 132, 134, 291 S.E.2d 618, 619 \(1982\)](#). "The trial court's conclusions of law . . . are fully reviewable on appeal." [State v. Hughes, 353 N.C. 200, 208, 539 S.E.2d 625, 631 \(2000\)](#).

A. The "Mission" of the Traffic Stop

[HN2](#) "[T]he 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." [Rodriguez v. United States, ___ U.S. ___, ___, 191 L. Ed. 2d 492, 498, 135 S. Ct. 1609, 1614 \(2015\)](#) (internal citations omitted). "Beyond determining whether to issue a traffic ticket, an officer's mission includes 'ordinary inquiries incident to [the traffic] stop.'" [\[**8\]](#) [Id. at ___, 191 L. Ed. 2d at 499, 135 S. Ct. at 1615](#) (quoting [Illinois v. Caballes, 543 U.S. 405, 408, 160 L. Ed. 2d 842, 847, 125 S. Ct. 834, 837 \(2005\)](#)). "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." [\[**323\]](#) [Id. at ___, 191 L. Ed. 2d at 499, 135 S. Ct. at 1615](#).

[\[*318\]](#) 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." [Id. at ___, 191 L. Ed. 2d at 499, 135 S. Ct. at 1615](#) (emphasis added). Thus, absent reasonable suspicion, "[a]uthority for the seizure . . . ends when tasks tied to the traffic infraction are -- or reasonably should have been -- completed." [Id. at ___, 191 L. Ed. 2d at 498, 135 S. Ct. at 1614](#).

Here, defendant does not dispute the finding 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, according to [Rodriguez](#), 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 -- as the trial court found, the officer learned through these checks that defendant had a valid license [\[**9\]](#) and no pending warrants for her arrest. These two checks, considered by [Rodriguez](#) to be "'ordinary inquiries incident to the stop,'" did not unlawfully prolong the stop. [Id. at ___, 191 L. Ed. 2d at 499, 135 S. Ct. at 1615](#) (quoting [Caballes, 543 U.S. at 408, 160 L. Ed. 2d at 847, 125 S. Ct. at 837](#)).

The trial court's unchallenged findings indicate that Sergeant Parker then returned to defendant's car and asked defendant to exit the car and join him at the rear of the car. Although Sergeant Parker arguably prolonged the stop by requesting defendant to get out of her car, the trial court found that this was "warranted in this case for purposes of officer's safety and to address the issues Sgt. Parker determined were related to the driver's license." Defendant does not challenge this finding, and we find it comports with [Rodriguez](#), because Sergeant Parker was "attend[ing] to related safety concerns" and had legitimate questions regarding the address on defendant's license. [Id. at ___, 191 L. Ed. 2d at 498, 135 S. Ct. at 1614](#).

The trial court's findings then indicate that once at the rear of the car, Sergeant Parker first "provided defendant a second warning from law enforcement 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 [\[**10\]](#) because, as the trial court found, Sergeant Parker gave defendant a verbal warning, deciding not to issue defendant 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. [Id. at ___, 191 L. Ed. 2d at 499, 135 S. Ct. at 1615](#).

[\[*319\]](#) According to the trial court's findings, subsequent to this original verbal warning, Sergeant Parker asked defendant questions regarding the address on her license. These questions were reasonable because "there existed in the mind of Sgt. Parker a valid, articulable issue regarding whether her residence was with Todd **Bedient** or Greg Coggins" and "failure to change an address on a driver's license after a fixed number of days is a violation of [N.C. Gen. Stat. §20-7.1](#)." [1](#) Defendant also did not challenge this specific finding, and it is binding on appeal.

Therefore, even though [\[**11\]](#) the original mission of the traffic stop was completed upon Sergeant Parker's verbal warning to defendant regarding her failure to dim her high beams, the additional questioning regarding the address on her license, and thus defendant's prolonged detention, was supported by reasonable suspicion. This finding by the trial court comports with the standard in [Rodriguez](#) and is in accordance with prior North Carolina precedent as well. See [State v. Myles, 188 N.C. App. 42, 45, 654 S.E.2d 752, 754 \(HN3\)](#) "'Once the original purpose of the [\[**324\]](#) stop has been addressed, there must be grounds which provide a reasonable and articulable suspicion in order to justify further delay.'" (quoting [State v. Falana, 129 N.C. App. 813, 816, 501 S.E.2d 358, 360 \(1998\)](#)), *aff'd per curiam*, [362 N.C. 344, 661 S.E.2d](#)

Because Sergeant Parker had reasonable suspicion to prolong the stop beyond the conclusion of the original mission of the traffic stop, Sergeant Parker developed a new mission for the stop: to determine whether defendant was in violation [***12] of N.C. Gen. Stat. § 20-7.1 (2015) for failure to change the address on her license. After eliciting a response from defendant regarding her address, Sergeant Parker "explained to her the concerns over the change in address on the driver's license" and "gave an additional verbal warning about maintaining the proper address on her driver's license." At that point, and pursuant to *Rodriguez*, Sergeant Parker had concluded the second mission of the stop because [*320] he had determined not to issue defendant a ticket in connection with defendant's license.

As this Court recognized in *State v. Cottrell*, 234 N.C. App. 736, 744, 760 S.E.2d 274, 280 (2014), once Sergeant Parker completed both missions, he needed reasonable suspicion to prolong defendant's detention beyond the conclusion of this second mission. In *Cottrell*, this Court held that after an officer addressed the two purposes for a traffic stop -- defendant's failure to activate his headlights and defendant's loud music -- with verbal warnings, the officer "was then required to have 'defendant's consent or grounds which provide a reasonable and articulable suspicion in order to justify further delay before' asking defendant additional questions." *Id.* at 744, 760 S.E.2d at 279-80 (quoting *Myles*, 188 N.C. App. at 45, 654 S.E.2d at 755). See also *State v. Jackson*, 199 N.C. App. 236, 242, 243, 681 S.E.2d 492, 496, 497 (2009) (finding further detention and questioning of defendant was [***13] unreasonable seizure because it occurred "[r]ight after the traffic stop was pretty much over," and "there was no evidence which could have provided [the officer] with reasonable and articulable suspicion to justify the extension of the detention").

Here, after Sergeant Parker verbally warned defendant about her failure to dim her high beams and failure to maintain the proper address on her license, the two purposes -- the two missions -- of the traffic stop were addressed. And, at that point, Sergeant Parker needed reasonable, articulable suspicion that criminal activity was afoot before he prolonged the detention by asking additional questions.

B. Reasonable Suspicion to Prolong the Stop

According to the trial court's findings of fact, "[a]t the conclusion of the interaction . . . Sgt. Parker asked the defendant 'Do you have anything in the vehicle?[,]' to which defendant replied, 'No. You can look.'" In support of its conclusion that "Sgt. Parker had reasonable suspicion to further question the defendant in that under the totality of the circumstances there existed specific articulable facts to indicate that criminal activity was afoot[,]" the trial court made the following findings:

48. [***14] . . . Sgt. Parker had reasonable articulable suspicion under the totality of the circumstances to further detain defendant. These factors consisted of observing defendant for eight minutes, finding her speech to be stuttering, defendant exhibiting fidgety actions which is consistent with use of methamphetamine, repeated fixation on the driver's side sun visor, failure [*321] to initially provide the last name of the passenger or explain the passenger was her daughter, continued operation of the same vehicle with the same lack of headlights on the same day after receiving a warning ticket for the same failure to dim headlights [***325] and having been at a residence known by law enforcement in Jackson County to be a location of drug use and drug transactions.

. . . .

55. Additionally, at the same time consent was given there did exist reasonable articulable suspicion based upon the totality of the circumstances presented to Sgt. Parker which supported further investigation and detention of defendant.

56. In addition to the specific and articulable factors that defendant was observed for eight minutes, the speech stuttered, defendant exhibiting fidgety actions which is consistent with use of methamphetamine, [***15] defendant repeatedly manipulated the driver's side sun visor, defendant failed to initially provide the last name of the passenger or explain the passenger was her daughter, defendant continued to drive the same vehicle with the same lack of headlights on the same day after receiving a warning ticket for the same failure to dim headlights issue and was at a residence known by law enforcement in Jackson County to be a location of drug use and drug transactions, after getting consent to search the vehicle defendant then attempted to return to the vehicle thereby impeding the search of Sgt. Parker.

Defendant contends that most of the circumstances identified in these findings of fact to justify further detention are not supported by competent evidence. Based on our review of the record, we agree.

Defendant first claims that the evidence does not support the finding that defendant failed to initially explain the passenger was her daughter. After reviewing Sergeant Parker's dashboard video camera footage, it is clear that defendant identifies the passenger as her daughter in immediate response to Sergeant Parker's inquiry. This finding is, therefore, not supported by

the evidence.

[*322] Defendant [***16] next challenges the description of her fidgeting as "consistent with use of methamphetamine." At the suppression hearing, Sergeant Parker testified that defendant's conduct indicated nervousness. There is no evidence suggesting that Sergeant Parker believed defendant's "fidgety actions," or other nervous behavior such as her "fixation on the driver's side sun visor" or the "extreme rapidity in her movements" were consistent with the use of methamphetamine. Thus, this finding is also unsupported.

Next, defendant argues that the trial court erroneously described the warning she received before Sergeant Parker's stop as a warning for "failure to dim high beams." As a result, she also claims the finding that defendant received the same verbal warning for the "same failure to dim headlights" is unsupported by the evidence. The dashboard video in fact evidences that defendant explained to Sergeant Parker that her original warning was for a nonworking headlight and, further, that the prior investigating officer instructed her to use her high beam lights in lieu of her nonworking headlight. Accordingly, we hold this finding regarding the warnings is unsupported by competent evidence.

Finally, [***17] defendant challenges the finding that defendant was at a residence known for drug use and transactions. Sergeant Parker's testimony indicates that he observed defendant the night before the traffic stop at the home of Greg Coggins, a man who is known in the town of Cashiers as "the main man" for methamphetamine. We hold that this testimony is sufficient to support the finding that Mr. Coggins' home was a regular location for drug use and transactions.

Accordingly, as defendant argues, the only competent findings supporting the trial court's determination 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, we must determine whether these two factors establish reasonable articulable suspicion that criminal activity was afoot under [***326] the "totality of the circumstances." [Myles, 188 N.C. App. at 45, 654 S.E.2d at 754.](#)

HN4 "To determine reasonable articulable suspicion, courts view the facts through the eyes of a reasonable, cautious officer, guided by his experience and [***18] training at the time he determined to detain defendant." [Id. at 47, 654 S.E.2d at 756](#) (quoting [State v. Bell, 156 N.C. App. 350, 354, 576 S.E.2d 695, 698 \(2003\)](#)). "In addition, '[t]he requisite degree of [*323] suspicion must be high enough to assure that an individual's reasonable expectation of privacy is not subject to arbitrary invasions solely at the unfettered discretion of officers in the field.'" [Cottrell, 234 N.C. App. at 744, 760 S.E.2d at 280](#) (quoting [State v. Fields, 195 N.C. App. 740, 744, 673 S.E.2d 765, 767 \(2009\)](#)). Thus, "in determining whether the officer acted reasonably in such circumstances, due weight must be given, not to his inchoate and unparticularized suspicion or 'hunch,' but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience." [Terry v. Ohio, 392 U.S. 1, 27, 20 L. Ed. 2d 889, 909, 88 S. Ct. 1868, 1883 \(1968\)](#).

First, it is well settled that **HN5** 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. See, e.g., [State v. Pearson, 348 N.C. 272, 276, 498 S.E.2d 599, 601 \(1998\)](#) (suggesting that "[t]he nervousness of the defendant [was] not significant" to the determination of reasonable suspicion because "[m]any people become nervous when stopped by a state trooper"); [State v. Blackstock, 165 N.C. App. 50, 58, 598 S.E.2d 412, 417-18 \(2004\)](#) (holding nervousness, by itself, is not sufficient to establish reasonable suspicion). Moreover, as this Court has recognized, the nervousness needs to be "extreme" in order [***19] to "be taken into account in determining whether reasonable suspicion exists[.]" [Myles, 188 N.C. App. at 49, 654 S.E.2d at 757](#). While defendant's nervousness in this case may have been substantial, it cannot, by itself, establish reasonable suspicion to extend the traffic stop.

Although those findings of the trial court supported by the evidence show that 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, we note 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.

Furthermore, **HN6** 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 without more competent evidence. See [State v. Washington, 193 N.C. App. 670, 678, 668 S.E.2d 622, 627 \(2008\)](#) (holding conclusion "that the officer had a right to make a brief investigatory stop of defendant because he was transporting [a person wanted for various felony offenses] was erroneous as [***20] a matter of law"). This circumstance is analogous to the [*324] well settled principle that mere presence in a high-crime area, although relevant in the totality of the circumstances, is insufficient by itself to establish reasonable suspicion. See [Illinois v. Wardlow, 528 U.S. 119, 124, 145 L. Ed. 2d 570, 576, 120 S. Ct. 673, 676 \(2000\)](#) ("An individual's presence in an area of expected criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime."); [Blackstock, 165 N.C. App. at 58, 598 S.E.2d at 417-18](#) (holding that presence in high crime area alone does not amount to reasonable suspicion).

Here, defendant's association with Greg Coggins -- specifically the fact that Sergeant Parker saw defendant over at Coggins' house, "a residence known . . . to be a location of drug use and drug transactions[,] 24 hours prior to the stop -- is also insufficient to establish reasonable suspicion. Although Sergeant Parker testified he believes "anybody that hangs out with Greg Coggins is on drugs[,] " Sergeant Parker did not testify to any particularized suspicion that defendant was on drugs the previous night when he encountered defendant at Coggins' house. [\[**327\]](#) Nor did he testify that he believed defendant was on drugs at the time of the traffic stop. Thus, Sergeant Parker [\[***21\]](#) did not tie defendant's association with Coggins to any basis particularized to defendant for reasonably suspecting that she was, at the time of the traffic stop, engaging in criminal activity.

Considering the totality of the circumstances found by the trial court (as supported by the evidence) -- defendant's nervous behavior and association with Greg Coggins -- we find these two factors are together insufficient to amount to the reasonable suspicion necessary for Sergeant Parker to further detain defendant. The established case law in this State is consistent with that holding. For instance, in *Myles*, this Court found that the defendant's extremely nervous behavior, specifically his fast heartbeat, and the fact that his rental car was one day overdue, did not amount to reasonable suspicion. [188 N.C. App. at 47, 50, 51, 654 S.E.2d at 756, 757, 758](#). Similarly, in *Cottrell*, the officer's knowledge of the defendant's past criminal drug convictions and the smell of a common cover scent for marijuana did not support a finding of reasonable suspicion under the totality of the circumstances. [234 N.C. App. at 744, 760 S.E.2d at 280-81](#).

The Fourth Circuit has also concluded that reasonable suspicion did not exist when the only indicators of criminal activity were the facts that defendant had [\[***22\]](#) an odd travel itinerary, that he rented a car from a state which is a source of illegal drugs, that defendant was stopped on an interstate known for drug trafficking, and that defendant was [\[*325\]](#) initially nervous. [United States v. Digiovanni, 650 F.3d 498, 513 \(4th Cir. 2011\)](#). Thus, because there was "no evidence of flight, suspicious or furtive movements, or suspicious odors, such as the smell of air fresheners, alcohol, or drugs" that would amount to suspicious behavior, the extended detention was impermissible. *Id.*

Indeed, when considering factors collectively that individually would not warrant a conclusion that reasonable articulable suspicion existed, the Fourth Circuit has directed that "the relevant facts articulated by the officers and found by the trial court, after an appropriate hearing, must in their totality serve to eliminate a substantial portion of innocent travelers." [United States v. Williams, 808 F.3d 238, 246 \(4th Cir. 2015\)](#) (internal quotation marks omitted). See also [Digiovanni, 650 F.3d at 511](#) (while acknowledging that "[t]he Supreme Court has recognized that factors consistent with innocent travel can, when taken together, give rise to reasonable suspicion[,] " holding that "[t]he articulated innocent factors collectively must serve to eliminate a substantial portion of innocent travelers before the requirement of reasonable [\[***23\]](#) suspicion will be satisfied" (internal quotation marks omitted)).

Here, as in *Williams* and *Digiovanni*, defendant's nervousness when combined with the fact that she had associated with a drug dealer (who was not even present in the car) are not sufficient circumstances to eliminate a substantial portion of innocent travelers. These two circumstances simply give rise to a hunch rather than reasonable, particularized suspicion. Compare [State v. Fisher, 219 N.C. App. 498, 504, 725 S.E.2d 40, 45 \(2012\)](#) (finding reasonable suspicion given defendant's nervousness, cover scent, inconsistent answers regarding travel plans, and "driving a car not registered to the defendant"); [State v. Euceda-Valle, 182 N.C. App. 268, 274-75, 641 S.E.2d 858, 863 \(2007\)](#) (holding reasonable suspicion present given defendant's extreme nervousness, refusal to make eye contact, cover scent, and inconsistencies in defendant's and passenger's stories regarding their trip); [State v. Hernandez, 170 N.C. App. 299, 309, 612 S.E.2d 420, 426, 426-27 \(2005\)](#) (holding reasonable suspicion existed based on defendant's nervous behavior, conflicting statements, and a cover scent).

Therefore, under the totality of the circumstances here, defendant's association with Greg Coggins and nervous behavior do not amount to reasonable suspicion where there are no findings of evasive or inconsistent answers to the officer's questions, as noted in *Fisher*, [\[***24\]](#), *Euceda-Valle*, and *Hernandez*, no findings of flight or suspicious or furtive movements as indicated in *Digiovanni*, or any other findings suggesting that criminal [\[*326\]](#) activity is afoot amounting to more than Sergeant Parker's "inchoate and unparticularized suspicion." [Terry, 392 U.S. at 27, 20 L. Ed. 2d at 909, 88 \[**328\]](#) S. Ct. at 1883. Therefore, we hold that when Sergeant Parker further questioned defendant about the contents of her vehicle, he unlawfully prolonged the duration of the traffic stop.

C. Defendant's Consent

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. See [Myles, 188 N.C. App. at 45, 654 S.E.2d at 755](#) (holding [HN7](#) officer must have reasonable suspicion or defendant's consent to prolong the stop by asking additional questions). [HN8](#) "Generally, an initial traffic stop concludes and the encounter becomes consensual only after an officer returns the detainee's driver's license and registration." [Jackson, 199 N.C. App. at 243, 681 S.E.2d at 497](#).

Thus, defendant challenges the trial court's conclusion that "[t]he defendant voluntarily consented and agreed to additional

questioning . . . once the purpose of the traffic stop was over." In challenging this conclusion, defendant contends the [***25] findings of fact underlying that conclusion are unsupported by the evidence. The trial court first found: "Contemporaneously with Sergeant Parker advising her that she would not be charged or cited for any driving offense he returned her driver's license. These events occurred simultaneously" The trial court then further found: "Contemporaneous with the return of the license, Sgt. Parker asked the defendant 'Do you have anything in the vehicle?'"

After reviewing the dashboard video, we agree with defendant that these events did not occur simultaneously or contemporaneously as the trial court's findings suggest. To the contrary, 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. The trial court's pertinent findings of fact are not supported by the evidence, which necessarily invalidates the conclusion that defendant voluntarily consented [***26] to the additional questions after the conclusion of the stop.

"Accordingly, the officer's continued detention of defendant violated defendant's [Fourth Amendment](#) right against unreasonable seizures and defendant's subsequent consent to a search of his car was [*327] involuntary as a matter of law." [Cottrell, 234 N.C. App. at 752, 760 S.E.2d at 285](#). See also [Myles, 188 N.C. App. at 51, 654 S.E.2d at 758](#) ("Since [the officer's] continued detention of defendant was unconstitutional, defendant's consent to the search of his car was involuntary."). The trial court, therefore, erred in denying defendant's motion to suppress, and we reverse.

REVERSED AND REMANDED.

Chief Judge McGEE and Judge [DAVIS](#) ▼ concur.

Footnotes

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As noted by the trial court's order, violation of this statute was a Class 2 misdemeanor until 1 December 2013. It is now punished as an infraction. [N.C. Gen. Stat. § 20-35\(a2\)\(3\)](#) (2015). This change was implemented pursuant to 2013 N.C. Sess. Law Ch. 385, § 4. Because the traffic stop was conducted on 28 February 2013, this change has no effect on the trial court's determinations.

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Furthermore, assuming, without deciding, that Sergeant Parker did not have reasonable suspicion to further question defendant about her address, the question could be considered an "ordinary inquir[y] incident to [the traffic] stop" because Sergeant Parker was checking the accuracy of defendant's driver's license. [Rodriguez, ___ U.S. at ___, 191 L. Ed. 2d at 499, 135 S. Ct. at 1615](#) (quoting [Caballes, 543 U.S. at 408, 160 L. Ed. 2d at 847, 125 S. Ct. at 837](#)).

STATE V. REED

1.

STATE V. REED:

**DEFENDANT'S MOTION TO SUPPRESS
FILED BY
ATTORNEY BRIAN R. KNOTT
CLAYTON, NC**

NORTH CAROLINA
JOHNSTON COUNTY

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NUMBER 14CRS 54773,
14CRS 54776

2015 APR 27 PM 2:16

STATE OF NORTH CAROLINA)
SUPERIOR COURT) S.C.

MOTION TO SUPPRESS

VS.

DAVID MICHAEL REED

Joe

NOW COMES, the Defendant, by and through his undersigned counsel, pursuant to the Fourth, Fifth, Sixth and Fourteenth Amendments of the United States Constitution; Article I, Section 20 of the North Carolina Constitution and pursuant to the provisions N.C.G.S. § 15A-974, et seq, moving the Court for an Order suppressing the vehicle stop of the Defendant on September 9, 2014 and the subsequent search of the vehicle the Defendant was driving, any and all items seized and any oral or written statements made by the Defendant as a result of the search; and in support of said Motion, counsel shows the Court as follows:

1. On September 9, 2014 at 0818 hours, North Carolina State Highway Trooper, John W. Lamm, stopped the Defendant, David Michael Reed, driving a Nissan Altima Enterprise Rental Car, for speeding near mile-marker 83 on Interstate I-95 in Johnston County, North Carolina. There was a passenger in the car, Usha N. Pearl.
2. Trooper Lamm asked the driver for his license and registration and the rental agreement. The Defendant handed the trooper a New York Driver's License and a New York Registration Card and a rental agreement.
3. The trooper called Enterprise to confirm the vehicle was properly rented to the Defendant and his passenger, Usha Pearl.
4. The trooper then launched into a series of questions with the Defendant first then the passenger separately without attention to the purpose for which he claimed to have stopped Defendant's vehicle including but not limited to: where are you coming from? Where are you going to? What's the purpose of your trip?
5. The trooper completed his enforcement action and handed the Defendant all of his paperwork including a written warning for speeding.
6. While still detained, the trooper then asked the Defendant more questions unrelated to the purpose for which he had stopped the Defendant and after a warning citation was written. The trooper asked him: if he had anything illegal in the car? If he had any marijuana, cocaine, heroin, meth, large sums of US Currency or illegal cigarettes in the car? The trooper then asked to search the car and the Defendant said no and that he was in a hurry to get to the hotel and had to use the bathroom.
7. While the Defendant and passenger were still detained, the trooper then approached the passenger side window and again made contact with Usha Pearl. The trooper asked her the same questions about having anything illegal in the car and she said no.

8. The trooper than asks Ms. Pearl if he can search the car and asks her to provide identification. She did not answer regarding searching the car and she handed the officer her identification from her employer and from the State of New York.

9. While the Defendant and the passenger were still detained, the trooper presented a written consent form to search the car and asked her to sign it. Ms. Pearl signed it at 0913 hours, almost an hour after the car was first stopped.

10. The consent obtained from the passenger was in violation of the Defendant's Fourth Amendment Right to be free from unreasonable stops in that Defendant had already been issued a warning and had refused to consent to the search and was unlawfully detained while the trooper unlawfully continued his investigation by talking to the passenger a second time. The Defendant and passenger had been detained for almost an hour before the consent was signed by Ms. Pearl and said signature was obtained under duress.

11. As the result of the trooper's search, a black plastic bag containing contraband was allegedly found and a written statement from the Defendant was allegedly obtained.

12. Defendant's vehicle was stopped for speeding and speeding only. The continued seizure of the Defendant and his passenger even after the trooper issued the warning for speeding was beyond the original purpose of the stop and there were no grounds providing the trooper with additional reasonable and articulable suspicion of criminal activity to continue his investigation. Once the trooper handed the Defendant the warning for speeding, the trooper had completely addressed the original purpose of the stop. The officer did not have reasonable suspicion to justify the continued detention of the Defendant and his passenger.

13. According to the Fourth Circuit of the Federal Court of Appeals, the Fourth Amendment of the United States Constitution guarantees the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. Temporary detention of individuals during the stop of an automobile by the police if only for a brief period and for a limited purpose constitutes a seizure of persons within the meaning of this provision. "Because an ordinary traffic stop is a limited seizure more like an investigative detention than a custodial arrest, we employ the Supreme Court's analysis for investigative detention used in *Terry v. Ohio*, 392 U.S. (1968), to determine the limits of police conduct in routine traffic stops. Under *Terry's* dual inquiry, after asking whether the officer's action was justified at its inception, we ask whether the continued stop was sufficiently limited in scope and duration to satisfy the conditions of an investigative seizure. With regard to the scope, the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's reasonable suspicion in a short period of time. With regard to duration, although the reasonable duration of a traffic stop cannot be stated with mathematical precision, a stop may become unlawful if it is prolonged beyond the time reasonably required to complete its mission." *U.S. v. Vaughn* __ F. 3d __, __ (4th Cir. 2012) "The scope of the detention must be carefully tailored to its underlying justification." *Florida v. Royer*, 460 U.S. 491, 500 (1983). "The seizure remains lawful only so long as [unrelated] inquiries do not measurably extend the duration of the stop." *Caballes*, 543 U.S. 455 (2005).

14. Trooper Lamm's stop, search and seizure of the Defendant, his passenger and the car he was driving went well beyond the scope and duration afforded by the United States Constitution and the North Carolina State Constitution.

15. Any and all evidence obtained as the result of the traffic stop and unreasonable search and seizure of the Defendant and his passenger, conducted by Trooper Lamm and Trooper Kenneth Ellerbe is in violation of the Fourth Amendment of the United States Constitution, and the North Carolina State Constitution and is the fruit of the poisonous tree and therefore must be suppressed.

WHEREFORE, Defendant respectfully prays the Court as follows:

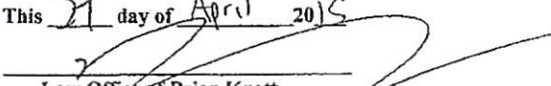
That a Hearing be conducted to determine the legality of the stop, search and seizure of the Defendant and his passenger and thereafter enter an Order suppressing the traffic stop, the search and the seizure as the stop, search and seizure is in violation of the Defendant's Fourth Amendment Right to be free from unreasonable stops, searches and seizures as well as his Fifth Amendment Right Against Self Incrimination as well as his Sixth Amendment Right to have counsel present during questioning. That any and all oral and written statements and all evidence obtained in connection with the stop, search, and seizure of the Defendant, his passenger and the vehicle Defendant was driving be excluded as fruit of the poisonous tree.

Respectfully submitted, this 27th day of April 2015.

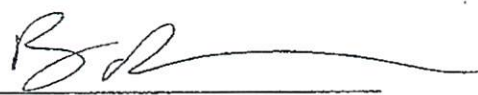
CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this pleading in the above entitled action upon all other parties to this cause by depositing a copy hereof, postage paid, in the United States mail, addressed to the attorney or attorneys for said parties.

This 27 day of April 2015


Law Office of Brian Knott

LAW OFFICE OF BRIAN KNOTT


Brian R. Knott
Attorney for Defendant
505 E. Main St.
Clayton, NC 27520
Telephone: (919) 616-6528

NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NUMBER 14CRS 54773,
14CRS 54776

JOHNSTON COUNTY

2015 APR 27 PM 2:16

STATE OF NORTH CAROLINA

JOHNSTON COUNTY, N.C.

AFFIDAVIT

VS.

J. O. R.

DAVID MICHAEL REED

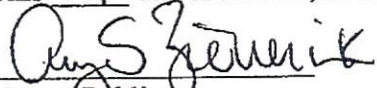
Now comes counsel for the Defendant, Brian Knott, and makes the following affidavit.
The affiant saith thus:

That I have reviewed the State's discovery file in this matter, including the reports of the involved law enforcement officers contained therein, and that further I have interviewed the Defendant and otherwise investigated this matter. Based upon information developed from the aforementioned sources and upon information and belief, the facts as set forth below have caused me to determine that the stop, search and seizure conducted in this case violates the Defendant's Fourth Amendment Rights to be free from unreasonable stops, searches and seizures. This unreasonable stop, search and seizure of the Defendant by the State Highway Patrol in this case, resulted in evidence now sought to be used against the Defendant, and the use of such evidence is fruit of the poisonous tree and is unlawful under both the U.S. and North Carolina Constitutions. The facts which support this belief are set forth in the motion to which this affidavit is attached and are incorporated herein as if fully set forth.

The foregoing one page of text comprising the body of counsel's affidavit is incorporated by reference with the motion to suppress filed in this matter.


BRIAN R. KNOTT

Sworn and subscribed before me
This 27 day of APRIL, 2015.


Notary Public

My Commission Expires: Jan 31, 2020



2.

STATE V. REED:

**ORDER DENYING DEFENDANT'S
MOTION TO SUPPRESS**

JUDGE GAYLE ADAMS

STATE OF NORTH CAROLINA
COUNTY OF JOHNSTON

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

2015 JUL 14 A 10: 57 FILE NO.: 14CRS 54773; 54776

STATE OF NORTH CAROLINA JOHNSTON CO., C.S.C.

VS

RAM

**ORDER DENYING DEFENDANT'S
MOTION TO SUPPRESS**

DAVID MICHAEL REED

This matter coming on for hearing and being heard by the undersigned Judge of the Superior Court for June 2nd and June 4th, 2015, upon the Defendant's Motion to Suppress dated April 27, 2015. After considering all the evidence and arguments of counsel, the Court hereby makes the following findings of fact:

1. That on September 9, 2014 at approximately 8:18 am, Trooper John W. Lamm of the North Carolina State Highway Patrol was assigned and working Interstate 95 in Johnston County.
2. That Trooper Lamm, who was radar certified, was stationary in the median of I-95 operating a stationary radar.
3. That Trooper Lamm observed a grey Nissan Altima traveling south on I-95 and formed an opinion that the vehicle was traveling at a speed of 80 mph in a 65 mph zone.
4. That Trooper Lamm activated his radar and observed a target speed of 78 mph.
5. That Trooper Lamm then pulled out from where he was stationed, followed the grey Altima, and activated his blue lights and siren causing the Altima to pull over to the shoulder of the highway.
6. That upon approaching the left side of the vehicle, Trooper Lamm observed a female in the front passenger seat holding an adult female pit bull dog and the defendant in the driver's seat of the vehicle.
7. That Trooper Lamm noticed the presence of coffee, energy drinks, trash, and dog food scattered throughout the interior of the vehicle indicating a lived in look and hard travel.
8. That Trooper Lamm knew that the presence of a female dog and dog food are sometimes used to distract a male canine during a dog sniff.
9. That Trooper Lamm noticed several air fresheners, which the Trooper knew are sometimes used to mask the odor of a controlled substance.
10. That the Defendant provided Trooper Lamm with a New York driver's license in the name of David Michael Reed, a registration card, and an Enterprise rental agreement.
11. That the Defendant complied with Trooper Lamm's request to accompany him back to the patrol vehicle where Trooper Lamm told the Defendant, while the Defendant was still outside the vehicle, that he was stopped for speeding, which the Defendant acknowledged stating that he "was running about 84".

12. That after a consensual pat down for weapons, Trooper Lamm opened the passenger door of the patrol car for the Defendant before he sat down in the driver's seat.
13. That upon sitting down, Trooper Lamm noticed the Defendant had taken a seat in the patrol vehicle, but had left the door open and had one leg out of the door.
14. That when Trooper Lamm asked the Defendant to close the door, the Defendant responded by looking at the Trooper, laughing, and continuing to leave the door open before responding, "I'm scared to do that".
15. That the Defendant then partially closed the door and only fully closed it after Trooper Lamm ordered him to do so and also indicated that the door was still unlocked.
16. That Trooper Lamm observed the Defendant was overly nervous for a speeding violation.
17. That while running record checks on the Defendant and the vehicle, Trooper Lamm engaged the Defendant in casual conversation.
18. That during this time Trooper Lamm determined that the rental agreement was for a Black Rio that had been previously returned for a different vehicle, not the Nissan Altima he had stopped, indicated a cash payment, and limited travel to New York, New Jersey, and Connecticut only.
19. That Trooper Lamm also learned that Ms. Peart, the passenger, was the lessee of the vehicle, that the Defendant had previously been "arrested for robbery in the military," and that he was coming from New York heading to Fayetteville to see family.
20. That Trooper Lamm then met with Ms. Peart, who was seated in the passenger seat of the Altima, to obtain information about the rental of the car.
21. That while Ms. Peart looked for the current rental agreement, which was never found, Trooper Lamm engaged her in casual conversation and learned from her that she was unsure of their travel plans, but believed they were visiting family in "Fayetteville or maybe Tennessee or Georgia".
22. That after confirming by a phone call that the Nissan Altima was properly rented to Ms. Peart, although only for travel in New York, New Jersey, and Connecticut, Trooper Lamm handed the Defendant all his paperwork and issued a warning ticket for speeding.
23. That from the time Trooper Lamm first spotted the grey Nissan Altima until he returned the Defendant all his paperwork and issued him a warning ticket for speeding, less than 30 minutes had elapsed
24. That after Trooper Lamm told the Defendant that the traffic stop was complete, he then asked the Defendant if he could ask him a few questions, and the Defendant responded in the affirmative.
25. That after asking the Defendant if there was anything illegal in the vehicle, the Defendant stated that "you can break the car down".
26. That after asking the Defendant if he could search his car, the defendant expressed reluctance before directing Trooper Lamm to ask Ms. Peart since she was the lessee of the vehicle. At which time, Trooper Lamm left the patrol car, asked the Defendant to sit tight, and went to ask Ms. Peart.

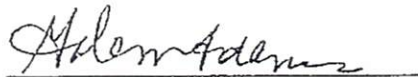
27. That when Trooper Lamm asked Ms. Peart for consent to search the vehicle, she verbally consented and signed a written consent form, and Trooper Lamm began the search of the grey Nissan Altima.
28. That during the search of the grey Nissan Altima, Trooper Lamm found suspected cocaine under the back seat of the vehicle.
29. Upon seeing the suspected cocaine that had been found under the back seat of the grey Nissan Altima, the Defendant made statements denying ownership or knowledge that the cocaine was in the car and stated he had even given his consent to search, and had also stated that "I said you can ask her (Ms. Peart)" and that "she gave consent."

The Court herein makes the following Conclusions of Law:

1. That Trooper Lamm had a reasonable basis to stop the vehicle being driven by Defendant for speeding.
2. That Trooper Lamm was at all times casual and conversational in his words and manner.
3. That after the stop for the traffic violation was concluded, Trooper Lamm was justified in prolonging the stop because he possessed reasonable suspicion of criminal activity and he received consent to extend the stop.
4. That the Defendant had no standing to contest the search of the grey Nissan Altima that he was driving since he was not the owner nor legal possessor of the vehicle and deferred to Ms. Peart, the legal possessor, when asked for consent to search the vehicle.
5. That the Defendant never unequivocally refused consent to search the grey Nissan Altima and in fact made a statement consistent with consent, such as, "you can break the car down," and after the search stated, "I said you could search."
6. That even if the Defendant had standing to contest the search of the grey Nissan Altima, Trooper Lamm had sufficient reasonable suspicion of criminal activity to continue the traffic stop beyond the speeding enforcement action.
7. Trooper Lamm's reasonable suspicion consisted of :
 - a. Defendant was overly nervous for a traffic stop for speeding.
 - b. Defendant would not close the patrol car door until ordered to do so, stating that he was "scared to do that" and had one leg out of the door.
 - c. Defendant gave the Trooper a rental agreement for a different car than he was operating and that car was paid for in cash.
 - d. Defendant was operating the car outside of the approved area for travel, New York, New Jersey, and Connecticut.
 - e. He noted the presence of numerous air fresheners in the vehicle.
 - f. The vehicle had a lived in look showing hard travel, such as, coffee, energy drinks, and trash.
 - g. The presence of a female dog in the car and dog food scattered throughout the car.
 - h. The driver and passenger provided inconsistent travel plans.

Therefore, based on the foregoing findings of fact and conclusions of law, the Court herein orders that the Defendant's Motion to Suppress is DENIED.

This the 10th of July, 2015



Honorable Gale Adams
Superior Court Judge

3.

STATE V. REED:

**DEFENDANT/APPELLANT'S BRIEF
FILED BY
ATTORNEY PAUL E. SMITH
CHAPEL HILL, NC**

No. COA 16-33

ELEVENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

STATE OF NORTH CAROLINA)	
)	
v.)	
)	
DAVID MICHAEL REED,)	
)	
Defendant-Appellant.)	

From Johnston County
14 CRS 54773, 54776

**DEFENDANT-APPELLANT'S
OPENING BRIEF**

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No. COA 16-33

ELEVENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

STATE OF NORTH CAROLINA)

)

v.)

)

From Johnston County

14 CRS 54773, 54776

DAVID MICHAEL REED,)

)

Defendant-Appellant.)

**DEFENDANT-APPELLANT'S
OPENING BRIEF**

ISSUE PRESENTED

- I. DID THE TRIAL COURT ERR IN DENYING DEFENDANT'S MOTION TO SUPPRESS EVIDENCE WHERE THE OFFICER SEIZED DEFENDANT WITHOUT CONSENT OR REASONABLE SUSPICION?

STATEMENT OF THE CASE

Defendant David Michael Reed was indicted for two counts of trafficking in cocaine on 6 October 2014. (R. pp 7-8.) Mr. Reed filed a motion to suppress evidence which was heard at the 1 June 2015 Criminal Session of Johnston County Superior Court before the Honorable Gale M. Adams. (R. pp 13-16; T. Vol. I.)¹ Judge Adams issued a written order denying the motion on 10 July 2015. (R. pp 17-20.)

Mr. Reed's case came on for hearing at the 20 July 2015 Criminal Session of Johnston County Superior Court, before the Honorable Thomas H. Lock. (T. Vol. II.) On 20 July 2015, Mr. Reed pled guilty to the charges pursuant to an agreement in which Mr. Reed retained his right to appeal the denial of his motion to suppress. (R. p 25; T. Vol. II pp 6-7.) On 20 July 2015, Judge Lock entered Judgement, sentencing Mr. Reed to 70-93 months of imprisonment, a \$100,000 fine, and \$3,494.50 in costs. (R pp 29-30.) Mr. Reed gave notice of appeal in court on the same day. (R pp 31-32.)

STATEMENT OF THE GROUNDS FOR APPELLATE REVIEW

Mr. Reed appeals pursuant to N.C. Gen. Stat. §§ 7A-27(b), 15A-979(b), and 15A-1444(a) from a final judgment entered in Johnston County Superior Court.

¹ The transcript for the proceedings on 2 and 4 June 2015 is referred to as Volume I and the transcript for the proceedings on 20 July 2015 is referred to as Volume II.

STATEMENT OF FACTS

I. TROOPER LAMM STOPS MR. REED FOR SPEEDING.

Shortly after 8 a.m. on 9 September 2014, Defendant David Michael Reed was driving south on I-95 in Johnston County, North Carolina, with Ms. Usha Peart, his fiancé. (T. Vol. I pp 10-13.) State Trooper John Lamm was parked in the highway median. (Id. pp 9-10.) Lamm's radar detector indicated that Mr. Reed was traveling at 78 miles per hour, above the posted speed limit of 65 miles per hour. (Id. p 13.) Lamm followed Mr. Reed and activated his blue lights and siren. (Id. p 14.) Mr. Reed pulled his car to the side of the road. (Id.)

Trooper Lamm's patrol car had a forward facing camera system that recorded the police encounter, including audio recordings both inside and outside the vehicle. (Id. pp 14-15; Exs. 3, 5.)

Trooper Lamm approached the car's passenger side. (T. Vol. I p 16; Ex. 3 at 2:50.) Lamm observed a female pit bull sitting with Ms. Peart in the passenger seat. (T. Vol I p 16.) Lamm asked if the dog was friendly, and Mr. Reed and Ms. Peart told him that he was. (Ex. 3 at 3:05.) Lamm spoke to the dog, saying that it looked a lot like his dog. (Ex. 3 at 3:15.) Lamm observed coffee, energy drinks, trash, and dog food scattered throughout the interior of the vehicle indicating a

lived in look and hard travel. (T. Vol. I pp 30-31.) He also noticed air fresheners in the vehicle. (Id.)

Mr. Reed gave Trooper Lamm a New York driver's license in his name, a registration card, and an Enterprise rental agreement. (Id. p 17; Ex. 1; Ex. 3 at 3:10.) The rental agreement listed Ms. Peart as the renter and Mr. Reed as an authorized driver. (Ex. 1; T. Vol. I p 22.) Lamm then told Mr. Reed "come on back here with me." (Ex. 3 at 3:35.) Mr. Reed exited the vehicle, and Lamm asked if he had any guns or knives on him. (Ex. 3 at 3:50.) Lamm then asked if he could frisk Mr. Reed, as Mr. Reed held his arms to the side. During the frisk, Mr. Reed asked why the frisk was necessary, and Lamm stated "I'm just going to pat you down for weapons because you're going to have a seat with me in the car." (Ex. 3 at 3:55.) During the frisk, Lamm found a pocket knife and placed it on the hood of Mr. Reed's car. (Ex. 3 at 4:09.) Lamm testified that the pocket knife was "no big deal." (T. Vol. I p 23.)

Lamm then told Mr. Reed to "come on back here," and opened the door to the passenger side of his patrol car. (T. Vol. I p 23; Ex. 3 at 4:20.) Mr. Reed sat in the patrol car but left the door open. (T. Vol. I p 24; Ex. 3 at 4:50.) Lamm told Mr. Reed to close the door. (Ex. 3 at 5:00.) Mr. Reed told the officer that he was scared to close the door. (Ex. 3. at 5:08.) Lamm responded "Shut the door. I'm

not asking you, I'm telling you to shut the door. I mean you're not trapped, the doors unlocked. Last time I checked we were the good guys." (Ex. 3 at 5:14; see also T. Vol. I p 25.) After Mr. Reed replied "I'm not saying you're not," Trooper Lamm replied "You don't know me, don't judge me." (Ex. 3 at 5:28.) Mr. Reed explained that he had been stopped in North Carolina before, and they had not taken him back to the patrol car. (Ex. 3 at 5:35.) Lamm replied "well there's a first time for everything." (Id.) He repeated "don't judge me, man, you don't know me," and "I said don't judge me, you don't know me, I'm the good guy." (Ex. 3 at 5:45.) Mr. Reed complied with Lamm's direction and closed the door. (T. Vol. I p 25.)

Trooper Lamm ran the regular checks on Mr. Reed, concluding that his license was valid, he did not have any warrants for his arrest, and he was safe to drive the highways. (T. Vol. I p 60.) While running the checks, he asked Mr. Reed a series of questions. Lamm asked "where are y'all heading to?" (Ex. 3 at 6:30.) Mr. Reed replied that they were going to Fayetteville to visit his family. (Id. p. 29; Ex. 3 at 6:30.) Mr. Reed explained that they first rented the car because they needed a second vehicle for work in New York. (Ex. at 6:50.) Lamm noted that the rental agreement only authorized use in New Jersey, New York, and

Connecticut, and told Mr. Reed that they could probably clear the matter up with a phone call. (Ex. 3 at 7:10.)

Lamm then began to ask a series of questions unrelated to the speeding ticket. He asked Mr. Reed what he had been arrested for in the past; Mr. Reed told him about a previous arrest for robbery while he was serving in the military. (Id. at 7:45.) He asked Mr. Reed about his and Ms. Peart's living arrangements, their relation to one another, and whose pet the dog was. (Id. at 8:15.)

About five minutes after Mr. Reed entered the patrol car, Trooper Lamm said he noticed the rental agreement was for a different car than the one Mr. Reed was driving. (Id. at 10:00.) Mr. Reed said that rental agreement was for a rental car they had before their current rental car. (Id. at 10:20.) Lamm left the car to see if Ms. Peart has the correct agreement, instructing Mr. Reed to "sit tight." (Id. at 10:25.) Mr. Reed asked if he could smoke a cigarette. (Id. at 10:30.) Lamm told him that he could not. (Id.)

Trooper Lamm approached Ms. Peart, who was still seated in passenger side of the car. (T. Vol. I p 28.) Trooper Lamm told her about the problem with the rental agreement and asked about their travel plans. (Ex. 3 at 10:45.) Ms. Peart said that they had family down and they were going to Fayetteville. (T. Vol. I p 30; Ex. 3 at 11:10.) She said that after visiting Mr. Reed's family in North

Carolina, they might visit some of her family in Tennessee or Georgia. (Id.) On this point, she stated “We may end up in Tennessee,” and “I also have a sister in Georgia.” (Ex. 3 at 11:40.) At the suppression hearing, Lamm testified that Ms. Peart said “they had family down and they were going to Fayetteville, and then she also mentioned Tennessee and Georgia.” (T. Vol. I p 30.)

Ms. Peart explained that the first car they rented had been hit by another car, and that the company provided them their current car as a replacement. (Ex. 3 at 12:50.) Ms. Peart was unable to find the most recent rental agreement, and asked if Lamm wanted her to call the rental company. (Id. at 13:35.) Lamm said that he would call the company. (Id. at 14:00.) Lamm then told Ms. Peart that he was going to write Mr. Reed a speeding ticket and that they would “be on your way.” (Id. at 14:05.)

Trooper Lamm returned to the patrol car, told Mr. Reed that his license fine, and told him that he would be issued a ticket for speeding. (Id. at 14:30.) He then proceeded to ask Mr. Reed more questions unrelated to the traffic stop. He asked “what was the purpose of the trip down here?” (Id. at 15:20.) Mr. Reed again stated that they were visiting his family, and that a number of his family members were in town before school started. (Id. at 15:25.)

After questioning Mr. Reed for several more minutes, Lamm finally called Enterprise Rental. (Ex. 3 at 19:30.) Lamm explained that Ms. Peart produced the wrong rental agreement for the vehicle she was driving, and that she told him Enterprise had provided her current car as a replacement. (Ex. 3 at 20:30; Ex. at 0:00.) Enterprise confirmed that everything was fine with Ms. Peart and Mr. Reed's current rental car, and that Ms. Peart simply needed to call the company to correct the issue regarding the states in which the car was authorized for use. (T. Vol. I pp 32-33; Ex. 3 at 20:00; Ex. 5 at 0:50.)

After completing this call, Lamm gave Mr. Reed a written warning and asked if he had any questions. (Ex. 5 at 2:30.)

II. LAMM COMPLETES THE TRAFFIC STOP BUT CONTINUES TO DETAIN MR. REED.

Lamm then told Mr. Reed that the traffic stop was over, but that he wanted to ask him some questions. (T. Vol. I p 35; Ex. 5 at 2:45.) Lamm asked if that was "ok." (Id.) Mr. Reed made no audible response in the video; at trial, Lamm testified that Mr. Reed nodded his head. (T. Vol. I p 36; Ex. 5 at 2:50.) At no point did Lamm tell Mr. Reed that he was free to leave, and at the hearing, Lamm admitted that Mr. Reed was not free to leave. (T. Vol. I p 53.)

Lamm asked Mr. Reed if he was carrying any of a number of illegal substances. Mr. Reed denied possessing anything unlawful, saying "no liquor, no

nothing, you can break the car down.” (Ex. 5 at 3:00.) Lamm continued asking questions, and eventually said “look, I want to search your car is that OK with you.” (Id. at 3:45.) Following muffled, equivocal responses, Trooper Lamm stated “it’s up to you,” and Mr. Reed asked “for what?” (Id. at 3:49.) Mr. Reed eventually made a statement that could be heard as “you got to ask her, I don’t see a reason why.” Trooper Lamm responded “OK, you want me to ask her because she’s the renter on the agreement?” (Ex. 5 at 4:00.) Mr. Reed responded, “I’m just saying, I’ve got to go to the bathroom, I want to smoke a cigarette, we’re real close to getting to the hotel so that we can see our family, like, I don’t, I don’t see a reason why.” (Ex. 5 at 4:00.)

Mr. Reed responded to additional inquiries by talking about how he had already been searched when he was frisked, and how the search resulted only in a pocket knife. Lamm eventually stated “Alright, well let me go talk to her then, sit tight,” and left the patrol car. (T. Vol. I pp 64-65; Ex. 5 at 4:55.) At the hearing, Lamm testified that “for safety reasons I had him stay seated in the car.” (T. Vol. I pp 64-65.) When asked if Mr. Reed was “allowed to leave the car,” Lamm testified that “no, he wouldn’t have.” (Id. p. 65.)

Earlier in the stop, Trooper Lamm had called Trooper Kenneth Ellerbe for backup. (Id. p 76.) By the time Lamm went to speak with Ms. Peart for the

second time, Trooper Ellerbe had arrived at the scene and parked his vehicle behind Lamm's patrol car. (Id. p 77.) Ellerbe stood beside Mr. Reed's passenger door while Lamm spoke with Ms. Peart. (Id. pp 78-79.)

Trooper Lamm approached Ms. Peart, assured her everything was fine with the rental car, and then began asking her a series of questions about whether they possessed anything unlawful. (Ex. 5 at 5:15.) He then asked Ms. Peart if he could search her vehicle, and after several unequivocal answers, Ms. Peart stated "no. There's nothing in my car, I mean..." (Ex. 5 at 6:00.) At the hearing, Trooper Lamm testified that he did not remember Ms. Peart ever saying "no." (T. Vol. I p 65.) Trooper Lamm continued to ask for consent to search, and Ms. Peart eventually signed a written consent form. (T Vol. I pp 39-40; Ex. 2.)

The officers then searched the vehicle and found a bag of cocaine under the back seat. (T. Vol. I pp 42.)

III. MR. REED'S MOTION TO SUPPRESS IS DENIED.

On 27 April 2015, Mr. Reed filed a motion to suppress the evidence recovered by Trooper Lamm on the basis that it was the result of an unlawful stop, search, and seizure of Mr. Reed under the Fourth Amendment and the North Carolina Constitution. (R. pp. 13-16.) Judge Gale Adams conducted a hearing on the motion on 2 and 4 June 2015, during which Trooper Lamm and Trooper

Ellerbe were the sole witnesses, and denied the motion from the bench on 4 June 2015. (R. pp. 17-19; T. Vol. I.) The court issued a written order denying the motion on 10 July 2015. (R. pp 17-20.)

Judge Adams' order included 29 findings of fact, including:

11. That the Defendant complied with Trooper Lamm's request to accompany him back to the patrol vehicle...
...
21. That while Ms. Peart looked for the current rental agreement, which was never found, Trooper Lamm engaged her in casual conversation and learned from her that she was unsure of their travel plans, but believed they were visiting family in "Fayetteville or maybe Tennessee or Georgia."
...
26. That after asking the Defendant if he could search his car, the defendant expressed reluctance before directing Trooper Lamm to ask Ms. Peart since she was the lessee of the vehicle. At which time Trooper Lamm left the patrol car, asked the Defendant to sit tight, and went to ask Ms. Peart.

(R pp 17-18.) The order included seven Conclusions of Law, including the finding that Trooper Lamm "was at all times casual and conversational in his words and manner." (R p. 19, Conclusion of Law 2.) The court found Lamm was justified in prolonging the stop beyond what was required for the traffic violation both because he possessed reasonable suspicion of criminal activity and because he received consent to extend the search. (Id., Conclusion of Law 3.) It found that Defendant had no standing to contest the search. (Id., Conclusion of Law 4.) And it found

that even if Mr. Reed had standing, Trooper Lamm had “sufficient reasonable suspicion of criminal activity to continue the traffic stop beyond the speeding enforcement action.” (Id., Conclusion of Law 6.)

The court identified eight factors that supporting Trooper Lamm’s reasonable suspicion:

- a. Defendant was overly nervous for a traffic stop for speeding.
- b. Defendant would not close the patrol car door until ordered to do so, stating that he was ‘scared to do that’ and had one leg out of the door.
- c. Defendant gave the Trooper a rental agreement for a different car than he was operating and that car was paid for in cash.
- d. Defendant was operating the car outside of the approved area for travel, New York, New Jersey, and Connecticut.
- e. He noted the presence of numerous air fresheners in the vehicle.
- f. The vehicle had a lived in look showing hard travel, such as, coffee, energy drinks, and trash.
- g. The presence of a female dog in the car and dog food scattered throughout the car.
- h. The driver and passenger provided inconsistent travel plans.

(Id., Conclusion of Law 7.)

Mr. Reed subsequently pled guilty to the charges pursuant to a plea agreement that preserved his right to appeal the denial of the suppression motion.

(R. p 25.)

ARGUMENT

In addressing Mr. Reed’s motion to suppress, the trial court made several findings of fact that are not supported by competent evidence. It then erred in

denying Mr. Reed's motion to suppress evidence. The court first erred because the scope of Trooper Lamm's initial investigatory detention was not properly tailored to address a speeding violation. Second, when Trooper Lamm directed Mr. Reed to "sit tight" in the patrol car after having already issued the speeding ticket, Trooper Lamm seized Mr. Reed without consent or reasonable suspicion of criminal activity. Because the search of the car was the result of each of these unlawful seizures, the products of that search are the fruit of the poisonous tree and must be suppressed.

I. THE TRIAL COURT ERRED IN DENYING DEFENDANT'S MOTION TO SUPPRESS BECAUSE THE VEHICLE SEARCH WAS THE RESULT OF MR. REED'S UNLAWFUL SEIZURE.

A. Standard of Review

"At a hearing to resolve a defendant's motion to suppress, the State carries the burden to prove by a preponderance of the evidence that the challenged evidence is admissible." *State v. Parker*, 183 N.C. App. 1, 3, 644 S.E.2d 235, 238 (2007) "The standard of review in evaluating a trial court's ruling on a motion to suppress is that the trial court's findings of fact are conclusive on appeal if supported by competent evidence, even if the evidence is conflicting." *State v. McArn*, 159 N.C. App. 209, 211, 582 S.E.2d 371, 373 (2003) (internal alterations

and quotations omitted). “However, the trial court’s conclusions of law are fully reviewable on appeal.” *Id.* at 212, 582 S.E.2d at 374.

B. Several of the Trial Court’s Findings of Fact Are Not Supported by Competent Evidence.

Several findings of fact by the trial court are not supported by competent evidence. In Finding of Fact 11, the trial court found that “Defendant complied with Trooper Lamm’s request to accompany him back to the patrol vehicle[.]” (R. p 17.) This finding lacks support in the record to the extent it characterizes Lamm’s conduct as a “request” to which Mr. Reed voluntarily complied.² Lamm never asked Mr. Reed to join him in his patrol car – he unilaterally directed him to do so. (Ex. 3 at 3:35; 3:55.) The fact that Lamm was exercising his authority to compel Mr. Reed to enter the car was made clear when Mr. Reed said he did not want to close the patrol car door, and Lamm commanded him to do so saying “I’m not asking you, I’m telling you to shut the door.” (Ex. 3 at 5:14.) No evidence supports the conclusion that Lamm’s directives were merely “requests” to which Mr. Reed voluntarily complied.

² The court’s determination of Lamm’s statement to be a “request” rather than a command or order is actually a conclusion of law, not a finding of fact, because it requires the exercise of judgment. *See Matter of Helms*, 127 N.C. App. 505, 510, 491 S.E.2d 672, 675 (1997) (“As a general rule . . . any determination requiring the exercise of judgment or the application of legal principles is more properly classified a conclusion of law.”)

Finding of Fact 21 is not supported by competent evidence. The trial court found that “Lamm engaged [Ms. Peart] in casual conversation and learned from her that she was unsure of their travel plans, but believed they were visiting family in ‘Fayetteville or maybe Tennessee or Georgia.’” (R p 18.) Ms. Peart never said she was going to “Fayetteville or maybe Tennessee or Georgia.” Instead, Lamm testified that Ms. Peart said “~~they~~ had family down and they were going to Fayetteville, and then she also mentioned Tennessee and Georgia.” (T. Vol. I p 30.) In the recording of the encounter, Ms. Peart said that after visiting Mr. Reed’s family in North Carolina they might visit her family, explaining “we may end up in Tennessee,” and “I also have a sister in Georgia.” (Ex. 3 at 11:40.) Nothing in the record supports the trial court’s account of events.

In Finding of Fact 26, the trial court stated that “defendant expressed reluctance before directing Trooper Lamm to ask Ms. Peart since she was the Lessee of the vehicle. At which time, Trooper Lamm left the patrol car...” (R. p 18.) This characterization of Mr. Reed and Trooper Lamm’s interaction lacks any support in the record. The evidence shows that, in the midst of making several statements about his reluctance to consent to a search, Mr. Reed made a statement that could be interpreted as “I don’t understand, you got to ask her, I don’t see a reason why...” (Ex. 5 at 4:00.) Trooper Lamm attempted to clarify this statement,

asking “OK, you want me to ask her, though, since she’s the renter on the agreement, right?” But his attempts to elicit such a directive were unsuccessful. Mr. Reed did not agree to Trooper Lamm’s statement, and instead responded that he did not understand why a search was necessary, that he needed to go to the bathroom, that they were not far from their hotel, and that he felt he had already been searched when he was frisked. Lamm’s repeated attempts to prompt a directive from Mr. Reed unequivocally shows that Mr. Reed had never provided such a direction. About a minute later, Trooper Lamm gave up and simply went to Ms. Peart on his own accord. (Ex. 5 at 4:58.)

Conclusion of Law 19 includes the statement that Lamm “was at all times casual and conversational in his words and manner,” which is a finding of fact. (R. p 19.) This statement is refuted by the recording of the encounter, in which Lamm orders Mr. Reed to close the door to the car. He then proceeded to aggressively berate Mr. Reed, making statements such as “you don’t know me, don’t judge me” and “last time I checked we were the good guys.” (Ex. 3 at 5:00-6:00.) Lamm plainly was not “at all times casual and conversational.”

C. Mr. Reed Was Subject to an Unlawful Seizure.

- 1. Trooper Lamm Did Not Use the Least Intrusive Means Reasonably Required to Carry Out Mr. Reed’s Traffic Stop.**

An officer who makes an investigatory stop may take “such steps as are reasonably necessary to protect their personal safety and to maintain the status quo during the course of the stop.” *State v. Campbell*, 188 N.C. App. 701, 709, 656 S.E.2d 721, 727 (2008). However, “the characteristics of the investigatory stop, including its length, the methods used, and any search performed should be the least intrusive means reasonably available to effectuate the purpose of the stop.” *State v. Thorpe*, 232 N.C. App. 468, 478, 754 S.E.2d 213, 221 (2014) (emphasis added). “If the methods used by the police exceed those least intrusive means reasonably required to carry out the stop, the encounter evolves into a de facto arrest, creating the need for the police to show probable cause to support the detention.” *State v. Carrouthers*, 200 N.C. App. 415, 419, 683 S.E.2d 781, 784 (2009).

In certain situations, officers are permitted “to neutralize dangerous suspects during an investigative detention” by using measures of force such as drawing weapons, placing the subject in handcuffs, or placing suspects in patrol cars. *Campbell*, 188 N.C. App. at 709, 656 S.E.2d at 727. But there must be some justification for such an application of force, as “the reasonableness of the methods used in the investigatory stop depends on the circumstances.” *Thorpe*, 232 N.C. App. at 478, 754 S.E.2d at 221.

For example, in *Thorpe*, this Court held that “[w]hen dealing with aggressive, noncooperative individuals, handcuffs and placing the suspect in the officer’s car are acceptable methods of effecting an investigatory stop.” 232 N.C. App. at 479, 754 S.E.2d at 222. In part because the trial court had found that the defendant and his companion were “aggressive, belligerent, and noncompliant with orders,” this Court found the officer was justified in handcuffing the defendant and placing him in the passenger seat of his patrol car. *Id.*

Similarly, in *State v. Campbell*, this Court found that officers were permitted to handcuff the subject of an investigatory stop who posed a demonstrated risk of flight. 188 N.C. App. at 709, 656 S.E.2d at 727. The trial court had found that the officers knew of “prior occasions in which the Defendant had fled from law enforcement.” *Id.* The use of handcuffs in the course of an investigatory detention was therefore “reasonable under the circumstances.” *Id.*

Here, the trial court found no facts indicating that Lamm’s forcible detention of Mr. Reed in his patrol vehicle was the “least intrusive means” of effecting the traffic stop. The only potentially relevant fact is that Ms. Peart was waiting in the passenger seat of the vehicle. In some situations, an officer being outnumbered can justify an additional detention during an investigatory stop. But in order to justify further detention, there must be some additional facts suggesting a threat to

the officer. *See Thorpe*, N.C. App. at 479, 754 S.E.2d at 222 (officer was outnumbered two-to-one by individuals who were each acting aggressively); *State v. Carrouthers*, 213 N.C. App. 384, 390-91, 714 S.E.2d 460, 465 (2011) (officer was outnumbered three-to-one by individuals who had appeared to have engaged in a hand-to-hand drug deal, and the officer “feared [the defendant] may have been concealing a weapon” in his baggy clothes). Here, Lamm was able to separate Mr. Reed from Ms. Peart by having him step out of his vehicle. There are no facts suggesting that Ms. Peart or Mr. Reed posed a threat that would have justified Mr. Reed’s detention in the patrol car.

Mr. Reed had been stopped for a speeding violation. He was cooperative and nonaggressive. He consented to a frisk, which produced only a pocket knife that Trooper Lamm viewed as “no big deal.” No facts suggested that Mr. Reed posed a flight risk or a risk to Lamm’s safety. And no facts support the presence of probable cause sufficient to justify an arrest. Because Trooper Lamm failed to use the least intrusive means reasonably required to carry out Mr. Reed’s traffic stop, his seizure of Mr. Reed violated the Fourth Amendment.

2. Trooper Lamm Extended Mr. Reed’s Seizure Without Consent After Issuing a Citation.

Even if Trooper Lamm's initial actions were constitutional, he still violated the Fourth Amendment by requiring Mr. Reed to "sit tight" in his patrol car after issuing him a citation for speeding. Law enforcement officers effectuate a Fourth Amendment seizure when, "by means of physical force or show of authority, [they] terminate[] or restrain [a person's] freedom of movement." *Brendlin v. California*, 551 U.S. 249, 254, 127 S. Ct. 2400, 2405, 168 L.Ed.2d 132, 138 (2007). When an officer completes a traffic stop, "the return of documentation would render a subsequent encounter consensual only if a reasonable person under the circumstances would believe he was free to leave or disregard the officer's request for information." *State v. Jackson*, 199 N.C. App. 236, 243, 681 S.E.2d 492, 497 (2009). "A reviewing court determines whether a reasonable person would feel free to decline the officer's request or otherwise terminate the encounter by examining the totality of circumstances." *State v. Icard*, 363 N.C. 303, 308, 677 S.E.2d 822, 826 (2009).

Here, Mr. Reed was seized when Lamm went to ask Ms. Peart for consent to search. After issuing Mr. Reed a citation, Lamm left him in the patrol car and told him to "sit tight." Trooper Ellerbe stood outside Mr. Reed's door after Lamm left the vehicle. Mr. Reed had been told to "sit tight" on an earlier occasion and had then asked to smoke a cigarette; Lamm told him he was not allowed to smoke a

cigarette. Mr. Reed was never told he was free to leave, and at the suppression hearing, Lamm testified that he was not free to leave. A reasonable person in Mr. Reed's position would have accurately felt they were not free to terminate the police encounter. Mr. Reed was plainly seized under the Fourth Amendment.

Mr. Reed did not consent to this extended seizure. Lamm had previously asked Mr. Reed if it was alright if he asked him a few questions after the traffic stop ended. But any consent Mr. Reed gave to the earlier questions did not extend to an additional extension of the traffic stop for other purposes. *See State v. Schiro*, 219 N.C. App. 105, 111, 723 S.E.2d 134, 138 (2012) (recognizing that the scope of consent "is measured against a standard of objective reasonableness where the court asks 'what would the typical reasonable person have understood by the exchange between the officer and the suspect?'"). And any earlier consent to questioning would plainly not extend to the additional seizure of Mr. Reed's person in Lamm's patrol vehicle. *Id.*

This holds true even if the Court credits the trial court's conclusion that Mr. Reed directed Trooper Lamm to ask Ms. Peart about consent. Any such direction could not be construed as consent for Mr. Reed's continued detention in Trooper Lamm's patrol car. *See id.*; *State v. Myles*, 188 N.C. App. 42, 46, 654 S.E.2d 752, 755 *aff'd*, 362 N.C. 344, 661 S.E.2d 732 (2008) (driver's continued detention in

patrol car was not consensual despite the fact that the driver said he “did not mind” if the officer went to speak to a passenger in his vehicle, where driver was not told he was free to leave and the officer testified he was not, in fact, free to leave).

Once Trooper Lamm completed the traffic stop, he continued to detain Mr. Reed in his patrol car without consent. Mr. Reed was therefore seized under the Fourth Amendment.

3. Trooper Lamm Did Not Have Reasonable Suspicion to Extend the Investigatory Stop or Continue Mr. Reed’s Detention.

The trial court erroneously concluded that Lamm had a reasonable, articulable suspicion of criminal conduct sufficient to continue the traffic stop beyond the speeding enforcement action. The trial court listed eight factors supporting this conclusion. Several factors either were not present or provided no evidence of criminal misconduct. The remaining factors are insufficient to support a finding of reasonable suspicion.

a. The Trial Court Considered Factors That Were Not Present or Were Not Suggestive of Criminal Activity.

First, the trial court found that “[t]he driver and passenger provided inconsistent travel plans.” (R. p. 19, 7(h).) This conclusion appears based on the unsupported factual finding that Ms. Peart stated they were visiting family in “Fayetteville or maybe Tennessee or Georgia.” (R. p 18, Finding of Fact 21.) As

discussed above, there is no evidence that Ms. Peart ever said the quoted phrase. (See supra § I.B.). Instead, she said that they were in North Carolina to visit Mr. Reed's family, that they were going to Fayetteville, and that they might then visit her family in Tennessee and Georgia. Mr. Reed, meanwhile, told Lamm that they were in North Carolina to visit his family in Fayetteville. Although these itineraries were not communicated in an identical fashion, they are perfectly consistent.

Two of the trial court's findings relate to three issues surrounding the rental car. The trial court found reasonable suspicion supported by the fact that 1) Ms. Peart first gave a rental agreement for a different car; 2) that car was identified as being paid for in cash; and 3) Mr. Reed and Ms. Peart were driving the vehicle beyond the states mentioned in the rental contract. But Trooper Lamm had already investigated these issues. The rental company confirmed that there were no problems with the rental agreement, that Mr. Reed and Ms. Peart lawfully possessed the vehicle, and that they simply needed to call the company to clear up the issue regarding the authorized states of travel. The earlier confusion surrounding the rental agreement was fully resolved, with a third party having confirmed that Ms. Peart and Mr. Reed's explanation was accurate. It therefore could not have supported reasonable suspicion. If anything, the inquiry into the

rental car demonstrated Ms. Peart and Mr. Reed's veracity. *See Myles*, 188 N.C. App. at 50, 654 S.E.2d at 757 (considering only a driver's nervousness when evaluating the presence of reasonable suspicion since the evidence demonstrated there was nothing unusual about the driver's rental car being one day overdue).

The trial court also found that "Defendant was overly nervous for a traffic stop for speeding." (R. at 19, Conclusion of Law 7(a).) "[E]xtreme nervousness can be a factor considered by police in examining the totality of the circumstances[.]" *State v. Phifer*, 226 N.C. App. 359, 362, 741 S.E.2d 446, 449 (2013). But not all nervousness is indicative of criminal intent, as "[m]any people become nervous when stopped by a state trooper." *State v. Pearson*, 348 N.C. 272, 276, 498 S.E.2d 599, 601 (1998). Instead, nervousness becomes relevant when defendants show "more than ordinary nervousness." *State v. McClendon*, 350 N.C. 630, 639, 517 S.E.2d 128, 134 (1999).

When determining if an individual was extremely nervous, courts do not simply look to the officer's ultimate opinion. Instead, Courts look to articulable indicia of nervousness to determine whether the officer's opinion was supported by the facts. Such evidence can include an individual's failure to make eye contact, profuse sweating, rapid breathing, or rapid heart rate. *See id.* (opinion of extreme nervousness supported by defendant's "sweating, breathing rapidly, sighing

heavily, . . . chuckling nervously in response to questions[, and] refus[ing] to make eye contact when answering questions”); *State v. Hernandez*, 170 N.C. App. 299, 309, 612 S.E.2d 420, 426 (2005) (opinion of extreme nervousness supported by the fact that the defendant’s eyes were “darting, shifting,” that he “wouldn’t look directly at the officer,” and that the officer could see the defendant’s heart beating under his shirt).

Here, the trial court found that “Trooper Lamm observed the Defendant was overly nervous for a speeding violation.” (R. p. 18.) This appears primarily based on Trooper Lamm’s testimony that Mr. Reed was “overly nervous for just getting a warning for a speeding ticket. He just couldn’t relax.” (T. Vol. I p 35.) The trial court did not and could not find any objective indicia of nervousness supporting Trooper Lamm’s opinion. Moreover, Trooper Lamm did much more than conduct a routine traffic stop. There is certainly no evidence indicating that Mr. Reed was overly nervous for what actually occurred: a traffic stop in which a trooper ordered the driver out of his vehicle, frisked him, ordered him into a patrol car against his will, berated him when he indicated that he was scared to close the door, and held him for over twenty minutes. *See Berkemer v. McCarty*, 468 U.S. 420, 437, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984) (noting that after a traffic violation, a driver can generally expect “to spend a short period of time answering questions and waiting

while the officer checks his license and registration”). Indeed, the audio recording from the encounter demonstrates that Mr. Reed was remarkably calm and cooperative in the face of the intrusive stop, with the exception of the period immediately surrounding Trooper Lamm’s command that he close the door to the patrol car. Such commands are plainly not part of a routine traffic stop for speeding. A nervous response to such commands does not demonstrate that Mr. Reed was “overly nervous for a traffic stop for speeding.” (R. p 19.)

The trial court also listed as a separate factor the fact that Mr. Reed would not close the patrol car until ordered to do so. This behavior appears to be relevant only to the extent it demonstrates Mr. Reed’s nervousness. But again, Mr. Reed’s reluctance to close the car door did not indicate “extreme” nervousness given the full context of Trooper Lamm’s stop. This factor cannot provide an independent ground for Lamm’s suspicion separate from Mr. Reed’s nervousness. And as discussed above, it is not indicative of the type of “extreme” nervousness that can at times support a finding of reasonable suspicion in this context.

b. The Remaining Factors Are Insufficient To Establish a Reasonable Suspicion of Unlawful Conduct.

As such, the only evidence consistent with unlawful conduct was 1) the presence of air fresheners in the vehicle; 2) the fact that the vehicle was messy, with a “lived in look showing hard travel, such as, coffee, energy drinks, and

trash”; and 3) the presence of a female dog in the car and dog food scattered throughout the car. All other evidence indicated that Mr. Reed and Ms. Peart were not acting unlawfully. Trooper Lamm’s frisk of Mr. Reed did not reveal any contraband or weapons beyond an ordinary pocket knife. Defendant’s license check did not return any problems. Defendant was not wanted for any crimes. Mr. Reed responded to all of Trooper Lamm’s questions in a forthright manner. There was no evidence Defendant or Ms. Peart had a history of drug crimes. Ms. Peart and Mr. Reed gave consistent itineraries. The rental company confirmed that there were no significant problems with the rental agreement, and that Ms. Peart and Mr. Reed lawfully possessed the vehicle.

In short, nothing suggested that Ms. Peart and Mr. Reed were anything other than a young couple on a long road trip with their dog. This cannot provide reasonable suspicion to extend the traffic stop and detain Mr. Reed. For example, in *State v. Cottrell*, ___ N.C. App. ___, 760 S.E.2d 274 (2014), an officer stopped a car for driving with its headlights off. In the course of conducting the traffic stop, the officer found that defendant “had a history of drug charges and various felonies,” and noticed “an extremely strong odor coming from the vehicle” that was “more like an incense than what someone would wear.” *Id.* at ___, 760 S.E.2d at 280. The officer believed the odor was a “cover scent” used to “mask or cover

the smell of drugs like marijuana.” *Id.* Otherwise, there was no evidence of extreme nervousness, failure to maintain eye contact, or conflicting stories about registration or destination, and there no invalid documents. *Id.*

This Court found that the use of a strong fragrance believed to be a cover scent and a known felony and drug history were not, without more, sufficient to support a finding of reasonable suspicion of criminal activity. “[S]ome additional evidence of criminal activity is necessary for an officer to develop a reasonable and articulable suspicion.” *Id.* at ___; 760 S.E.2d at 281. *See also State v. Pearson*, 348 N.C. 272, 276, 498 S.E.2d 599, 601 (1998) (holding no reasonable suspicion of criminal activity where defendant was stopped at 3pm, defendant produced a valid license and registration, officers had not previously encountered the defendant, and there was no indication defendant had a criminal record or was the subject of a drug investigation, despite the fact that the defendant had a slight odor of alcohol, acted “nervous and excited,” and made statements about his itinerary that conflicted with those made by the passenger); *Myles*, 188 N.C.App. at 47, 50, 51, 654 S.E.2d at 756, 758 (holding no reasonable suspicion existed to extend traffic stop when rental car occupants' stories did not conflict, there was no odor of alcohol, officer found no contraband or weapons upon frisking driver, and driver's license was valid, despite fact that driver's “heart was beating unusually fast” and

rental car was one day overdue). Here, too, there is nothing indicating unlawful activity other than evidence Trooper Lamm believed indicated Mr. Reed and Ms. Peart were attempting to cover up the scent of drugs. Without additional evidence of criminal activity, this cannot provide reasonable suspicion for an extended traffic stop.

Regardless, even if the facts at hand did provide reasonable suspicion to extend the investigatory stop, none justified Mr. Reed's continued detention in Lamm's patrol car for the duration of that extension. *See Thorpe*, 232 N.C. App. at 478, 754 S.E.2d at 221. (“[T]he characteristics of the investigatory stop, including its length, the methods used, and any search performed should be the least intrusive means reasonably available to effectuate the purpose of the stop.”) As discussed above, the only fact potentially supporting Lamm's initial decision to detain Mr. Reed in his patrol car was the fact that, given Ms. Peart's presence, he was outnumbered at the initiation of the traffic stop. But even that justification evaporated as soon as Trooper Ellerbe arrived on the scene. Nevertheless, Lamm continued Mr. Reed's detention, instructing him to “sit tight” in the patrol car with Trooper Ellerbe standing beside his door. Even if Lamm were justified in detaining Mr. Reed in the patrol car at the initiation of the traffic stop, and even if he were justified in extending the investigatory detention, there was no

constitutional justification for him to continue Mr. Reed's seizure in the patrol car once Trooper Ellerbe arrived.

Lamm did not have reasonable suspicion to extend the traffic stop beyond the issuance of the traffic citation, and he did not have reasonable suspicion to continue Mr. Reed's detention in his patrol car after Trooper Ellerbe arrived.

4. Mr. Reed Has Standing to Challenge The Violation of His Fourth Amendment Rights.

The trial court erroneously found that Defendant lacked standing to contest the search of the rental car because "he was not the owner nor legal possessor of the vehicle and deferred to Ms. Peart, the legal possessor, when asked for consent to search the vehicle." (R. p 19, Conclusion of Law 4.) This conclusion is faulty because Mr. Reed, as an authorized driver of the rental car, had a sufficient possessory interest in the car to create an expectation of privacy. *See United States v. Walker*, 237 F.3d 845, 849 (7th Cir. 2001) ("[A] person listed on a rental agreement as an authorized driver has a protected Fourth Amendment interest in the vehicle and may challenge a search of the rental vehicle.")

But the Court need not reach this question. "When evidence is obtained as the result of illegal police conduct . . . all evidence that is the 'fruit' of that unlawful conduct should be suppressed." *State v. McKinney*, 361 N.C. 53, 58, 637 S.E.2d 868, 872 (2006). As such, when consent to search is obtained subsequent to

an unlawful detention, the consent is “tainted by the illegality of the extended detention,” rendering it “ineffective to justify the search.” *Jackson*, 199 N.C. App. at 243, 681 S.E.2d at 497.

In the context of the Fourth Amendment, the concept of “standing” simply requires that “[b]efore defendant can assert the protection afforded by the Fourth Amendment . . . he must demonstrate that any rights alleged to have been violated were his rights, not someone else's.” *State v. Mlo*, 335 N.C. 353, 377, 440 S.E.2d 98, 110 (1994). Here, both the vehicle search and any consent given to that search were plainly the result of Mr. Reed’s unlawful detention. Each was therefore tainted by the violation of Mr. Reed’s Fourth Amendment rights, regardless of whether Mr. Reed would otherwise have an expectation of privacy in the rental car.

This principal is illustrated by *State v. Jackson*, 199 N.C. App. 236, 241, 681 S.E.2d 492, 496 (2009). The *Jackson* defendant was a passenger in a vehicle. Passengers typically do not have expectations of privacy vehicles, and, without more, often lack standing to challenge the constitutionality of vehicle searches. See *State v. Melvin*, 53 N.C. App. 421, 427, 281 S.E.2d 97, 101 (1981). But in *Jackson*, officers unlawfully extended a traffic stop, thereby subjecting both the driver and the passenger to an unconstitutional seizure under the Fourth Amendment. *Jackson*, 199 N.C. App. at 241, 681 S.E.2d at 496. The driver

consented to the search of his vehicle during the unlawful extension of the stop. This Court rejected the State's argument that the Defendant lacked standing to challenge the detention. It found that both passengers and drivers have standing to challenge an unlawfully extended stop. *Id.* And it found that the passenger could move to suppress the evidence uncovered in the subsequent search because the driver's eventual consent was tainted by a violation of the passenger's own Fourth Amendment rights. *Id.* at 243; 681 S.E.2d at 497.

Mr. Reed has standing to challenge his own unlawful detention. He therefore has standing to challenge the admissibility of evidence produced in the resulting search.

CONCLUSION

For the foregoing reasons, Mr. Reed respectfully requests that the Court reverse the trial court's order denying his motion to suppress evidence and vacate the judgment against him.

Respectfully submitted, this 21st day of March, 2016.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 28(j) of the Rules of Appellate Procedure, counsel for the Defendant certifies that the foregoing brief, which is prepared using proportional font, is less than 8,750 words (excluding cover, index, table of authorities, certificate of service, this certificate of compliance, and appendices) as reported by the word-processing software.

This the 21st day of March, 2016.

Electronically submitted
Paul E. Smith

CERTIFICATE OF SERVICE

The undersigned counsel for the Defendant hereby certifies that a copy of Defendant-Appellant's Opening Brief was sent via first class mail, postage prepaid, addressed as follows:

Edmund Burke Haywood
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This the 21st day of March, 2016.

Electronically submitted
Paul E. Smith

NORTH CAROLINA COURT OF APPEALS

STATE OF NORTH CAROLINA)
)
v.)
)
DAVID MICHAEL REED,)
)
Defendant-Appellant.)

From Johnston County
14 CRS 54773, 54776

**DEFENDANT-APPELLANT'S
REPLY BRIEF**

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NORTH CAROLINA COURT OF APPEALS

STATE OF NORTH CAROLINA)	
)	
v.)	<u>From Johnston County</u>
)	14 CRS 54773, 54776
DAVID MICHAEL REED,)	
)	
Defendant-Appellant.)	

**DEFENDANT-APPELLANT'S
REPLY BRIEF**

ARGUMENT

The trial court erred in denying Mr. Reed’s motion to suppress evidence because he was seized without reasonable suspicion in violation of the Fourth Amendment, and because the evidence in question was only discovered as a result of his unlawful seizure. In contending otherwise, the State ignores controlling law and mischaracterizes the facts of this case.

I. Mr. Reed’s Detention Was Not Consensual.

The State argues that Mr. Reed’s detention in the patrol car was consensual because Mr. Reed suggested that Trooper Lamm should ask Ms. Peart about the

vehicle search. (State's Br. at 12.) Even if this Court affirms the trial court's findings of fact on this point, this Court's decision in *State v. Myles*, 188 N.C. App. 42, 46, 654 S.E.2d 752, 755 *aff'd*, 362 N.C. 344, 661 S.E.2d 732 (2008), refutes the State's position. In *Myles*, a driver was detained in a patrol car during a traffic stop. *Id.* at 43, 654 S.E.2d at 753. After completing the traffic stop, the officer asked if the driver minded if he went to talk to a passenger still seated in the vehicle. *Id.* at 46, 654 S.E.2d at 755. The driver said he did not mind. *Id.* The officer "never told [the driver] he was free to leave," and later testified that he "was not free to leave." *Id.* Notwithstanding the driver's statement that he "did not mind" if the officer went to speak with the passenger, this Court found that the extension of the traffic stop was a detention, not a consensual encounter. *Id.* Under *Myles*, Mr. Reed's purported statement that Trooper Lamm should speak with Ms. Peart cannot render the encounter consensual.

The State does not reference *Myles*. Instead, it relies only on *United States v. Gigley*, 213 F.3d 509 (10th Cir. 2000). In *Gigley*, a vehicle's driver sat in the passenger seat of a patrol car during an eight-minute traffic stop. *Id.* at 513. The officer completed the traffic stop, told the defendant that "that was all [he] had for her," and asked the defendant if he could ask her "a couple more questions." *Id.*

The defendant agreed, and ultimately consented to a search of her vehicle. *Id.* The officer had the defendant leave the patrol car while he conducted the search. *Id.*

The *Gigley* defendant claimed that she was unlawfully seized at the time of her consent because she was seated within the officer's patrol car. In rejecting this argument, the court cited authority recognizing that a passenger's consent would be valid so long as "a reasonable person would have felt free to terminate the encounter," and found that "[t]he fact that Defendant was sitting in the front passenger seat of Smith's patrol car, without more, does not make her consent involuntary." *Gigley*, 213 F.3d at 514 (citing *United States v. Anderson*, 114 F.3d 1059, 1064 (10th Cir. 1997)) (emphasis added).

Even if *Gigley* were controlling, it does not support the State's position. Mr. Reed does not contend he was seized solely because he was seated in the patrol car. Additional facts made clear that he had no choice but to remain in the patrol car following the completion of the traffic stop. Mr. Reed had never been told that he was free to leave, and Trooper Lamm admitted that he was not free to leave. (T. Vol. I p 53); *see also Myles*, 188 N.C. App. at 46, 654 S.E.2d at 755. Trooper Lamm had previously made multiple displays of authority, commanding Mr. Reed to enter the car against his will and denying Mr. Reed's request to smoke a cigarette. (*Id.* p. 25; Ex. 3 at 5:14; 10:30); *see United States v. Mendenhall*, 446

U.S. 544, 554-55, 100 S.Ct. 1870, 1877 (1980) (facts demonstrating seizure include "the use of language or tone of voice indicating that compliance with the officer's request might be compelled"). Trooper Lamm's backup arrived while Mr. Reed was seated in the patrol car. (T. Vol. I p 76-77); *see State v. Icard*, 363 N.C. 303, 310, 677 S.E.2d 822, 827 (2009) (fact that an officer called for backup during an encounter supported the conclusion that a reasonable person would not feel free to leave). During the purportedly consensual encounter, a second trooper arrived and stood outside the patrol car's passenger side door, directly by where Mr. Reed was seated. (T. Vol. I pp 78-79); *see Mendenhall*, 446 U.S. at 554-55, 100 S.Ct. at 1877 ("the threatening presence of several officers" indicated that a reasonable person would not feel free to leave); *cf State v. Buchanan*, 353 N.C. 332, 339, 543 S.E.2d 823, 828 (2001) ("a police officer standing guard at the door" supports a showing that one was in custody under the Fifth Amendment).

Notwithstanding Trooper Lamm's statement that the traffic stop was over, a reasonable person in Mr. Reed's situation would have correctly felt they were not free to terminate the encounter. Because Mr. Reed was detained without reasonable suspicion, that detention tainted any subsequent willingness to answer questions and any subsequent suggestion that Trooper Lamm talk to Ms. Peart. Even if *Gigley* were controlling, it would not require a different result.

II. The State's Attempt to Downplay the Coercive Nature of Trooper Lamm's Statements Are Unavailing.

The State suggests that Trooper Lamm's repeated instruction for Mr. Reed to "sit tight" was not coercive. It claims that "[g]iven the precipitation, 'sit tight' can be interpreted as permission to stay dry in the car." (State's Br. p. 12.) The record does not allow for any such interpretation. After Mr. Reed was first told to "sit tight," he asked if he could smoke a cigarette. (Ex. 3 at 10:30.) Trooper Lamm told him he could not. (Id.) After this exchange, Lamm's instruction to "sit tight" could only be interpreted as a command to remain in the car.

III. The State Misconstrues the Facts in Arguing That Mr. Reed's Detention Was Motivated by Reasonable Suspicion.

In asserting that Mr. Reed's extended detention was motivated by reasonable suspicion, the State misconstrues the facts. It first claims that there were articulable indicia of extreme nervousness because Trooper Ellerbe testified that Mr. Reed was "breaking eye contact" during their conversation. (State's Br. p. 14 (citing T. Vol I p 82.)) But reasonable suspicion depends on what was "known to the officers at the time of the stop or seizure." See *In re I.R.T.*, 184 N.C. App. 579, 585, 647 S.E.2d 129, 135 (2007) (emphasis added). The conversation cited by the State occurred after Trooper Lamm had already begun searching Mr. Reed's vehicle. The fact that Mr. Reed was breaking eye contact later in the police

encounter is irrelevant as to whether Trooper Lamm had reasonable suspicion earlier in the encounter.

In addition, nervousness needs to be extreme in order to be taken into account in determining whether reasonable suspicion exists. *State v. Bedient*, No. COA 15-1011, __ N.C. App. __, 2016 WL 1742802, at *7 (May 3, 2016) (internal quotation marks omitted). Because there is no evidence indicating that Mr. Reed's nervousness was extreme, it cannot be considered when evaluating reasonable suspicion.

The State also asserted that discrepancies with the rental agreement supported reasonable suspicion. (State's Br. at 15.) Trooper Lamm did testify about how the issues with the rental car agreement were problematic. (T. Vol. I p. 26.) But this testimony only related to why he felt the need to investigate the issue further and contact the rental car company. (Id.) Trooper Lamm did not testify that he was still concerned about the car being driven without authorization after the company informed him there were no significant problems with the rental. (Id. p. 34.) Once Trooper Lamm spoke with the rental car company, any previous concerns were put to rest.

The State also persists in claiming that Mr. Reed and Ms. Peart provided inconsistent travel plans. (State's Br. p 16.) It attempts to defend the trial court's

finding that Ms. Peart said she was "visiting family in Fayetteville or maybe Tennessee or Georgia." (Id. p 8.) The State fails to identify any portion of the record in which Ms. Peart made the quotation attributed to her by the trial court. It fails to do so because Ms. Peart never said she was going to "Fayetteville or maybe Tennessee or Georgia." Instead, Ms. Peart and Mr. Reed's itineraries were perfectly consistent: Ms. Peart said that they were visiting Mr. Reed's family in Fayetteville and that they might then visit her family in Tennessee or Georgia, (T. Vol. I p 30; Ex. 3 at 11:40), and Mr. Reed said that they were driving to Fayetteville to visit his family, (T. Vol. I p 29; Ex. 3 at 6:30).

IV. The State's Argument Regarding Standing Is without Merit.

Finally, the State ignores controlling case law regarding standing. If the Court accepts the State's argument that only Ms. Peart had an expectation of privacy in the vehicle, then Mr. Reed's interest in the vehicle was that of a passenger. In North Carolina, "a passenger subject to detention beyond the scope of the initial seizure is still seized under the Fourth Amendment and, therefore, has standing to challenge the constitutionality of the extended detention." *State v. Jackson*, 199 N.C. App. 236, 241, 681 S.E.2d 492, 496 (2009). Unlawfully detained passengers therefore have standing to suppress evidence discovered in subsequent vehicle searches. *Id.* This is so even when an officer eventually

obtained consent to search, as the consent would be tainted by the illegality of the extended detention[.] *Id.* at 143, 681 S.E.2d at 497.

The State fails to cite *Jackson*, let alone attempt to explain why it does not control here. Instead, it cites an opinion standing for the unremarkable proposition that a defendant can move to suppress evidence only when it appears that his personal rights were violated. (State's Br. at 17-18 (citing *State v. Taylor*, 298 N.C. 405, 416, 259 S.E.2d 502, 508 (1979))). Here, Mr. Reed's personal rights were violated because he was subjected to an unlawful detention. Under *Taylor* and *Jackson*, he has standing to contest the admissibility of all evidence discovered as a direct result of that seizure.

CONCLUSION

For the foregoing reasons, Mr. Reed respectfully requests that the Court reverse the trial court's order denying his motion to suppress evidence and vacate the judgment against him.

Respectfully submitted, this 6th day of May, 2016.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 28(j) of the Rules of Appellate Procedure, counsel for the Defendant certifies that the foregoing brief, which is prepared using proportional font, is less than 3,750 words (excluding cover, index, table of authorities, certificate of service, this certificate of compliance, and appendices) as reported by the word-processing software.

This the 6th day of May, 2016.

Electronically submitted
Paul E. Smith

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The undersigned counsel for the Defendant hereby certifies that a copy of Defendant-Appellant's Reply Brief was sent via first class mail, postage prepaid, addressed as follows:

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Electronically submitted
Paul E. Smith

4.

**STATE V. REED:
FEBRUARY 28, 2020**

**SUPREME COURT OPINION
JUSTICE MORGAN;
CONCURRING
JUSTICE BEASLEY
JUSTICE HUDSON
JUSTICE EARLS**

**DISSENTING OPINIONS
JUSTICE NEWBY
JUSTICE DAVIS
JUSTICE ERVIN**

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State v. Reed, 373 N.C. 498

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No. 365A16-2

Reporter

373 N.C. 498 * | 2020 N.C. LEXIS 103 ** | 2020 WL 967618

STATE OF NORTH CAROLINA v. DAVID MICHAEL REED

Prior History: State v. Reed, 257 N.C. App. 524, 810 S.E.2d 245, 2018 N.C. App. LEXIS 52 (Jan. 16, 2018)

Disposition: AFFIRMED.

Core Terms

traffic stop, reasonable suspicion, consent to search, patrol car, law enforcement officer, door, prolonged, driver, criminal activity, questions, detain, trial court, rental vehicle, suppress, rental car, circumstances, passenger, suspicion, seated, law enforcement, duration, traffic, rental agreement, seizure, sit, free to leave, paperwork, speeding, trial court's finding, defense motion

Case Summary

Overview

ISSUE: Whether defendant was entitled to suppress evidence that resulted in trafficking in cocaine charges when a law enforcement officer stopped defendant for speeding as he was driving a rental car along an interstate highway.

HOLDINGS: [1]-Defendant was entitled to suppress the evidence because the law enforcement officer who arrested defendant disregarded the basic tenets of U.S. Const. amend. IV by prolonging the traffic stop after the lawful duration of the traffic stop had concluded upon the completion of the mission of the traffic stop without defendant's voluntary consent or a reasonable, articulable suspicion of criminal activity to justify doing so.

Outcome

Judgment of intermediate appellate court affirmed.

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HN1 [Search & Seizure, Scope of Protection](#)

Law enforcement officers need discretion in conducting their investigative duties. This discretion has been judicially broadened, equipping law enforcement officers with wide latitude within which to effectively fulfill their duties and responsibilities. When complex considerations and exigent circumstances combine in a fluid setting, officers may be prone to exceed their authorized discretion and to intrude upon the rights of individuals to be secure against unreasonable searches and seizures under [U.S. Const. amend. IV](#). [More like this Headnote](#)

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HN2 [De Novo Review, Conclusions of Law](#)

When considering on appeal a motion to suppress evidence, a court reviews the trial court's factual findings for clear error and its legal conclusions de novo. This requires the appellate court to examine whether competent evidence supports the trial court's findings of fact and whether the findings of fact support the conclusions of law. [More like this Headnote](#)

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HN3 [Search & Seizure, Scope of Protection](#)

[U.S. Const. Amend. IV](#) guards against unreasonable searches and seizures. The temporary detention of individuals during the stop of an automobile by police, even if only for a brief period and for a limited purpose, constitutes a seizure of persons within the meaning of [U.S. Const. Amend. IV](#). Thus, a traffic stop is subject to the reasonableness requirement of [U.S. Const. Amend. IV](#). In that regard, because a traffic stop is more analogous to an investigative detention than a custodial arrest, a court will employ the two-prong standard articulated in the case law in determining whether or not a traffic stop is reasonable. [More like this Headnote](#)

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HN4 [Warrantless Searches, Investigative Stops](#)

Under a dual inquiry, a court must evaluate the reasonableness of a traffic stop by examining (1) whether the traffic stop was lawful at its inception; and (2) whether the continued stop was sufficiently limited in scope and duration to satisfy the conditions of an investigative seizure. The scope of the search must be strictly tied to and justified by the circumstances which rendered its initiation permissible. Although the scope of the intrusion permitted will vary to some extent with the particular facts and circumstances of each case, the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time. An investigatory detention must last no longer than is necessary to effectuate the purpose of the stop. Consistent with this approach, the second prong restricts the range of permissible actions that a police officer may take after initiating a traffic stop. A stop may become unlawful if it is prolonged beyond the time reasonably required to complete its mission. [More like this Headnote](#)

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HNS Warrantless Searches, Investigative Stops

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. [More like this Headnote](#)

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HN6 Search & Seizure, Scope of Protection

North Carolina decisions are obliged to heed and implement [U.S. Const. Amend. IV](#) constraints, which have been articulated as the law of the land governing searches and seizures in traffic stops continues in its development, interpretation, and application. To this end, the duration of a traffic stop must be limited to the length of time that is reasonably necessary to accomplish the mission of the stop. Thus, a law enforcement officer may not detain a person even momentarily without reasonable, objective grounds for doing so. Further, it is the State of North Carolina's burden to demonstrate that the seizure it seeks to justify was sufficiently limited in scope and duration to satisfy the conditions of an investigative seizure. [More like this Headnote](#)

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HN7 Warrantless Searches, Investigative Stops

In the context of traffic stops, police diligence includes more than just the time needed to issue a citation. Beyond determining whether to issue a traffic ticket, an officer's mission includes ordinary inquiries incident to the traffic stop, such as checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance. In addition, while conducting the tasks associated with a traffic stop, a police officer's questions or actions need not be solely and exclusively focused on the purpose of that detention. An officer is permitted to ask a detainee questions unrelated to the purpose of the stop in order to obtain information confirming or dispelling the officer's suspicions. However, an investigation unrelated to the reasons for the traffic stop must not prolong the roadside detention. To prolong a detention beyond the scope of a routine traffic stop requires that an officer possess a justification for doing so other than the initial traffic violation that prompted the stop in the first place. This requires either the driver's consent or a reasonable suspicion that illegal activity is afoot. [More like this Headnote](#)

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HN8 Warrantless Searches, Investigative Stops

Implicit in the very nature of the term "consent" is the requirement of voluntariness. To be voluntary the consent must be unequivocal and specific, and freely and intelligently given. On the other hand, a determination of the existence of reasonable suspicion requires an assessment of factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. [More like this Headnote](#)

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HN9 Warrantless Searches, Investigative Stops

Wide-ranging investigatory authority is authorized if it does not extend the duration of a traffic stop. [More like this](#)

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HN10 [Warrantless Searches, Investigative Stops](#)

The duration of a traffic stop must be limited to the length of time that is reasonably necessary to accomplish the mission of the stop. [More like this Headnote](#)

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HN11 [Search & Seizure, Scope of Protection](#)

An officer may, consistent with [U.S. Const. amend. IV](#), conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot. An obvious, intrinsic element of reasonable suspicion is a law enforcement officer's ability to articulate the objective justification of his or her suspicion. [More like this Headnote](#)

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HN12 [De Novo Review, Conclusions of Law](#)

Conclusions of law are reviewed de novo and are subject to full review. Under a de novo review, a court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal. [More like this Headnote](#)

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HN13 [Warrantless Searches, Investigative Stops](#)

General nervousness is not significant to reasonable suspicion analysis because many people become nervous when stopped by a state trooper. Indeed, it is common for most people to exhibit signs of nervousness when confronted by a law enforcement officer whether or not the person is currently engaged in criminal activity. Thus, absent signs of nervousness beyond the norm, a court will discount a detaining officer's reliance on a detainee's nervousness as a basis for reasonable suspicion. [More like this Headnote](#)

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Counsel: [\[*1\] Joshua H. Stein](#), Attorney General, by [Kathleen N. Bolton](#), Assistant Attorney General, and [Derrick C. Mertz](#), Special Deputy Attorney General, for the State-appellant.

[Paul E. Smith](#) for defendant-appellee.

Judges: [MORGAN](#), Justice. Justice [NEWBY](#) dissenting. Justice [DAVIS](#) dissenting. Justices [NEWBY](#) and [ERVIN](#) join in this dissenting opinion.

Opinion by: [MORGAN](#)

Opinion

[*498] Appeal pursuant to [N.C.G.S. § 7A-30\(2\)](#) from the decision of a divided panel of the Court of Appeals, [257 N.C. App. 524, 810 S.E.2d 245 \(2018\)](#), on remand from this Court, [370 N.C. 267, 805 S.E.2d 670 \(2017\)](#), reversing a judgment entered on 21 July 2015 by Judge [Thomas H. Lock](#) in Superior Court, Johnston County, following defendant's plea of guilty after the entry of an order by Judge Gale Adams on 14 July 2015 denying defendant's motion to suppress. Heard in the Supreme Court on 9 April 2019.

On 9 September 2014, a law enforcement officer stopped a rental car which was being driven along an interstate highway by the defendant, David Michael **Reed**. [HN1](#) In the seminal case of *Terry v. Ohio*, the Supreme Court of the United States recognized that law enforcement officers need discretion in conducting their investigative duties. [392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 \(1968\)](#). Since *Terry*, this discretion has been judicially broadened, equipping law enforcement officers with wide latitude within which to effectively [\[**2\]](#) fulfill their duties and responsibilities. When complex considerations and exigent circumstances combine in a fluid setting, officers may be prone to exceed their authorized discretion and to intrude upon the rights of individuals to be secure against unreasonable searches and seizures under the [Fourth Amendment](#). This case presents such a situation, as we find here that the law enforcement officer who arrested defendant disregarded the basic tenets of the [Fourth Amendment](#) by prolonging the traffic stop at issue without defendant's voluntary consent or a reasonable, articulable suspicion of criminal activity to justify doing so. As a result, we affirm the decision of the Court of Appeals.

Factual and Procedural Background

Defendant was indicted on 6 October 2014 on two counts of trafficking in cocaine for transporting and for possessing 200 grams or more, but less than 400 grams, of the controlled substance. On 27 April 2015, defendant, through his counsel, filed a motion to suppress evidence obtained during a traffic stop of a vehicle operated by defendant, which resulted in the trafficking in cocaine charges. During a suppression hearing which was conducted on 2 June 2015 and 4 June 2015 pursuant to defendant's motion [\[**3\]](#) to suppress, the following evidence was adduced:

At approximately 8:18 a.m. on 9 September 2014, Trooper John W. Lamm of the North Carolina State Highway Patrol was in a stationary position in the median of Interstate 95 (I-95) between the towns of Benson and Four Oaks. Trooper Lamm was a member of the Criminal Interdiction Unit of the State Highway Patrol. In that capacity, he was assigned primarily to work major interstates and highways to aggressively enforce traffic laws, as well as to be on the lookout for other criminal activity including drug interdiction and drug activity. Trooper Lamm was in the median facing north in order to clock the southbound traffic, using radar for speed detection, when he determined that a gray passenger vehicle was being operated at a speed of 78 miles per hour in [\[*500\]](#) a 65 mile-per-hour zone. [1](#) The driver of the vehicle appeared to Trooper Lamm to be a black male. Trooper Lamm left his stationary position to pursue the vehicle. As he caught up to the vehicle, the trooper turned on his vehicle's blue lights and siren. The operator of the car pulled over to the right shoulder of the road, and Trooper Lamm positioned his law enforcement vehicle behind the driver. [\[**4\]](#)

Trooper Lamm testified that he stopped the driver of the vehicle for speeding. Defendant was the operator of the vehicle, which was a Nissan Altima. Upon approaching the vehicle from its passenger side, the trooper noticed that there was a black female passenger and a female pit bull dog inside the vehicle with defendant. Trooper Lamm obtained defendant's driver's license along with a rental agreement for the vehicle. Defendant had a New York driver's license. The rental agreement paperwork indicated that a black Kia Rio was the vehicle which had been originally obtained, that there was a replacement vehicle, and that the renter of the vehicle was defendant's fiancée, Ms. Usha Peart. Peart was the female passenger in the vehicle with defendant. The vehicle rental agreement paperwork indicated that defendant was an additional authorized driver. The gray Nissan had not been reported to have been stolen.

After examining the rental agreement, Trooper Lamm requested that defendant come back to the law enforcement vehicle. The trooper inspected defendant for weapons and found a pocketknife, but in the trooper's view it was "no big deal." Trooper Lamm opened the door for defendant to enter [\[**5\]](#) the vehicle in order for defendant to sit in the front seat. Defendant left the front right passenger door open where he was seated, leaving his right leg outside the vehicle so that he was not seated completely inside the patrol car. Trooper Lamm asked defendant to get into the vehicle and told defendant to close the door. Defendant hesitated and stated that he was "scared to do that." He explained to the trooper that he had previously been stopped in North Carolina, but that he had never been required to sit in a patrol car with the door closed during a traffic stop. Trooper Lamm ordered defendant to close the door and stated, "[s]hut the door. I'm not asking you, I'm telling you to shut the door. . . . Last time I checked we were the good guys." Defendant complied with Trooper Lamm's order and closed the front passenger door of the patrol car. It was at this point in the traffic stop that Trooper Lamm did not consider defendant to be free to leave.

[\[*501\]](#) The trooper began to pose questions to defendant. Defendant told him that Peart and defendant were going to Fayetteville to visit family and to attend a party before school sessions officially resumed. Defendant was further questioned about [\[**6\]](#) his living arrangements with Peart, and whether he or Peart owned the dog in the car. When the trooper asked Peart about their destinations while she was still in the gray Nissan and defendant was in the patrol car, Peart confirmed that family members were in the area, and that she and defendant were going to Fayetteville, and also mentioned Tennessee and Georgia. Although the rental agreement paperwork only authorized the rental vehicle to be in the states of New York, New Jersey, and Connecticut and it was not supposed to be in North Carolina, the trooper determined that the vehicle was

properly in the possession of Peart upon actually calling the rental vehicle company in New York.

Trooper Lamm characterized the rental vehicle as being "very dirty inside." It had a "lived-in look," according to the trooper, with "signs of like hard driving, continuous driving—coffee cups, empty energy drinks." There was a large can of dog food, a jar of dog food, and dog food scattered along the floorboard. There were also pillows, blankets, and similar items inside the vehicle.

After receiving confirmation from the rental vehicle company that all was sufficiently in order with the gray Nissan, Trooper [**7]. Lamm completed the traffic stop by issuing a warning ticket to defendant. The trooper handed all of the paperwork back to defendant—including defendant's driver's license, the vehicle rental agreement, and the warning ticket—and told defendant that the traffic stop was concluded. The traffic stop had already lasted for a duration of fourteen minutes and twelve seconds through the point in time that Trooper Lamm told Peart that "I just have to write Mr. **Reed** a warning, he just has to slow down, his license is good and then you'll be on your way." After this, the stop was lengthened for an additional five minutes during which Trooper Lamm communicated with the rental vehicle company. While the trooper did not know the time that the traffic stop concluded, he acknowledged that "it did take a little bit longer than some stops." Trooper Lamm testified that defendant was free to leave upon the completion of these actions; nonetheless, the trooper did not inform defendant that defendant was free to leave. Instead, the trooper said to defendant, "[t]his ends the traffic stop and I'm going to ask you a few more questions if it is okay with you." Trooper Lamm construed defendant's continued [**8] presence in the front passenger seat of the law enforcement officer's vehicle to be voluntary, testifying: "[h]e complied . . . [h]e stayed there." Trooper Lamm later [*502] said in his testimony that although he informed defendant that the traffic stop was completed, defendant would still have been detained and required to stay seated, even if defendant denied consent to search the rental vehicle and wanted to leave, based upon Trooper Lamm's observations. The trooper went on to testify that at the point that he went to get consent to search the vehicle from Peart, defendant was detained.

When defendant was asked by Trooper Lamm if there was anything illegal inside the vehicle and for permission to search it, the trooper testified that defendant responded, "you could break the car down," and did not give a response to the trooper's inquiry regarding permission to search the vehicle. Defendant instead directed Trooper Lamm to Peart on the matter of searching the vehicle, because she was the individual who had rented it. Trooper Lamm then told defendant to remain seated in the patrol car by instructing defendant to "sit tight." At this point, for safety reasons, the trooper once again would [**9] not have allowed defendant to leave the patrol car.

Trooper Kenneth Ellerbe of the North Carolina State Highway Patrol, like Trooper Lamm, was also a member of the Patrol's Criminal Interdiction Unit who was located in a stationary position elsewhere on I-95 in the median, facing northbound as he observed southbound traffic at about 8:30 a.m. Trooper Ellerbe was contacted by Trooper Lamm to meet at the traffic stop in which Trooper Lamm was involved, because the Criminal Interdiction Unit operates in such a manner that a trooper who suspects criminal activity in a traffic stop needs another trooper to provide some security in the event that the investigating trooper eventually searches the vehicle at issue if consent to search is obtained. Trooper Ellerbe proceeded to Trooper Lamm's location, parked behind Trooper Lamm's vehicle to the right off the shoulder while putting on his blue lights and siren, and waited for Trooper Lamm to exit his patrol vehicle. Trooper Lamm was inside of his vehicle, and seconds after Trooper Ellerbe's arrival, exited his vehicle and started to walk back towards Trooper Ellerbe's vehicle. Trooper Ellerbe then got out of his vehicle, with the two law enforcement [**10] officers meeting between the rear of Trooper Lamm's vehicle and the front of Trooper Ellerbe's vehicle. Trooper Lamm informed Trooper Ellerbe that Trooper Lamm was going to talk with Peart to see if she would give consent to search the vehicle. Consent to search the rental vehicle had not been given at the time of Trooper Ellerbe's arrival on the scene. The sole reason for Trooper Ellerbe's presence was to provide security. At that point, Trooper Ellerbe approached the passenger side of Trooper Lamm's vehicle and remained beside the car door [*503] for the duration of the traffic stop. Although defendant asked Trooper Ellerbe for permission to smoke a cigarette, defendant did not leave the vehicle. Trooper Ellerbe testified that this had become an officer safety issue, and that he did not want defendant to be outside of the vehicle during the traffic stop to smoke a cigarette. Even while Trooper Ellerbe and defendant engaged in conversation, this occurred through the passenger side window of Trooper Lamm's patrol car while defendant was seated in the vehicle.

As Trooper Ellerbe stood beside the front passenger door of Trooper Lamm's patrol car to provide security while defendant remained in [**11] the front passenger seat of Trooper Lamm's vehicle, Trooper Lamm proceeded to talk with Peart. Trooper Lamm asked Peart if there were any items in the rental car that were illegal. When the trooper, in the words of his testimony, "asked her . . . to search the car, she tried to—without saying, she tried to open the door. . . . [when I was] standing right there." Immediately following that portion of Trooper Lamm's testimony, the following exchange took place between the questioning prosecutor and the answering witness, Trooper Lamm:

Q. What was she opening the door for?

A. She told me she was opening the door so I could — I think she might of said look or search. I don't remember the exact[] verbiage, but she was opening the door to get out so we could search the car.

Q. She was just getting out of your way so you [could] search?

A. Exactly, yes, sir.

Q. So, based on — at least by her actions she was consenting to your search of the vehicle; is that right?

A. Yes, sir.

Trooper Lamm then told Peart that he needed her to complete some paperwork for a search of the rental car. He gave her the State Highway Patrol form "Written Consent to Search," completed the form himself, and obtained Peart's [\[**12\]](#) signature on the form.

Trooper Lamm performed an initial search of the rental car and found cocaine in the backseat area of the Nissan. He notified Trooper Ellerbe to place defendant in handcuffs, and Trooper Ellerbe did so.

[*504] Upon consideration of all of the evidence presented at the suppression hearing, the trial court entered an order on 14 July 2015 which denied defendant's motion to suppress. On 20 July 2015, defendant pleaded guilty to the offenses of (1) trafficking in cocaine by transporting more than 200 grams but less than 400 grams of cocaine, and (2) trafficking in cocaine by possessing more than 200 grams but less than 400 grams of cocaine. In exchange for defendant's guilty plea, the State agreed to dismiss the charges against his codefendant, Peart; to consolidate his two trafficking offenses for one judgment; and to stipulate to an active sentence of seventy to ninety-three months of imprisonment with a \$100,000.00 fine. The trial court accepted defendant's plea, sentenced defendant to seventy to ninety-three months imprisonment, and imposed a \$100,000.00 fine and \$3,494.50 in costs. Defendant appealed to the Court of Appeals.

In his original appeal, defendant argued that [\[**13\]](#) the trial court erred in denying his motion to suppress evidence which was discovered pursuant to an unlawful traffic stop. Specifically, defendant asserted that the trial court made findings of fact which were not supported by competent evidence because his "initial investigatory detention was not properly tailored to address a speeding violation." Defendant further contended that Trooper Lamm seized him without consent or reasonable suspicion of criminal activity when Trooper Lamm ordered him to "sit tight" in the patrol car. Defendant therefore maintained that Trooper Lamm unlawfully seized items from the Nissan Altima vehicle during the ensuing search of the car and that these objects were "the fruit of the poisonous tree." The Court of Appeals agreed.

In a divided opinion, the Court of Appeals determined that Trooper Lamm's authority to seize defendant for speeding had ended when Trooper Lamm informed defendant that the officer was going to issue a warning citation for speeding and provided defendant with a copy of the citation. The majority of the lower appellate court ultimately concluded that Trooper Lamm lacked reasonable suspicion to search the rental car after the traffic [\[**14\]](#) stop had been completed because the evidence relied upon by the trial court in support of its finding of reasonable suspicion constituted legal behavior which was consistent with innocent travel. Therefore, the Court of Appeals reversed the trial court's order denying defendant's motion to suppress.

On 5 October 2016, the State filed a petition for writ of *supersedeas* and a motion for temporary stay of this matter with this Court. On the same date, we allowed the State's motion for a temporary stay. The State filed a Notice of Appeal on 25 October 2016 pursuant to a dissenting **[*505]** opinion in the Court of Appeals which supported the State's position that the traffic stop was properly executed and that the disputed evidence was therefore admissible. On 2 November 2017, this Court vacated the opinion of the Court of Appeals and remanded the matter for reconsideration in light of this Court's recent decision in [State v. Bullock, 370 N.C. 256, 805 S.E.2d 671 \(2017\)](#). Upon remand, the Court of Appeals opined:

In *Bullock*, after the officer required the driver to exit his vehicle, he frisked the driver for weapons. The Supreme Court held this frisk was lawful, due to concerns of officer safety, and the very brief duration of the frisk. The officer [\[**15\]](#) then required the driver to sit in the patrol car, while he ran database checks. The [C]ourt determined this did not unlawfully extend the stop either. The [C]ourt then held the officer had reasonable suspicion to thereafter extend the stop and search defendant's vehicle. The defendant's nervous demeanor, as well as his contradictory and illogical statements provided evidence of drug activity. Additionally, he possessed a large amount of cash and multiple cell phones, and he drove a rental car registered in another person's name. The [C]ourt determined these observations provided reasonable suspicion of criminal activity, allowing the officer to lawfully extend the traffic stop and conduct a dog sniff.

[State v. Reed, 257 N.C. App. 524, 529, 810 S.E.2d 245, 249 \(2018\)](#) (citations omitted).

The majority of the panel below went on to conclude:

In reconsideration of our decision, we are bound by the Supreme Court's holding in *Bullock*. Therefore, we must conclude Trooper Lamm's actions of requiring [d]efendant to exit his car, frisking him, and making him sit in the patrol car while he ran records checks and questioned [d]efendant, did not unlawfully extend the traffic stop. Yet, this case is distinguishable from *Bullock* because after Trooper Lamm returned [\[**16\]](#) [d]efendant's

paperwork and issued the warning ticket, [d]efendant remained unlawfully seized in the patrol car . . . [T]he governing inquiry is whether under the totality of the circumstances a reasonable person in the detainee's position would have believed that he was not free to leave.

[*506] Here, a reasonable person in [d]efendant's position would not believe he was permitted to leave. When Trooper Lamm returned [d]efendant's paperwork, [d]efendant was sitting in the patrol car. Trooper Lamm continued to question [d]efendant as he sat in the patrol car. When the trooper left the patrol car to seek Peart's consent to search the rental car, he told [d]efendant to "sit tight." At this point, a second trooper was present on the scene, and stood directly beside the passenger door of Trooper Lamm's vehicle where [d]efendant sat. Moreover, at trial Trooper Lamm admitted at this point [d]efendant was not allowed to leave the patrol car.

A reasonable person in [d]efendant's position would not feel free to leave when one trooper told him to stay in the patrol car, and another trooper was positioned outside the vehicle door. Therefore, even after Trooper Lamm returned [d]efendant's paperwork, [d]efendant [**17] remained seized. To detain a driver by prolonging the traffic stop, an officer must have reasonable articulable suspicion that illegal activity is afoot.

As we concluded in our first opinion, Trooper Lamm did not have reasonable suspicion of criminal activity to justify prolonging the traffic stop. The facts suggest [d]efendant appeared nervous, Peart held a dog in her lap, dog food was scattered across the floorboard of the vehicle, the car contained air fresheners, trash, and energy drinks—all of which constitute legal activity consistent with lawful travel. While Trooper Lamm initially had suspicions concerning the rental agreement, the rental company confirmed everything was fine.

These facts are distinguishable from *Bullock* in which the officer observed the defendant speeding, following a truck too closely, and weaving briefly over the white line marking the edge of the road. Then the defendant's hand trembled as he handed over his license. Additionally, the defendant was not the authorized driver on his rental agreement, he had two cell phones, and a substantial amount of cash on his person. He failed to maintain eye contact, and made several contradictory, illogical statements. [**18]

[Id. at 529-32, 810 S.E.2d at 249-50](#) (citations omitted). Accordingly, the Court of Appeals again held in a divided opinion that the trial court erred [*507] in denying defendant's motion to suppress and reversed the trial court's judgment. The State then exercised its statutory right of appeal to this Court based upon the dissenting opinion in the court below.

In the instant appeal, the State challenges the Court of Appeals decision which reverses the trial court's denial of defendant's motion to suppress. In doing so, the State contends that Trooper Lamm's actions during the traffic stop were reasonable and, therefore, consistent with the [Fourth Amendment](#). The constitutionality of Trooper Lamm's search-and-seizure activities following the traffic stop is the sole question before us.

Standard of Review

HN2 When considering on appeal a motion to suppress evidence, we review the trial court's factual findings for clear error and its legal conclusions de novo. [State v. Williams, 366 N.C. 110, 112, 726 S.E.2d 161, 166 \(2012\)](#). This requires us to examine "whether competent evidence supports the trial court's findings of fact and whether the findings of fact support the conclusions of law." [State v. Biber, 365 N.C. 162, 167-68, 712 S.E.2d 874, 878 \(2011\)](#) (citing [State v. Brooks, 337 N.C. 132, 140-41, 446 S.E.2d 579, 585 \(1994\)](#)).

Analysis

HN3 The [Fourth Amendment to the United States Constitution](#) guards against "unreasonable searches and seizures." See [U.S. Const. Amend. IV](#). The "[t]emporary detention of individuals during [**19] the stop of an automobile by police, even if only for a brief period and for a limited purpose, constitutes a 'seizure' of 'persons' within the meaning of [the [Fourth Amendment](#)]." [Whren v. United States, 517 U.S. 806, 809-10, 116 S. Ct. 1769, 135 L. Ed. 2d 89 \(1996\)](#); see also [Bullock, 370 N.C. at 257, 805 S.E.2d at 673](#). Thus, a traffic stop is subject to the reasonableness requirement of the [Fourth Amendment](#). In that regard, because a traffic stop is more analogous to an investigative detention than a custodial arrest, we employ the two-prong standard articulated in *Terry* in determining whether or not a traffic stop is reasonable. [United States v. Bowman, 884 F.3d 200, 209 \(4th Cir. 2018\)](#).

HN4 Under *Terry's* "dual inquiry," we must evaluate the reasonableness of a traffic stop by examining (1) whether the traffic stop was lawful at its inception, see [United States v. Rusher, 966 F.2d 868, 875 \(4th Cir. 1992\)](#), and (2) whether the continued stop was "sufficiently limited in scope and duration to satisfy the conditions of an investigative seizure." [Florida v. Royer, 460 U.S. 491, 500, 103 S. Ct. 1319, 75 L. Ed. 2d 229 \(1983\)](#). The United States Supreme Court has made clear that "[t]he scope of the search must be strictly [*508] tied to and justified by the circumstances which rendered its initiation

permissible." [Terry, 392 U.S. at 19](#) (citation omitted). Although "[t]he scope of the intrusion permitted will vary to some extent with the particular facts and circumstances of each case, . . . the investigative methods employed should be the least intrusive means reasonably [**20] available to verify or dispel the officer's suspicion in a short period of time." [Royer, 460 U.S. at 500](#). Relatedly, "an investigatory detention must . . . last no longer than is necessary to effectuate the purpose of the stop." *Id.*

Consistent with this approach, "Terry's second prong restricts the range of permissible actions that a police officer may take after initiating a traffic stop." [United States v. Palmer, 820 F.3d 640, 649 \(4th Cir. 2016\)](#). A stop may become "unlawful if it is prolonged beyond the time reasonably required to complete [its] mission." [Illinois v. Caballes, 543 U.S. 405, 407, 125 S. Ct. 834, 160 L. Ed. 2d 842 \(2005\)](#). As the United States Supreme Court explained in [Rodriguez v. United States](#),

[a] [HN5](#) seizure for a traffic violation justifies a police investigation of that violation . . . [T]he 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.

[575 U.S. 348, 354, 135 S. Ct. 1609, 191 L. Ed. 2d 492 \(2015\)](#) (emphasis added) (citations omitted). [HN6](#) Our Court's decisions are obliged to heed and [**21] implement these [Fourth Amendment](#) constraints, which have been articulated by the United States Supreme Court in *Terry* and its progeny, as the law of the land governing searches and seizures in traffic stops continues in its development, interpretation, and application. To this end, we have expressly held that "the duration of a traffic stop must be limited to the length of time that is reasonably necessary to accomplish the mission of the stop." [Bullock, 370 N.C. at 257, 805 S.E.2d at 673](#) (quoting [Caballes, 543 U.S. at 407](#)). Thus, a law enforcement officer may not detain a person "even momentarily without reasonable, objective grounds for doing so." [Royer, 460 U.S. at 497-98](#). Further, "[i]t is the State's burden to demonstrate that the seizure it seeks to justify . . . was sufficiently limited in scope and duration to satisfy the conditions of an investigative seizure." [Id. at 500](#).

[*509] In this case, defendant initially challenged the announced basis of the traffic stop as being unreasonable. We note, however, that defendant now concedes that the traffic stop was lawful at its inception due to a speeding violation; consequently, there is no issue which arises under the first prong of the *Terry* analysis that requires this Court's attention. However, defendant continues to argue that his seizure continued [**22] after the apparent conclusion of the purpose of the traffic stop and that this continuation was unconstitutional because Trooper Lamm had neither voluntary consent for a search of the vehicle nor any reasonable, articulable suspicion that criminal activity was afoot so as to further detain defendant. In response, the State argues that the initial lawful detention resulting from the traffic stop—which all parties agree was proper—had ended, but further contends that thereafter either defendant consented to the search of the rental vehicle and in the alternative, that any ongoing detention of defendant after the completion of the traffic stop was supported by reasonable, articulable suspicion. Therefore, our analysis begins with the second prong of *Terry* and its operation in the traffic stop context: whether Trooper Lamm "diligently pursued a means of investigation that was likely to confirm or dispel [his] suspicions quickly, during which time it was necessary to detain the defendant." [United States v. Sharpe, 470 U.S. 675, 686, 105 S. Ct. 1568, 84 L. Ed. 2d 605 \(1985\)](#). Specifically, we must determine whether Trooper Lamm trespassed upon defendant's [Fourth Amendment](#) rights when he extended an otherwise-completed traffic stop.

[HN7](#) In the context of traffic stops, we recognize that police [**23] diligence "includes more than just the time needed to issue a citation." [Bullock, 370 N.C. at 257, 805 S.E.2d at 673](#). Beyond determining whether to issue a traffic ticket, an "officer's mission includes ordinary inquiries incident to the traffic stop, such as checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." *Id.* In addition, "[w]hile conducting the tasks associated with a traffic stop, a police officer's 'questions or actions . . . need not be solely and exclusively focused on the purpose of that detention.'" [United States v. Digiovanni, 650 F.3d 498, 507 \(2011\)](#) (quoting [United States v. Mason, 628 F.3d 123, 131 \(4th Cir. 2010\)](#)). An officer is permitted to ask a detainee questions unrelated to the purpose of the stop "in order to obtain information confirming or dispelling the officer's suspicions." [State v. Williams, 366 N.C. at 116, 726 S.E.2d at 167](#) (citation omitted). However, an investigation unrelated to the reasons for the traffic stop must not prolong the roadside detention. See [Bullock, 370 N.C. at 258, 805 S.E.2d at 674](#) ("Safety precautions taken to facilitate investigations into crimes that are unrelated to the reasons for which a driver has been stopped . . . are not [*510] permitted if they extend the duration of the stop." (citing [Rodriguez, 575 U.S. at 356](#))); see also [Bowman, 884 F.3d at 210](#) ("[P]olice during the course of a traffic stop may question [**24] a vehicle's occupants on topics unrelated to the traffic infraction . . . as long as the police do not extend an otherwise-completed traffic stop in order to conduct these unrelated investigations." (citation omitted)). To prolong a detention "beyond the scope of a routine traffic stop" requires that an officer "possess a justification for doing so other than the initial traffic violation that prompted the stop in the first place." [United States v. Branch, 537 F.3d 328, 336 \(4th Cir. 2008\)](#). This requires "either the driver's consent or a 'reasonable suspicion' that illegal activity is afoot." *Id.*

[HN8](#) "Implicit in the very nature of the term 'consent' is the requirement of voluntariness. To be voluntary the consent

must be 'unequivocal and specific,' and 'freely and intelligently given.'" [State v. Little, 270 N.C. 234, 239, 154 S.E.2d 61, 65 \(1967\)](#) (citation omitted). On the other hand, a determination of the existence of reasonable suspicion requires an assessment of "factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." [Ornelas v. United States, 517 U.S. 690, 695, 116 S. Ct. 1657, 134 L. Ed. 2d 911 \(1996\)](#).

In applying these binding legal principles to the present case, we embrace the exercise of the law enforcement officer's diligence to actively engage defendant, upon the effectuation of the traffic stop, in the performance [\[**25\]](#) of the fundamental tasks which this Court identified in *Bullock* as being inherent in a routine, thorough traffic stop. In detaining defendant for the speeding violation, Trooper Lamm discovered that defendant had no outstanding warrants and that defendant's driver's license was valid. The trooper reviewed the registration documents of the Nissan Altima which defendant was operating and the proof of insurance materials and, while the officer found nothing illegal, nonetheless there were inconsistencies in the vehicle rental agreement paperwork which prompted Trooper Lamm to dutifully question defendant and Peart about the details underlying the inconsistencies. [HN9](#) Even after instructing defendant to exit the rental car, to enter the patrol car, and to close the front passenger door immediately beside defendant's seated position, the law enforcement officer was still properly within his authority to detain defendant as the trooper explored varying subjects with defendant; while some of these areas of inquiry were directly related to the rental agreement details and other areas meandered into more questionable categories such as the personal relationship between defendant and Peart as well [\[**26\]](#) as the ownership of the dog, nonetheless the United States Supreme Court in *Rodriguez* and our Court in *Bullock* and [\[*511\]](#) in *Williams* authorize such wide-ranging investigatory authority if they do not extend the duration of the traffic stop. The trooper even saw fit to contact the rental vehicle company office in New York while defendant remained seated in the law enforcement vehicle, as the officer received confirmation from the rental business that the vehicle was properly in the possession of Peart, with defendant as an authorized driver. While Trooper Lamm's exercise of his authority to seize defendant's liberty and to detain defendant's movement through this juncture was authorized by the cited case holdings of the United States Supreme Court, the Fourth Circuit Court of Appeals, and this Court, the return of the vehicle rental agreement paperwork, the issuance of the traffic warning ticket to defendant, and Trooper Lamm's unequivocal statement to defendant that the traffic stop had concluded all combine to bring an end to the law enforcement officer's entitled interaction with defendant. The mission of defendant's initial seizure—to address the traffic violation and attend to related [\[**27\]](#) safety concerns—was accomplished. Trooper Lamm's authority for the seizure of defendant terminated when the trooper's tasks which were tied to the speeding violation had been executed. Therefore, as dictated by the United States Supreme Court in *Cabellas* and reinforced by *Rodriguez*, the traffic stop in the instant case became unlawful after this point because the law enforcement officer prolonged it beyond the time reasonably required to complete its mission.

[HN10](#) While this Court determined that the law enforcement officer in *Bullock* did not unlawfully prolong the traffic stop at issue under the *Rodriguez* standard, see *Bullock*, [370 N.C. at 256, 257, 805 S.E.2d at 671, 673](#), the Court's reasoning in this case is quite instructive regarding the mission of a traffic stop in examining its factual distinctions from the current case. We have already noted our reiteration in *Bullock* of the well-established principle that the duration of a traffic stop must be limited to the length of time that is reasonably necessary to accomplish the mission of the stop. In *Bullock*, we expressly opined that "[t]he conversation that [the law enforcement officer] had with defendant while the database checks were running enabled [the officer] to constitutionally extend [\[**28\]](#) the traffic stop's duration" and noted that the officer "had three database checks to run before the stop could be finished." *Id.* [at 263, 805 S.E.2d at 677](#). Here, in contrast, the record shows that Trooper Lamm testified at the suppression hearing that after the stop was finished, he said to defendant, "[t]his ends the traffic stop and I'm going to ask you a few more questions if it is okay with you." This interaction, which was initiated by the law enforcement officer with defendant, occurred after the traffic stop was categorically recognized by the trooper to have concluded and before reasonable suspicion [\[*512\]](#) existed. This significant feature of the clear conclusion of the traffic stop in the case at bar, coupled with other vital factual dissimilarities between this case and *Bullock*—as persuasively detailed by the lower appellate court in its decision—effectively establish that the mission of the traffic stop had been consummated, that the continued pursuit of involvement with defendant by Trooper Lamm wrongly prolonged the traffic stop, and that defendant was unconstitutionally detained beyond the announced end of the traffic stop because reasonable suspicion did not exist to justify defendant's further detention. [\[**29\]](#)

Similarly, the State's heavy reliance on [State v. Heien, 226 N.C. App. 280, 741 S.E.2d 1, aff'd per curiam, 367 N.C. 163, 749 S.E.2d 278 \(2013\), aff'd sub nom. on other grounds, Heien v. North Carolina, 574 U.S. 54, 135 S. Ct. 530, 135 S. Ct. 530, 190 L. Ed. 2d 475, 190 L. Ed. 2d 475 \(2014\)](#), is also unpersuasive in light of the factual distinctions and major legal differences regarding not only the existence of reasonable suspicion, but also a defendant's expression of his or her consent to search as conveyed to a law enforcement officer. In *Heien*, two law enforcement officers initiated a traffic stop of a vehicle based upon a malfunctioning brake light. *Id.* [at 281, 741 S.E.2d at 3](#). There were two individuals in the subject vehicle: its operator and the defendant, who was lying down in the backseat of the vehicle. *Id.* [at 284, 741 S.E.2d at 4](#). As the interaction occurred between the officers and the vehicle's occupants, circumstances unfolded which ultimately led the lower appellate court to resolve legal issues pertaining to the concepts of reasonable suspicion and consent to search. *Id.* [at 284-86, 741 S.E.2d at 4-5](#). In the present case, while the State extensively cites the Court of Appeals decision in *Heien* as persuasive authority, based on a number of factual similarities between the two cases, along with the Court of Appeals'

interpretation and application of the law in determining that the encounter between the officers and the vehicle's occupants was consensual, [\[**30\]](#). nonetheless the differences between the two fact patterns and the resulting legal outcomes are consequential:

<i>Heien</i> case	Present case
The operator of the vehicle was standing outside between the officer's vehicle and the subject car as the officer interacted with the driver.	The operator of the vehicle—defendant—was sitting inside the officer's vehicle as the officer interacted with defendant.
The second officer was positioned outside with the subject car's operator who was also allowed to be outside.	The second officer was positioned outside of the front passenger door of the patrol car in which defendant sat, as defendant was not allowed to be outside.
The officer who had received the pertinent documents from the subject car's operator during the traffic stop returned them, gave the driver a warning citation, and then asked the driver while both were outdoors if the driver would be willing to answer some questions.	The officer who had received the pertinent documents from the subject car's operator—defendant—during the traffic stop returned them, gave defendant a warning citation, and then asked defendant while both were inside the officer's patrol car

[*513]

In determining the result in *Heien*, the court below concluded:

We believe that the trial court's conclusion that defendant consented to this search is reasonable and should be upheld, as we further believe a reasonable motorist or vehicle owner would understand that [\[**32\]](#) with the return of his license or other documents, the purpose of the initial stop had been accomplished and he was free to leave, was free to refuse to discuss matters further, and was free to refuse to allow a search.

[Id. at 288, 741 S.E.2d at 6](#). The critical factual distinctions between *Heien* and the case at bar, and their collective effect upon the presence of reasonable suspicion and consent to search, render the Court of Appeals decision in *Heien* inapposite in the present case. Not only do these pertinent differences operate so as to make the State's major dependence upon *Heien* ineffective, but they also accentuate the fallacies and **[*514]** frailties of the dissenters' positions regarding the acceptability of the law enforcement officer's actions after the conclusion of the traffic stop in the instant case based upon what the dissenters contend is the existence of reasonable suspicion or consent to search defendant's vehicle.

HN11 An officer may, consistent with the [Fourth Amendment](#), conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot. [Illinois v. Wardlow, 528 U.S. 119, 123, 120 S. Ct. 673, 145 L. Ed. 2d 570 \(2000\)](#). An obvious, intrinsic element of reasonable suspicion is a law enforcement officer's ability to articulate the objective justification [\[**33\]](#) of his or her suspicion. Both dissenting opinions conveniently presuppose a fundamental premise which is lacking here in the identification of reasonable, articulable suspicion: the suspicion must be articulable as well as reasonable. In the present case, Trooper Lamm offered contradictory statements during the suppression hearing concerning his formation of reasonable suspicion to validate his detainment of defendant. On one hand, Trooper Lamm testified that defendant was free to leave upon the completion of the traffic stop and construed defendant's act of remaining seated in the patrol car to be voluntary after its conclusion, despite having ordered defendant to close the passenger door of the patrol vehicle after defendant had entered it. However, on the other hand, Trooper Lamm later testified at the suppression hearing that although he had informed defendant that the traffic stop was completed, the officer still would have detained defendant in the patrol car, even if defendant wanted to leave, based upon Trooper Lamm's observations. These inconsistencies in the law enforcement officer's testimony illustrate the inability on the trooper's part to articulate the objective basis [\[**34\]](#) for his determination of reasonable suspicion and, of equal importance, the time at which he formulated such basis.

HN12 While our dissenting colleagues address the existence of reasonable suspicion and the consent to conduct a vehicle

search by assuming that we have not properly considered the binding nature of the trial court's findings of fact in its order denying defendant's motion to suppress, we have indeed evaluated these findings and determined that they do not support the trial court's conclusions of law that Trooper Lamm was justified in prolonging the stop based upon a reasonable, articulable suspicion and that the trooper had received consent from defendant to extend the stop. In applying the very standard recognized by the dissenting opinion discussing reasonable suspicion that "[c]onclusions of law are reviewed de novo and are subject to full review," [Biber, 365 N.C. at 168, 712 S.E.2d at 878](#) (citations omitted), coupled with our acceptance of the responsibility that "[u]nder a de novo review, the court considers [*515] the matter anew and freely substitutes its own judgment for that of the lower tribunal," [State v. Williams, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 \(2008\)](#) (citation and internal quotation marks omitted), we determine that the legal conclusions drawn by the trial court [**35] that the law enforcement officer had reasonable suspicion to prolong the traffic stop, and that the officer received voluntary consent to extend the stop and to search the vehicle, are not supported by the trial court's findings of fact.

With the two dissenting opinions' joint focus on the trial court's conclusions of law, our de novo review further reveals that the dissenters' dependence upon these conclusions of law to buttress their disagreement with our decision in this case is faulty upon an examination of the combination of factors cited to constitute reasonable suspicion. Firstly, the reasonable suspicion dissent creatively conflates Peart's statement to Trooper Lamm that "they [Peart and defendant] were going to Fayetteville, and then she [Peart] also mentioned Tennessee and Georgia," coupled with defendant's failure to mention "anything about going to Tennessee or Georgia," with an inability by Peart to articulate where she and defendant were going so as to discern the presence of a factor which contributed to reasonable suspicion. Secondly, this dissent considered the trooper's view that it was "out of the ordinary" for the rental car to be a decided distance away from its [**36] designated geographic area to constitute reasonable suspicion pursuant to a cited case from the state of Arkansas. However, as noted earlier, the trooper was "able to determine the vehicle was in fact *properly* in possession of Ms. Pert [sic]" upon contacting the vehicle rental company by telephone. (Emphasis added). While the dissent regards the presence of coffee cups, energy drinks, pillows, sheets, trash, and dog food as raising Trooper Lamm's suspicions, "the presence of these items in a vehicle, without more, is utterly unremarkable." [Bowman, 884 F.3d at 216](#). The dissent particularly emphasizes the presence of dog food scattered along the floor of the rental vehicle as a factor contributing to Trooper Lamm's reasonable suspicion; the importance of this element dims, however, when the existence of this dog food, along with a can of dog food and a jar of dog food, are available in the rental vehicle to feed the pit bull dog on a road trip traversing hundreds of miles. In continuing to identify the factors which constituted the existence of the trooper's reasonable suspicion in its view, the dissent frames defendant's nervousness to close the passenger door of the patrol car as a solid indicator of the [**37] potential of defendant to flee the scene. [HN13](#) This Court has expressly determined that general nervousness is not significant to reasonable suspicion analysis because "[m]any people become nervous when stopped by a state trooper." [Pearson, 348 N.C. at 276, 498 S.E.2d at 601](#); see also [United States v. Palmer, 820 \[*516\] F.3d 640, 649-50 \(4th Cir. 2016\)](#) (concluding that a "driver's nervousness is not a particularly good indicator of criminal activity, because most everyone is nervous when interacting with the police"). Indeed,

[i]t is common for most people to exhibit signs of nervousness when confronted by a law enforcement officer whether or not the person is currently engaged in criminal activity. *Thus, absent signs of nervousness beyond the norm, we will discount the detaining officer's reliance on the detainee's nervousness as a basis for reasonable suspicion.*

[United State v. Salzano, 158 F.3d 1107, 1113 \(10th Cir. 1998\)](#) (internal quotation marks and citations omitted) (emphasis added); see also [United States v. Massenburg, 654 F.3d 480, 490 \(4th Cir. 2011\)](#).

Just as the dissenting opinion labors to elevate the payment of cash for the rental vehicle and other enumerated factors to the level of reasonable suspicion by adopting the same convenient speculative conclusions which the investigating trooper utilized to unlawfully prolong the traffic stop, the other dissenting opinion is plagued by identical shortcomings regarding [**38] the officer's attempts to justify the voluntariness of the consent to search the rental vehicle. In the first instance, this dissent repeats the flimsy premise of the reasonable suspicion dissent that the trial court's findings of fact support the order's conclusions of law. In doing so, this dissent unfortunately confuses our de novo review of the conclusions of law in light of the findings of fact with a reevaluation of the evidence and the credibility of witnesses in order to find different facts. The dissent discussing consent to search shares the convenient approach of the dissent discussing reasonable suspicion in casually choosing to ignore the inconsistent testimony rendered by Trooper Lamm in his liberal discernment that he was somehow granted consent to search the rental car.

The dissent expressly agrees with the trial court's conclusion that, as a matter of law, Trooper Lamm received consent to extend the stop. It bases this ratification of the trial court's determination on the recognized principle that officers must determine whether a reasonable person, viewing the particular police conduct as a whole and within the setting of all of the surrounding circumstances, would [**39] have concluded that the officer had in some way restrained the defendant's liberty so that such a defendant was not free to leave. However, the trial court erred in its conclusion of law that "[d]efendant had no standing to contest the search of the grey Nissan Altima that he was driving since he [*517] was not the owner nor

legal possessor of the vehicle and deferred to Ms. Peart, the legal possessor, when asked for consent to search the vehicle." The trial court made no finding of fact upon which to base this unsupported conclusion of law that defendant here had no standing to contest the search. Defendant was an authorized operator of the rental vehicle, and his referral of the trooper to Peart about searching the vehicle did not divest defendant of the authority to grant consent to search the vehicle. The dissent further compounds its wayward stance on the trial court's conclusion of law that Trooper Lamm was justified in prolonging the traffic stop through the dissent's position that defendant himself prolonged the traffic stop by voluntarily remaining in the officer's patrol car to answer the trooper's questions after the conclusion of the stop, which is inconsistent with the dissent's [\[**40\]](#) simultaneous embrace of the trial court's determination that Peart prolonged the traffic stop through her grant of consent to search the rental vehicle. These inconsistent articulations by the dissent, which mirror the inconsistent articulations by the trooper on the matters of reasonable suspicion and consent to search, contribute largely to the dissent's agreement with the trial court's conclusions of law regarding these issues and to the dissent's misplaced reliance on *Heien*. The dissent cannot logically, on one hand, agree with the trial court's conclusion of law that defendant had no standing to contest the search and that Peart's consent to search validly prolonged the stop, while on the other hand, determining in its own analysis that defendant validly prolonged the stop by voluntarily remaining seated in Trooper Lamm's patrol car even following the trooper's inconsistent testimony about defendant's freedom to leave and after Trooper Lamm told defendant to "sit tight" as another trooper stood directly beside defendant's front passenger door.

Finally, while the dissenters couch our decision in a manner which they view as creating uncertainty among law enforcement officers and [\[**41\]](#) upsetting established law regarding the concepts of reasonable suspicion and consent to search, their collective desire to extend and to expand the ample discretion afforded to law enforcement officers to utilize their established and recognized authority in the development of reasonable suspicion and the attainment of consent to search would constitute the type of legal upheaval which they ironically claim our decision in this case creates. Clarity regarding a detained individual's freedom to leave serves to preserve and to promote the safety of both the motorist and the investigating law enforcement officer; the equivocal, presumptive, and inarticulate observations of the trooper here which the dissenters would implement as legal standards would serve to detract from such clarity. In reiterating the guiding principles established in the landmark [\[*518\]](#) United States Supreme Court cases of *Terry v. Ohio*, *Rodriguez v. United States*, and their progeny, applying the sturdy guidelines reiterated in our Court's opinions in *State v. Bullock* and *State v. Williams*, and explaining the distinguishing features of *State v. Heien*, we choose to sharpen the existing parameters of reasonable suspicion [\[**42\]](#) and consent to search rather than to blur them through an undefined and imprecise augmentation of these principles.

Conclusion

Based upon the foregoing matters as addressed, we agree with the determination of the Court of Appeals that the trial court erred in denying defendant's motion to suppress evidence which was obtained as a result of the law enforcement officer's unlawful detainment of defendant without reasonable suspicion of criminal activity after the lawful duration of the traffic stop had concluded. The officer impermissibly prolonged the traffic stop without a reasonable, articulable suspicion to justify his action to do so and without defendant's voluntary consent. Accordingly, we affirm the decision of the Court of Appeals.

AFFIRMED.

Dissent by: [NEWBY](#) ▼; [DAVIS](#) ▼

Dissent

Justice NEWBY dissenting.

After the paperwork has been returned at the end of a traffic stop, can an officer ask an individual for consent to ask a few more questions? The majority seems to answer this question no, holding that asking for permission to ask a few more questions unlawfully prolongs the traffic stop. In so holding, the majority removes a long-standing important law enforcement tool, consent to search. A traffic stop can [\[**43\]](#) be lawfully extended based on reasonable suspicion or consent. I fully join Justice [Davis](#) ▼'s dissent and agree, as the trial court held, that Officer Lamm had reasonable suspicion to detain defendant and conduct the search after the initial traffic stop concluded. I write separately, however, to state that I would also uphold the search of the car based on defendant's consent to prolong the stop to answer a few more questions and the subsequent valid consent to search the car. I respectfully dissent.

Traffic stops present one of the most dangerous situations for law enforcement officers, yet policing our highways is vital for public safety. Knowing how to lawfully extend a traffic stop is important to law enforcement officers who daily encounter circumstances similar to those presented by this case. Before today's decision, the law regarding reasonable suspicion and

consent was clear. Now the majority upsets [*519] this settled law and provides little guidance to law enforcement about how to proceed under these circumstances.

The majority holds that Officer Lamm's returning paperwork, issuing a traffic warning, and stating that the traffic stop had concluded ended his ability to interact with [**44] defendant, meaning that "the traffic stop in the instant case became unlawful after this point because the law enforcement officer prolonged [the stop] beyond the time reasonably required to complete its mission." Under the majority's approach, the traffic stop could not be lawfully prolonged even when defendant expressly permitted the officer to ask a few more questions. This holding effectively removes consent as a tool for law enforcement. Further, to reach its decision the majority fails to conduct the proper analysis of the trial court's order: An appellate court must determine whether the trial court's findings of fact are supported by competent evidence and whether those findings of fact support the trial court's conclusions of law. *State v. Williams*, 366 N.C. 110, 114, 726 S.E.2d 161, 165 (2012). Instead, on a cold record the majority reweighs the evidence and makes its own credibility determinations in finding facts. It then misapplies our precedent to unduly undermine the vital role of law enforcement.

Applying the appropriate standard, an appellate court first reviews the trial court's findings of fact. Here the trial court made the following findings:

24. That after Trooper Lamm told the Defendant that the traffic stop was complete, he [**45] then asked Defendant if he could ask him a few questions, and the Defendant responded in the affirmative.

25. That after asking the Defendant if there was anything illegal in the vehicle, the Defendant stated that "you can break the car down[.]"


26. That after asking the Defendant if he could search his car, the defendant expressed *reluctance before directing Trooper Lamm to ask Ms. Peart since she was the lessee of the vehicle*. [(Emphasis added.)] At which time, Trooper Lamm left the patrol car, asked the defendant to sit tight, and went to ask Ms. Peart.

27. That when Trooper Lamm asked Ms. Peart for consent to search the vehicle, she verbally consented and signed a written consent form, and Trooper Lamm began the search of the grey Nissan Altima.

[*520] 28. That during the search of the grey Nissan Altima, Trooper Lamm found suspected cocaine under the back seat of the vehicle.

29. Upon seeing the suspected cocaine that had been found under the back seat of the grey Nissan Altima, the Defendant made statements denying ownership or knowledge that the cocaine was in the car and stated he had even given his consent to search, and had also stated that "I said you can ask her (Ms. Peart)" and that [**46] "she gave consent."

These findings are supported by competent evidence in the record. 

Based on its findings of fact, the trial court concluded as a matter of law that Trooper Lamm "received consent to extend the stop."  The [*521] trial court also concluded that Officer Lamm's search was justified based on reasonable suspicion. Therefore, the trial court denied defendant's motion to suppress.

"[T]o detain a driver beyond the scope of the traffic stop, the officer must have the [appropriate person's] consent or reasonable articulable suspicion that illegal activity is afoot." *State v. Williams*, 366 N.C. 110, 116, 726 S.E.2d 161, 166-67 (2012) (first citing *Florida v. Royer*, 460 U.S. 491, 497-98, 103 S. Ct. 1319, 1324, 75 L. Ed. 2d 229, 236 (1983); then citing *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)). The State argues before this Court that the search was supported by reasonable suspicion and was also valid as consensual. The State must prove "that the consent resulted from an independent act of free will." *United States v. Thompson*, 106 F.3d 794, 797-98 (7th Cir. 1997) (citing *Royer*, 460 U.S. at 501, 103 S. Ct. at 1319, 75 L. Ed. 2d at 238). Whether a defendant was seized at the time that officers obtained her consent requires an objective determination of "whether a reasonable person, viewing the particular police conduct as a whole and within the setting of all the surrounding circumstances, would have concluded that the officer had in some way restrained her liberty so she was not free to leave." *Id.* at 798 (citing *Michigan v. Chesternut*, 486 U.S. 567, 573, 108 S. Ct. 1975, 1979, 100 L. Ed. 2d 565, 571 (1988)) (recognizing [**47] that a defendant may still be free to leave, and interaction with police officers may still be consensual, even when the defendant is sitting in a police car). Whether an individual is free to leave is evaluated based on an objective standard, meaning it does not take into account the officer or individual's beliefs in that particular situation. See *id.*; *State v. Nicholson*, 371 N.C. 284, 292, 813 S.E.2d 840, 845 (2018) ("It is well established, however, that "[a]n action is "reasonable" under the Fourth Amendment, regardless of the individual officer's state of mind, "as long as the circumstances, viewed objectively, justify [the] action."" (quoting *Brigham City v. Stuart*, 547 U.S. 398, 404, 126 S. Ct. 1943, 1948, 164 L. Ed. 2d 650, 658 (2006) (brackets and emphasis in original))).

While consent must be obtained voluntarily, a defendant need not be informed that he has a right to refuse. See *Schneckloth v. Bustamonte*, 412 U.S. 218, 248-49, 93 S. Ct. 2041, 2059, 36 L. Ed. 2d 854, 875 (1973). Instead, whether a person gives consent voluntarily is evaluated based on "the totality of the circumstances surrounding the consent." *United* [*522] States

v. Lattimore, 87 F.3d 647, 650 (4th Cir. 1996) (7-6 decision) (citing [Schneckloth, 412 U.S. at 227, 93 S. Ct. at 2047-48, 36 L. Ed. 2d at 862-63](#)). This determination requires an evaluation of factors like "the characteristics of the accused (such as age, maturity, education, intelligence, and experience) as well as the conditions under which the consent to search was given (such as the officer's conduct; the number of officers present; and the duration, [\[**48\]](#) location, and time of the encounter)." See *id.* (first citing [United States v. Watson, 423 U.S. 411, 424, 96 S. Ct. 820, 828, 46 L. Ed. 2d 598, 609 \(1976\)](#)); then citing [United States v. Analla, 975 F.2d 119, 125 \(4th Cir. 1992\)](#), *cert. denied*, [507 U.S. 1033, 113 S. Ct. 1853, 123 L. Ed. 2d 476 \(1993\)](#); and then citing [United States v. Morrow, 731 F.2d 233, 236 \(4th Cir.\)](#), *cert. denied*, [467 U.S. 1230, 104 S. Ct. 2689, 81 L. Ed. 2d 883 \(1984\)](#)).

The majority here cites the correct standard of review. The majority then proceeds with its analysis, without even mentioning any of the trial court's findings of fact, making only a passing reference to the trial court order. The majority instead finds its own facts to reach its conclusion. In doing so, it relies on its view of the officer's subjective state of mind instead of employing the correct objective standard. Finding facts is not the job of an appellate court. This responsibility resides with the trial court, which makes credibility determinations based on face-to-face interactions with the parties before it.

When applying the correct standard of review, it is clear that the trial court's findings of fact here are supported by competent evidence in the record and that those factual findings support the trial court's conclusions of law. Officer Lamm explicitly told defendant that the traffic stop was finished before inquiring whether he could ask defendant additional questions. At this point defendant was no longer seized but was free to leave and to [\[**49\]](#) refuse Officer Lamm's request. See [State v. Heien, 226 N.C. App. 280, 287, 741 S.E.2d 1, 5-6](#) ("Generally, the return of the driver's license or other documents to those who have been detained indicates the investigatory detention has ended."), *aff'd per curiam*, [367 N.C. 163, 749 S.E.2d 278 \(2013\)](#), *aff'd sub nom. on other grounds, Heien v. North Carolina, 574 U.S. 54, 135 S. Ct. 530, 190 L. Ed. 2d 475 (2014). [3](#) Notably, Officer Lamm asked defendant if he could proceed with additional questions, and defendant expressly consented; Officer Lamm did not just begin questioning defendant without first acquiring defendant's [\[*523\]](#) consent to do so. Though defendant was still sitting in the patrol car at the time, this factor alone does not transform the consensual encounter, during which defendant was free to leave because the traffic stop had ended, into a nonconsensual interaction. See [Thompson, 106 F.3d at 798](#). Thus, Officer Lamm initially prolonged the stop with defendant's consent. When asked if defendant and Peart had any illegal substances in the car, defendant responded, "No, nothing, you can break the car down." Defendant then told Officer Lamm that he would need to obtain Peart's consent to search the rental car. The officer reasonably kept defendant in the patrol car for officer safety while he talked with Peart.*

Thereafter, Peart, the authorized renter of the car and the [\[**50\]](#) person with the authority to give consent, gave both verbal and written consent authorizing the search. Thus, at a time when defendant was not seized for [Fourth Amendment](#) purposes, Officer Lamm had, per defendant's express direction, obtained Peart's consent to search the car. See [Heien, 226 N.C. App. at 287-88, 741 S.E.2d at 5-6](#) (concluding that, after officers had issued a warning ticket to the driver of a vehicle in which the defendant was the passenger and also returned the defendant passenger's driver's license, the encounter became consensual and officers could obtain valid consent to search the car from the defendant, who owned the car). Once defendant advised Officer Lamm to ask Peart for consent to search the car, Officer Lamm's request for defendant to stay in the patrol car for officer safety reasons was reasonable. See [State v. Bullock, 370 N.C. 256, 262, 805 S.E.2d 671, 676 \(2017\)](#) (recognizing that, in the context of facilitating the mission of the traffic stop itself, officers may take certain precautions justified by officer safety). Additionally, no one contests that Peart's consent was voluntarily given. Significantly, once officers discovered drugs in the car, defendant told the officers he had consented to the search.

The trial court's findings of fact are supported by competent evidence in [\[**51\]](#) the record, and those findings of fact support the trial court's conclusion of law that the search was lawful. Thus, because I would also uphold the trial court's order denying defendant's motion to suppress based on valid consent as well as the existence of reasonable suspicion, I respectfully dissent.

Justice [DAVIS](#) ▼ dissenting.

I respectfully dissent from the majority's opinion. Even assuming *arguendo* that defendant's consent to the search of the vehicle was not voluntary, I believe that Trooper Lamm possessed reasonable suspicion to extend the traffic stop after issuing the warning ticket.

[\[*524\]](#) "The reasonable suspicion standard is a 'less demanding standard than probable cause' and a 'considerably less [demanding standard] than preponderance of the evidence.'" [State v. Bullock, 370 N.C. 256, 258, 805 S.E.2d 671, 674 \(2017\)](#) (alteration in original) (quoting [Illinois v. Wardlow, 528 U.S. 119, 123, 120 S. Ct. 673, 145 L. Ed. 2d 570, 576 \(2000\)](#)); see also [State v. Watkins, 337 N.C. 437, 442, 446 S.E.2d 67, 70 \(1994\)](#) ("The only requirement is a minimal level of objective justification, something more than an 'unparticularized suspicion or hunch.'" (quoting [United States v. Sokolow, 490 U.S. 1, 7, 109 S. Ct. 1581, 104 L. Ed. 2d 1, 10 \(1989\)](#))). The reviewing court must consider "the totality of the

circumstances—the whole picture." [Watkins](#), 337 N.C. at 441, 446 S.E.2d at 70 (quoting [United States v. Cortez](#), 449 U.S. 411, 417, 101 S. Ct. 690, 66 L. Ed. 2d 621, 628 (1981)).

All of the evidence, when considered together, must yield "a particularized and objective basis for suspecting the particular person stopped of [**52] criminal activity." [State v. Jackson](#), 368 N.C. 75, 78, 772 S.E.2d 847, 849 (2015) (quoting [Navarette v. California](#), 572 U.S. 393, 396, 134 S. Ct. 1683, 188 L. Ed. 2d 680, 686 (2014)). This objective basis must be premised upon "specific and articulable facts" and the "rational inferences" therefrom, [Terry v. Ohio](#), 392 U.S. 1, 21, 88 S. Ct. 1868, 20 L. Ed. 2d 889, 906 (1968), as understood by a "an objectively reasonable police officer," [Bullock](#), 370 N.C. at 258, 805 S.E.2d at 674 (citation omitted). See [Watkins](#), 337 N.C. at 441, 446 S.E.2d at 70 (holding that reasonable suspicion "must be based on specific and articulable facts, as well as the rational inferences from those facts, as viewed through the eyes of a reasonable, cautious officer, guided by his experience and training").

Our standard of review on appeal from orders ruling on motions to suppress is well-settled. We review a trial court's order to determine "whether competent evidence supports the trial court's findings of fact and whether the findings of fact support the conclusions of law." [State v. Nicholson](#), 371 N.C. 284, 288, 813 S.E.2d 840, 843 (2018) (quoting [Jackson](#), 368 N.C. at 78, 772 S.E.2d at 849). When a trial court's findings of fact are not challenged on appeal, "they are deemed to be supported by competent evidence and are binding on appeal." [State v. Biber](#), 365 N.C. 162, 168, 712 S.E.2d 874, 878 (2011) (citation omitted). The trial court's conclusions of law are reviewed *de novo*. *Id.*

In my view, a proper application of this standard of review in the present case requires that the trial court's order denying defendant's motion to suppress be affirmed. Here, the pertinent findings [**53] made by the court are largely unchallenged and therefore binding on us in this appeal. I believe that the majority has failed to properly consider these [**525] findings, which are sufficient to support the trial court's conclusion that Trooper Lamm had a reasonable basis to believe that further investigation was warranted. As the trial court recognized, Trooper Lamm identified at the suppression hearing numerous factors that combined to create a reasonable suspicion that further investigation of possible criminal activity was appropriate.

First, the inconsistent statements of defendant and Peart concerning their travel plans raised Trooper Lamm's suspicions. Defendant stated that they were traveling from New York to Fayetteville to visit family, while Peart said that they were going to Fayetteville for a two-day trip but also mentioned driving to Tennessee and Georgia to visit some of her family members. ¹ See [State v. Williams](#), 366 N.C. 110, 117, 726 S.E.2d 161, 167 (2012) (holding that a passenger's "inability to articulate where they were going" is a factor contributing to reasonable suspicion).

Second, the rental agreement authorized the vehicle to be driven only in New York, New Jersey, and Connecticut. Trooper Lamm testified that he considered it "out [**54] of the ordinary" that the car was located approximately 500 miles away from the geographic area designated in the rental agreement. *Cf.* [Burks v. State](#), 362 Ark. 558, 561, 210 S.W.3d 62, 65 (2005) (holding that officer had reasonable suspicion to extend traffic stop in part because defendant's rental vehicle was "half a continent away" from the permitted driving locations).

Third, the fact that the rental car had been paid for with \$750 in cash was also a factor in Trooper Lamm's decision to extend the stop, as he testified that "the majority of [rental car payments] we see [are] usually on a credit card." *Cf.* [Sokolow](#), 490 U.S. at 8-9, 104 L. Ed. 2d at 11 (1989) (holding that paying for airline tickets with large sums of cash was "out of the ordinary" and could be considered as relevant when determining whether reasonable suspicion existed to investigate suspected drug couriers).

Fourth, the presence of empty coffee cups, energy drinks, pillows and blankets, and trash in the car—which gave the vehicle a "lived-in [**526] look"—also raised Trooper Lamm's suspicions. He testified that signs of "hard" and "continuous" driving are consistent with drug trafficking. Trooper Lamm further stated that indicia of attempts to "sleep and drive at the same time" are "things we've been trained to look for beyond the [**55] normal traffic stop [as] . . . an indicator [of criminal activity]." See [United States v. Finke](#), 85 F.3d 1275, 1277-1280 (7th Cir. 1996) (holding that a vehicle that looked like the defendant "had been living in [it] for the last few days" was a factor supporting a finding of reasonable suspicion because the officer making the stop "knew from his training that drug couriers frequently make straight trips because they do not want to stop anywhere with a load of drugs in their vehicle").

Fifth, Trooper Lamm testified that the presence of dog food "strung throughout the car" is a tactic used by drug traffickers to distract police canines from detecting the scent of narcotics. See [Grimm v. State](#), 458 Md. 602, 618, 183 A.3d 167, 176 (2018) (noting that dog food can be used as a distraction for police canines searching for narcotics).

Sixth, the presence of air fresheners in the vehicle—which Trooper Lamm believed to be unusual given that the vehicle was a rental car—was consistent with an additional tactic utilized by drug traffickers to mask the scent of narcotics and act as a diversion for police canines. See, e.g., [Jackson v. State](#), 190 Md. App. 497, 521, 988 A.2d 1154, 1167 (2010) (stating that drug traffickers "seem to enjoy an incorrigible affinity for air fresheners" and although "[t]here is nothing criminal" about them, their presence in a vehicle may be a "tell-tale [**56] characteristic[] of a drug courier").

Finally, Trooper Lamm testified that it was unusual for a person in defendant's position to be scared to shut the door of the

patrol car upon entering the vehicle, despite the officer's order to close the door and the fact that it was raining outside. This conduct suggested to Trooper Lamm that defendant may have considered fleeing, an unusual desire for a person stopped for a mere speeding violation. See [Illinois v. Wardlow](#), 528 U.S. 119, 124, 120 S. Ct. 673, 145 L. Ed. 2d 570, 576 (2000) (holding that "nervous, evasive behavior is a pertinent factor in determining reasonable suspicion"); see also [United States v. Moorefield](#), 111 F.3d 10, 14 (3d Cir. 1997) (holding that a defendant's "refusal to obey the officers' orders," when combined with other factors, supported a finding of reasonable suspicion).

None of the above referenced circumstances would give rise to reasonable suspicion *when viewed in isolation*. But that is not the test. To the contrary, it is the *totality* of the circumstances that must be examined. Here, the factors discussed above—when considered together—went [*527] well beyond a mere "unparticularized suspicion or hunch" that criminal activity may have been afoot. [Sokolow](#), 490 U.S. at 15, 104 L. Ed. 2d at 15; see *id.* at 9, 104 L. Ed. 2d at 11 ("Any one of these factors is not by itself proof of any illegal conduct and is quite consistent with innocent [**57] travel. But we think taken together they amount to reasonable suspicion." (citation omitted)).

The majority fails to offer any explanation as to why these factors—when looked at together—were not enough to meet the relatively low standard necessary to establish reasonable suspicion. Instead, the majority examines each factor individually and in isolation despite the wealth of caselaw cautioning against such an approach. Not surprisingly, the majority fails to cite any case in which either this Court or the United States Supreme Court has held that reasonable suspicion was lacking in the face of anything close to the combination of circumstances presented here. Moreover, the majority incorrectly attempts to reweigh the credibility of Trooper Lamm's testimony despite the fact that the trial court expressly made findings as to his observations that are binding upon us in this appeal.

In determining that no reasonable suspicion existed, the majority also fails to view the evidence through the eyes of a law enforcement officer in light of his training and experience. This Court has recognized that the facts and inferences that can give rise to a trained law enforcement officer's suspicion [**58] of criminal activity "might well elude an untrained person." [Williams](#), 366 N.C. at 116-17, 726 S.E.2d at 167 (citation omitted); see also [Cortez](#), 449 U.S. at 419, 66 L. Ed. 2d at 629 ("[W]hen used by trained law enforcement officers, objective facts, meaningless to the untrained, can be combined with permissible deductions from such facts to form a legitimate basis for suspicion of a particular person and for action on that suspicion."). The United States Supreme Court has made clear that "the evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement." [Cortez](#), 449 U.S. at 418, 66 L. Ed. 2d at 629 (1996). As we stated in [Williams](#):

Viewed individually and in isolation, any of these facts might not support a reasonable suspicion of criminal activity. But viewed as a whole by a trained law enforcement officer who is familiar with drug trafficking and illegal activity on interstate highways, the responses were sufficient to provoke a reasonable articulable suspicion that criminal activity was afoot and to justify extending the detention until a canine unit arrived.

[*528] [Williams](#), 366 N.C. at 117, 726 S.E.2d at 167; see [Ornelas v. United States](#), 517 U.S. 690, 700, 116 S. Ct. 1657, 134 L. Ed. 2d 911, 921 (1996) ("To a layman the sort of loose panel below the back seat armrest in the automobile involved in this case may suggest only wear and tear, but to [the officer [**59] conducting the search], who had searched roughly 2,000 cars for narcotics, it suggested that drugs may be secreted inside the panel.").

Here, the undisputed evidence showed that Trooper Lamm is an experienced law enforcement officer who has been employed by the State Highway Patrol for over eleven years, three of which were spent in the drug interdiction unit. I believe the majority errs in failing to take into any account whatsoever his training and experience upon being confronted by these circumstances.

This Court's recent decision in [State v. Bullock](#) constitutes a proper application of these principles. The defendant in [Bullock](#) was stopped on a highway for speeding while driving a rental car that contained a large amount of drugs. [370 N.C. at 256, 805 S.E.2d at 673](#). The defendant moved to suppress the evidence of the drugs, claiming that they were found only after the officer at the scene had unlawfully extended the stop without reasonable suspicion. *Id.* at 256, 805 S.E.2d at 673. We disagreed and held that the officer possessed reasonable suspicion to extend the stop and search defendant's vehicle. *Id.* at 256, 805 S.E.2d at 673. In so doing, this Court identified a number of factors that gave rise to reasonable suspicion: (1) Highway I-85 is a major thoroughfare for drug [**60] trafficking, (2) defendant possessed two cell phones, (3) the rental car was rented in another person's name, (4) the defendant appeared nervous when he was asked questions about where he was going and had driven miles past his alleged destination, (5) a frisk of defendant's person revealed \$372 in cash, (6) defendant gave contradictory statements about the person he claimed to be visiting, and (7) defendant lied about recently moving to North Carolina. *Id.* at 263-64, 805 S.E.2d at 677-78. None of these factors in isolation would likely have been sufficient to create reasonable suspicion. But collectively, they were enough for the officer to lawfully extend the traffic stop.

The same is true in the present case. Under the majority's analysis, Trooper Lamm somehow acted unconstitutionally simply by responding in accordance with his training upon his recognition of seven factors that were suggestive of criminal activity. Based on the majority's opinion, law enforcement officers in future cases who similarly observe a combination of

circumstances that they have been taught to view as suspicious will presumably be forced to ignore their training and forego [*529] further investigation for fear of being deemed to have acted without [**61] reasonable suspicion. Accordingly, I respectfully dissent.

Justices NEWBY and ERVIN join in this dissenting opinion.

Footnotes

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During the traffic stop, defendant admitted that his speed was 84 miles per hour.

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The trial court's findings of fact were based on the following evidence admitted at trial: After Officer Lamm issued defendant a warning ticket for speeding, Officer Lamm told defendant, "That concludes the traffic stop." At that point, defendant remained in Officer Lamm's patrol car. Officer Lamm then stated, "I'm completely done with the traffic stop, but I'd like to ask you a few more questions if it's okay with you. Is that okay?" Defendant responded in the affirmative. Officer Lamm asked defendant if he was carrying various controlled substances, firearms, or illegal cigarettes in the rental car. Defendant responded, "No, nothing, you can break the car down," which Officer Lamm interpreted as defendant giving permission to search the rental car. Nonetheless, to clarify defendant's response, Officer Lamm continued questioning defendant and subsequently said, "Look, I want to search your car, is that okay with you?" When defendant did not immediately respond, Officer Lamm stated, "It's up to you." Defendant asked why the officer wanted to search the vehicle, and Officer Lamm explained he wanted to look for any of the things previously mentioned, such as illegal drugs or firearms. Defendant then responded, "You gotta ask [Peart]. I don't see a reason why." Officer Lamm then questioned, "Okay. You want me to ask her since she is the renter on the agreement, right?" Defendant neither agreed nor disagreed but stated that he needed to go to the restroom, wanted to smoke a cigarette, and added that they were getting close to the hotel so he did not "see a reason why." At that point Officer Lamm asked, "Okay, so you're saying no?" Defendant did not answer the question but mentioned that Officer Lamm had initially frisked defendant at the beginning of the traffic stop. After further conversation, Officer Lamm said, "Alright, let me go talk to her, then. Sit tight for me, okay?"

Officer Lamm then got out of the patrol car and approached the rental car to speak to Peart. Officer Lamm asked Peart if he could search the rental car, and Peart, without verbally responding, immediately opened the door. Peart then explained that she was opening the door for Officer Lamm to search the car. Peart thereafter noted, "There's nothing in my car," but she gave verbal consent and then signed the form authorizing officers to search the rental car. During the search, officers discovered suspected cocaine under the back passenger seat. Thereafter, defendant stated that he, too, had given his consent to search.

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Notably, the trial court further concluded as a matter of law "[t]hat the Defendant had no standing to contest the search of the grey Nissan Altima that he was driving since he was not the owner nor legal possessor of the vehicle and deferred to Ms. Peart, the legal possessor, when asked for consent to search the vehicle." The State failed to present for review the issue of defendant's standing to challenge the search. Nonetheless, the majority incorrectly attempts to reach this issue despite it not being before this Court. Regardless, it is undisputed that defendant told Officer Lamm to seek permission from Peart and that Peart consented to the search.

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In rejecting the State's arguments about the similarities between *Heien* and this case, the majority frequently refers to the Court of Appeals' opinion in that case. Importantly, this Court affirmed *Heien* in a per curiam opinion, placing its approval on the Court of Appeals' opinion.

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At the suppression hearing, Trooper Lamm testified at one point that "all [Peart] wanted to say was they had family down and they were going to Fayetteville, and then she also mentioned Tennessee and Georgia." Shortly thereafter, Trooper Lamm stated that "the passenger was not certain where she was going with the driver other than they were going — that she was on a trip with him and it was a trip from New York to Fayetteville for a two-day turnaround trip." The trial court's finding of fact on this issue was that Trooper Lamm "learned from [Peart] that she was unsure of her travel plans." This finding is binding upon us in this appeal.