

CMPD POLICE LAW BULLETIN

A Police Legal Newsletter

October 2021

Volume 38, Issue 5

Page 1 of 5



Contents

CASE BRIEFS

North Carolina Court of Appeals:

1. [Fourth Amendment – Traffic Stops / Extension: State v. Johnson](#)
2. [Fourth Amendment – Traffic Stops / Extension: State v. France](#)

REMINDERS

UPDATES

Forward: It has been a quiet couple of months at the federal level, so in this issue we will focus on two recent decisions by the North Carolina Court of Appeals. Both cases involve the extension of traffic stops and take into consideration the United States Supreme Court decision in [Rodriguez v. United States, 575 U.S. 348 \(2015\)](#). We will also address an important reminder about warrantless entries that are based upon exigency or urgent necessity. Finally, we will discuss two updates: one regarding DMV-349 reports and the other concerning a new question that will be posed to officers who are completing the “Victim Characteristics” section in KBCOPS.

CASE BRIEFS

NORTH CAROLINA COURT OF APPEALS

Fourth Amendment – Traffic Stops / Extension: [State v. Johnson, 2021-NCCOA-501](#)

Issue: Did a deputy violate *Rodriguez* when he asked the defendant, during the course of a traffic stop for a seatbelt violation, for consent to search his person?

Holding: Yes. Because the deputy had no reasonable suspicion of any other criminal activity outside of the seatbelt violation, asking the defendant for consent to search unreasonably and measurably extended the traffic stop.

Facts: On the afternoon of Dec 22, 2017, a deputy in Iredell County initiated a traffic stop on the defendant after he observed the defendant leaving a convenience store without putting on a seatbelt. As the deputy approached the vehicle he observed that the defendant still had not put on a seatbelt. After informing the defendant he would be given a warning for the violation, the deputy asked the defendant to step out of the vehicle. The defendant complied and both men began walking back toward the deputy’s vehicle.

During that short walk, the deputy turned to the defendant and asked him if he had anything illegal in his possession. The defendant answered that he did not. The deputy then asked the defendant if he could search him, to which the defendant raised his arms indicating consent. The deputy’s search, which lasted less than 30 seconds, focused solely on the defendant’s pockets. A bag of cocaine was ultimately found in one of the pockets leading to an eventual arrest.

The deputy testified that he asked the defendant for consent to search for reasons related to officer safety, citing the fact that he was about to have the defendant sit in the front passenger area of his patrol vehicle. However, dashcam video that captured the interaction showed that the deputy did not examine areas of the defendant where a weapon could have been hidden.

CMPD POLICE LAW BULLETIN

A Police Legal Newsletter

October 2021

Volume 38, Issue 5

Page 2 of 5



Discussion: The court did not dispute that officer safety is a legitimate concern and agreed that a frisk of the defendant's person would have been justified if the deputy in fact had reasonable suspicion that the defendant was armed and dangerous. However, the court questioned the truthfulness of the deputy's safety concerns, citing the discrepancy between his testimony and what the dashcam showed. The court also found that the deputy had no reason to believe the defendant was in violation of any crime other than the seatbelt violation. This fact led them to conclude that the deputy unreasonably and measurably extended the length of the traffic stop without reasonable suspicion in asking for consent and subsequently searching the defendant. The defendant's consent was therefore involuntary as a matter of law. The court ruled that the defendant's motion to suppress should have been granted and the conviction was overturned.

It is important for officers to remember that even small delays, like the 30 second search of the defendant in this case, will be deemed unconstitutional if they are without a justifiable basis. The next case involves an even longer delay but the result was different because officers articulated justifiable reasons for each action they took that resulted in the extension of the traffic stop.

[Return to Top](#)

NORTH CAROLINA COURT OF APPEALS

Fourth Amendment – Traffic Stops / Extension: [State v. France, 2021-NCCOA-498](#)

Issue: Did officers violate *Rodriguez* when they prolonged the duration of a traffic stop and eventually conducted a search for drugs?

Holding: No. The reasons for extending the traffic stop were to either 1) make permissible inquiries related to any traffic stop or 2) reasonably ensure officer safety.

Facts: On February 15, 2017, two members of the Winston-Salem Police Department made a traffic stop on a vehicle being driven by the defendant. The basis for the stop was a broken taillight. Three individuals were located inside the vehicle upon approach. Officer LaValley explained the reason for the traffic stop to the occupants and requested identification from each. Detective Veal called in the vehicle's license plate and peered into the car with a flashlight. The defendant informed Officer LaValley that he did not have his driver's license. The front passenger suggested to officers that he could just walk home after handing over his identification. Officer LaValley returned to the patrol car to check each of the occupants for warrants. Detective Veal briefly discussed the taillight issue again with the defendant before returning to the patrol vehicle with Officer LaValley.

Detective Veal requested a canine unit after she returned to the patrol vehicle. Around this time, Officers Ferguson and Wagoner arrived to provide backup. Detective Veal exited the patrol vehicle to greet Officers Ferguson and Wagoner who agreed to watch over the occupants of the vehicle while Officer LaValley completed the check for warrants. When Detective Veal returned again to the patrol vehicle, Officer LaValley had learned that the rear passenger of the vehicle had an active arrest warrant. Officers LaValley and Wagoner asked the rear passenger to step out of the vehicle, to which he complied while admitting that he had a gun in his possession. Officer LaValley removed the gun and placed it on the trunk of the suspect vehicle as Officer Ferguson looked on with his weapon drawn.

CMPD POLICE LAW BULLETIN

A Police Legal Newsletter

October 2021

Volume 38, Issue 5

Page 3 of 5



Meanwhile, Detective Veal approached the driver's side of the vehicle and requested the remaining occupants to place their hands on the dash. Officer Ferguson took the seized firearm to "render it safe" as Officers LaValley and Wagoner placed the rear passenger under arrest. Once Officer Ferguson placed the seized firearm in the trunk of a patrol car, he relieved Detective Veal of watching over the remaining occupants so that she could get back to completing the process of issuing a citation to the defendant for the taillight and for driving while license revoked.

While Detective Veal was working on the citation, the canine unit arrived. Detective Veal greeted the canine unit and informed the handler that she had observed the suspect vehicle engage in a hand-to-hand earlier in the evening. The other officers then requested the defendant and the front passenger to exit the vehicle. The canine unit gave a positive alert on the vehicle. Officers searched the vehicle and found multiple burnt marijuana cigarettes. The defendant was searched and a digital scale was found in his pocket. A subsequent strip search of the defendant yielded multiple baggies of unburnt marijuana and a bag of cocaine.

Discussion: The court found that throughout the entire traffic stop, all the officers were working together to diligently pursue the original purpose of the stop. They made ordinary inquiries incident to a traffic stop when they requested identifications and checked the occupants for warrants. In dealing with the rear passenger who had an active arrest warrant and a firearm, the officers took steps that were necessary to ensure officer safety. Although requesting a canine unit was unrelated to the reason for the stop, that request did not measurably extend the duration of the stop.

The court went on to suggest, solely for the sake of argument, that even if the officers had *unreasonably* extended the traffic stop, their actions would have been justified because there was reasonable suspicion of additional criminal activity. The court opined that reasonable suspicion could have been based on the combination of several factors: 1) Detective Veal had observed the vehicle engage in a hand-to-hand earlier in the evening; 2) the front passenger's comments suggesting he could just walk home after he provided his identification; 3) the rear passenger having an active arrest warrant and a gun; and 4) the stop took place late at night in a high-crime area.

Concluding Thoughts: Again, remember that officers must work diligently to address the traffic violation(s) that led to the stop. That work may include checks for identification, warrants, vehicle registration, insurance, or other inquiries related to the original purpose of the stop. Officers may also tend to safety concerns. However, the way in which safety concerns are addressed must be reasonable and supported by the facts. The deputy in the first case did not articulate a reasonable suspicion the defendant was armed and dangerous. Furthermore, his search didn't even address that concern as he failed to search areas where a weapon could be hidden. Those facts made both the request for consent and the actual search an unlawful extension of the stop. On the other hand, the officers in the second case had legitimate reasons for extending the stop due to the safety concerns that arose when it was determined the rear passenger had a gun.

Finally, unrelated investigations, such as requesting a canine unit, will only be tolerated if they do not lengthen the traffic stop. The Detective in the second case called for a canine unit while Officer LaValley was checking the occupants for warrants. Her request did not lengthen the roadside detention. Similarly, the canine sniff was lawful because it occurred before Detective Veal had completed drafting the citation. Once the dog indicated, officers then had probable cause to extend the stop to conduct a search.

[Return to Top](#)

CMPD POLICE LAW BULLETIN

A Police Legal Newsletter

October 2021

Volume 38, Issue 5

Page 4 of 5



REMINDERS

EXIGENT CIRCUMSTANCES and URGENT NECESSITY

Remember that officers may not enter a home or other place of residence to search for evidence of a crime without a search warrant or consent *unless* probable cause to search *and* exigent circumstances exist. Some factors to consider when determining whether exigent circumstances exist:

- Whether officers have an objectively reasonable belief that destruction or removal of evidence is imminent
- Whether there is a likelihood that violence might be committed against officers
- The seriousness of the offense for which officers are searching for evidence
- How long it would take to obtain a search warrant

But what about when officers are asked to enter a home to render emergency assistance to an injured occupant or to protect an occupant from imminent injury?

The United States Supreme Court recognizes an emergency aid exception to the warrant requirement. Although similar, the emergency aid exception is different than the exigency exception. It requires that officers have an objectively reasonable basis for believing that a person within a house needs immediate aid. Additionally, North Carolina has a statute that directly addresses these types of situations. N.C.G.S. § 15A-285 allows for **non-law-enforcement action** when there is an “urgent necessity”. The North Carolina statute reads as follows:

“When an officer reasonably believes that doing so is urgently necessary to save life, prevent serious bodily harm, or avert or control public catastrophe, the officer may take on or more of the following actions:

- (1) Enter buildings, vehicles, and other premises.
- (2) Limit or restrict the presence of persons in premises or areas.
- (3) Exercise control over the property of others.

An action taken to enforce the law or to seize a person or evidence cannot be justified by authority of this section”

What does all that mean? The United States Supreme Court and our statute in North Carolina seemingly say the same thing but in a slightly different way. The important thing to remember is that for an officer to make a non-consensual warrantless entry to conduct a non-law-enforcement action, they must have a *reasonable belief* that making entry is urgently necessary to save life, prevent serious bodily harm, or avert or control public catastrophe. Conversely, if an officer does not have that *reasonable belief*, they should not enter without a warrant.

[Return to Top](#)

CMPD POLICE LAW BULLETIN

A Police Legal Newsletter

October 2021

Volume 38, Issue 5

Page 5 of 5



UPDATES

DMV-349

Starting soon requests for DMV-349 reports can once again be made at the division office or the Records Desk. This update applies to all CMPD sworn and civilian personnel including NEPS and Patrol Division Offices. **A department-wide email will go out soon.**

CRIME VICTIMS' RIGHTS ACT

When completing the "Victim Characteristics" screen officers will soon notice an additional question to answer in reference to the victim-person. In order to comply with the Crime Victim's Rights Act N.C.G.S. § 15A-831 officers will be asked the following:

"Does the victim or their guardian/family wish to receive further notices on the status of the accused during the pretrial process, in the event an accused is identified and arrests?" (y/n)

That question and answer will be included in the KBCOPS papering packet submitted to the Mecklenburg County District Attorney's Office.

[Return to Top](#)