

## Body-Camera Footage Leads to Plain Error Reversal in State v. Miller

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Categories : [Motor Vehicles](#), [Search and Seizure](#), [Uncategorized](#)

Tagged as : [body cameras](#), [fourth amendment](#), [miller](#), [rodriguez](#)

Date : January 31, 2017

My colleagues here have previously blogged about the impact of *Rodriguez v. United States*, 575 U.S. \_\_\_\_, 135 S. Ct. 1609 (2015), and my predecessor Alyson Grine created a handy chart summarizing North Carolina cases on the matter, found [here](#). *Rodriguez* of course held that a traffic stop may not be extended beyond the time necessary to accomplish the purpose of the stop, absent reasonable suspicion or consent, and effectively overruled prior case law in NC allowing *de minimis* extensions of such stops. In December, the Court of Appeals issued a new, unanimous decision applying this rule in [State v. Miller](#), \_\_\_\_ N.C. App. \_\_\_\_ (Dec. 20, 2016), *temp. stay allowed*, \_\_\_\_ N.C. \_\_\_\_ (Jan. 4, 2017). I found it noteworthy for the role that the officer's body-camera footage played, as well as for the fact that the court applied plain error review to grant the defendant a new trial.

**Facts.** *Miller* involved a stop in an allegedly high-crime area of Greensboro when the officer ran the car's license plate and found information that a hold had been placed on the tag because the car owner had not paid the insurance premiums. Once stopped, the owner of the car (who was in the passenger seat) produced an insurance card showing that he had recently purchased insurance. The officer inquired about travel plans and was intrigued by their mention of coming from a certain road. The officer had seen their vehicle turn onto the interstate from another road and knew that the road mentioned by the occupants to be some distance away (it isn't clear how far). *Miller*, who was driving, and the passenger-owner were then ordered out of the vehicle and asked about weapons or drugs; *Miller* denied having any. At this point, the officer's testimony was that he asked for and received *Miller*'s consent to search. A small bag of cocaine was found in *Miler*'s pocket.

**Procedural History.** *Miller* was ultimately tried and convicted of possession of cocaine, receiving an active sentence. Much of the encounter between the officer and *Miller* was captured on the officer's body-cam, and the video was played for the jury during the trial.

On appeal, *Miller* objected (for the first time) to the admissibility of the cocaine and testimony regarding it as the product of an unconstitutional seizure.

**The opinion.** The opening paragraph of the decision states: "Upon plain error review, we hold that (1) the officer unlawfully extended the traffic stop; (2) assuming the seizure was lawful, defendant's consent was not valid; and (3) admitting the evidence at trial prejudiced the defendant and seriously affects the integrity and public reputation of judicial proceedings. Defendant is entitled to a new trial." Slip Op. at 1–2. That's fairly strong language. While I haven't found specific statistics on the likelihood of relief on a plain error standard, it is fair to say that it can be a difficult standard to meet. Plain error is error "so basic, so prejudicial, so lacking in its elements that justice cannot have been done [.]'" *State v. Odom*, 307 N.C. 655,660, (1983) (internal citations omitted). A defendant seeking reversal on a plain error standard must demonstrate a fundamental error at trial, one that prejudiced him or her and had a probable impact on the jury's verdict. *Id.* That the court found plain error here may signal a tendency to strictly interpret constitutional violations under the *Rodriguez* rule, at least when the record is sufficient for the panel to review the evidence and decide the issue.

The court weighed heavily that after *Miller* produced proof of insurance, the officer did nothing to further investigate or pursue the insurance or other traffic violations (the officer told the men that he had also stopped them for speeding).

The officer was also still in possession of Miller's license at the time he ordered Miller out of the vehicle, which contradicted a consensual extension of the stop. The court found that the officer was more concerned about investigating drugs and weapons than effectuating the purpose of the stop, and held that the officer unlawfully extended the stop.

Notably, the Court relied on its own interpretation of the video footage of the encounter. Even if the encounter was justified up to the point of the search, the court discredited the officer's testimony regarding Miller's consent and found the search to be "textbook coercion." The officer testified that Miller orally consented and placed his hands on the vehicle; the video, however, showed the officer turning Miller around at the rear of the vehicle and spreading his arms and legs before asking for consent. To the extent Miller consented under these facts (which the court found wasn't clear), such consent was not voluntary.

The State pointed to the area in which Miller was stopped, the "incongruent answers" regarding travel plans, the fact that the owner of the vehicle was not driving, and that Miller raised his hands while exiting the vehicle as factors establishing reasonable suspicion, justifying the extension of the stop. The court rejected this argument, finding that the answers about travel were not in fact "incongruent" and that the factors indicated by the State fell short of establishing reasonable suspicion.

Practitioners should take note of the trend of cases applying *Rodriguez* and take care to preserve such claims for appeal by filing pretrial motions and objecting at trial. It is also essential to obtain, review, and include relevant video footage in the record when litigating these issues. The court described the constitutional violations here as "egregious" and "apparent" from the video. Slip Op. at 13. One has to wonder how this result might have differed without inclusion of the video in the record on appeal.

By my count, there have now been four North Carolina cases after *Rodriguez* finding for the State (including one unpublished), and now four finding for the defendant (five if you include a Fourth Circuit case). As more cases on this topic are decided, I will update and post the chart linked above. Note that the North Carolina Supreme Court has issued a stay in the case. We will of course continue to update you on what happens to this case there, along with any other developments in this evolving area.

On a personal note, I'd like to add that I am honored to join the team here at the School of Government. It's exciting to be here and to be contributing to the blog. If I can be of assistance, please don't hesitate to reach out.

*Update: On June 8, 2018, the North Carolina Supreme Court reversed the Court of Appeals decision covered here, finding that plain error review was not available for suppression issues where no motion to suppress was made at trial.*