# Court of Appeals Finds Extension of Traffic Stop Unsupported by Reasonable Suspicion

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Last week, the court of appeals decided State v. Bedient, a significant post-*Rodriguez* opinion on traffic stops. The court ruled that an officer lacked reasonable suspicion to extend a stop by a few seconds to ask the driver for consent to search. This post summarizes and analyzes the case.

**Facts.** A deputy stopped the defendant at 11:30 p.m. for failing to dim her high beams. The two had a brief preliminary discussion, during which the defendant identified the sole passenger in the vehicle as her daughter. The officer then asked the defendant for her license. The defendant took 20 seconds to locate it, and the officer thought that she "seemed nervous because she was fidgety and was reaching all over the car and in odd places such as the sun visor." The deputy determined that he had seen the defendant the night before at the home of a local drug dealer, and remembered that the defendant's husband had called the sheriff's office to complain that the defendant "was taking up residence" with the drug dealer.

The officer then returned to his vehicle to run the defendant's license and to run a warrant check on the driver and her passenger. While doing so, the officer saw the defendant "moving around her car and reaching for her sun visor again." The officer issued a verbal warning for the headlight violation, spoke briefly with the defendant about whether the address listed on her license was current, then asked the defendant (1) whether she had ever been in trouble for anything, and (2) whether she had anything unlawful in her car. The defendant answered both queries in the negative and stated, "you can look." The officer searched the car and found drugs and paraphernalia.

**Procedural history.** The defendant moved to suppress, arguing that the officer had unlawfully extended the stop after giving her the warning. A superior court judge denied the motion, finding that the officer had reasonable suspicion to extend the stop and that the defendant voluntarily consented to the search during the properly extended stop. The defendant pled guilty, received a probationary sentence, and appealed.

**Court of appeals opinion.** The court of appeals reversed. It found that several of the superior court judge's factual findings were not supported by the record. (For example, the judge found that the defendant's nervous, fidgeting behavior was "consistent with use of methamphetamine," but the officer never testified to that effect.) Indeed, the court stated that only two facts found by the judge were supported by the record: "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."

Those two facts didn't add up to reasonable suspicion. Nervousness, the court stated, "is insufficient by itself to establish reasonable suspicion," because it "is a common response to a traffic stop." Similarly, the court indicated, "a person's mere association with or proximity to a suspected criminal does not support a conclusion of particularized reasonable suspicion." As to the combination of the two factors, the court found that they could give rise only to a "hunch," not reasonable suspicion, because even together they would not "eliminate a substantial portion of innocent travelers." Op. at 19, quoting *United States v. Digiovanni*, 650 F.3d 498 (4th Cir. 2011).

**Comment.** Overall, the court's analysis strikes me as sound. Even though the stop was extended by just long enough for the officer to ask the driver whether she had been in trouble before and whether she had anything in her car, we know from *Rodriguez v. United States*, __ U.S. __, 135 S. Ct. 1609 (2015), that there is no de minimis exception to the Fourth Amendment. However, like so many Fourth Amendment cases, the result is quite fact-specific. If the officer had testified that the defendant seemed high as well as nervous, or if the officer stated that the defendant's movements with respect to the visor appeared to be furtive rather than anxious, the case might have come out differently.

As a final note, the widespread use of video recording continues to revolutionize appellate review. In this case, the court of appeals found one of the trial judge's findings of fact (concerning the speed with which the defendant identified her passenger in response to the officer's inquiry) unsupported based on its review of the dash cam video. I'm sure that smart appellate lawyers have thought deeply about this, but the traditional rule of deference to a trial court's findings of fact may be less supportable when the appellate court is able to review the same video that the trial judge saw.