

## Court of Appeals Rules That Officer Had Reasonable Suspicion to Extend Traffic Stop

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Jeff Welty in his post [here](#) yesterday discussed last week's North Carolina Court of Appeals ruling in [State v. Bedient](#). Today, I will discuss another ruling decided on the same day: [State v. Castillo](#). Both cases are post-*Rodriguez* cases with different outcomes, with *Bedient* resulting in a ruling for the defendant and *Castillo* a ruling for the State.

Why should you be interested in post-*Rodriguez* cases? First, *Rodriguez* (discussed below) was a significant change in prevailing law in most federal and state courts concerning the justification to extend a traffic stop after the completion of the purpose of the stop. Second, traffic stops constitute one of the primary ways that officers interact with people on a daily basis, and thus it is especially important that officers comply with the Fourth Amendment's requirements as well as any additional state-imposed restrictions. Third, after every significant United States Supreme Court ruling that affects everyday law enforcement practices, it usually takes a few years of appellate court rulings to sort out its legal ramifications amid diverse facts. These rulings provide helpful guidance to trial judges, lawyers, and officers.

**Rodriguez summary.** In April 2015, the United States Supreme Court in [Rodriguez v. United States](#), 135 S. Ct. 1609 (2015), significantly limited the scope of a traffic stop. The Court ruled that an officer may not extend a completed traffic stop for any period of time, no matter how brief, to conduct a dog sniff—absent reasonable suspicion of criminal activity (or consent). The Court rejected the government's argument that an officer may incrementally prolong a traffic stop, which some lower courts, including North Carolina's, had justified as a *de minimis* intrusion. The Court reasoned that a dog alert is not a permissible part of a traffic stop because it detects evidence of ordinary criminal wrongdoing, which is not part of an officer's traffic mission. The Court, however, clearly indicated that if a dog sniff or other non-traffic-related activity does not add any time to the stop (in this case, it added 7–8 minutes), then the dog sniff or other activity is valid under the Fourth Amendment, as it previously had ruled in *Illinois v. Caballes*, 543 U.S. 405 (2005).

**State v. Castillo.** An officer with fifteen years' experience and assigned to highway interdiction stopped the defendant's vehicle for speeding. As the officer approached the vehicle, he saw the defendant was shaking uncontrollably as he handed his license to the officer. The officer also smelled a mild odor of air freshener emanating from the interior and saw the defendant was operating the vehicle with a single key, which indicated to the officer that he might not be the vehicle's owner. When the officer asked the defendant his destination and where he started his trip, the defendant merely and repeatedly responded, "huh." Eventually the defendant said he started from Queens, New York, but claimed he did not know his destination but had an address in his phone's GPS. He later said it was Big Tree Way, but did not know the city except it was an hour away. The officer had never in his experience received an answer that the motorist did not know his or her destination but it was in a GPS. From these facts involving this stop, the officer concluded that there was criminal activity involved.

Later in the patrol car the defendant admitted that he had smoked marijuana three days ago and some of his friends smoked, and that is what the officer might have smelled. He also said that he had been arrested in New York for DUI while under the influence of marijuana. Also, he still did not reveal his destination city other than it was an hour away, he was to see "Eric" without giving his last name, stay a few days, and return to New York in this vehicle, which he borrowed from a friend. When safety, arrest warrant, and other checks proved negative, the officer printed out a warning ticket for speeding. As the officer handed the defendant the ticket, he asked him if there was marijuana in the

car. The defendant said no, but also said that the officer could search the car if he wanted. An ensuing search discovered heroin and cocaine.

The entire interaction was recorded by cameras in the officer's vehicle and the entire video played for the trial judge. The judge granted the suppression motion, ruling that the officer unnecessarily extended the traffic stop without reasonable suspicion and that the defendant had not given clear and unequivocal consent to search his vehicle.

The court of appeals reversed. It reviewed *Rodriguez* and the North Carolina and federal cases on reasonable suspicion that it considered relevant to the *Castillo* facts. The court noted that a series of innocent factors, when viewed collectively, may support reasonable suspicion.

The court set out a number of factors known to the officer before the defendant joined him in the patrol vehicle: (1) an unusual story of his travel because he did not know his destination or was concealing it; (2) a masking odor; (3) third-party vehicle registration; and (4) nervousness. Then while in the patrol car the officer checked the defendant's name for arrest warrants, an action permitted by *Rodriguez*, and the officer also smelled marijuana on the defendant's person and learned from the defendant of his DUI charge based on marijuana. Given the officer's training and experience and viewing the totality of circumstances, the court ruled that the officer had reasonable suspicion to extend the stop by running ancillary checks (e.g., running the names of the vehicle owner and defendant through the El Paso Intelligence Center, which among other things provides criminal record, license, and vehicle information and intelligence concerning drug trafficking, firearms, and immigration status). These checks were done relatively quickly. The court concluded the stop was not unreasonably extended.

The court assumed that an officer under *Rodriguez* may ask about travel plans as a permissible function of a traffic stop, but whether significantly lengthy questioning about travel plans is improper remains an issue to be litigated. Also, whether an officer can check, for example, the El Paso Intelligence Center as part of a routine traffic stop was not at issue in this case, because in any event reasonable suspicion supported prolonging the stop to do such a check.

**The rulings in *State v. Castillo* and *State v. Bedient*.** It is interesting to note the patrol vehicle video in *Castillo* clearly played a factor in the court of appeals ruling. The court commented on what the video showed in discussing the facts concerning the reasonable suspicion issue. Also, the court reviewed the video for the consent issue and found that the trial judge did not correctly find the facts.

The court in *Bedient* relied in part on the officer's video to overturn some of the trial judge's finding of facts and reversed the trial judge's ruling denying the defendant's suppression motion. As Jeff Welty mentioned in yesterday's *Bedient* post, officers' video recordings are revolutionizing appellate review.

The appellate court rulings in both cases are clearly supportable, although *Bedient* might be a somewhat closer case on the merits. Both defendants displayed nervousness, but the nervousness in *Castillo* was supported by other more weighty factors (see the discussion above) than in *Bedient*, which the court said was only additionally supported by the defendant's association with a drug dealer.

Whether the losing party in each case will seek review from the North Carolina Supreme Court remains to be determined.