

Update on U.S. Supreme Court's Ruling in *Rodriguez v. United States* Concerning Extension of Traffic Stops

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Last April, the United States Supreme Court in *Rodriguez v. United States*, 135 S. Ct. 1609 (2015), significantly limited the scope of a traffic stop. The officer in *Rodriguez* completed a traffic stop for driving on the shoulder of a highway after checking the vehicle registration and driver's licenses of the driver and passenger, conducting a warrant check, returning all documents, and issuing the driver a warning ticket. The officer then asked the driver for consent to walk his drug dog around the vehicle, but the driver refused to give his consent. Nonetheless, the officer told the driver to turn off the ignition, leave the vehicle, and wait for a second officer. When the second officer arrived, the first officer walked his drug dog around the car, and the dog alerted to the presence of drugs. A search of the vehicle revealed methamphetamine. Seven to eight minutes had elapsed from the time the officer issued the written warning until the dog's alert.

The Court recognized that during a traffic stop, in addition to determining whether to issue a traffic ticket, an officer's mission includes ordinary inquiries incident to the stop, such as (1) checking a driver's license; (2) inspecting a vehicle's registration and insurance; and (3) determining whether there are outstanding warrants. The Court said that these checks serve the same objective as enforcement of traffic laws, ensuring that vehicles on the road are operated safely and responsibly. However, it noted that an officer must act reasonably in completing these authorized checks—that is, an officer cannot deliberately or unreasonably delay the checks to allow time, for example, for a drug dog to arrive at the scene.

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).

Jeff Welty wrote two posts on this important case: (1) a summary of the ruling [here](#); and (2) a July 2015 post [here](#) on how courts in other jurisdictions were applying the ruling in cases before them. This post supplements Jeff's two posts by reviewing two post-*Rodriguez* North Carolina appellate cases, as well as providing a reference to a discussion of a Fourth Circuit Court of Appeals case.

State v. Leak. In [State v. Leak](#), ___ N.C. App. ___, 773 S.E.2d 340 (June 2, 2015), an officer was on patrol at 11:30 p.m. on April 30, 2012, and saw a parked car in a gravel area near a highway and stopped to see if the driver needed assistance. Before approaching the car, the officer ran the license plate through his computer and learned the car was owned by Keith Leak, the defendant. The officer spoke with the defendant, who told him he did not need assistance and had pulled off the road to return a text message. The officer asked to see his driver's license and the name on it was Keith Leak. The officer went to his vehicle to check the status of the driver's license, which turned out to be valid.

However, a computer search revealed there was an outstanding arrest warrant for Leak. After ordering the defendant out of his vehicle, the defendant revealed that he had a pistol in his pocket. The defendant was arrested for possession of a firearm by a felon and later convicted of this offense. The defendant made a suppression motion before the trial court, which alleged that he was effectively seized when the officer took the defendant's driver's license to the officer's vehicle to conduct a computer search. And because the officer had no suspicion that the defendant had engaged in criminal activity, the seizure violated the Fourth Amendment. The trial court denied the defendant's motion.

The court of appeals agreed with the defendant's argument and reversed the trial court's ruling. The court concluded that it did not constitute a seizure when the officer approached the car, discussed with Leak why he was there, and asked the defendant to allow the officer to examine his license and registration. However, relying on *State v. Jackson*, 199 N.C. App. 236 (reasonable person would not feel free to drive away while an officer retains his or her driver's license) and other cases, the court concluded that the officer's taking Leak's driver's license to his vehicle to check it with his computer was a seizure of Leak that was not supported by reasonable suspicion of criminal activity. The court also rejected the trial court's alternative basis to uphold the officer's acts that the delay in checking the license was a *de minimis* intrusion that did not constitute an unlawful seizure. The court correctly noted that *Rodriguez v. United States*, which was decided after the suppression motion hearing had been held, rejected the *de minimis* rationale to justify a seizure after a traffic stop had ended absent reasonable suspicion of criminal activity. The court ruled that the evidence of the defendant's possession of a firearm was a fruit of the poisonous tree of the unconstitutional seizure and thus the evidence must be suppressed. (Incidentally, the United States Supreme Court has granted review of *Utah v. Strieff*, 357 P.3d 532 (2015), and will likely decide by June a related issue that may affect the ultimate ruling in this case: whether evidence seized incident to a lawful arrest on an outstanding warrant should be suppressed under the Fourth Amendment because the warrant was discovered during an investigative stop later found to be unlawful.)

There was a dissenting opinion in *Leak*. It stated that it would rule that when a traffic encounter is based on determining whether assistance is needed an officer may still verify, just as *Rodriguez* recognized for traffic violation stops, that the car is properly registered, the driver has a valid license, and there are not outstanding arrest warrants.

The State appealed to the North Carolina Supreme Court based on the dissent, which vacated the court of appeals decision and remanded the case to the trial court to reconsider the defendant's suppression motion in light of *Rodriguez*. Thus *Leak* is no longer a binding precedent on the Fourth Amendment issue, and whether this case reappears in the appellate courts remains to be seen.

State v. Warren. The other post-*Rodriguez* case is [State v. Warren](#), ___ N.C. App. ___, 775 S.E.2d 362 (August 4, 2015), in which the court ruled that an officer had reasonable suspicion to extend a traffic stop to allow a dog sniff of a vehicle. Just like *Leak*, however, there is no final resolution of the case. There was a dissenting opinion, and the defendant has appealed to the North Carolina Supreme Court, where the case is currently pending for its ruling.

The defendant in *Warren* did not contest the validity of the traffic stop. Instead, the defendant contended that the trial court erred in ruling that the officer had reasonable suspicion to extend the scope and length of time of a routine traffic stop to allow a dog sniff outside the defendant's vehicle. Before discussing whether reasonable suspicion existed, the court recognized that *Rodriguez* overturned prior rulings of lower appellate courts, including North Carolina's (see *State v. Brimmer*, 187 N.C. 451 (2007), and *State v. Sellars*, 222 N.C. App. 245 (2012)), to the extent that they permitted a *de minimis* time period to prolong a traffic stop for activities unrelated to a traffic stop, such as a dog sniff.

The court noted that it was unclear whether the officer's call for backup or waiting for backup to arrive prolonged the stop beyond what was necessary to complete the traffic stop. However, the court did not need to decide that issue, because it found that reasonable suspicion justified an extension of the traffic stop to execute a dog sniff based on the following trial court's findings: (1) defendant was observed and stopped in an area that the officer knew to be a high crime and drug area; (2) while writing a warning citation, the officer saw that the defendant appeared to have something in his mouth that he was not chewing and that affected his speech; (3) the officer has had specific training in drug detection and during his six years of experience, he has made many drug stops and has seen suspects attempt to

hide drugs in their mouths and swallow them to destroy evidence; and (4) during the officer's conversation with the defendant, he denied being involved in drug activity "any longer." The court stated that this case was similar to the facts in *In re I.R.T.*, 184 N.C. App. 579 (2007), which also upheld a finding of reasonable suspicion.

The dissenting opinion disagreed with the court's finding of reasonable suspicion. The dissent found that the present case differed from *I.R.T.* because the officer in *Warren* never asked the defendant about the object in his mouth nor searched his mouth even though he had consent to search his entire person. The officer did not take any steps to confirm his suspicion concerning what was in the defendant's mouth, which in the dissent's view had improperly supported the court's finding of reasonable suspicion.

Fourth Circuit Court of Appeals opinion. The Fourth Circuit Court of Appeals hears appeals from federal district courts in several states, including North Carolina. Although North Carolina appellate courts are not bound by its decisions on federal constitutional issues, they often will give them some weight in deciding their cases. In a post-*Rodriguez* case, the Fourth Circuit ruled in *United States v. Williams*, 808 F.3d 238 (4th Cir. 2015), that officers lacked reasonable suspicion to detain the defendant for a dog sniff of his vehicle after a traffic stop had been completed and after the defendant had refused to consent to a search. The court's opinion involves an extensive analysis of the facts and law, which in the interest of space will not be covered here. However, you may read my summary of the court's opinion [here](#).