

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA13-316  
NORTH CAROLINA COURT OF APPEALS

Filed: 1 October 2013

STATE OF NORTH CAROLINA

v.

New Hanover County  
Nos. 11 CRS 057410-11

ALFUTIR KAREEM-ID MAYWEATHER,  
Defendant.

Appeal by defendant from judgment entered 31 August 2012 by Judge Phyllis M. Gorham in New Hanover County Superior Court. Heard in the Court of Appeals on 9 September 2013.

*Roy Cooper, Attorney General, by Adren L. Harris, Special Deputy Attorney General, for the State.*

*William D. Spence, for defendant-appellant.*

MARTIN, Chief Judge.

Alfutir Mayweather, defendant, was charged with conspiracy to traffic heroin by transportation and possession, trafficking heroin by possession and transportation, possession with intent to manufacture, sell, and deliver heroin, possession with intent to manufacture, sell, and deliver marijuana, felony possession of marijuana, and possession of drug paraphernalia. He was

found guilty of trafficking by possession and transportation of more than 14 but less than 28 grams of heroin, possession with intent to manufacture, sell, or deliver heroin, possession with intent to manufacture, sell, or deliver marijuana, felony possession of marijuana, and possession of drug paraphernalia. He appeals from the judgment entered upon the verdicts.

Prior to trial, defendant moved to suppress evidence seized after the automobile in which he was a passenger was stopped on a traffic violation. The evidence, at the hearing on the motion to suppress, tended to show that Sergeant Fike of the New Hanover County Sheriff's Department pulled over a Hyundai Sonata on 5 August 2011 at 1:29 a.m. for speeding. Jamal Curry was driving the vehicle and defendant was a passenger in the car. After approaching the vehicle and obtaining Curry's license and registration, Sergeant Fike asked Curry to step out of the vehicle because defendant was answering Sergeant Fike's questions instead of Curry. After speaking with Curry outside of the Hyundai for a few minutes, Sergeant Fike asked Curry to sit in the front passenger seat of the police car.

By this point in time Sergeant Croom had arrived with Ross, a drug-detection dog. Sergeant Fike, with Curry in the front passenger seat of the police car, at 1:36 a.m. began to generate a speeding ticket. While Sergeant Fike was filling out the

speeding ticket, Curry gave him permission to search the car. Sergeant Fike informed Sergeant Croom that Curry had consented to a search of the car. So Sergeant Croom asked defendant to step out of the vehicle and go wait by the police car with Sergeant Fike while he conducted a search of the car.

Sergeant Fike stopped filling out the speeding ticket and waited with Curry and defendant while Sergeant Croom searched the car with Ross. Defendant informed Sergeant Fike that he did not consent to a search of his belongings, and Sergeant Fike responded that they were going to search the car based on Curry's consent. The duration of the search by Sergeant Croom and Ross lasted between four and five minutes.

To search the vehicle, Sergeant Croom walked Ross around the car once and he did not alert to anything. Sergeant Croom then walked Ross around the car a second time directing his attention to certain areas on the outside of the vehicle such as the wheel wells and door seams. When Sergeant Croom directed Ross's attention to the left rear passenger door he alerted to drugs. Sergeant Croom opened the door of the car and let Ross into the back seat and Ross indicated that the bags in the back seat contained drugs.

Sergeant Croom, with the help of Detective Bacon, who had recently arrived at the scene, began to search the bags in the

back seat. The two of them recovered 360.6 grams of marijuana, 700 bindles of heroin, and a single bag of heroin in a shoe. There was not a uniform amount of heroin in each bag.

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On appeal, defendant challenges the trial court's order denying his motion to suppress evidence. An order denying a motion to suppress evidence is reviewed "upon an appeal from a judgment of conviction." N.C. Gen. Stat. § 15A-979(b) (2011).

In this case, defendant argues that the trial court should have suppressed evidence because the Fourth Amendment of the United States Constitution and Article I, Section 20 of the North Carolina Constitution required its exclusion for two reasons: (1) his luggage was searched without his consent or a search warrant; and (2) the traffic stop lasted for an unreasonable amount of time.

We strictly limit our review of a trial court's order on a motion to suppress to "determining whether the trial judge's underlying findings of fact are supported by competent evidence, in which event they are conclusively binding on appeal, and whether those factual findings in turn support the judge's ultimate conclusions of law." *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982).

Before addressing defendant's arguments we note that

Article I, Section 20 of the North Carolina Constitution does not confer any rights beyond those afforded by the Fourth Amendment. *State v. Garner*, 331 N.C. 491, 506-07, 417 S.E.2d 502, 510 (1992). Therefore, the analysis of defendant's issues will be the same under Article I, Section 20 and the Fourth Amendment.

First, we address defendant's argument, as a passenger in an automobile, that the warrantless search of his luggage violated the Fourth Amendment of the United States Constitution and Article I, Section 20 of the North Carolina Constitution. We find this argument unpersuasive.

The Fourth Amendment and Article I, Section 20 protects individuals from unreasonable searches and seizures by the government. *State v. Otto*, 366 N.C. 134, 136, 726 S.E.2d 824, 827 (2012). This right is personal, so the search or seizure must intrude into a place where an individual has a reasonable expectation of privacy. *State v. VanCamp*, 150 N.C. App. 347, 350, 562 S.E.2d 921, 924 (2002). A passenger has no reasonable expectation of privacy in an automobile in which the passenger has no ownership or possessory interest. *Id.* at 350, 562 S.E.2d at 925.

Defendant, a passenger with no ownership or possessory interest, had no reasonable expectation of privacy in the

automobile. Without a reasonable expectation of privacy, defendant's rights were not violated by the search and the trial court properly denied defendant's motion to suppress the evidence obtained in the search of the automobile.

Next, we consider defendant's allegation that the duration of the traffic stop by Sergeant Fike violated the Fourth Amendment of the United States Constitution and Article I, Section 20 of the North Carolina Constitution. We also find this argument unconvincing.

When a vehicle is stopped for a traffic violation, the driver and all passengers in the vehicle are seized. *State v. Jackson*, 199 N.C. App. 236, 240, 681 S.E.2d 492, 495 (2009). This seizure provides a passenger with standing to challenge the initial seizure (the traffic stop) and/or the extended scope or duration of the seizure. *Id.*

The Supreme Court of the United States has noted that a seizure can become unlawful if the duration of the seizure is "prolonged beyond the time reasonably required to complete" the mission of the seizure. *Illinois v. Caballes*, 543 U.S. 405, 407, 160 L. Ed. 2d 842, 846 (2005). The Eighth Circuit in *United States v. Alexander*, 448 F.3d 1014, 1016 (8th Cir. 2006), relying in part on the reasoning in *Caballes*, embraced the *de minimis* approach to traffic stops. This Court, in reliance on

Alexander, has also embraced the *de minimis* approach to traffic stops. See *State v. Sellars*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 730 S.E.2d 208, 210-13 (2012), *supersedeas denied, disc. review denied, and appeal dismissed*, \_\_\_ N.C. \_\_\_, \_\_\_ S.E.2d \_\_\_ (filed Jan. 24, 2013).

The *de minimis* approach to traffic stops means that a court may overlook a minimal delay in a traffic stop because it is so insignificant. As a result, this Court has reasoned that if a traffic stop is delayed for a short period of time, then the delay is *de minimis* and the Fourth Amendment is not implicated. See *id.* at \_\_\_, 730 S.E.2d at 213.

In this case, the Hyundai Sonata was stopped at 1:29 a.m. for speeding. Sergeant Fike approached the car and asked Curry some questions. When the passenger started answering the questions instead of Curry, Sergeant Fike asked Curry to step out of the car. Ultimately, Curry ended up in the front passenger seat of the police car. With Curry in the police car, Sergeant Fike began generating the speeding ticket at 1:36 a.m., and shortly thereafter Curry consented to a search of the car.

When Curry consented to the search Sergeant Fike stopped filling out the ticket and stood with Curry and defendant while Sergeant Croom searched the Hyundai. Sergeant Croom conducted a four to five minute search of the vehicle with a drug-detection

dog. The dog alerted to drugs and the subsequent search of the vehicle uncovered the presence of marijuana and heroin.

Seven minutes passed between the time the Hyundai was pulled over (1:29 a.m.) and the time that Sergeant Fike began to generate the speeding ticket (1:39 a.m.). It is reasonable for a traffic stop to last seven minutes. Thus, even though Sergeant Fike had not issued the speeding ticket when the search began, the most this traffic stop could have been delayed by the search was five minutes.

The five-minute search of the car with a drug-detection dog was *de minimus* and did not violate defendant's rights. See *Sellars*, at \_\_\_, 730 S.E.2d at 213 (holding that a four minute and thirty-seven second delay, after a warning ticket had already been issued, to search a vehicle with a drug-detection dog was *de minimis*). Therefore, the trial court correctly held that the traffic stop was not for an unreasonable amount of time.

Affirmed.

Judges GEER and STROUD concur.

Report per Rule 30(e).