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Fourth Circuit Court of Appeals

(Note: You may access the court's opinions by clicking on the case name)

Court Rules That Traffic Stop Did Not Exceed the Time Reasonably Required to Complete the Tasks Incident to the Stop's Mission and Thus Did Not Violate *Rodriguez v. United States*, 135 S. Ct. 1609 (2015)

[United States v. Hill](#), ___ F.3d ___, 2017 WL 1192897 (4th Cir. March 30, 2017). Two Richmond, Virginia law enforcement officers conducted a traffic stop of a vehicle in which the defendant was a passenger. Officer Taylor recognized the driver as someone who had been associated with people connected with robberies and recognized the defendant-passenger from a prior traffic stop and that he had been a victim of a prior stabbing. The officer entered both of their names into computer databases operated by the state motor vehicle department and NCIC. After three minutes, NCIC returned an alert that both men had been associated with drug trafficking and were likely armed, and the driver had a suspended driver's license. The officer began writing two summonses for the driver and also requested a K-9 unit to be sent to the scene. The officer interrupted writing the summonses to enter their names into another computer database, PISTOL, which tracks every person who has had prior contacts with Richmond police. The officer spent three to five minutes reviewing the information and resumed writing the two summonses. It takes about four or five minutes to write one summons. While Officer Taylor searched the databases and continued to write the summonses, Officer McClendon remained standing next to the stopped car and conversed with both the driver and defendant, including asking three times whether there were any drugs or firearms in their car. Following the third inquiry, the defendant said he had a firearm on his person. Officer McClendon immediately shouted "gun," prompting Officer Taylor to come over to assist in securing the defendant and the firearm. Although the K-9 unit had arrived by then, the dog was still in the unit's vehicle and had not begun a "sniff" of the car. A total of 20 minutes had elapsed from the initiation of the stop to the shouting of "gun."

In a Virginia federal district court where the defendant was charged with being a felon in possession of a firearm, the defendant's motion to suppress evidence obtained from the traffic stop was denied by the district court judge. The defendant pled guilty to the charge but appealed the denial of his suppression motion, and the fourth circuit affirmed the district court's ruling.

The fourth circuit ruled that the traffic stop did not exceed the time reasonably required to complete the tasks incident to the stop's mission and thus did not violate *Rodriguez v. United States*, 135 S. Ct. 1609 (2015) (extending traffic stop by even a *de minimis* length of time violates the Fourth Amendment unless reasonable suspicion or consent exists). The court made the following points: (1) *Rodriguez* does not render unlawful a traffic stop in which there are brief periods unaccounted for, as long as the stop was not prolonged for purposes beyond the stop's mission, and the officers executed their tasks with reasonable diligence; (2) although Officer Taylor could have executed the stop without using PISTOL, his decision to search this database was reasonable to determine a person's prior contact with local enforcement, just as an officer can search for outstanding warrants; (3) Officer McClendon's decision to converse with the driver and defendant instead of assisting Officer Taylor in completing the database searches was not unreasonable, noting the dangerous risks of traffic stops to officers; (4) Officer McClendon's questioning that was unrelated to the traffic violations did not violate the Fourth Amendment because it did not extend the length of the stop; and (5) the presence of the K-9 unit with

the dog still in the unit's car did not extend the stop because the unit's arrival was contemporaneous with Officer McClendon's shouting of "gun," which did involve the diligent pursuit of the stop's mission.

(1) No Sixth Amendment Compulsory Process Violation When Government Deported Potential Witness for Defendant

(2) Email Message Was Admissible under Rules 901, 802, and 801

[United States v. Zhu](#), ___ F.3. ___, 2017 WL 1363881 (4th Cir. April 12, 2017). The defendant was convicted in a Virginia federal district court of an immigration fraud conspiracy and aiding and abetting immigration fraud, both offenses discovered through a green card sting operation. (1) The court ruled that there was no Sixth Amendment compulsory process violation under *United States v. Valenzuela-Bernal*, 458 U.S. 858 (1982), when the government deported a potential witness for the defendant. The defendant failed to show prejudice resulted from the absence of the deported witness at trial. The court did not decide whether the defendant must also show that the government acted in bad faith in deporting the witness. (2) The court ruled that the trial court did not abuse its discretion in admitting under Rule 901 an email from a co-conspirator to the government's undercover officer. The court stated that the email was sufficiently authenticated to clear the relatively low prima facie hurdle for admission, even though the government did not produce the author of the email or the translator who prepared the email for the author. The author had conducted a series of transactions with the undercover officer, and the email was a reasonable interpretation of what the author had been saying to the officer. (3) The court noted that the district court had ruled that the email contained a statement of a co-conspirator and thus was not hearsay under Rule 801(d)(2)(E), and the defendant did not challenge this ruling on appeal. Relying on the analysis in *United States v. Vidacak*, 553 F.3d 344 (4th Cir. 2009), the court rejected the defendant's argument on appeal that the email was hearsay because it was unknown whether the translator who prepared the email for the co-conspirator author acted as a pure conduit for the language translation, or it was the translator's statement and not simply the co-conspirator's statement. The court interpreted the district court's ruling to hold that the interpreter in fact did act as a mere language conduit and did not create an additional level of hearsay.