

Case Summaries: Fourth Circuit Court of Appeals (Nov. 8 and 29, 2022)

No reasonable suspicion existed to extend traffic stop for a canine sniff; denial of motion to suppress reversed

[U.S. v. Miller](#), ___ F.4th ___, 2022 WL 17259018 (Nov. 29, 2022). The defendant was a passenger in a car stopped in the Northern District of West Virginia for a broken taillight. After the officer activated his patrol lights, the driver braked within four seconds, turned on her blinker within three more seconds, and was completely stopped within seventeen seconds. According to the officer, the driver was nervous, and her hands were shaking during the encounter. The body camera footage from the stop did not show the driver's hands shaking when they were within view of the camera. The driver explained that the car was messy when she could not immediately find her registration card. She explained to the officer that she had just renewed her license earlier that day and knew the card was in the car. She complained to the officer that she had waited over three hours at DMV while watching her three grandchildren. The officer indicated he intended to write a warning if the driver's license and paperwork was in order. Another officer arrived, and the initial stopping officer expressed his suspicion about the driver and passenger because the driver was "shaking and tapping on the car door." A warning ticket was printed, but the officer asked the occupants to step out of the car in order to conduct a canine sniff. Following a positive alert, the car was searched, leading to the discovery of two guns in the defendant's bag. She was indicted for possession of firearm by felon and moved to suppress, arguing that the stop was improperly extended. The district court denied the motion. The court agreed that the video of the encounter did not show the driver's hands shaking, but nonetheless determined the driver displayed excessive nervousness by oversharing the details of her day with the officer, tapping her fingers, and that her nervousness continued even after being told she would only receive a warning. It also found that she was slow to stop her car in response to the patrol lights and could have safely stopped sooner. Based on these factors and the fact that the highway was a "known drug corridor," the district court held that the officer had reasonable suspicion to extend the stop for the canine sniff. On appeal, a unanimous panel of the Fourth Circuit reversed.

The court noted that some nervousness during a traffic stop is normal and not indicative of criminal activity. Only where a suspect displays extreme or unusual nervousness does it become a meaningful factor in the reasonable suspicion analysis. "[A]bsent signs of nervousness beyond the norm, we will discount the detaining officer's reliance on a detainee's nervousness as a basis for reasonable suspicion." *Miller* Slip op. at 13 (citation omitted). Sustained nervousness throughout the encounter may also be a relevant consideration because most innocent drivers become less nervous as the encounter proceeds. The amount of time the driver takes to pull over and the road being travelled on may also contribute to reasonable suspicion, "but the mere fact that a person is traveling on a route commonly used to transport drugs, standing alone, is entitled to very little weight." *Id.* at 14 (cleaned up).

Here, the bodycam video largely contradicted the officer's justifications to extend the stop, and the district court erred in crediting his version of events. For one, the driver was not slow to stop in response to the patrol lights. According to the court:

Just as officers are not required to complete a traffic stop as quickly as humanly possible, drivers should not be required to pull over as quickly as humanly possible—especially when a driver may need to continue driving for a slightly longer period of time to reach a safer stopping point—as long as the time it took to stop was reasonable. Such a rule deters the Government from transforming innocuous behavior—or, as found here, behavior that enhances the safety of the driver, the officer, and others on the road—into evidence of criminality. *Id.* at 15-16 (cleaned up).

Here, the driver stopped within a reasonable amount of time and the video showed that she had no place to safely stop sooner. Thus, the driver's stopping time did not here meaningfully contribute to reasonable suspicion. Similarly, the video did not show that the driver was unusually nervous during the encounter. The driver's hands could be seen multiple times during the recording, and they were never shaking. While the driver indicated her car was messy, that was an explanation for her trouble locating her registration card. Her sharing details of her experience at DMV with the officer was in response to the officer's request for her registration card and his inquiry as to the status of her license. "It is hard to imagine why this exchange would arouse suspicions of criminal behavior." *Id.* at 18. The defendant's demeanor remained the same throughout the encounter and did not evidence extreme nervousness. While the driver was tapping her fingers on the car door, this was not enough to establish unusual nervousness. In the court's words:

Although fidgeting may certainly be a sign of nervousness, tapping one's fingers may just as likely be a sign of annoyance, impatience, or even boredom—any of which may be expected when a person is stopped by a police officer and is awaiting the results of a license check. By itself, tapping one's fingers is a very weak indicator of nervousness. *Id.* at 19.

With those factors discounted, all that remained was the fact that the car was travelling on a known drug route. This alone "does not serve to eliminate a substantial portion of innocent travelers" and could not support reasonable suspicion to extend the stop. *Id.* at 20 (citation omitted). The motion to suppress therefore should have been granted. The district court's ruling to the contrary was reversed, the convictions vacated, and the matter remanded for any further proceedings.

Pretrial detainee's right to be free from deliberate indifference to his serious mental health needs was clearly established; district court properly denied qualified immunity for EMTs

[Tarashuk v. Givens](#), 53 F. 4th 154 (Nov. 8, 2022). The decedent, a 26-year-old man with schizoaffective disorder, was driving on Interstate 95 in the South Carolina when he was involved in an accident. This triggered a psychotic episode. The man took off his clothes, left his phone and wallet in the car, and began walking down the highway. At an off-ramp, he jumped onto a parked tractor-trailer. The driver of the truck began driving and went several miles before realizing that a naked man was in the catwalk area between the trailer and the cab of the truck. The truck driver called 911 and eventually had to stop due to the decedent disconnecting the brake lines of the vehicle. The man was sitting on top of the truck when officers arrived and displayed obvious signs of psychosis. He was eventually persuaded to come down from the top of the truck and was handcuffed. An officer put in a call for EMS with the code of "altered mental status." Both responding EMTs recognized the code as such. The man was nonverbal

and nonresponsive to questions while the EMTs attempted to take his vitals. The EMTs eventually offered the man an option between going to the hospital or going to jail, but the man shook his head no in response to both choices. A deputy then remarked that he would give him a ride. After the EMTs left the scene, the deputy told the man that he was not under arrest and that the deputy would be giving him a ride to a safe place. The deputy ultimately dropped the man off at a nearby gas station at around 2am. The station was closed, the man's mental health had not noticeably improved, and the man remained without his phone, wallet, shoes, or ID. Around 6am the same day, officers discovered that the man had been hit and killed walking alongside I-95. The man's estate sued, arguing that the defendant-EMTs violated the man's due process rights by deliberate indifference to his obvious medical needs. The district court refused to grant the defendant's qualified immunity at the summary judgment stage, and they appealed. A unanimous panel of the Fourth Circuit affirmed.

Pretrial detainees have a clearly established right for government actors not to be deliberately indifferent to known and serious medical needs as a matter of substantive due process. Mental health is included within this protection. According to the court, any reasonable official would have known that "failing to properly assess and transport an unresponsive detainee with an altered mental state either to the hospital or jail" could result in a due process violation. *Tarashuk* Slip op. at 17. In the words of the court:

A reasonable EMT or paramedic in Appellants' position clearly would have known that a government official may be subject to a claim for deliberate indifference for failure to provide adequate medical care to a mentally ill detainee. Likewise, a reasonable EMT or paramedic in Appellants' position would have known that their conduct was not only unlawful but also created a substantial risk of serious harm to both the detainee and those he may have encountered. *Id.* at 20.

The district court was therefore correct to deny summary judgment and qualified immunity, and the case was remanded for further proceedings.