

STATE OF RHODE ISLAND

KENT, SC.

SUPERIOR COURT

[FILED: May 10, 2021]

STATE OF RHODE ISLAND

:

V.

:

C.A. No. K2-2019-0513A

:

JUNJIE LI

:

:

Consolidated with

STATE OF RHODE ISLAND

:

V.

:

C.A. No. K2-2019-0513B

:

ZHONG KUANG

:

:

DECISION

“The life of the law has not been logic; it has been experience.”

— Justice Oliver Wendell Holmes, Jr.

PROCACCINI J. There is a growing movement across the United States to either decriminalize or legalize the possession and use of recreational and medical marijuana.¹ This trend is evidenced by the numerous states that have chosen to legalize marijuana, decriminalize marijuana, and not surprisingly tax the sale of marijuana which resulted in over two billion dollars in revenue in 2019.² Presently, seventeen states including the nearby states of Massachusetts, New Jersey, Vermont,

¹ Honorable Neil E. Axel, *The Legalization of Marijuana and Its Impact on Traffic Safety and Impaired Driving*, American Bar Association, https://www.americanbar.org/groups/criminal_justice/publications/criminal-justice-magazine/2020/spring/the-legalization-marijuana-and-its-impact-traffic-safety-and-impaired-driving (April 20, 2020).

² Magnus Thorsson & Michael Budziszek, *States See Green in Emerging Cannabis Industry*, Providence Journal, <https://www.providencejournal.com/story/opinion/columns/2021/04/09/opinion-thorsson-and-budziszek-states-see-green-emerging-cannabis-industry/7093876002> (April 9, 2021).

and Maine as well as the District of Columbia have fully legalized small amounts of marijuana for adult use.³ Additionally, twenty-seven states have decriminalized small amounts of marijuana for personal consumption and thirty-six states have also chosen to implement comprehensive medical marijuana programs.⁴ In addition, “Alaska, Colorado, Oregon, and Washington are developing their own unique structures to collect tax revenue, and license and regulate marijuana cultivation facilities and retail shops.”⁵ The push towards decriminalization or legalization “has been based, at least in part, on the perception that marijuana is a harmless drug, criminal possession cases are not worthy of prosecution, the war on drugs has led to unnecessary incarceration, and the regulation of the marijuana industry leads to increased tax revenues.”⁶

While Rhode Island currently falls into the decriminalization category, there is proposed legislation currently before our Legislature that would legalize marijuana possession and tax marijuana sales.⁷ This proposed bill would authorize individuals to possess one ounce of marijuana in their homes as well as transport one ounce of marijuana in sealed containers in their vehicles.⁸ If this legislation is enacted as law, we will most likely see a rise in the already increasing number of traffic stops where the odor of marijuana is detected in motor vehicles.

Due to the growing trend to either decriminalize or legalize the possession and use of recreational and medical marijuana, many state courts have been confronted with the question of

³ Louise Hall, *Marijuana becomes legal in a third of US states as New Mexico signs off on drug*, Independent, <https://www.independent.co.uk/news/world/americas/marijuana-legalisation-new-mexico-us-b1830616.html> (last visited April 14, 2021).

⁴ National Conference of State Legislatures, *Deep Dive Marijuana*, <https://www.ncsl.org/bookstore/state-legislatures-magazine/marijuana-deep-dive.aspx> (last visited April 7, 2021).

⁵ *Id.*

⁶ Axel, *supra* note 1.

⁷ See 2021 Rhode Island Senate Bill No. 0568, Rhode Island 2021 Legislative Session, March 09, 2021.

⁸ See *id.* at 34, 37.

how this trend impacts Fourth Amendment principles associated with motor vehicle stops. In answering this question, many state courts have chosen to rework their Fourth Amendment jurisprudence to ensure that the Fourth Amendment’s protection against unreasonable searches and seizures stays intact. For example, Massachusetts has decided that “the odor of burnt marijuana alone cannot reasonably provide suspicion of criminal activity to justify an exit order.” *Commonwealth v. Cruz*, 945 N.E.2d 899, 910 (Mass. 2011). Additionally, Maryland has determined that “[a]rresting and searching a person, without a warrant and based exclusively on the odor of marijuana on that person’s body or breath” violates a person’s Fourth Amendment protection from unreasonable searches. *Lewis v. State*, 233 A.3d 86, 101 (Md. 2020). Furthermore, Vermont has decided that the “odor of marijuana is a factor, but not necessarily a determinative factor, as to whether probable cause exists.” *Zullo v. State*, 205 A.3d 466, 502 (Vt. 2019). If our Legislature legalizes marijuana, our courts, like those in Massachusetts, Maryland, and Vermont, will have no choice but to decide how our Fourth Amendment jurisprudence will comport with the legalization of marijuana. *See State v. Terzian*, 162 A.3d 1230, 1239 (R.I. 2017) (“the ultimate touchstone of the Fourth Amendment is reasonableness”).

Thus, this Court is mindful of the growing trend to either decriminalize or legalize the possession and use of recreational and medical marijuana and how this trend impacts Fourth Amendment jurisprudence. Changing societal perceptions of marijuana as well as increasing governmental acceptance of legalization inform the Court’s view in its analysis of the issues presented.

Defendants Junjie Li (Li) and Zhong Kuang (Kuang)—collectively Defendants—move to suppress evidence that was obtained during a search of Kuang’s vehicle on May 25, 2019. The Defendants argue that the evidence obtained from the vehicle should be suppressed because the

traffic stop was unlawfully prolonged, and in the alternative, that the search of the vehicle and subsequent seizure of evidence was done without probable cause. Conversely, the State of Rhode Island (State) maintains that there was reasonable suspicion to prolong the traffic stop and that the search of Kuang's vehicle was lawful under the automobile exception to the warrant requirement, and therefore, the evidence found during the search should not be suppressed. For the reasons discussed herein, this Court grants the Defendants' motions to suppress.

I

Facts⁹ and Travel

This matter arises from events that occurred on May 25, 2019, the Saturday of Memorial Day Weekend. Rhode Island State Trooper Justin Andreozzi¹⁰ (Andreozzi) was assigned to monitor northbound traffic on Route 95 North from a fixed post located in the median under the Austin Farm Road overpass in the Town of Exeter.

At approximately 11:16 a.m., Andreozzi observed a black Ford Taurus sedan, bearing a New York registration, traveling northbound in the right traffic lane. As the vehicle approached Andreozzi's traffic post, he observed that the front seat passenger was sleeping and not wearing his seatbelt. As a result, Andreozzi entered the highway and attempted to catch up with the vehicle so he could conduct a traffic stop related to a seatbelt violation. Once he was behind the Taurus, Andreozzi observed the front seat passenger look over his left shoulder at the cruiser and then put his seat belt on. Andreozzi then activated his emergency lights in the area of Weaver Hill.

⁹ The facts set forth in this decision were taken from testimony at a suppression hearing held on February 24, 2021.

¹⁰ Andreozzi, at the time of the hearing, had been a State Trooper for ten years. He graduated from the State Police Academy in 2011. During his time in the academy, Andreozzi received training on how to detect marijuana and other drugs through sight and smell. He was also trained on detecting nervous behavior and how it corresponds to potential criminal offenses involved in motor vehicle stops.

Once the vehicle pulled over, Andreozzi exited his cruiser and approached the vehicle on the passenger side. As he approached the passenger side window, he observed two occupants—a male operator and a male passenger. Andreozzi spoke with the operator of the vehicle, who identified himself as Li, and explained the reason for the traffic stop.¹¹ He then asked Li for his license, registration, and insurance. Li told Andreozzi that the vehicle belonged to his uncle, Kuang, who was sitting in the passenger seat. Li further explained that he and Kuang were going to visit a friend in Chinatown in Boston for a couple of hours and then drive back to New York. He also stated that he was driving because his uncle became tired during the long ride between New York and Chinatown.

While conversing with Li, Andreozzi detected a *slight* odor of fresh marijuana emanating from the interior of the vehicle. He also noticed that Li began to exhibit nervous behavior. He specifically observed that Li's neck was pulsing, his chest was pounding, and that he began to perspire despite the mild outside temperature. Andreozzi also testified that Kuang's chest was pounding as well.

After obtaining the vehicle registration as well as Li and Kuang's licenses, Andreozzi requested Li to exit the vehicle and directed him to sit in the front passenger seat of his cruiser while he performed law enforcement checks. Andreozzi testified that he asked Li to exit the vehicle for several reasons—his safety, to separate the parties, and so he could ask questions without prolonging the stop. Andreozzi also testified that Li was not free to leave the passenger seat of his cruiser once he was placed there.

¹¹ While it was apparent to Andreozzi that English was not Li's primary language, Andreozzi did not believe there was a significant language barrier as Li appeared to understand what he was asking and provided proper responses. This Court believes it necessary to point out that both Defendants requested a court interpreter for the hearing.

While Li was sitting in the cruiser with Andreozzi, Andreozzi called for backup and requested that Rhode Island State Trooper James D'Angelo (D'Angelo) report to the scene with his K-9, Chuck, who was trained in marijuana detection. Andreozzi then began to ask Li several questions while he performed law enforcement checks. Andreozzi asked Li separate questions about whether the vehicle contained any illegal contraband such as firearms, cocaine, and methamphetamines, to which Li replied no.¹² Andreozzi then asked Li if the vehicle contained any marijuana. Li paused and did what Andreozzi described as a "target glance"¹³ at the vehicle. He then looked back at Andreozzi, and said he did not know what marijuana was and then replied no. Checks of the vehicle registration and the Defendants' licenses indicated that they were active and thus valid. Additionally, criminal history checks of both Defendants came back negative.

Once D'Angelo arrived at the scene, Andreozzi left Li in the front passenger seat of his cruiser and asked Kuang to exit the vehicle and stand in front of his cruiser in the breakdown lane. As Kuang exited the vehicle, Andreozzi detected an odor of fresh marijuana emanating from Kuang's clothing. D'Angelo brought Chuck to the front of the vehicle so he could perform an exterior sniff. D'Angelo guided Chuck to the front passenger headlight and then walked him counterclockwise around the vehicle. When Chuck arrived at the rear of the vehicle, he placed his nose on the trunk seal and then sat down, indicating the presence of a narcotic odor.

Andreozzi then proceeded to open the trunk of the vehicle. In the trunk, Andreozzi and D'Angelo observed five large laundry style bags containing a total of ninety-four (94)

¹² Andreozzi testified that asking individual questions concerning different types of narcotics and contraband is a tactic utilized by officers when they suspect some type of criminal activity is afoot. This tactic allows officers to gauge how the suspect's verbal and nonverbal responses change based on the narcotic or contraband referred to in the question.

¹³ Andreozzi testified that based on prior narcotic training and arrest experience, a "target glance" is a nonverbal indicator of criminal activity, specifically the transportation of narcotics.

approximately one-pound vacuum sealed bags of suspected marijuana. Andreozzi and D'Angelo placed Li and Kuang into custody and transported them to the Hope Valley Barracks. Andreozzi also arranged for the vehicle to be towed to the Hope Valley Barracks.

Once the vehicle arrived at the barracks, Andreozzi and D'Angelo performed an inventory search and discovered a set of metal nunchucks in the map pocket of the driver side door. The troopers also removed the suspected marijuana from the trunk and conducted a field test using a KN Reagent test kit. The test yielded a positive response to the presumptive presence of marijuana. Additionally, a search of Kuang yielded \$6165 in his wallet.

The State charged both Li and Kuang with (1) possession with intent to deliver marijuana and (2) possession of one to five kilograms of marijuana. The State also charged Li, separately, with possession of a "Kung Fu" weapon. Defendants moved, individually, to suppress the evidence found during the search of Kuang's vehicle.

II

Standard of Review

Defendants bring their instant motions pursuant to Rule 41(f) of the Superior Court Rules of Criminal Procedure. The State bears the burden of establishing that the evidence seized from Kuang's vehicle is admissible "by a fair preponderance of the evidence." *State v. O'Dell*, 576 A.2d 425, 427 (R.I. 1990) (citing *United States v. Matlock*, 415 U.S. 164, 177 n.14 (1974)); see also *State v. Tavarez*, 572 A.2d 276, 279 (R.I. 1990).

III

Analysis

Li and Kuang each contend that the evidence seized from Kuang's vehicle should be suppressed because the traffic stop became unlawful when it was prolonged beyond the initial

reason for the traffic violation and in the alternative, that the vehicle was searched without probable cause. They further argue that the slight odor of marijuana coming from within a car stopped for a seatbelt violation does not give probable cause to search the car, including the trunk and containers therein.

Conversely, the State argues that Andreozzi had reasonable suspicion to prolong the traffic stop as it shifted to a narcotics investigation, and he reasonably believed crime was afoot. The State also argues that the search of Kuang's vehicle was lawful because Andreozzi had probable cause to search the vehicle for contraband.

"The Fourth Amendment, applicable to the states through the Fourteenth Amendment, guarantees a person's right to be secure against unreasonable searches and seizures." *State v. Foster*, 842 A.2d 1047, 1050 (R.I. 2004). "A traffic stop, by definition, embodies a detention of the vehicle and its occupants. It therefore constitutes a seizure within the purview of the Fourth Amendment." *United States v. Chhien*, 266 F.3d 1, 5 (1st Cir. 2001); *see also State v. Parra*, 941 A.2d 799, 803-04 (R.I. 2007) ("[i]t is well established that when a police officer makes a traffic stop, both the driver and any passengers are seized within the meaning of the Fourth Amendment, regardless of the brevity of the stop"). Accordingly, any occupant in the vehicle "may challenge his own detention regardless of whether he was the immediate target of the investigation or whether he had a privacy interest in the vehicle itself." *United States v. Sowers*, 136 F.3d 24, 27 (1st Cir. 1998).

For a traffic stop to be conducted in accordance with the Fourth Amendment, it must be reasonable under the circumstances. *See State v. Quinlan*, 921 A.2d 96, 106 (R.I. 2007) ("It is well established that a traffic stop, regardless of how brief and limited, constitutes a seizure for Fourth Amendment purposes, and thus must be reasonable under the circumstances."). To justify

the type of seizure involved in a traffic stop, the United States Supreme Court has stated that “officers need only reasonable suspicion—that is, a particularized and objective basis for suspecting the particular person stopped of breaking the law.” *Heien v. North Carolina*, 574 U.S. 54, 60 (2014) (citing *Navarette v. California*, 572 U.S. 393, 396 (2014)) (internal quotation marks omitted). The Court has also stated that “the level of suspicion the standard requires is considerably less than proof of wrongdoing by a preponderance of the evidence, and obviously less than is necessary for probable cause.” *Navarette*, 572 U.S. at 397 (citing *United States v. Sokolow*, 490 U.S. 1, 7 (1989)) (internal quotation marks omitted). When assessing reasonable suspicion, a court must look at the “totality of the circumstances—the whole picture.” *Sokolow*, 490 U.S. at 8 (quoting *United States v. Cortez*, 449 U.S. 411, 417 (1981)).

A

Lawfulness of the Traffic Stop

The Defendants argue that Andreozzi unlawfully prolonged the traffic stop because he did not have reasonable suspicion to inquire of crimes other than the seatbelt violation. They specifically argue that Andreozzi unlawfully prolonged the traffic stop because the slight odor of marijuana coupled with their nervousness during the encounter did not give Andreozzi reasonable suspicion to believe criminal activity was afoot.

Conversely, the State argues that Andreozzi possessed reasonable suspicion based on articulable facts to prolong the stop and conduct the dog sniff. The State specifically argues that Andreozzi’s experience and training coupled with the Defendant’s nervousness, Li’s response to questioning as well as his target glance, and Andreozzi’s detection of the slight odor of fresh marijuana, all constitute articulable facts that gave Andreozzi reasonable suspicion to prolong the traffic stop and call for the dog sniff.

The Court’s analysis of the lawfulness of a traffic stop requires a two-step analysis. First, the Court must assess “whether the initial stop was justified; and second, whether the police had a legal basis to justify an investigation beyond the scope of the reason for the stop itself.” *United States v. Orth*, 873 F.3d 349, 353-54 (1st Cir. 2017).

1

Initial Stop

Li and Kuang do not challenge the lawfulness of the initial stop by Andreozzi, and they concede that the initial stop of Kuang’s vehicle for a seatbelt violation was lawful. Having found that the initial stop of Kuang’s vehicle was justified, the Court will proceed to step two of its analysis and determine whether Andreozzi prolonged the traffic stop without independent reasonable suspicion, thus causing the traffic stop to become unlawful. The Court will specifically examine whether Andreozzi’s conduct after the initiation of the stop and before the dog sniff withstands our well-settled Fourth Amendment jurisprudence.¹⁴

The parties pose that the only legal question before this Court is whether Andreozzi possessed reasonable articulable suspicion that criminal activity was afoot, thus warranting the prolonging of the motor vehicle stop to conduct the dog sniff. This Court believes that it must also address whether Andreozzi requesting Li to exit his vehicle and sit in the front passenger seat of the police cruiser was proper. This inquiry is relevant and necessary because it assists the Court in deciding at what point in time the stop was prolonged. It is also significant because the State urges the Court to consider Andreozzi’s questioning of Li as well as Li’s target glance, all of which

¹⁴ The Court is mindful that the dog sniff and positive alert given by K-9 Chuck gave Andreozzi probable cause to search Kuang’s vehicle under the automobile exception. However, the dog sniff and subsequent search of the vehicle are deemed fruits of the poisonous tree if the vehicle stop was prolonged without reasonable suspicion.

occurred in Andreozzi's cruiser, in its analysis of whether Andreozzi had reasonable suspicion to prolong the traffic stop.

2

Li's Detention

The United States Supreme Court has stated "that a seizure that is lawful at its inception can violate the Fourth Amendment if its manner of execution unreasonably infringes interests protected by the Constitution." *Illinois v. Caballes*, 543 U.S. 405, 407 (2005). It has cautioned on numerous occasions that a traffic stop "justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission." *Id.*; see also *Arizona v. Johnson*, 555 U.S. 323, 333 (2009) (holding that a seizure remains lawful only "so long as [unrelated] inquiries do not measurably extend the duration of the stop").

The mission of an officer conducting a traffic stop is not constrained to determining whether to issue a traffic ticket. The mission also includes "ordinary inquiries incident to the traffic stop." *Rodriguez v. United States*, 575 U.S. 348, 355 (2015). "Typically such inquiries involve checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." *Id.* Consequently, "[a]n officer . . . may conduct certain unrelated checks during an otherwise lawful traffic stop. But . . . he may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual." *Id.*

Our Supreme Court has held that "an officer can order the driver and passengers to get out of a lawfully stopped vehicle without violating the Fourth Amendment's prohibition against unreasonable searches and seizures." *Quinlan*, 921 A.2d at 108; see also *Pennsylvania v. Mimms*,

434 U.S. 106, 111 n.6 (1977). Given that the Supreme Court cited to *Mimms* as support for this proposition, this Court will look to *Mimms* in addressing the permissible scope of an officer asking a driver to exit the vehicle during a motor vehicle stop.

In *Mimms*, the United States Supreme Court was asked to weigh officer safety against “the intrusion into the driver’s personal liberty occasioned not by the initial stop of the vehicle, which was admittedly justified, but by the order to get out of the car.” *Mimms*, 434 U.S. at 111. The Court held that such an additional intrusion can only be described as *de minimis* because

“[t]he driver is being asked to expose to view very little more of his person than is already exposed. The police have already lawfully decided that the driver shall be briefly detained; the only question is whether he shall spend that period sitting in the driver’s seat of his car or standing alongside it. Not only is the insistence of the police on the latter choice not a serious intrusion upon the sanctity of the person, but it hardly rises to the level of a petty indignity. What is at most a mere inconvenience cannot prevail when balanced against legitimate concerns for the officer’s safety.” *Id.* (internal citations and quotations omitted).

The United States Supreme Court, in *Rodriguez*, revisited the competing interests of officer safety and the intrusion into a driver’s personal liberty when he is asked by police to exit his vehicle. *Rodriguez*, 575 U.S. at 349. In *Rodriguez*, the Court again acknowledged that the “government’s ‘legitimate and weighty’ interest in officer safety outweighs the ‘*de minimis*’ additional intrusion of requiring a driver, already lawfully stopped, to exit the vehicle.” *Rodriguez*, 575 U.S. at 356 (citing *Mimms*, 434 U.S. at 110-111). However, it also articulated that “the government’s officer safety interest stems from the mission of the stop itself . . . [t]raffic stops are ‘especially fraught with danger to police officers.’” *Id.* (quoting *Johnson*, 555 U.S. at 330). Accordingly, “[h]ighway and officer safety are interests different in kind from the Government’s endeavor to detect crime in general or drug trafficking in particular.” *Id.* at 357. This difference

indicates that an officer cannot use safety precautions in order to facilitate a detour from the mission of the traffic stop and perform on-scene investigation into other crimes. *See id.* at 356.

Andreozzi testified before this Court that he removed Li from the vehicle for his safety while he conducted ordinary inquiries incident to the traffic stop. This Court is not persuaded by his justification. In fact, this Court believes that Andreozzi's actions are more akin to using officer safety as a mechanism to facilitate a detour from the traffic enforcement mission.

While testifying, Andreozzi could not fully articulate why he was in fear of his safety. He did, however, insinuate that Li and Kuang's level of nervous behavior could be categorized as some type of action that could jeopardize his safety. However, when he was asked whether he felt unsafe at the moment he took Li out of the driver seat, he answered "I wouldn't use that adjective, but it was uncomfortable."¹⁵ This Court is hesitant to equate "feeling uncomfortable" with "feeling unsafe" because doing so would set a significantly lower standard than the one expressed in *Mimms* and *Rodriguez* for police officers to remove drivers and passengers from their vehicles. *See Rodriguez*, 575 U.S. at 356; *Mimms*, 434 U.S. at 111.

Additionally, this Court's belief is justified under these circumstances because Andreozzi's conduct is at odds with someone who has legitimate concerns for their safety. First and foremost, Andreozzi did not testify that either of the Defendants acted evasively, aggressively, or made any movements consistent with reaching for a weapon. He only observed heightened nervousness, which he acknowledged was a common reaction exhibited by vehicle occupants during traffic stops.¹⁶ Second, rather than asking Li to step out of the vehicle and stand alongside

¹⁵ Tr. 47:2-4, Feb. 24, 2021 (Tr.).

¹⁶ Andreozzi specifically testified that "inherently everybody is nervous when they get stopped by the police. I know I have testified in court before that I have been nervous if a police officer is behind me; it is human nature." Tr. 8:19-22.

it so he could get a better glance of Li's person, Andreozzi immediately asked Li to sit next to him, in the front passenger seat of his cruiser, while he ran law enforcement checks. What is most concerning at this point is that Andreozzi did not conduct a pat down of Li, which is inconsistent with his statement that he asked Li to exit the vehicle out of a concern for his safety. He was also unaware of whether Li had an extensive criminal history or if he had existing warrants. Lastly, Andreozzi never removed Kuang from the vehicle and never conducted a pat down of Kuang. All of these facts indicate that Andreozzi, rather than securing his safety, took measures that could have heightened his safety risk. Thus, this Court is unable to conclude Li was asked to exit the vehicle based upon a valid concern for Andreozzi's safety.

Moreover, this Court is not persuaded by Andreozzi's two additional justifications: to separate the parties and to prevent the prolongation of the traffic stop. In regard to separating the parties, Andreozzi could have taken other less intrusive means than asking Li to sit in the front passenger seat of the police cruiser. Andreozzi could have separated the parties by asking Li to stand next to his vehicle, in front of the police cruiser, or even in the breakdown lane. These less intrusive alternative means would have allowed Andreozzi to accomplish his goal of separating the parties.

Turning to preventing the prolongation of the traffic stop, the Court concludes that despite Andreozzi's belief, his removal of Li from the vehicle actually prolonged the traffic stop. Based on the facts present in this case, it is clear that Andreozzi departed from his seatbelt violation mission and pursued a narcotics investigation when he removed Li from the vehicle. First, the investigation into the seatbelt violation most certainly came to a close because Andreozzi never pursued follow-up questioning regarding the traffic violation. Second, Andreozzi's ensuing investigation was not reasonably related in scope and duration to the circumstances that justified

the stop in the first instance. *See Parra*, 941 A.2d at 804 (recognizing that while an officer may order the driver and passenger out of a lawfully stopped vehicle, any “ensuing investigation must be reasonably related in scope and duration to the circumstances that justified the stop in the first instance, so as to be minimally intrusive of the individual’s Fourth Amendment interests”). Andreozzi clearly shifted his focus to a narcotics investigation because he not only called for a dog sniff, but he exploited Li’s detention in the vehicle to gain more information about possible criminal activity as evidenced by his line of questioning concerning the presence of different types of contraband in the vehicle. Therefore, the Court believes that Andreozzi removed Li from the vehicle under the pretense of a safety precaution in order to facilitate a detour from the traffic violation mission of the traffic stop and to perform on-scene investigation into narcotic trafficking. This belief is further buttressed by Andreozzi’s statement that once Li was seated in his police cruiser, he was not free to leave.

Thus, the Court is constrained to conclude that removing Li from the vehicle was a deviation from the traffic enforcement mission of the stop, and therefore, Andreozzi prolonged the stop when he removed Li from the vehicle.

3

Reasonableness of the Prolonged Traffic Stop

Given this Court’s conclusion that Andreozzi prolonged the traffic stop when he removed Li from the vehicle and then detained him in his cruiser, the Court must determine whether Andreozzi had adequate reasonable suspicion to justify the prolongation of the stop. *See Rodriguez*, 575 U.S. at 355 (An officer may not prolong a traffic stop, “absent the reasonable suspicion ordinarily demanded to justify detaining an individual.”). The Court will not consider Andreozzi’s observations of Li’s behavior after Li was removed from the vehicle in its reasonable

suspicion analysis because these events occurred after the stop was prolonged. Thus, the question before this Court is whether Andreozzi had adequate reasonable suspicion to prolong the traffic stop and turn it into a narcotics investigation based upon the events leading up to when he removed Li from the vehicle. *See State v. Linze*, 389 P.3d 150, 154 (Idaho 2016) (“[W]hen an officer abandons his or her original purpose, the officer has for all intents and purposes initiated a new seizure with a new purpose; one which requires its own reasonableness under the Fourth Amendment. This new seizure cannot piggy-back on the reasonableness of the original seizure.”).

While there is “[n]o simple, mechanical formula [that] tells us what reasonable suspicion is, . . . we know that it is less than probable cause and more than a naked hunch.” *United States v. Dion*, 859 F.3d 114, 124 (1st Cir. 2017) (quoting *United States v. McGregor*, 650 F.3d 813, 821 (1st Cir. 2011)). We also know that “no one-size-fits-all template exists to sketch out whether an officer acted with reasonable suspicion.” *Id.* “Evaluating whether an officer’s suspicions were reasonable is a fact-specific task, requiring some level of deference to the experienced perception of the officers.” *Orth*, 873 F.3d at 355 (internal quotations and citations omitted). “The court cannot evaluate reasonable suspicion in a vacuum; it must make due allowance for the need for police officers to draw upon their experience and arrive at inferences and deductions that might well elude an untrained person.” *Id.* (internal quotations and citations omitted).

Additionally, “the circumstances and unfolding events during a traffic stop allow for an officer to ‘shift his focus and increase the scope of his investigation by degrees’ with the accumulation of information.” *Id.* at 354 (quoting *Chhien*, 266 F.3d at 6). Furthermore, any subsequent actions after the initial stop must be “measured by the ‘emerging tableau’ of circumstances as the stop unfolds.” *Id.* Hence, “we must assess the presence of reasonable suspicion in a commonsense, case-by-case way, taking in the whole picture” while giving “a

measurable degree of deference to the perceptions of experienced law enforcement officers.” *Dion*, 859 F.3d at 124 (internal quotations omitted). “Of course, such deference is not without bounds.” *Orth*, 873 F.3d at 355.

Courts have concluded that certain facts such as excessive nervousness, inability of an occupant to confirm his or her identity, conflicting stories about travel plans, evasive moments by an occupant, as well as an occupant’s body language and displayed aggression, when viewed together, justify a prolonged traffic stop. *See id.* at 356 (holding that an officer had reasonable suspicion to prolong a traffic stop based on the passenger’s abnormal body language and displayed aggression, and that the driver was extremely nervous, gave quick answers to the officer’s questions, and refused to check his glove compartment for the vehicle’s registration); *see also Sowers*, 136 F.3d at 27 (holding that an officer had reasonable suspicion to believe criminal activity was afoot because of the conflicting stories told by the two occupants, their excessive nervousness, and the passenger’s inability to confirm her identity).

Based on the Court’s review of the sequence of events that led up to Andreozzi removing Li from the vehicle, there were few facts that, when viewed together, could provide Andreozzi with reasonable suspicion to believe criminal activity was afoot. The Defendants were fully compliant with Andreozzi’s requests, they did not display aggressive behavior, they did not make furtive movements, and they did not act evasively. Thus, based on the circumstances present in this case, the only articulable facts available to Andreozzi were Li’s nervousness, the slight odor of marijuana, and the fact that Defendants were traveling on a public highway known to be part of a drug trafficking corridor.

While our Supreme Court has not yet addressed how the odor of marijuana affects the reasonable suspicion or probable cause determination in light of the decriminalization of

marijuana, the Superior Court in *Cabrera* and *Petty* held that the odor of marijuana can be a factor in the totality of the circumstances test for probable cause to search a vehicle because marijuana, despite its decriminalization, is still contraband. *See State v. Cabrera*, No. K2-2015-0787A, 2016 WL 4039824 (R.I. Super. July 21, 2016); *State v. Petty*, No. K220160444, 2018 WL 835212 (R.I. Super. Feb. 6, 2018). However, the current case before this Court is considerably different from *Cabrera* and *Petty* because the court was not confronted in either of those cases with the slight odor of marijuana, nervousness, and the location of the stop as the only articulable facts for probable cause. *See Cabrera*, 2016 WL 4039824, at *7 (the court found probable cause based on the fact that defendant had prior drug charges, was not truthful, had possession of marijuana and a half smoked joint, and was so nervous during the encounter that he fainted after being informed that the trooper was going to search his vehicle); *Petty*, 2018 WL 835212, at *7 (the court found probable cause based on the fact that the vehicle emanated a smell of fresh marijuana, the defendant admitted to smoking weed earlier, was not truthful about his identity, and had an extensive criminal history).

Nervousness is of slight use to the Court in its reasonable suspicion analysis because “[n]ervousness is a common and entirely natural reaction to police presence[.]” *United States v. McKoy*, 428 F.3d 38, 40 (1st Cir. 2005); *see also State v. Huffman*, 360 P.3d 707, 712 (Or. Ct. App. 2015) (“nervousness alone is entitled to little weight when evaluating reasonable suspicion”). Since it’s pervasive, it is “not necessarily indicative of criminality, to appear nervous during even a mundane encounter with police[.]” *Cruz*, 945 N.E.2d at 907. Andreozzi himself testified that “everybody is nervous when they get stopped by the police.”¹⁷ Accordingly, this Court does not find nervousness to be a significant factor in its reasonable suspicion analysis.

¹⁷ Tr. 8:19-20.

Additionally, the fact that Defendants were traveling on a public highway considered by law enforcement to be part of a drug trafficking corridor is of minimal probative value to the Court's reasonable suspicion analysis. *See Orth*, 873 F.3d at 356 (“just because a stop occurs in a high crime area does not, in and of itself, justify the prolonged detention” of the driver and the vehicle's occupants). This is because it is unreasonable to infer that a person is a drug trafficker simply from a use of the highway when there is no indication that the interstate highway has fallen so out of favor with travelers not engaging in the trafficking of narcotics. *See State v. Bowen*, 481 P.3d 370, 374 (Or. Ct. App. 2021) (“the act of traveling on a public highway known to be part of a ‘drug trafficking corridor’ does not give rise to reasonable suspicion that any particular person traveling on the highway is trafficking drugs”).

Thus, having found that the nervousness of the Defendants as well as their route of travel are of minimal relevance to this Court's analysis of reasonable suspicion, the Court concludes nervousness, coupled with the *slight* odor of marijuana¹⁸ and the location of the traffic stop being in a known drug trafficking corridor, is insufficient to establish reasonable suspicion to prolong the traffic stop of Defendant's vehicle. The Court is constrained to come to this conclusion because Andreozzi never followed up on the slight odor he detected. He did not ask whether either Defendant had a medical marijuana card. He also did not ask if either of the Defendants had been smoking marijuana that day. These questions would have allowed Andreozzi to develop his suspicions during the stop and in turn increase the scope of his investigation by degrees, so he could properly shift his focus from the traffic violation to a criminal narcotics investigation. *See*

¹⁸ This Court has not distinguished between fresh and burnt odors of marijuana and finds that the nature of the odor does not change its analysis of reasonable suspicion in this matter.

Dion, 859 F.3d at 125 (recognizing that “as an investigation unfolds, an officer’s focus can shift, and he can ‘increase the scope of his investigation by degrees’”).

This Court cannot ignore that the decriminalization of marijuana affects an increasing number of motor vehicle stops. Andreozzi himself testified that he and other troopers see significantly more marijuana usage in motor vehicles due to the decriminalization of marijuana.¹⁹ This number will surely increase if our Legislature legalizes recreational use of marijuana.

If this Court were to hold that the odor of marijuana, nervousness, and a vehicle’s route of travel with nothing more provides reasonable suspicion to prolong a traffic stop, it would be undermining our Fourth Amendment jurisprudence that serves to protect the right of the people to be free from unreasonable searches and seizures. *State v. Taveras*, 39 A.3d 638, 648 (R.I. 2012) (“[t]he lynchpin of any Fourth Amendment analysis is reasonableness”). Such a finding would allow police officers to frequently and unreasonably prolong traffic stops and perform on-scene investigation into other crimes when they stop a vehicle on a public highway known to be part of a drug trafficking corridor and are confronted with the slight odor of marijuana, as well as a driver who could plausibly appear nervous for a myriad of reasons unrelated to transporting criminal contraband. This result would surely be incompatible with the State’s changing perception of marijuana usage and its prevalence in our daily lives.

This Court is aware that the search of Kuang’s vehicle resulted in the discovery of a significant amount of marijuana; however, it cannot overlook the unlawfulness of the traffic stop. Former United States Supreme Court Justice Robert H. Jackson once observed, “[a] search is not to be made legal by what it turns up. In law it is good or bad when it starts and does not change

¹⁹ Tr. 10:12-14.

character from its success.”²⁰ His wise words capture the deep-rooted notion that we do not stray from the bedrock principles of the Fourth Amendment just because criminal activity has been discovered. The principles enshrined within the Fourth Amendment must be followed regardless of what turns up in the wake of unlawful law enforcement action.

Therefore, this Court finds that Andreozzi’s extension of the traffic stop beyond its original scope was unreasonable under the circumstances because Andreozzi did not have independent reasonable suspicion to prolong the traffic stop of Kuang’s vehicle.

B

Probable Cause to Search the Vehicle

Based upon the Court’s conclusion that the stop was unlawfully prolonged, the Court need not address whether Andreozzi had probable cause to search Kuang’s vehicle because the evidence seized is fruit of the unlawful stop.

IV

Conclusion

Therefore, based on the facts present during the traffic stop, the Court concludes that the stop of Kuang’s vehicle was prolonged without independent reasonable suspicion to believe further criminal activity was afoot. Since the prolongation of the traffic stop was not supported by reasonable suspicion, Defendants’ constitutional rights were violated. Accordingly, Defendants’ motions to suppress the evidence seized from the vehicle are granted. Counsel shall submit an appropriate order for entry.

²⁰ *United States v. Di Re*, 332 U.S. 581, 595 (1948).



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: State of Rhode Island v. Junjie Li
consolidated with
State of Rhode Island v. Zhong Kuang

CASE NO: K2-2019-0513A and K2-2019-0513B

COURT: Kent County Superior Court

DATE DECISION FILED: May 10, 2021

JUSTICE/MAGISTRATE: Procaccini, J.

ATTORNEYS:

For Plaintiff: David Bonzagni, Esq.

For Defendant: John L. Calcagni, III, Esq.
S. Joshua Macktaz, Esq.